

Civilian Oversight and Police Legitimacy in an Age of Conflict and Distrust

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ABSTRACT

This dissertation explores the mechanisms by which civilian oversight of the police seeks to improve the accountability, transparency, trustworthiness, and, ultimately, the legitimacy of law enforcement. This exploration involves case studies of civilian oversight mechanisms in Los Angeles, New York City, and Kansas City. In the Kansas City case, I employed survey research and interviews to assess the attitudes and experiences of relevant actors. I found some evidence that civilian oversight can improve accountability, transparency, and trust. However, for oversight to produce the desired effects, citizen boards must have sufficient legal authority as well as appropriate staffing, budgets, and cooperation from police departments and unions. Unfortunately, such cooperation is not easily achieved.

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INTRODUCTION

Ever since the beating of motorist Rodney King by officers of the Los Angeles Police Department was televised nationally in March of 1991, the use of excessive force by law enforcement has been a salient national issue. The advent of smart phones with cameras has only increased the saliency of the issue, as encounters between police and citizens are now likely to be recorded and publicized. Recent years have witnessed a series of incidents in which police used deadly force while making arrests, arguably without necessity or justification. Some of the more prominent incidents of citizens being subjected to deadly force by the police are Michael Brown in Ferguson, Missouri, 2014; Eric Garner in Staten Island, New York, 2014; Laquan McDonald in Chicago, 2014; and Terry Williams in Milwaukee, 2017. In each of these cases, the officers were white and the citizens subjected to deadly force were black. All of these cases produced intense criticism in the media as well as massive unrest in urban communities.

In Ferguson, Missouri, the killing of Michael Brown by a police officer in August 2014 sparked days of protests that turned violent at points. It was during the Ferguson protests that the nation became aware of Black Lives Matter, a national advocacy group formed to combat what it perceived as unjustified use of force by police against African-American citizens. As Black Lives Matter conducted numerous protests in cities across the United States, racially-biased policing became a national political issue, and the legitimacy of law enforcement was called into question. It is fair to say that the law enforcement establishment today is facing a crisis of legitimacy due in large part to the highly-publicized incidents in which police used deadly force against citizens (Nix, Campbell, Byers, & Alpert, 2017).

“Policing in the United States is in crisis, a ‘perfect storm’ of popular protest and media coverage of egregious violations” (Epp et al., 2017, p.168). Law enforcement is facing a “defining moment” in which it must embrace changes in order to restore its legitimacy (Police Executive Research Forum, 2016, p.119).

Police officers who use excessive force in making arrests violate the constitutional rights of citizens, in particular the Fourth Amendment right to be free from unreasonable seizures (*Graham v. Connor*, 1989). An officer who violates the constitutional rights of a citizen by using excessive force in making an arrest is subject to criminal prosecution and/or civil liability under the federal and state civil rights statutes. The officer is also subject to criminal prosecution under state law for assault and battery or, in the case of deadly force, some form of homicide. However, criminal prosecutions of police officers by state authorities are uncommon and convictions are rare (Ross, 2019). Officers suspected of using excessive force are typically not indicted, in most cases because local prosecutors decline to take these cases before grand juries. When indictments are handed down, officers are often found not guilty.

Between 2014 to 2016, there were thirteen high-profile cases around the nation involving the use of deadly force by police. In only seven of these cases were police officers indicted, and as of 2016, none of these indictments had led to convictions (Park & Lee, 2017, para 2).

The Washington Post conducted an in-depth analysis of officer shootings in 2015. Their research found that of the 965 people who were shot by police, 564 were armed with a gun, 281 had a different weapon, and 90 were unarmed (Kindy, Fisher, Tate, and Jenkins, 2015). Another *Washington Post* study found that, since 2005, there were thousands of fatal police shootings. From those thousands, most officers were acquitted and only 54 were charged. Of those 54, only

11 were convicted and in most of the cases the officers were white and the victims were black (Kindy & Kelly, 2015)

Of course, there are internal police department sanctions available to penalize officers who employ excessive force, violate citizens' rights, or otherwise violate departmental policies. Traditionally, when a complaint is filed against a police officer, the Internal Affairs office of the police department conducts an investigation. During the pendency of the investigation, the officer is usually suspended with pay or reassigned to a 'desk job' that removes him or her from the streets. While police officers often resent and fear internal affairs investigations, internal affairs inquiries usually vindicate officers. A recent example of this occurred in Seattle, Washington.

In 2014 Seattle Police Officer Adley Shepherd punched a woman, Miyello Durden-Bosley, in the face as she sat handcuffed in the back of the officer's car. She supposedly kicked the officer in the jaw as she was shoved into the car. Since the patrol car's video captured this, the officer was placed on administrative leave for 29 months and then fired by then-Chief Kathleen O'Toole in 2016. It took almost two years for the officer to be fired due to various legal delays.

The Seattle Police Officers Guild along with the city chose an arbitrator to settle the case. The arbitrator decided the firing was too severe and the termination was cancelled. However, the King County Superior Court vacated the arbitrator's decision, and the firing was reinstated. The judge quoted from the police department manual which says, "An officer may not use physical force: To punish or retaliate on handcuffed or otherwise restrained subjects except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, escape, or destruction of property" (komonews.com, 2019, para 20).

The police maintain that they have “the responsibility and the capacity to handle their own affairs, especially when it involves discipline, and they consider complaints as hostile acts on the part of citizens” (Walker, 2005, p. 16). Internal Affairs investigations and decision-making processes are not shared with the complainants or the civilian community. This lack of transparency, coupled with the fact that officers generally are not held accountable for violations of departmental policies and procedures, can lead to suspicion and distrust in the community and contribute to a perception, especially in inner cities, that the police are enemies to be resisted.

Because police departments typically rule in favor of the police officer in many citizen complaints, it raises the question as to whether the police can investigate a complaint against one of their own in a fair and unbiased manner. In urban communities, especially among minority groups, there is a longstanding belief that the Internal Affairs units cannot be counted on to insure police accountability. However, this belief is not limited to inner-city communities. A national survey conducted by the Pew Research Center and reported in *USA Today* in August 2014 found that 65% of respondents believed that police departments do a poor or fair job of holding police officers accountable for misconduct; only 30% indicated that departments do a good or excellent job in this regard (Ofer, 2016). “A separate 2014 poll found that while a large majority of Americans (78%) have a favorable view of the police, only 46% believe that police officers are held accountable for wrongdoing” (Ofer, 2016, p.1034).

One major hurdle for police accountability is that citizens often don’t bother to file complaints because they don’t think their concerns would be taken seriously.

There is little motivation for police departments to encourage civilians to complain, experts say, and many internal affairs officers either implicitly or

explicitly make it difficult for citizens to air their grievances (Reilly, 2015, para 4).

In Baltimore, a city plagued by conflict between the police and the inner-city community, the police department has been slow to address allegations of misconduct. Research by the *Baltimore Sun* found that 76 police misconduct cases since 2016 have expired without any conclusions (Rector, 2019). “Critics of the police department have said its failure to fully investigate every complaint against officers is evidence it cannot be trusted to hold itself accountable and needs outside oversight” (Rector, 2019, para 3).

To highlight the seriousness of this issue, President Obama signed an executive order in 2015 establishing The President’s Task Force on 21st Century Policing. The Task Force report noted that, “Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve.” (The President's Task Force on 21st Century Policing, 2015, p. 26).

One of the reforms aimed at restoring trust and improving police accountability is the creation of civilian oversight boards. Such boards, ideally composed of people representing their community, are empowered to investigate complaints of police misconduct. In 1964, five years before he became Chief Justice of the Supreme Court, Judge Warren E. Burger, called for the establishment of civilian oversight agencies.

To accomplish the objective of maintaining lawful law enforcement calls for a commission or board which is predominantly *civilian*, an external rather than an internal *police* agency...Although such a review body would of necessity

cooperate with a police department, it must be *independent* of police administration in the same sense – and for some of the same reasons – that courts must be independent of prosecutors (Burger 1964, p. 16).

Judge Burger’s call was widely heeded, as numerous cities established police oversight mechanisms. According to the National Association for Civilian Oversight of Law Enforcement (NACOLE), there are more than 200 civilian oversight agencies in the United States. Among these agencies there are many different structures, oversight models, legal powers, and authority to make final decisions regarding officer discipline (Stephens, Scrivner, & Cambieri, 2018).

There are three key models of civilian oversight: investigation-focused, review-focused, and auditor/monitor focused. All models have potential strengths and weaknesses, and a city/county would need to research these models to find what might be appropriate. Although no two review boards are identical, there are some characteristics that they all share: high variability in structure, varying differences in authority, and a combination of models considered hybrids.

Models of Civilian Oversight

Investigation-focused model. In this model of oversight, an independent board staffed by civilians conducts its own investigations of complaints of police misconduct. Such boards vary as to their powers to subpoena individuals and records. In general, after concluding their investigations, their only power is to make recommendations to the police or local governing bodies.

Auditor/monitor model. The auditor/monitor model is more focused on a broader perspective than merely complaints, for example, what patterns are used in investigations, findings, and discipline. Sometimes the auditor/monitor will become involved in an active investigation. Since this model has the authority to review police policies, practices, and deeper access to departmental records, it can make recommendations on how the police department can improve. However, the Chief of Police has to implement these recommendations, and unfortunately there is no method to compel a police department to institute systemic changes. New York and LA both have the auditor/monitor model.

Review-focused model. This model focuses on how well the internal affairs department handles citizen complaints and usually consists of a board of volunteers to manage police activities. Typically these citizen volunteers have very little expertise in police business. The public trust can be enhanced when the complaint process becomes transparent, and the community can voice their opinions at open review board meetings. With limited authority, this model may be less independent of the police department and may not have the staff, resources, authority or money to conduct their own investigation (DeAngelis, Rosenthal, & Buchner, 2016).

NACOLE offers communities many resources in how to create a police review board, but, to date, there has been no clarification as to what makes a review board *effective* in its oversight of law enforcement. There are various reasons why cities form civilian oversight boards, but it is important to note that “... 49 percent of agencies’ oversight bodies were established following high-profile incidents and 30 percent from concerns about violence” (Stephens, Scrivner, & Cambareri, 2018, p. 27).

The need for civilian oversight of law enforcement was first realized in the 1960s due to corruption, brutality, and inefficiency, but the idea did not become a part of American policing

until the 1980s (Walker, 2005) with the movement toward community policing. Community policing entails cooperation between the police and the communities they serve. Citizens and police can work together to improve the safety of the community, but only if the citizens perceive the police as being legitimate. Collaboration is not possible in the absence of trust. “If police are to maintain social order in a normatively justifiable manner, it is vital they be considered legitimate by those they police” (Antrobus, Bradford, Murphy, & Sargeant, 2015, p. 152). When officers are discourteous and coercive with the public, citizens will perceive police and police departments as not being legitimate (Terrill & Paoline, 2015). The President’s Task Force on 21st Century Policing noted that civilian oversight is critical in order to strengthen the community’s trust and each community needs to identify what structure that oversight should be (The President's Task Force on 21st Century Policing).

Effectiveness of Civilian Oversight

There is very little research assessing the effectiveness of civilian review boards. Walker and Luna (2000) found that, despite having two civilian oversight agencies and a diverse police force, officer-involved shootings in Albuquerque continued to be high relative to other cities. On the other hand, Terrill and Ingram (2016) found that when police departments involve civilian oversight agencies in the investigation of complaints against officers, the rate at which complaints are sustained increases significantly. Most recently, Ali & Pirog (2019) found that civilian oversight boards with a significant scope of authority can reduce racial disparities when there is narrow discretion on the part of officers. But when boards have little authority and were established for appearance only, they will have very little effect on police violence.

Police Legitimacy

Ultimately, the key question is whether the creation of civilian oversight boards increases police legitimacy. “Understanding the causes of citizen complaints can potentially assist in establishing and preserving police legitimacy” (Terrill & Paoline, 2015, p. 193). The literature suggests that legitimacy is a function of several factors, including trust, accountability, descriptive representation, and procedural justice. Ideally, civilian oversight of police departments can improve community-police interactions, increase police accountability to the community, and enhance public perceptions of representation and procedural justice.

Concern for the Future of Policing

It is important that police be well-trained in the law, respectful of the rights of persons they encounter, and held accountable when they violate the law and individual rights. However, there is reason for concern about the effect of negative publicity on police morale and recruitment. Moreover, it may be that officers are becoming more hesitant to do their job due to the fear that their actions will be misinterpreted, that they will be subjected to intense media scrutiny, which could lead to the loss of their job. This hesitancy has been dubbed the Ferguson effect which is the idea that “officers are conscious of the negative publicity surrounding their profession, understand that their actions could be recorded by the public at any given time, and become less willing to do their job as a way to avoid being accused of racial profiling or excessive force” (Wolfe & Nix, 2016, p. 1).

Columbia, Missouri: Personal Experience

In November 2009 the City of Columbia, Missouri created its first Citizen Police Review Board. After being appointed by the City Council to serve on the Board, I was elected by the Board members to serve as chairman. I served in this capacity for two years, at which time my husband and I moved to Knoxville, Tennessee. During my two years on the Board, we dealt with roughly twenty complaints of police misconduct, including one highly publicized incident in 2010 in which officers illegally entered a home and shot two dogs, killing one, in front of the family who lived there. In about half of the cases brought before the Board, we recommended that the officers involved be disciplined, but in no case did the Chief of Police accept our recommendation. When we appealed to the city manager and the mayor, both of them supported the Chief's decision. This was a frustrating experience, but it piqued my interest in the topic of civilian oversight of law enforcement.

A Roadmap to the Dissertation

In this dissertation I examine three cities that have created different mechanisms to ensure citizen oversight of the police. I selected the Los Angeles Police Department (LAPD) and the New York City Police Department (NYPD) for their extensive history of police abuse. I chose Kansas City because it has the oldest civilian review board in the United States. In all three cases, the question is whether the oversight board has been effective in improving the antecedents of legitimacy. With respect to Los Angeles and New York, I rely solely on secondary sources. These case studies are exploratory and illustrative. In the case of Kansas City, however, I utilize the results of my own survey and interviews in addition to secondary sources. The Kansas City chapter is thus the focal point of the dissertation in that it involves original data.

Before examining these case studies, it is important to provide the historical, legal, and conceptual foundations of the use of force by police. Chapter 2 provides an overview of the controversy over excessive use of force, highlighting some of the more dramatic cases as well as key court decisions. Chapter 3 examines the concept of legitimacy and its application to the police-citizen relationship, focusing on the aforementioned antecedents of legitimacy. Chapter 4 contains the Los Angeles case study. The New York case study is found in Chapter 5. The in-depth examination of the Kansas City experience is provided in Chapter 6. Chapter 7 offers my conclusions and recommendations.

CHAPTER ONE

THE IMPETUS FOR CIVILIAN OVERSIGHT

On the night of October 3, 1974, two Memphis police officers responded to a call indicating that a residential burglary was taking place. Upon arriving at the scene, one of the officers went around the house into the back yard, where he observed a young black male running toward a fence. The officer ordered the young man to stop, but the order was not heeded. As 15-year-old Edward Garner climbed the fence to make his escape, the officer shot him in the back of the head. Garner, who was unarmed, died on the way to the hospital. The officer was acting under a Tennessee statute that allowed police to use deadly force to prevent the escape of a fleeing-felony suspect. Accordingly, the officer involved was not prosecuted. However, a civil suit filed by Garner's father made its way to the United States Supreme Court. Eleven years after the incident, the Court ruled that the officer had violated Garner's Fourth Amendment right to be free from an unreasonable seizure. Moreover, it held that the Tennessee statute allowing the officer to use deadly force was unconstitutional. The Court said that deadly force can be employed only where the officer has good reason to believe that the fleeing suspect is armed and imminently dangerous (*Tennessee v. Garner*, 1985).

Historically, police officers were permitted to use as much force as necessary, including deadly force, to make a felony arrest. The *Garner* decision gave rise to a flurry of litigation on the issue of use of force by police. It also reduced the number of police shootings, and police homicides across the country (Tennenbaum, 1994).

In 1989, speaking through Chief Justice Rehnquist, the Court held that an officer's use of force "must be judged from the perspective of a reasonable officer on the scene" (*Graham v. Connor*, 1989, p. 490). According to Rehnquist's majority opinion, "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation" (*Graham v. Connor*, 1989, p. 490). Thus, with little practical guidance from the Supreme Court, state and federal courts continued to grapple with cases alleging unlawful use of force by the police.

The most infamous of such cases began on March 3, 1991 when four white Los Angeles police officers beat black motorist Rodney King, who had been stopped after a high-speed chase. The officers claimed that King was resisting arrest and that they used reasonable force to subdue him. When a videotape of the incident recorded by a bystander was aired on national television, there was widespread outrage. In Los Angeles, which had long been plagued by poor relations between the police and the minority community, tensions ran high. The officers were charged with assault and excessive use of force, but the case was moved from downtown to suburban Simi Valley. When an all-white jury acquitted the officers, South Central Los Angeles erupted into riot. In 1993, the officers were prosecuted in federal court on civil rights charges. Two of them were convicted and spent time in prison (*Koon v. United States*, 1996).

Ferguson, Missouri: The Michael Brown Incident

On August 9, 2014, in Ferguson, MO, Michael Brown, an unarmed, 18-year old black male, was shot by Officer Darren Wilson, a 28-year old white male. When a St. Louis grand jury decided

not to indict Officer Wilson, the citizens of Ferguson reacted by rioting for four nights. It was obvious that many Ferguson residents did not believe that this shooting was legitimate.

Ferguson police responded with a strong show of force. Police “wearing camouflage, black helmets and vests with POLICE stamped on the back ... carried objects that doubled as warnings: assault rifles, slender black nightsticks and gas masks” (Bosman & Apuzzo, 2014, para 1). The police also employed armored vehicles, which accentuated the militaristic character of their response. “The indiscriminate and unmodulated use of quasi-military force against protesters ... antagonized the public, escalated tension between protesters and police, and, at times may have infringed on protesters’ constitutional rights” (The Constitution Project, 2016, p.13). Eventually, Missouri Governor Jay Nixon ordered the state highway patrol to take over local security.

Just days after the shooting of Michael Brown, the U.S. Justice Department announced that it was opening its own investigation. Six months later, that investigation concluded that there was not sufficient evidence to charge Officer Wilson with a federal civil rights offense. Despite that conclusion, the Civil Rights Division of the DOJ investigated the Ferguson Police Department under the pattern-or-practice provision of the Violent Crimes Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.” (United States Department of Justice, 2015, p. 1). This investigation declared that the department did violate the First, Fourth and Fourteenth amendments by its pattern or practice of unlawful conduct (United States Department of Justice, 2015). The DOJ also found that

“Ferguson’s approach to law enforcement both reflects and reinforces racial bias, including stereotyping” (United States Department of Justice, 2015, p. 1). The DOJ brought a federal lawsuit against the City of Ferguson that resulted in a consent decree under which the City pledged to make substantial changes in its law enforcement practices. Among the most prominent of these reforms was the establishment of a civilian board to review allegations of excessive force by the police. (*United States of America v. The City of Ferguson*, Consent Decree, 2016).

Baltimore, Maryland: The Freddie Gray Case

On April 12, 2015, Freddie Gray, a 25-year-old black male, was arrested by police ostensibly for carrying an illegal knife. Police put Gray into a police van face down with his arms handcuffed behind his back. In transit to the police station, Gray suffered a fatal injury - his spine was 80 percent severed at his neck. District attorney Marilyn Mosby “said that Gray was illegally arrested, assaulted and falsely accused of carrying an illegal switchblade” while the Police Commissioner Anthony Bates “stated that it is not clear why Gray was stopped by the officers as there ‘is no law against running’” (BBC, 2016, para 4 and 7). As the nation watched on television, Baltimore erupted in riots on the night of Gray’s funeral.

The six officers involved in this incident were charged with various criminal charges, ranging from second-degree assault, manslaughter by vehicle, reckless endangerment, etc. Three of the officers were found not guilty, and charges were dropped on the other three officers due to the not-guilty verdicts. However, in a related civil suit for damages, the City settled with Gray’s family for \$6.4 million (Hawkins, Bui, & Herman, 2016).

As in the Ferguson, Missouri case, the U.S. Department of Justice conducted its own investigation into the death of Freddie Gray. Just as in the Ferguson case, the DOJ concluded that there was not sufficient evidence to charge the officers with violating Gray's civil rights. And just as in Ferguson, DOJ launched a patterns and practices investigation into the Baltimore Police Department. DOJ's 163-page report found evidence of racial profiling and the excessive use of force. It also found that officers routinely infringe upon First Amendment freedoms, specifically the rights to free speech and to peaceably assemble (Woolston, 2016). In August 2016, the DOJ and the City of Baltimore entered into an Agreement in Principle under which the Baltimore Police Department would be reformed.

In January 2017 the Justice Department brought suit against the police department, mayor, and city council of Baltimore, alleging a pattern of civil rights violations by the police. At the same time, the parties filed a consent decree that had already been worked out pursuant to the August Agreement in Principle. One the elements of the consent decree called for the establishment of a Community Oversight Task Force to make recommendations to improve community oversight of the police. "The Parties recognize that effective civilian and community oversight of BPD is essential to rebuilding trust between BPD and the communities it serves and ensuring that BPD's enforcement activities reflect community values and are consistent with the Constitution and federal, state, and local laws" (*United States of America v. Police Department of Baltimore City*, Consent Decree, 2017, p. 4).

Reflecting on the task of reforming the police department, Baltimore Mayor Catherine Pugh stated, "I'm asking the citizens to have faith that we will continue this work...we do want to transform our police department" (Rector & Broadwater, 2017, para 2). During a 2018 federal court hearing, the independent monitor testified that the police department was far from reaching

compliance with any part of the consent decree (Miller, 2018). After two years, the DOJ monitoring team stated that there were some improvements in misconduct investigations, but they were still unsatisfactory. The team noted “inexcusable negligence over a recent instance in which a dozen misconduct cases against officers were tossed out because the department’s internal affairs team allowed them to expire” (Anderson, 2019, para 2). Obviously it is more than difficult to change the inner workings of a police department.

Cleveland, Ohio: The Tamir Rice Tragedy

On November 22, 2014, Cleveland police received a call about someone brandishing a gun on the street, but the caller noted that possibly it was child with a toy gun. Unfortunately, the dispatcher failed to tell officers on their way to the scene exactly what the citizen said. When the officers arrived on the scene, they saw a young African-American male sitting at a table and on the table was what appeared to be a gun. They saw the young man retrieve the object and place it in his waistband. While still in the car with the windows down, the officers shouted to the young man to show his hands. When 12-year old Tamir Rice reached for the object in his waistband, one of the officers emerged from the police car and fired two shots. One of the shots struck Rice in the chest. He died the following day. The object of concern turned out to be a toy gun (cleveland.com, 2017).

The officers involved in the shooting of Tamir Rice were placed on administrative leave pending the outcome of an investigation. A year later, a local grand jury declined to indict the officers on state criminal charges. As in Ferguson and Baltimore, the U.S. Department of Justice

got involved. Following its investigation, DOJ issued a report that concluded “the Cleveland Police Department and its officers had engaged in a pattern or practice of exercising excessive force in violation of the Constitution of the United States” (*United States of America v. City of Cleveland*, 2015, p. 3). A subsequent lawsuit culminated in a consent decree that was approved by a federal district judge in June 2015 (*United States of America v. City of Cleveland*, 2015). Under the consent decree, the City agreed to take steps to insure increased officer accountability and civilian oversight.

The Newark Lawsuit

In 2011, the Justice Department began an investigation into the Newark, New Jersey Police Department, responding to “claims that brutality, baseless searches, intimidation and false arrests are commonplace in the Newark Police Department” (Perez-Pena, 2011, para 1). As in similar cases, a federal lawsuit against the City led to the entry of a consent decree (*United States v. City of Newark*, Consent Decree, 2016). One of the mandates in the consent decree was the creation of the Civilian Complaint Review Board. This board has investigatory powers, including the power to subpoena data and testimony from the police department. However in January, a Superior Court judge in Newark “took away subpoena and investigatory powers from the city’s Civilian Complaint Review Board” (Moriarty & Yi, 2018, para 1). The judge made this decision based on a lawsuit filed by the Fraternal Order of Police, which claimed that the board would undermine the police’s disciplinary process. Without those two powers, the review board had been stripped of any ability to monitor the police department and improve police accountability.

In June of 2019, the subpoena power was restored to the review board by the state appellate court. However, in this court ruling, the board's decisions are no longer binding and they can only make recommendations to the city's public safety director (Panico, 2019a). The Fraternal Order of Police is continuing to challenge the Review Board, and the New Jersey Supreme Court has agreed to hear the case (Panico, 2019b).

In an effort to document police use of force in New Jersey, "a 16-month investigation by NJ Advance Media for NJ.com, found New Jersey's system for tracking police force is broken, with no statewide collection or analysis of the data, little oversight by state officials and no standard practices among local departments" (Stirling & Sullivan, para 7). The Report found that blacks were more than three times more likely to experience excessive use of force and that the department's system for reporting use of force was dysfunctional. There is also a trend that New Jersey does not monitor officers using disproportionately higher amounts of force (Stirling and Sullivan, 2018).

The independent monitor for the consent decree against the Newark Police Department (NPD) has a webpage dedicated to information and reports on the activities of the monitor. The consent decree was signed in March of 2016 and stated that Newark and the NPD were to revamp and improve the quality of policing by increasing community oversight and developing new policies and procedures for officer misconduct as well as using in-car and body-worn cameras (NOD Independent Monitor, 2019, p. 1).

Seattle Shooting and Response

In 2012 the Department of Justice investigated an incident in which John T. Williams, a Native American woodcarver, was shot and killed by a Seattle police officer (Kroman, 2018). The

shooting took place after police observed Williams crossing the street with what appeared to be a knife in his hand. An officer yelled three times to “Put the knife down.” Within seconds the officer fired five rounds, striking Williams with four. The Firearms Review Board determined that the shooting was unjustified and recommended that the officer be fired. The officer chose to resign, and no criminal charges were filed against him (Kirshner, 2013). As in the other cities discussed previously, the Department of Justice launched its own investigation, which found a “pattern or practice of excessive force that violates the U. S. Constitution and federal law” (Seattle Police Monitor, 2018, para 2). And, as in other cities, the federal government filed suit (*United States of America v. City of Seattle*, 2012). The settlement called for the City to revise its use-of-force policy, the appointment of an independent monitor and establishing a new civilian oversight board.

In October 2012, Seattle adopted an ordinance creating the Community Police Commission. The purpose of this ordinance is to ensure that Seattle’s police department operates in accordance with the Constitution with the goal of increasing public confidence in the police (DOJ Community Police Commission, 2012). A 2017 ordinance made the CPC permanent and expanded its size and authority. In 2018, the federal court that was monitoring compliance with the settlement agreement found that that City was in “full and effective compliance” (Miletich & Carter, 2018, para 1). After an officer punched a handcuffed woman, the police chief fired him but unfortunately an arbitrator reinstated him (Miletich & Carter, 2019). In light of this incident, District Court Judge James Robart ordered the police department and city officials to defend the decision to reinstate the officer. After a hearing, the judge “found the appeals process threatened public confidence in reform efforts, ruled the department had

fallen out of compliance in that one narrow area, and ordered SPD to fix it” (Miletich & Carter, 2019, para 15).

Chicago, Illinois: The Laquan McDonald Case

Chicago has a long history of conflict between the police and the citizenry, especially the black community. That conflict spiked in October 2016 when a police officer shot and killed 17-year-old Laquan McDonald. After a truck driver reported someone breaking into vehicles, officers pursued McDonald, who refused to stop. McDonald had a three-inch pocketknife in his hand. Officer Jason Van Dyke, arriving on the scene in his squad car, stepped out and shot McDonald sixteen times. Van Dyke was convicted of second-degree murder and aggravated battery and sentenced to seven years in prison (Smith, Williams, & Davey, 2018). Three other officers who were also at the scene were acquitted of falsifying reports and conspiring to cover up the shooting. For Prosecutor Holmes, there is hope that the code of silence will eventually become non-existent (Ailworth, 2019).

Subsequently, the nine-member Chicago Police Board “fired a sergeant and three officers ... for exaggerating the threat posed by the 17-year old McDonald in order to justify the actions of Officer Jason Van Dyke...” (Gorner, 2019, para 3). The Inspector General recommended firing eleven officers, but six of them resigned before being dismissed. Two of those six included a deputy chief and chief of detectives. Not surprisingly, the Fraternal Order of Police disagreed with the decision, claiming that the officers did nothing wrong. McDonald was killed in 2014, and five years later, the officers were finally held accountable.

In the years since the McDonald shooting, Chicago has been struggling with the issue of police reform. On January 31, 2019, U.S. District Judge Robert Dow approved the consent decree which would now govern reform of the police department (Seidel, 2019). Judge Dow also noted that "...the 2.85 million annual price tag of a yet-to-be-chosen monitoring team is dwarfed by the legal cost Chicago has suffered in the last 15 years" (Seidel, 2019, para 7).

Baton Rouge, Louisiana: The Alton Sterling Incident

In 2016 Alton Sterling, a 37-year-old black male, was shot and killed by a Baton Rouge police officer outside a convenience store. Two officers had responded to a call indicating that someone was carrying a firearm. When Sterling questioned why the officers had confronted him, the officers wrestled Sterling to the ground. Officer Salamoni saw that Sterling was armed, yelled out, "He's got a gun," and immediately shot and killed Sterling (Chavez, 2018). This shooting was the first police incident in which the Attorney General was Jeff Sessions, and the Department of Justice decided that no charges would be brought against the officers (Kaleem & Tanfani, 2018). *Two years* after the shooting, Salamoni was fired and the police department released Salamoni's body-camera footage.

In an effort to thwart continuing incidents similar to this, the Louisiana legislature passed HB473, which became effective on June 16, 2017 (LegiScan.com). Under this legislation, police officers may have their certification revoked for a number of reasons, including malfeasance while conducting their duties. Since this legislation passed, the Peace Officer Standards and Training Council (POST) has permanently decertified only 26 officers. Unfortunately according

to Ursula Price, executive director of the New Orleans Workers' Center for Racial Justice, "Nobody's playing their roles; they all support and cover for each other. The DA is not a check on police power. Judges are not checks on DA power. They're all part of one community" (Fan et al., p. 3). A loophole in this legislation allows POST not to decertify officers in the absence of a criminal conviction.

Excessive Force and Police Bias

In all of the aforementioned cases, white police officers used deadly force against minority citizens. The excessive use of force by police, especially as it involves minorities, has been a serious issue in the United States for decades. In a statistical study based on the National Justice Database, the Center for Policing Equity (CPE) found that, "although police officers employ force in less than 2% of all police-civilian interactions, the use of force is more than three times higher for African Americans than for whites..." (Chauhan, Goff, Hermann, & Piza, 2018, p. 21).

The problem tends to spike at times and then recede. In the first six months of 2017, police killed 492 people nationwide, which was roughly the number of all police killings in 2016. As in earlier years, African-American males were disproportionately killed by police (Sullivan, Thebault, & Jenkins, 2017). The Bureau of Justice Statistics produced nationwide data showing that for 2015, the percentage of whites contacted by police who were shot was 2.4 percent. However, for blacks and Hispanics, the percentage of persons shot was roughly 5 percent (Davis, Whyde, & Langton, 2018).

A study of San Diego police officers and the San Diego County Sheriff's Department found that officers were more likely to use force against blacks than whites (Winkley & Schroeder, 2019). Between 2016 and 2018, "the San Diego police department stopped black people at a 219 percent higher rate per population than white people" and "[t]he San Diego Sheriff's deputies stopped black people at 130 percent higher rate per population than white people" (Sinyangwe, 2019, p. 1). Once stopped by either agency, "black people were more likely to be searched, arrested and to have force used against them" (Sinyangwe, 2019, p. 1).

In another study, the Urban Institute and the Center for Policing Equity examined racial disparities in the Austin, Texas Police Department. In areas where there are distinctly more Hispanic and black residents, the research showed that these residents experienced an inordinate amount of police force (Goff, Obermark, LaVigne, Yahner, & Geller, 2017). In reviewing the literature on the excessive use of force by police, there is more research that identifies minorities as the ones who will face more victimization than whites (Smith & Holmes, 2014). One reason that African Americans are more likely to be the targets of excessive police force is that "police are more likely to come into contact with young black males than with other demographics" (Strother, Menifield, & Shin, 2018, para 8). After extensive research, they found that blacks make up a small percentage of the nation; however, they have a disproportionately larger chance of being killed versus whites.

Not all researchers are convinced that police are racially biased in their use of force. One recent study found no evidence for anti-Black or anti-Hispanic bias in police shootings, stressing that "White officers are not more likely to shoot minority civilians than non-White officers" (Johnson, Tress, Burkel, Taylor, & Cesario, 2019, p. 15877). That study has drawn sharp

criticism, however. Princeton political scientist Dean Knox argues that “It’s just a completely indefensible conclusion to draw from the data that’s available” (Bawagan, 2019, para. 2). Phillip Atiba Goff of the John Jay College of Criminal Justice has criticized the Johnson et al. study for not considering the possibility that all police—irrespective of race—could be biased in shooting black people (Bawagan, 2019, para. 3).

One of the recommendations from this study is that the San Diego County Citizens’ Law Enforcement Review Board should be given the power to impose discipline and recommend changes to police policies. Without these changes, the board cannot effectuate any change toward accountability. As noted in 2018, most of the board’s recommendations were ignored by the police department. Out of the 226 complaints in 2016 and 2017, merely 11% favored civilians. “Moreover, complaints alleging the most serious misconduct were *never* [emphasis added] sustained (Sinyangwe, 2019, p. 19).

In our society, there is a widespread perception that young black males are more likely to engage in criminal activity or threatening behavior. There is reason to believe that police officers, regardless of their race, share that perception (Bayley, Davis, & Davis, 2015). Although use of force is legally justifiable if the officer perceives a threat, either to his or her life or the community, there is evidence that race will affect the perceptions of threat (Spencer, Kharbonneau, & Glaser, 2016).

As in the Rodney King case, the use of force by police often occurs at the end of a high-speed motor vehicle chase. A study conducted by *USA TODAY* showed that, when there are police chases, African Americans are more than three times likely than others to be killed by

police (Frank, 2016). It may well be that, given their fear and suspicion of the police, African Americans would rather attempt to flee than be arrested on a minor charge. Of course, an attempt to flee often gives rise to the use of force by police. The USA Today study showed, “Deadly pursuits of black drivers were twice as likely to start over minor offenses or non-violent crimes...nearly every deadly pursuit that was triggered by an illegally tinted window, a seat-belt violation or the smell of marijuana involved a black driver” (Frank, 2016, para 10).

The issue of excessive force is closely tied to the issue of racially-biased policing. However, there are many types of police/citizen encounters that can manifest racial bias, including pedestrian stops, which often entail the so-called stop and frisk, as well as reasonable traffic stops in which drivers may or may not consent to a vehicle search. There is substantial evidence showing that African Americans are more likely to experience difficulties in their encounters with the police (Browning, et al., 1994; Flanagan & Vaughn, 1996; Harris, 1997).

Impoverished neighborhoods are more likely to have more aggressive policing because police are addressing crime and disorder. Unfortunately this type of policing leads to the residents feeling estranged and mistrustful of police. “As the police attempt to halt crime and disorder, the social processes of that area can assist police in gaining or losing trust, however, these processes are much greater than the activities of police” (Bradford, Jackson & Hough, 2017, p. 631).

After many studies regarding police-public encounters, “the relationship between how people recall being treated and their general confidence in the police may be asymmetrical” (Skogan, 2006, p. 99). When analyzing police-citizen contacts, there is strong asymmetry in citizen-initiated contacts but lower for police-initiated contacts (Skogan, 2006, p. 118).

Racial Discrepancies in Attitudes toward the Police

Attitudes toward the police are shaped not only by direct encounters but by word of mouth within communities and, of course, media coverage. However, personal experiences with police have more effect on shaping people's opinion of police than the media. "Consumption of crime-related media increased confidence in the police among white respondents but had no effect on Latinos and African Americans" (Callahan & Rosenberger, 2011, p. 167). When comparing television with newspaper coverage of police, television has a more positive effect on citizens while newspapers are more inclined to cover police use of force and corruption. Contact with police is a key determinant of how individuals perceive police; however, absent those contacts, media coverage influences public opinion. Although whites' attitudes towards police does not change when viewing a brutal arrest of a black youth, black attitudes are notably lower among blacks and remain this way longer than whites (Callahan & Rosenberger, 2011).

Whatever the source of attitudes, it is clear that African Americans and Hispanics harbor more negative attitudes about the police (Campbell & Schuman, 1968; Decker, 1981; Howell, Perry, & Vile, 2004; Smith, Graham & Adams, 1991; Weitzer & Tuch, 2005). A study by the Bureau of Justice Statistics found that African Americans in major metropolitan areas were twice as likely as whites to be displeased with law enforcement (Greenfield, Langan and Smith, 1997). These negative attitudes shape future encounters with police and possibly create a descending spiral in the relationship between the police and minority communities.

Over the years, surveys have analyzed how blacks and whites perceive law enforcement. A 2016 Pew survey questioned whether blacks are treated the same as whites. The survey found that 67 percent of blacks and 40 percent of whites believe that blacks are not treated fairly by police. In the same year Gallup conducted its annual survey on citizens' confidence in police

and 58 percent of whites and 29 percent of blacks showed either a lot or great deal of confidence in police (Kimbrough, 2017).

In the next chapter, I will examine how the perception of police bias and the typical institutional response to allegations of police misconduct negatively affect key determinants of police legitimacy. I will also consider how the creation of civilian oversight mechanisms might mitigate these effects.

CHAPTER TWO

CIVILIAN OVERSIGHT AND POLICE LEGITIMACY

Legitimacy is a key concept in the social sciences and, in particular, political science. In *Economy and Society: An Outline of Interpretive Sociology*, Max Weber identified three sources of legitimacy:

“traditional authority, based on the sanctity of customs and traditions; charismatic authority, which finds justification in the exceptional qualities of the power holder; and the legal-rational authority, which is grounded in a belief in the legality of the enacted rules and the right of those elevated to authority under such rules to issue commands” (Tankebe, 2013, p. 107).

While all three sources of legitimacy can be found in any society, modern democratic societies stress the legal-rational authority, which is closely related to the notion of the rule of law. This is especially true in the United States and other countries that take seriously the idea of constitutionalism.

As to the legitimacy of law enforcement, there is good reason to believe that it depends on public perceptions of how the police exercise their authority (Tyler, 2004).

In a democratic society, it is critically important that the public regards law enforcement as legitimate (National Institute of Justice, 2013). The notion that policing is based on, and limited by, legal rules is key to the legitimacy of law enforcement agencies in a democratic society.

As noted in the previous chapter, it is important to recognize that “citizens make judgments – every day – about the rightfulness or wrongfulness of police conduct, whether or not they experienced it directly...” (Buchner, 2014, p. 2). Certainly, high-profile incidents of police using deadly force can lead citizens to make such judgments.

Public evaluations of police legitimacy impact people’s compliance with the law as well as their willingness to cooperate with the police. In two New York surveys it was found that legitimacy has a strong influence on the public’s reactions to the police (Sunshine, 2003). Legitimacy can be tied to people’s social values and not necessarily related to police performance. If people view the police as legitimate, then it is likely that their behavior will conform to the law, thus allowing the police additional time to deal with more serious issues. The perception of legitimacy also leads to the public cooperating with the police in reducing crime as well as public support for police using their discretionary authority to resolve problematic situations.

Figure 2.1 below shows a theoretical model of legitimacy that can be applied to law enforcement. In this model, which is gleaned from the literature, legitimacy is primarily a function of trust. Trust, in turn, is affected by accountability (i.e., whether officers who engage in misconduct are adequately disciplined), descriptive representation, as well as procedural justice. The idea that the procedures established to discipline police officers are seen as fundamentally fair, irrespective of their outcome. Of course, for people to form this perception, there must be a reasonable level of transparency, so that people know what is going on.

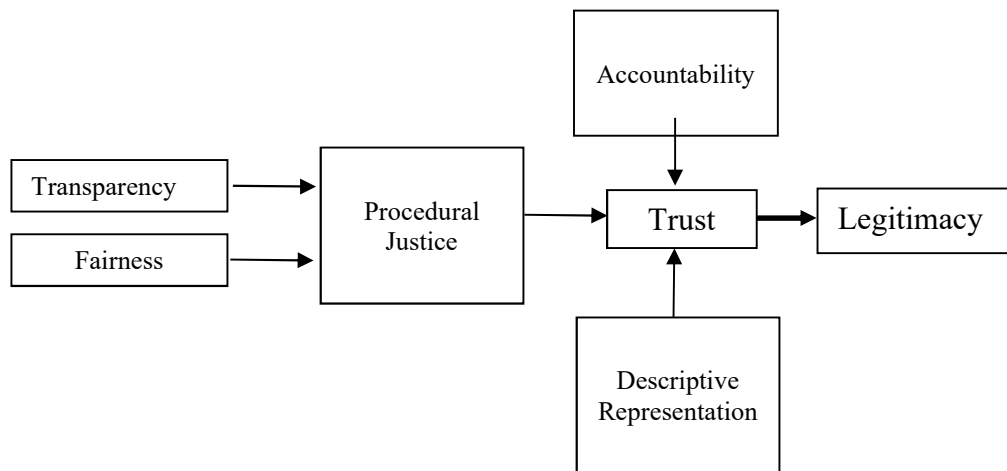


Figure 2.1: A Model of Legitimacy

Trust

It is common knowledge that there has been a decline of public trust in a variety of public institutions. Because trust “is an essential elixir for public life and neighborly relations,” (Rainie, Keeter, & Perrin, 2019), the decline of public trust in American institutions is a worrisome development. In the case of law enforcement, the decline in public trust is particularly noticeable, especially among minority communities. Today, while age and income are positively associated with trust in law enforcement, race is the strongest statistical predictor of trust, or lack thereof, in the police (Rotenberg, 2018).

In my theoretical model, trust is key to legitimacy. Trust, in turn, is a function of accountability, descriptive representation, and perceptions of procedural justice. There are two kinds of trust: institutional trust and motive-based trust. As it relates to law enforcement,

institutional trust occurs when citizens believe that police are honest and competent as well as handle their responsibilities for all citizens. Whereas, motive-based trust develops when citizens perceive the intentions of the police to be centered on the concerns of citizens. Both forms of trust are tied to the public's opinion of law enforcement's procedural fairness (Tyler, 2005). A police officer will be legitimate because he has a *role* to play within the institution, the police department. Therefore, a police officer will be *trusted* when he performs according to his *role* (Hawdon, 2008).

Social capital is organized by concepts of norms and trust with an organization whereby cooperation is facilitated for the benefit of all within that social organization. Furthermore, there is a difference between bridging capital and bonding capital. "Bonding capital holds people together in groups while bridging capital connects people across diverse groups" (Hawdon, 2008, p. 189). People in bonding groups tend to trust those within the group and will not trust those outside the group. The bridging group tends to connect with the larger social order and will probably treat law enforcement as legitimate, whereas, members of the bonding group tend to distrust those outside their group (Hawdon, 2008).

Generally, there are three types of policing: service (emphasis on community, watchman (order maintenance) and legalistic (focus on law enforcement). Someone with high bonding and bridging capital will trust an officer; high bridging, low bonding – respect the role of the officers; low bridging, low bonding – most difficult for police because (a) their low perception of the institution of the police and (b) the people in this group trust those within their environment and not those outside (Hawdon, 2008).

When there is a disturbance or killing in a minority neighborhood (low bridging, low bonding), it seems logical that the officer will have a difficult time gathering information from the residents. Even if an officer attempts to be service-oriented, the residents will not trust him. At some point an officer will display each of these policing styles, and hopefully identifies the one style to which a particular neighborhood responds.

Accountability

Accountability empowers citizens and/or their elected representatives to ensure that public officials are answerable for their actions. “Accountability controls and legitimizes government action by linking them to the ‘democratic chain of delegation’” (Bovens, Schillemans, & Hart, 2008, p. 229). Accountability has been, and always will be, an integral element of the relationship between government and the public it serves. “How well any government functions hinges on how good citizens are at making their politicians accountable for their actions” (Adserà, Boix, & Payne, 2003, p. 478).

Democracies hold governmental institutions accountable through various control measures – checks and balances (Mulgan, 2000). Citizens in a democratic society rightly expect a certain level of performance from their governing institutions. Most citizens understand the need for government officials to exercise authority and a certain degree of discretion. However, the public must demand accountability from public officials because the officials have been given a lot of discretion in making decisions about the city’s activities (Kelly, 2005).

Professionalism implies an internal level of accountability; a professional has the knowledge and training to do the right thing. Even though professionals have a lot of discretion, they are still accountable to both administrative and political superiors (Mulgan, 2000). An example of these professionals is police officers who have expertise and extensive training in executing law enforcement functions. But there have been many examples in which officers have not acted professionally nor been held accountable.

Because street-level bureaucrats like police have a certain amount of discretion in how they apply established rules to various situations, accountability can become blurred. “At the same time these actors work under an action imperative: they have to act. Actors see themselves forced to make choices: choices about how to deal with a specific rule – in general and in specific situations – but also choices between rules” (Hupe & Hill, 2007, p. 281). Since street-level bureaucrats are working for the public, they can be held accountable for their results. In the typical top-down organization, the people below the top are accountable to those at the top; therefore, accountability becomes an obligation for those at the bottom to justify their conduct (Hupe & Hill, 2007).

In the law enforcement context, police are accountable to their superiors within the police department, but the process of holding officers accountable commences with an Internal Affairs investigation. These investigations, which are cloaked in secrecy, may or may not be impartial and effective at determining the veracity of a complaint. In so many high-profile incidents in which the police have used questionable force, and where Internal Affairs investigations have exonerated the officers involved, it is quite understandable that the public may have doubts about the efficacy of this accountability mechanism. This is especially true when white police officers

are exonerated after using deadly force against minority citizens. In such situations, it is highly likely that the minority community will not accept the internal investigation as legitimate.

Civilian oversight of law enforcement is designed to enhance the accountability of the police. With the rise of oversight agencies, law enforcement becomes directly accountable to citizens in a more public forum. By effectively utilizing oversight agencies, citizens can participate in the effectiveness of police governance. “Governance is effective to the extent that governance arrangements are capable of solving the substantive problems that they are set to address” (Fung, 2015, p. 517).

NACOLE, a national organization dedicated to promoting civilian oversight of law enforcement, has identified a number of benefits that it believes will flow from the creation of civilian oversight structures. Fundamentally, oversight is seen as a means of improving the accountability of the police, in that the purpose of such a board is to provide an independent adjudication of complaints of police misconduct. Moreover, the very creation of an oversight board is thought to improve the public’s perception of the city’s commitment to the principle of accountability (National Association of Civilian Oversight of Law Enforcement, (NACOLE, n.d.).

Private citizens who serve on civilian oversight boards are typically appointed by an outside entity, for example, the city council. They are not supposed to hold any allegiance to the police establishment, nor are they supposed to assume an adversarial posture. Their role is to make an impartial determination as to whether officers have used excessive (unlawful) force. Their duty is “to pursue the public good according to their own criteria of what was right” (Mulgan, 2000, p. 561).

To achieve complete accountability as it relates to the use of force and other critical activities, police departments will have to conduct significant reorganizations (Walker, 2019, p. xvii). However, significant departmental changes have not been focused on since it is typically the officer who garners the public attention and therefore has emotional appeal to engage the public and media attention. Departmental changes do not have any emotional appeal (Walker, 2019). There have been several lawsuits against police departments and the cities, for example, “in 2016 Chicago paid \$52 million in lawsuits and outside attorneys” (Walker, 2019, p. 47). Departments have spent millions of dollars on officer misconduct, yet they are still hesitant to effect significant change. A deterrent for police accountability is the police subculture wherein officers have unwritten norms which include how to stay out of trouble and how much they can get away with (Walker, 2019).

There still exist various roadblocks to accountability. Departmental leadership itself could be a hindrance when a new chief is hired, and accountability is not one of his priorities. Since police departments are among many departments in a city, funding may not be sufficient to advance accountability measures or an accountability-focused chief may be fired (Walker, 2019, p. 302).

Descriptive Representation

Decades ago, Pitkin (1967) argued that descriptive representation of minorities in positions of authority can enhance perceptions of legitimacy. Since then, there has been considerable research pointing out the benefits of representative bureaucracy. It is well established that

“perceptions about bureaucratic legitimacy can be positively affected when the identity of the bureaucrat matches that of the client” (Riccucci, Van Ryzin, & Lavena, 2014, p. 537).

Applying this notion to the police, Theobald and Haider-Markel (2009) found evidence that black citizens were more likely to perceive their encounters with police as legitimate if there were black officers present during the encounter. There is now a widespread sense that improving the descriptive representativeness of police forces can improve relations between law enforcement and minority communities.

In the 1980s police departments (often as the result of a consent decree) attempted to hire more minority officers, and some progress was made along these lines (Lewis 1989). In 1987, about 9% of local police officers were black; as of 2013 that figure had risen to just over 12% (Reaves, 2015). Yet, it remains the case that in most encounters between police officers and minority citizens, the officers are white.

There are a number of barriers to the recruitment of minority officers, not the least of which is the negative relationship that often exists between police departments and the minority communities they serve. In constructing civilian oversight boards, best practices dictate that local officials should strive to appoint board members who represent the diversity of their communities (Finn, 2001). Presumably, a more diverse board is more likely to engender trust across the community.

Procedural Justice

Procedural justice refers to fairness in the administration of justice. Procedural justice entails “...neutrality, lack of bias, honesty, efforts to be fair, politeness, and respect for citizens’ rights” (Tyler & Wakslak, 2004, p. 279). In law enforcement, that equates to the impartial exercise of

police discretion as well as treating citizens with dignity and respect (Tyler, 1994). Along these lines, it has been noted that “issues of respect figure prominently in conceptions of fairness and equal treatment across all racial and ethnic groups, as well as in people’s conceptions of justice” (Stone, Foglesong, & Cole, 2009, p. 50).

It has been argued that “...fairness and respectful treatment (i.e., procedural justice) are the *primary* antecedents of police legitimacy” (Antrobus et al., 2015, p. 153). One study found that procedural justice was the most important factor in determining levels of trust in the police and that a positive evaluation of procedural justice could reverse the influence of unfavorable neighborhood and social environments (Nix, Wolfe, Rojek, & Kaminski, 2015). On the other hand, Worden and McLean (2016) found that the citizens’ positive judgments about procedural justice had only modest effects on trust in the police. However, negative perceptions of procedural justice had substantial negative effects. In other words, citizens expect procedural justice and when it exists, current levels of trust can be maintained. But when citizens perceive procedural injustice, the negative effect on trust can be profound.

The basic concept of community policing, which became popular in the 1990s, is that effective policing requires public support and cooperation. The public is much more likely to cooperate with the police when they have a favorable opinion that the police will act with fairness and impartiality. “A focus on building legitimacy via procedural justice is surely not the whole of effective policing, but it is an important component...” (Tyler, Goff, & MacCoun, 2015, p. 77).

Enhancing police departments' commitment to procedural justice may well have a positive effect on community trust in the police. To do this requires a commitment from the top down—from mayors and police commissioners down to the cops on the street. It requires a different approach to recruitment and training and is not easily implemented. In addition to practical problems, such a dramatic change in philosophy is apt to run into a “cultural wall” (Worden & McLean, 2016, p. 152)

The Chicago Police Department conducted an experimental training program based on the idea of procedural justice from mid-2012 to September 2013. The “training increased officer support for all of the procedural justice dimensions included in the experiment” (Skogan, Van Craen, & Hennessy, 2015, p. 319). After receiving the training, “officers were more likely to endorse the importance of giving citizens a voice, granting them dignity and respect, demonstrating neutrality, and (with the least enthusiasm) trusting them to do the right thing” (Skogan et al., 2015, p. 319). Skogan et al. concluded that such training can play a role in improving police relations with the communities they serve.

Public perceptions of procedural fairness in law enforcement depend primarily on the behavior of the police themselves. These perceptions also depend on how police agencies handle claims of police misconduct. When citizens file complaints against police officers and the police department's internal affairs department rules in favor of the officer consistently, citizens will question the motivations of the police. The lack of transparency in internal affairs investigations contributes to a climate of suspicion.

Transparency

In its broadest sense, transparency means that there is a free flow of information within a political system. In a democratic system, transparency is essential if the perception of procedural fairness is to be maintained. As Ian Shapiro (2003, p. 200) has noted, “democratic leaders can never be entirely free from a commitment to truth-telling.” Transparency is also crucial to ensure the accountability of government (Hollyer, Rosendorff, & Vreeland, 2014).

In 2013, as a first step in collecting data for this dissertation, I conducted a survey of more than 200 police and oversight practitioners who attended the NACOLE annual conference in Salt Lake City. The focus of the survey was transparency—its definition and the indicators that it has been achieved. The consensus of respondents was that transparency includes openness of records and procedures, especially in the complaint process, as well as regular reporting on police activities.

Requiring police officers to wear body cameras to record encounters with citizens is an important step toward greater transparency with respect to police-citizen encounters. To promote transparency, the Austin Texas Police Department has instituted a policy “that someone may be terminated immediately if his or her camera is not activated during a deadly-force incident (without appropriate justification) ...” (Goff et al., 2016, p. 15). Not only can body camera videos provide crucial evidence to Internal Affairs and/or civilian oversight agencies investigating allegations of police misconduct, the public release of these videos can diminish (or exacerbate, depending on content) public concern about police misconduct.

Each police department maintains its own statistics and records; there is no national database to analyze patterns across the United States. However, the Department of Justice has created the National Justice Database to compile national-level statistics about police behavior.

Police departments serving 25% of the U.S. population have committed to sharing their data, approximately 100 departments. Following President Obama's Task Force on 21st Century Policing, the Police Data Initiative was launched to make data publicly available. The Police Foundation "makes this data available through a portal on its website...through such transparency the Police Data Initiative aims to rebuild trust between communities and police" (Goff et al., 2016, p. 2).

As the 21st century continues to evolve toward greater openness with various forms of social media, law enforcement and oversight agencies both have an opportunity to communicate with the public in a direct and more open fashion. However, merely using social media to communicate with citizens is not enough to improve the perception of transparency.

"Governments that only use social media to deliver messages to citizens and never ask for feedback or react to comments or posts from citizens limit their ability to communicate"

(Grimmelikhuijsen & Meijer, 2015, p. 599). By utilizing Twitter as a means to communicate with citizens, the police are attempting to appear that they are modernistic. However, the use of Twitter does not improve the perception of procedural justice or fairness. Since Twitter is not typically used by communities to reach police, other social media outlets may be more effective in presenting the police in a positive light (Grimmelikhuijsen & Meijer, 2015).

Police Resistance to Reform

Law enforcement agencies, while necessary to any civilized society, do not harmonize well with a democratic polity. Their hierarchical structures and militaristic styles often provoke feelings of fear and mistrust on the part of citizens. The occupation of police officer tends to attract authoritarian personalities. Moreover, police organizations are not known for transparency, and

police unions often resist efforts to improve transparency and accountability. Without question, reforming the police is a daunting challenge.

Although officers are in a hierarchical organization, they do their jobs with very little supervision. Procedural justice, as has been noted, is a critical element of how citizens perceive the police. But that is only the beginning. Procedural justice applies to officers themselves. “...encouraging procedurally just behavior within departments has been proposed as a way to change officer behavior outside of it” (Trinker, Tyler, & Goff, 2016, p. 158). Over the years, it has been noted that police departments’ command and control structure is a hindrance to the improvement of long-term strategies to fight crime (Trinker, Tyler, & Goff, 2016). “In short, a democratic approach to policing can be summarized as a style of fair, participatory community-based policing that uses force and coercion as a last resort (Trinker, Tyler, & Goff, 2016, p.160).

How officers are treated within their departments is a critical aspect of democratic policing. If officers are treated fairly by the department, then they are more likely to “endorse a community model of policing incorporating procedurally just tactics and reject excessive use of force to the extent that they believed their organization treated them fairly” (Trinker, Tyler, & Goff, 2006, p. 167). It has been suggested that officer misconduct can be related back to the department, and organizational theory implies that employee deviance is a result of unjust and unfair actions by the department. Wolfe & Piquero noted some actions that departments could implement in order to reduce officer misconduct: promotions and special assignments should be fairly distributed; disciplinary measures and the process should be fair and actions explained; and down-the-line officers need to understand that the department values their opinions and cares for their well-being (Wolfe & Piquero, 2011, p. 333).

As noted earlier, procedural justice is a critical element in determining whether citizens will trust the police to “do the right thing.” Procedural justice also applies to police officers who may or may not perceive their department as fair and just. If an officer believes the department is not fair and just, then it is more likely that the officer will not always adhere to policies and regulations. When an officer considers the department as legitimate and procedurally fair, the officer tends to exhibit those fair actions to the people they interact with (Tyler, Callahan & Frost, 2007, p. 482).

Civilian Oversight and the Elements of Legitimacy

There are many types of reforms that can have a positive impact on the legitimacy of the police. Most reformers consider civilian oversight to be a key element in the movement to reform law enforcement. It is hoped, and is certainly plausible, that civilian oversight can improve transparency, procedural justice, accountability, and descriptive representation, which in turn should improve trust in law enforcement. It remains to be seen whether civilian oversight agencies are having these desired effects.

To answer that question, I conducted research on three police departments: New York City Police Department (NYPD), Los Angeles Police Department (LAPD) and Kansas City Police Department (KCPD). NYPD and LAPD have long histories of police misconduct, and various attempts have been made to reduce misconduct, including Justice Department Consent Decrees. For these two cities, I conducted in-depth analyses using secondary sources. For KCPD, I used Qualtrics surveys of police, city council members, members of the Board of Police

Commissioners, OCC staff and complainants. All of the responses were anonymous with an option to include comments, and the option to be personally interviewed by me. Additionally, I organized both in-person and telephonic interviews of the people who gave me phone numbers with written consent to interview them.

CHAPTER THREE

CASE STUDY: LOS ANGELES

Los Angeles has had a long history of racial tension and, in particular, conflict between its police and its minority communities. This long-standing conflict flared up in April 1992 when an all-white jury acquitted four white LAPD officers of criminal charges stemming from the nationally-televised beating of motorist Rodney King. The video “was one of the first police brutality videos of its kind, and forever changed the conversation about police and race in America” (CBS Evening News, 2016, para. 2).

The Board of Police Commissioners

Article 9, Section 5(b) of the City of Los Angeles’ City Charter sets forth the management structure of LAPD. It also establishes a Board of Police Commissioners who have the power to supervise and regulate the police department. The mayor appoints five commissioners to the Board who are then confirmed by the City Council, and each board member serves a maximum of two five-year terms. One of the Board’s responsibilities is to nominate candidates for the position of Chief of Police. The City’s personnel department recommends six candidates to the Board which, in turn, nominates three candidates for consideration by the mayor. The mayor’s appointee is subject to confirmation by the LA City Council. The Board also has authority to remove the police chief, but this action is subject to veto by the mayor within a five-day period.

The Christopher Commission

In April 1991, in the immediate aftermath of the Rodney King incident, Los Angeles Mayor Tom Bradley created the independent Christopher Commission to investigate LAPD's recruitment and training practices, its internal disciplinary system, and its system for handling citizen complaints. Later that year, the Commission issued its report. The Commission found that many LAPD officers routinely ignored departmental policy and used excessive force against citizens. It also found that the City's Board of Police Commissioners failed to monitor and correct these abuses. The Commission concluded that such abuses "will not diminish until ranking officers know they will be held responsible for what happens in their sector, whether or not they personally participate" (Human Rights Watch, 2018, p. 1).

One of the Christopher Commission's recommendations was for the creation of an Inspector General (IG) who would report to the Board of Police Commissioners and would be responsible for overseeing the Police Department's handling of complaints against officers as well as all officer-involved shootings (Los Angeles Police Department, 2018b). In 1995, LA voters approved an amendment to the City Charter creating the Office of Inspector General. "The original duty of the OIG was to inspect, on behalf of the Police Commission, LAPD's handling of complaints of employee misconduct, and to perform other duties as assigned by the Commission" (Office of the Inspector General, 1995, para 1).

The Rampart Scandal and its Aftermath

In 1997, Deputy Chief Bernard C. Parks became the 52nd Chief of the LAPD. Under Chief Parks, there was more emphasis on accountability and professionalism as he moved toward a

goal of community policing. However, in 1999 LAPD was rocked by a scandal involving the CRASH (Community Resources against Street Hoodlums) unit of its Rampart Division. The scandal involved officers stealing confiscated drugs, framing suspects, and committing acts of brutality. One of the officers arrested in the scandal, Rafael Perez, became a witness for the prosecution and “provided more than 4,000 pages in sworn testimony. Before he was done, Perez implicated about 70 officers in misconduct, from bad shootings to drinking beer on the job” (PBS Frontline, 2018, para 13).

In response to this scandal, the U.S. Department of Justice (DOJ) filed a civil lawsuit based on Title 42, §14141(a) alleging that LAPD continues to make false arrests as well as the continuance of practicing excessive force (Los Angeles Police Department, 2018a). In settling this lawsuit, the City of Los Angeles entered into a consent decree that would last a minimum of five years (*United States v. City of Los Angeles*, Consent Decree, 2001). There were nine major areas emphasized by the consent decree which included management bolstering measures to promote civil rights integrity and community outreach (Los Angeles Police Department, 2018a, n.d.). Pursuant to the consent decree, the federal district court appointed a monitor to work with the IG in reforming LAPD.

In the wake of the Rampart scandal, a blue-ribbon panel appointed by the Police Commission issued a series of reports. In its first report, the panel harshly criticized the culture and methods of LAPD, noted the poor relationship between LAPD and the community, and faulted the City for weak civilian oversight of the police department. The report called for an expansion of the resources of the Inspector General’s office (Rampart Independent Review Panel, 2000).

Beginning in 2000, the OIG's new powers included "the authority to initiate any audit or investigation of LAPD without prior approval by the Police Commission, guaranteed access to all department information and documents, and the power to subpoena a witness at will" (Los Angeles Police Commission, 2016, p.19).

Six years after the Rampart scandal was uncovered, a follow-up report by the same panel noted that the Rampart division had recovered from the scandal by adopting a crime-fighting model that stressed collaboration with the community. Still, the panel found that the relationship between LAPD and the community was highly antagonistic and that officers still harbored an 'us versus them' mentality. It also found that supervisors were delinquent in punishing scandalous behavior and that whistleblowers faced retaliation (Rampart Independent Review Panel, 2006). The report concluded that the Inspector General alone was in a position to effectively recommend changes to enable LAPD to be an accountable agency. Unfortunately, when this report was written, the Inspector General's office was not functioning as a check on the department due to resource constraints. Therefore, the report recommended that additional resources be allocated to the IG office (Rampart Independent Review Panel, 2006).

In 2009 the Harvard Kennedy School's Program in Criminal Justice Policy and Management issued a report entitled: *Policing Los Angeles under a Consent Decree: The Dynamics of Change at the LAPD*. Among its many findings, the report noted that:

- “Public satisfaction is up, with 83% of residents saying the LAPD is doing a good or excellent job.”
- “The frequency of the use of serious force has fallen each year since 2004.”
- “Management and the governance of the LAPD have both changed for the better under the decree.”
- “... black residents of Los Angeles are among the most hopeful about the Department.” (Stone, Foglesong, & Cole, 2009, pp. i,ii).

Even though the report characterized black residents as hopeful, there was a 2005-2009 survey that noted 10% of black respondents “reported that almost no LAPD officers treat them with respect.” (Stone, Foglesong, & Cole, 2009, p. 50). The Report considers a question that could not be answered at the time: “Will the management and oversight improvements persist if the consent decree ends?” (Stone, Foglesong, & Cole, 2009, p. ii). In 2009 the Federal Court lifted its consent decree and entered into a Transition Agreement. By 2013 the Transition Agreement was withdrawn, and the Inspector General assumed full oversight of LAPD.

Officer Involved Shootings

In 2014, an unarmed black man, Ezell Ford, was shot by an LAPD officer and the family settled with the City for \$1.5 million (Arange, 2018). On July 11, 2016, Joseph Mann, a 50-year old black male, was shot by an LA County Sheriff Department’s officer. The family settled with the City for \$719,000 (Rainey & Romero, 2018). In 2018, Anthony Weber, a mixed-race 16-year-

old, was shot dead by an LA County Sheriff's Department officer. Even though the officers were not charged, the Weber family settled with the City for \$4 million. In FY 2016-2017, "the Los Angeles Police Department paid *nearly \$81 million* [emphasis added] in legal settlements last fiscal year, a sharp increase as the city closed the books on several high-profile and costly cases" (Winton, 2017, para 1).

In 2015, LAPD officers opened fire 45 times as compared to 23 times in 2014, with 19 people being killed by police gunfire in 2015 (Mather, 2015). In November 2015, the Board of Police Commissioners requested the Inspector General (IG) to conduct a review of LAPD's policies and practices with the goal of reducing use-of-force incidents. The Board instructed the IG to compare LAPD's use of force policies, investigations and training with those of Dallas, Las Vegas, San Diego, and Washington, D.C. These instructions came after Matt Johnson, president of the Board of Police Commissioners, described the upward trend in officer-involved shootings, as an alarming development (Mather, 2015).

In May of 2016, LAPD's Police Commission meetings were being interrupted continuously by activists demanding changes to LAPD's handling of African-American residents. "Last year, eight out of 38 people struck by LAPD gunfire – or 21% - were black. African Americans make up about 9% of the city's population" (Mather, 2016b, para 7). Following this, in June of 2016, a survey published by the Center for the Study of Los Angeles at Loyola Marymount University noted that there was still skepticism about the LAPD among African Americans. "Despite *two decades* [emphasis added] of efforts to improve relations, Los Angeles County law enforcement is still struggling to build trust among African-American residents" (Mather, 2016a, para 1).

Also, in June of 2016, legislators for the State of California ‘killed’ various bills that were intended to increase the transparency of LAPD by the release of police video footage and internal disciplinary investigations. “Law enforcement groups argue strongly against the efforts to increase transparency... [Senator Mark] Leno has said the group’s influence is so powerful at the Capitol that a state-wide ballot measure might be the only way to loosen police disclosure laws” (Dillon, 2016, para 10).

On October 6, 2016, the IG issued its report: *Comparative review of Selected Agencies, Investigations, and Training on the Use of Force: OIG Final Report* (Los Angeles Police Commission, 2016). The report covered the years of 2011 to 2015 and compared the Dallas, Las Vegas, San Diego, and Metro DC police departments to LAPD. The report covered officer-involved shooting incidents, use of force policies, and use of force training. “The OIG found that the main differences between the departments involve their use of force policies, their level of transparency with regard to use of force incidents, the manner and frequency of officer training, and the support provided to officers after a use-of-force incident” (Los Angeles Police Commission, 2016, p. 1).

In comparing these police departments, the OIG noted that other departments’ policies include language that deadly force should only be used as the last resort. Also included in these policies is the requirement for officers to emphasize de-escalation tactics first, prior to using deadly force. When this Report was issued in 2016, the LAPD’s use of force policy did not include language that conveyed those policy definitions. Subsequently, the Board of Police Commissioners mandated that LAPD modify its use of force policy to embrace the concepts of de-escalation and exhaustion of reasonable alternatives.

In February 2017, Alexander Bustamante, the Inspector General at the time, reported on LAPD's use of less-lethal force (tasers, beanbag shotgun, and 40mm less-lethal launcher). The report noted that "the department has been working to ensure de-escalation concepts (including the appropriate use of less-lethal options) are integrated into all Department use of force training, in accordance with the Commission's direction" (Los Angeles Police Commission, 2017a, p. 17).

On April 12, 2017, LA's Chief of Police, Charlie Beck, recommended that the Board of Police Commissioners adopt a Revised Use of Force Policy. Chief Beck recommended that the following statement be added to the Preamble to Use of Force: "Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so" (Beck, 2017, p.1). This revised use of force policy was approved by the Board of Police Commissioners on April 18, 2017. Following up on this revised policy, the *Los Angeles Times* reported that "the move comes after a year in which the Police Commission ruled eight shootings by LAPD officers were unjustified – the highest number in at least a decade, according to a *Times* analysis of nearly 440 shootings reviewed since 2007" (Mather & Chang, 2017, para 9).

The California Department of Justice (CDOJ) released the Use of Force Incident Reporting for 2017 in which it noted that in Los Angeles, 741 people experienced police use of force that led to serious bodily injury or death. In only 349 of these incidents citizens were confirmed to have been armed, yet the officers thought 454 were armed (Office of the Attorney General, 2017a).

Racial Profiling

On November 15, 2016, the *Los Angeles Times* reported that the Police Commission was investigating the issue of racial profiling by LAPD. LAPD presented a report to the Police Commission on how LAPD and other agencies investigate alleged biased policing. According to this report, in the 1,356 complaints there was no bias (Wynter, 2016). This departmental report, which included a survey of 2,000 residents identified a disparity of perceptions among residents. When asked if they believe that the police are honest and trustworthy, less than 50% of African Americans agreed but whites, Latinos and Asians were at least 70% in agreement (Wynter, 2016). Although LAPD had made various reforms to improve diversity in its ranks and reduce bias, the report noted that LAPD needs to continue working on ways to maintain and improve the level of trust that is so essential for policing.

Increased Oversight, Transparency and Accountability

On May 2, 2017, the Inspector General's Office issued its report on the progress that LAPD had made in implementing National Best Practices. The areas that the IG focused on were: "adopting the principles of external and internal procedural justice; prevention of biased policing; establishing a culture of transparency and accountability; collection and reporting of data; policies and practices relating to use of force; stop and search policies; and expanding community policing" (Los Angeles Police Commission, 2017b, p. 2). In summary, the Report stated that LAPD had met the requirements to be either fully or partially in line with the recommendations.

A key point in the Report is that “law enforcement culture embraces a ‘guardian mindset’ to build public trust and legitimacy, and that agencies adopt the concept of procedural justice as the guiding principle for their policies and practices, both external and internal” (Los Angeles Police Commission, 2017b, p. 3). The report highlighted the fact that LAPD had created a Community Safety Partnership in collaboration with the City Housing Authority. Under this partnership, officers must live in the communities of eight public housing developments for at least five years. With the success of this experiment, for example a major drop in crime, LAPD expanded the program to Harvard Park.

In May 2017, Los Angeles voters approved a new law, Charter Amendment C, that created an all-citizen, disciplinary review board of LAPD. Activists claim that this charter would end up favoring officers who are accused of misconduct. “For one thing, the measure allows officers accused of misconduct to choose whether their case will be reviewed by the partial board [one civilian and two high-ranking LAPD officers] or all civilian board” (Delgadillo, 2017, para 4). The implication is that the officer would choose whichever board would be more lenient. Tim Lynch, director of the libertarian Cato Institute’s Project on Criminal Justice, said “the idea of civilian review always sounds appealing...but when you look into the way it actually works, it can be vulnerable to political manipulations, inadequate funding, and staffing...” (Delgadillo, 2017, para 7).

In February 2018 the Board of Police Commissioners unanimously elected Mark Smith as the new Inspector General. Since the Board recently adopted a more hands-on approach to oversight, Smith noted that one of his goals was “to provide a constant source of accountability –

monitoring the department consistently, not just after a crisis” (Mather, 2018b, para 10). Having served on the Board of Directors for the National Association for Civilian Oversight of Law Enforcement, Smith embraced the values of transparency and accountability as well as strengthening civilian oversight. Additionally, he served as a Constitutional Policing Advisor for the Los Angeles Sheriff’s Department where he was responsible for advising the Sheriff on a number of issues including accountability, adherence to best practices, policies, procedures and other duties. The appointment of Mark Smith as IG is notable in that as Inspector General, he has more authority to make constructive changes to increase officer accountability.

On March 20, 2018, the Police Commission voted 4-0 that video from body cameras and patrol cars will now be released for public viewing. “Transparency and accountability are the bedrocks of building public trust [said Commissioner Shane Murphy Goldsmith]. The public has a right to see these videos” (Mather, 2018a, para 4). LAPD’s Chief Charlie Beck was concerned that Charter Amendment C would only offer a limited, incomplete snapshot of an incident, especially without any other evidence being offered to the public. Under this policy, critical incident videos would become available within 45 days of the incident. The Police Commission or the police chief has the option to release other non-critical incident videos if they decide it is in the public interest. District Attorney Jackie Lacey noted that the new policy would “make seeking justice in these politically-charged cases more difficult” (Mather, 2018a, para 7). The board of the police officers’ union (Los Angeles Police Protective League) agreed with the district attorney. For the release to be delayed by 14 days, the police chief and two liaisons selected by the Police Commission would have to vote unanimously. Reflecting on the new policy, Barry Friedman, Director of the Policing Project, observed:

Cities throughout the country are struggling with when to release body camera video after an officer-involved shooting. Too often these decisions are made ad hoc, under pressure. We commend the Police Commission for developing a clear policy to guide these decisions and doing so with substantial input from the broader LA community (Staff and News Service Reports, 2018, para 20).

Key Legislative Developments

By 2015, the long history of problems in the LAPD, as well as a rash of incidents across the state, made police reform a salient issue in California politics. With increasing pressure from groups like Black Lives Matter, the Democratically controlled California legislature was spurred into action. Over the next four years, the legislature would enact four significant pieces of legislation designed to increase the accountability of police officers and the transparency of investigations of officer-involved shootings.

In an effort to reach the goal of California police departments being more transparent and accountable, the California legislature enacted the Racial and Identity Profiling Act of 2015 (RIPA), which has been called “truly groundbreaking legislation – the first of its kind and scale in the United States” (Racial and Identity Profiling Advisory Board, 2019, p. 1). Regarding detentions and searches, almost all California law enforcement agencies are now required to collect and scrutinize the demographic data (Racial and Identity Profiling Advisory Board, 2019). To assure that this data was collected and public reports produced, the Act created the RIPA Advisory Board (Racial and Identity Profiling Advisory Board, 2019). This Board’s first

report was in 2018, and the 2019 report outlines the data to be collected and which agencies are participating. The Board's 2020 report will have a detailed analysis of all the data, and the Board's goal is that the data can be the first step for improving trust and respect between the police and the communities (Racial and Identity Profiling Advisory Board, 2019).

In July of 2017, a Bay area assemblyman, Phil Teng, introduced Assembly Bill 748 focused on "making public footage from police shootings and other cases considered to be in the public interest, such as police uses of force or violent political protests" (Dillon, 2017, para 2). Nearly a year later, in April of 2018, Senator Nancy Skinner (D-Berkeley) introduced SB 1421, designed to make records available to the public associated with investigations of officer-involved shootings. According to the bill's sponsor, "SB 1421 ensures that when officers use serious or deadly force, engage in sexual assault or are dishonest in carrying out their duties, the public is informed" (sd09.senate.ca.gov, para 3). SB 1421 now requires that officer personnel records, complaints and investigations are now available for public inspection (Skinner, 2018).

In California, two bills addressing the improvement of investigative transparency were signed into law by California Governor Jerry Brown in September of 2018. These laws went into effect on January 1, 2019. The ACLU of Southern California commented that "the legislature passed SB 1421 because communities demanded an end to the secrecy cloaking police misconduct and use of force" (Casiano, 2018, para 3).

Before this legislation was enacted, neither the public nor prosecutors had access to police misconduct records. The legislation represents a significant shift in a state that has been known for secrecy with regard to police misconduct. In the 1970s, LAPD officers were enraged

that their past complaints started to appear in court cases. Surprisingly, LAPD shredded four tons of personnel records beginning in the 1940s (Dillon, 2018b). This decision resulted in over 100 criminal cases against officers accused of misconduct being purged. Police unions opposed the 2018 legislation and have filed lawsuits arguing that the law should not be retroactive (Arango, 2019).

In August of 2019, after months of wrangling between pro-reform groups and law enforcement interests, the California legislature enacted AB 392. The new law raises the bar in assessing the lawfulness of police shootings. Prior to the new law's enactment, the prevailing standard was that of objective reasonableness, as set forth in the Supreme Court's 1989 decision in *Graham v. Connor*. Under AB 392, the question is whether an officer's use of potentially deadly force was necessary. The definition of necessary was removed as a compromise to the police, and due to this Black Lives Matter withdrew their support for the legislation (Coaston, 2019). Typically prosecutors do not file criminal charges against an officer, however, with this new law prosecutors can scrutinize what happened prior to the incident of deadly force. Departments will need to be more aggressive about training officers in de-escalation strategies (Chabria, A., 2019). However, not everyone was satisfied with the new law.

Countervailing Developments

The election of Alex Villanueva as the thirty-third sheriff of Los Angeles County in 2018 represented something of a setback in the movement for greater oversight and accountability. Prior to taking office, Villanueva declared that he would dispose of two constitutional policing

advisors who managed many legal matters ranging from the use-of-force policy as well as dispensing of discipline (Stoltze, 2018). Villanueva's win is another example of the strong opposition that police unions typically have against any form of accountability. The deputy sheriffs' union spent more than \$1.3 million on behalf of Villanueva. The former sheriff, McDonnell, created a shooting analysis review committee, partly based on the advice of the policing advisors, that would have "analyzed deputies with multiple shootings and make risk management recommendations about removing deputies from patrol duties" (Stoltze, 2018, para. 11).

Civilian Oversight in Los Angeles.: Current Structure and Process

Any citizen can file a complaint against an LAPD officer by phone, in person at any police office, with the Internal Affairs group (IAG), the Police Commission or the Inspector General. The Inspector General reviews all complaints before assigning them for investigation by a trained supervisor. Some complaints may be eligible for mediation with the hopes that this leads to stronger relationships between LAPD and the community.

Due to Los Angeles voters approving Charter Amendment C in 2017, LAPD officers have the option to choose an all-civilian Board of Rights panel (three civilian members) or the Board of Police Commissioners. There is no civilian review board per se to receive complaints. The Board of Rights came into existence in June of 2019, and the Police Commission established what qualifications a resident must have to be chosen. This Board of Rights was established as a temporary, experimental body, for a period of two years, after which LAPD must report on its

effectiveness (Human Rights Watch, n.d.). “In the current disciplinary system, once a complaint against an officer is initiated, it is investigated and rises through the chain of command up to the chief. If an allegation is sustained, a commanding officer recommends discipline. The chief can either accept or modify the punishment” (Puente, 2019, para 9). The officer has the opportunity to appeal the punishment to the Board of Rights, and both the officer and the department have the right to have witnesses testify. At this point the panel can either find the officer guilty or not guilty as well as adjusting the chief’s recommended discipline (Puente, 2019).

Complaints are investigated by the Internal Affairs Group with oversight and review by the Inspector General’s department. Depending on the complaint, the resident also has the option of having the complaint moved to mediation (a confidential process whereby the resident and the police officer meet face-to-face with a mediator present) or the alternative complaint resolution (resident meets with the police officer for a discussion facilitated by an LAPD supervisor). However, if at any time a complainant is not happy with the Internal Affairs decision, he or she may request a case review by the IG’s department.

For all officer-involved shootings within the LAPD, the Board of Police Commissioners has the sole authority to decide if an officer’s actions were consistent with Department policy. What is notable about this is that the Chief of Police cannot change this decision; however, the Chief of Police can impose discipline on an officer based on the Board’s decision. This Report outlined nine recommendations for action by the LAPD, some of which had specific deadlines. One of those is that LAPD must make a detailed presentation to the Board of Police Commissioners within 90 days outlining the use of force training required for officers,

specifically de-escalation training and use of less-lethal weapons, and a policy regarding the release of video footage of use of force incidents.

Assessing Civilian Oversight in Los Angeles

LAPD has made some progress in improving transparency and accountability. However, when one considers that the Rodney King incident was in 1991 and it is now 2020, there have been 29 years of disconnect between LAPD and its citizens. LAPD has a long history of police issues that may subside for a time but resurface and continue to project the image of not being transparent and accountable. Despite an Inspector General and the LA Police Commission, problems are still occurring. “Members of the Los Angeles Police Commission expressed concern that the disproportionate number of black drivers stopped by an elite unit is damaging the public’s trust in the police department” (Chang, 2019, para 1). Although this elite unit, “Metro,” is proactive in addressing crime as directed by the LAPD Command Staff, “black drivers [are stopped] at a rate more than five times their share of the population” (Chang, 2019, para 2).

For civilian review to be effective in increasing accountability, review boards need to identify a way to neutralize the opposition of unions by developing a plan to become partners with the unions for the benefit of the community. An example of this was the passage of California’s Senate Bill 1421. In California, as elsewhere, police unions have opposed reforms that would promote greater transparency and accountability. However, SB 1421 was negotiated with the California Police Chiefs Association. SB 1421 is an example of political groups negotiating and formulating a plan to meet the communities’ needs.

The role of upper management within police departments, starting with the chief, is crucial to reform. Research suggests “that fair policing may be linked to fair supervision” and that “the relationship between internal and external procedural justice is mediated by officers’ self-legitimacy and compliance with instructions and policies” (Van Craen & Skogan, 2017, p.5). Supervisors need to lead by example and show the rank-and-file officers what it looks like to be an officer who is focused on the community. Rank-and-file officers need procedural justice training, and beyond that supervisors and managers should also be trained in internal procedural justice (Van Craen & Skogan, 2017,). To state this differently, the “challenge of police accountability is not about how to get a few bad apples but *how to fix the organization* [emphasis added]” (Harris, 2012, p. 241).

As more police commissions, inspectors general, and courts support police accountability, it is possible that California may lead the nation in this regard. For LAPD, there have been many efforts and reforms to improve transparency and accountability; however, success has been fleeting. As the governing body of LAPD, the Board of Police Commissioners has the opportunity, as well as the responsibility, to improve the legitimacy of the police department.

CHAPTER FOUR

CASE STUDY: NEW YORK CITY

New York City, with its volatile mixture of immigrant populations, has had a long history of conflict between police and the communities they serve. In 1950, 18 organizations came together to form the Permanent Coordination Committee on Police and Minority Groups. Its purpose was to develop a plan to reduce police malfeasance, especially as it relates to minority groups (NYC Civilian Complaint Review Board, n.d.). In response to this concern, in 1953 the NYPD created its first Civilian Complaint Review Board (CCRB), consisting of three deputy police commissioners. Police officers reviewed citizen complaints, and the commissioners decided on any discipline, if any.

In 1965, former federal judge Lawrence E. Walsh was appointed by Mayor John Lindsay for the purpose of making suggestions to improve the NYPD. In order to inculcate public assurance in the fair administration of civilian complaints, Walsh's report declared that there must be civilians on the board (NYC Civilian Complaint Review Board, n.d.). Despite opposition from the Patrolman's Benevolent Association (PBA) and for the first time in the city's history, the mayor appointed four citizens to the CCRB.

In 1986, the city council passed legislation to restructure the CCRB. Under this legislation, the mayor appointed six civilians to the board, and the police commissioner appointed six non-uniformed police officers. Under the new law, the Civilian Complaint Investigations Bureau hired civilians to investigate complaints; however, NYPD employees

supervised these civilians. In 1988, there were a series of violent incidents in Tompkins Square Park. A special report on these incidents found that no effort was made to limit force, and the officers used force because they could (NYC Civilian Complaint Review Board, n.d.). The Tompkins Square incidents and the ensuing report produced public support for an all-civilian review board.

In 1993, Mayor David Dinkins and the NYC City Council created a new CCRB with an all-civilian composition. The CCRB was given subpoena power to obtain film coverage from media outlets. However, the agency was underfunded and unable to investigate a large number of complaints. On April 2, 2012, CCRB and NYPD entered into a Memorandum of Understanding in which CCRB agreed to undertake “administrative prosecution of all civilian complaints against NYPD uniformed officers which have been substantiated by CCRB” (New York City Government, p. 1). However, there are provisions within this document that authorized the Police Commissioner to deny or reduce the recommendations from CCRB.

High-Profile Incidents of Excessive Use of Force by NYPD

Despite the creation of CCRB, the decades that followed witnessed a series of high-profile incidents in which police were accused of using excessive force against civilians. In 1994, a 13-year-old African American, Nicholas Heyward, Jr., was shot and killed by an NYPD officer who mistook a toy gun for the real thing. No charges were filed against the officer. In 2000, four NYPD officers were acquitted of murder after they shot and killed an African immigrant, Amadou Diallo, when he reached for his wallet. The Diallo shooting, and the acquittal of the officers, produced considerable unrest in the African-American community.

A month after the officers were acquitted in the Diallo shooting case, Malcolm Ferguson, a 23-year-old African-American man who was unarmed, was shot and killed by an undercover NYPD officer. The shooting happened only a few blocks from where Amadou Diallo had been shot. The death was determined to be accidental. In that same month, March 2000, an African-American father of two, Patrick Moses Dorismond, was shot and killed by an undercover NYPD officer in an altercation associated with an illegal drug transaction. Again, no charges were filed.

Between 2010 to 2014, there were 104 substantiated cases of NYPD's excessive use of force, and only 37 officers received discipline (Officer of the Inspector General, 2015). In fiscal year 2013, more than 9,500 claims were filed against NYPD officers which cost the city \$137.2 million (New York City Comptroller, 2014). According to NYPD, in the five years ending in 2015, the City defended itself against more than 15,000 lawsuits, which cost the City more than \$202 million. In addition to these monies, the mayor allocated \$4.5 million to the New York City law department to hire 30 new attorneys and 10 new paralegals to defend the City (New York City Department of Investigation, 2015c).

Stop and Frisk Controversy

In the 1990s, under the leadership of Police Commissioner William Bratton, NYPD adopted a policy of aggressive stop and frisk. The Supreme Court held in 1968 that police officers having reasonable suspicion that crime was afoot could temporarily detain and question suspects and during such detentions were allowed to pat down suspects' outer garments to locate concealed weapons (*Terry v. Ohio*, 1968). NYPD's policy went well beyond what the Supreme Court

authorized in *Terry v. Ohio*. “From 2002 to 2006, the number of stops made by the NYPD exploded from 97,296 to 508,540, a *rise of 422%* [emphasis added]” (Kupferberg, 2008, p. 158). By 2008, NYPD officers were detaining more than 500,000 persons per year, most of whom were black or Latino. Only a small percentage of these stops led to arrests and fewer still resulted in convictions. On average, between 2002 and 2013, only 14% of detentions resulted in convictions (NYCLU.org, n.d.).

In 1999 a federal class-action lawsuit in the Southern District of New York, (*Daniels v. City of New York*), the Center for Constitutional Rights (CCR) accused NYPD of conducting illegal racial profiling and violating citizens’ Fourth Amendment rights. After much negotiation between the parties, Judge Shira Scheindlin approved a consent decree and continued oversight of the case until the decree expired in December, 2007. Because the decree was a result of a civil suit, the judge was the sole enforcer of a weak agreement with no monitor and no enforcement mechanisms. Although ordered to produce various data, NYPD never complied, which led to CCR filing another lawsuit in 2008.

There is little doubt that NYPD’s stop and frisk program adversely affected police-community relations. “The practice of stop-and-frisk has left an impression on residents in New York City and beyond, with many believing that the practice is motivated by racial or age-based bias and that it limits the rights of citizens in public spaces” (Eterno, Barrow, & Silverman, 2016, p. 182).

In January of 2008, a second lawsuit was filed to challenge NYPD’s stop-and-frisk policy. In *Floyd, et al. v. City of New York, et al.* (2013), Judge Shira Scheindlin ruled that the

NYPD policy was unconstitutional. The judge further ruled that an independent monitor should be appointed to oversee efforts to remedy the constitutional violations. “After hundreds of thousands of legally questionable stop-and-frisks, several hundred million dollars of legal settlements and countless protests on the streets of New York City, the nation’s largest police department is now under the oversight of US District Judge Shira Scheindlin” (Winston, 2013, para 1). According to Judge Scheindlin, “NYPD conducted 4.4 million stop and frisks between January 2004 and June 2012” (*Floyd v. City of New York*, 2013, p. 1). Out of those stops, 80% were of blacks or Hispanics (*Floyd v. City of New York*, 2013).

Following Judge Scheindlin’s order that a court-appointed monitor should be engaged to remedy NYPD’s widespread constitutional violations, the New York City Council enacted Local Law No. 70 in June 2013. The new law established the Office of Inspector General (OIG-NYPD) to oversee the NYPD. The OIG-NYPD is part of New York City’s Department of Investigation (DOI), and the OIG reports to the DOI’s Commissioner. Philip Eure became the first-ever Inspector General for the NYPD in May 2014 (Brennan Center for Justice, para 1).

Another facet of Judge Scheindlin’s order was the implementation of police wearing body-worn cameras in an effort to provide a detached review of the stops and frisks where it is not just officer’s word vs. civilian’s word (Davie, 2020). As chair of the CCRB, Fred Davie announced that, without body-worn camera footage, unsubstantiated determinations were at 51%. However, with body-worn camera footage unsubstantiated decisions were reduced to 23% (Davie, 2020). This reduction occurred between November 2017 and early 2020. “Body-worn camera technology is a necessary tool for civilian oversight of police in New York City” (Davie, 2010, para. 7).

Discriminatory Enforcement of Subway Fare Evasion

It is well known that in NYC many people jump the turnstiles to avoid paying subway fares. Between 2011 and 2015 the commander in charge of South Brooklyn police station ordered officers to cite blacks and Latinos for this offense while allowing whites and Asians to go unticketed (Goldstein & Southall, 2019). This racial profiling did not stop in 2015. Between October 2017 and June 2019, 73% of those who were ticketed for fare evasion were blacks and Hispanics. Additionally, among those jumping the turnstiles, more than 90% of blacks and Hispanics were arrested rather than ticketed (Goldstein and Southall, 2019). This information became public because Lt. Edwin Raymond sued the police department for being denied a promotion based on his race (Goldstein & Southall, 2019).

The Eric Garner Case

In July 2014, two white NYPD officers approached Eric Garner, a 43-year-old African-American man, on the grounds that he was engaging in unlicensed street vending by selling single cigarettes. Garner continuously denied that and said that he was breaking up a fight. During the ongoing confrontation, Officer Pantaleo approached Garner from behind and placed him in a chokehold. Section 203-11 of NYPD's Patrol Guide explicitly and unequivocally prohibits officers from using chokeholds, but Officer Pantaleo deployed it nevertheless. There were a number of chokehold incidents in the few years prior to Eric Garner. Due to these incidents, the NYPD "spent \$35 million to retrain patrol officers not to employ strangleholds..." (Winston, 2019, para. 3).

While Garner was face down on the sidewalk with the officer on top of him, Garner protested eleven times that he could not breathe. The officer maintained his chokehold and Garner lost consciousness. By the time an ambulance arrived, Garner was dead. Although a Staten Island grand jury voted not to indict Officer Pantaleo, he was fired in August 2019, five years after Eric Garner's death (Barrett, 2019). During Pantaleo disciplinary trial, the City's Police Academy head trainer watched the video and said that "it meets the definition of a chokehold" (SpectrumNews NY1, para 1). In a related civil suit, Eric Garner's family received a \$5.9 million settlement from the City of New York (Goodman, 2015).

The Eric Garner tragedy led to the new Inspector General's first report. This report focused on ten *substantiated* chokehold cases, each with a different scenario and outcome. Although the CCRB recommended administrative charges in nine of the ten cases, NYPD's Department Advocate's Office dismissed these recommendations and chose either lesser penalties or no discipline. Although the Police Commissioner made the final determination, he also rejected CCRB's recommendation and chose a lesser penalty or no discipline (New York City Department of Investigation, 2015a).

In late 2016, the Civil Rights Division of the U.S. Justice Department recommended federal civil rights charges against the officer who killed Garner (Benner, 2019). However, in July 2019, President Trump's Attorney General, William Barr, decided that no federal charges would be filed.

Reform and Resistance

In October 2015 the OIG released a report on the use of force by NYPD, analyzing trends, reporting, de-escalation, training, and discipline. Between 2010 and 2014, the CCRB

investigated and found that in 179 cases there was excessive use of force (New York City Department of Investigation, 2015b). Despite verification by OIG researchers of this excessive use of force, the “NYPD Commissioner *refused to impose any form of Discipline...* [emphasis added]” (NYC Department of Investigation, 2015b, p. 1).

Following this report, NYPD revised the use-of-force policies and procedures as well as a new Patrol Guide regarding the use of force. Although OIG approved these changes, NYPD advised that these reforms would not take effect until or around April 2016 (final implementation was June 1, 2016). In April 2018 the OIG reported that the NYPD made significant changes in the use-of-force reporting. However, the OIG noted that, despite these improvements, officers needed to improve documentation of all excessive force cases and not under-report these incidents (New York City Department of Investigation, 2018).

In August of 2018, the NYPD Deputy Commissioner for Legal Matters Lawrence Byrne (Byrne) responded to the April OIG report noted above. Byrne stated that in 2015, NYPD created a new unit within the Department’s Legal Bureau, Police Action Litigation Section (PALS). PALS is comprised of uniform and civilian members led by Department attorneys and have led to highly desirable and beneficial results. In his scathing comments, Byrne believes that the report used unreliable information and antiquated methodology (New York City Police Department, 2018). It is not surprising that the OIG and the NYPD have conflicting reports on the same subject. It is also possible that both departments’ reports used different data to inform their conclusions. It is beyond the scope of this research to conduct an in-depth analysis of both reports to ascertain the differences. Since the OIG is conducting oversight of NYPD, it is understandable that NYPD would respond with a favorable assessment of itself.

One of the NYPD changes was implementation of officers being required to fill out a Threat, Resistance or Injury (TRI) form on every use-of-force incident. The goal of the TRI is to enhance supervision and accountability while analyzing what conditions officers use force. The OIG noted one of the problems with the TRI is that “NYPD does not have sufficient controls in place to assure that TRIs are completed when arrest reports say that no force was used but officers in fact used force” (New York City Department of Investigation, 2018, p. 2). OIG Phil Eure succinctly addressed this issue by saying:

A healthy relationship between the public and NYPD requires transparency and accountability – especially when it comes to police use of force. Failures to comprehensively and accurately document use of force by police officers are not only missed opportunities to improve policing, but risk jeopardizing the trust NYPD has worked to build with communities across the City (Office of the Inspector General, 2018, p. 1).

The OIG Inspector General Eure “issued three reports during 2018 that faulted the NYPD for failing to completely document the use of force by cops, properly staff its sex-crimes division and analyze brutality and false-arrest policies and procedures” (McCarthy & Golding, 2019, para. 2). When police departments refuse to implement mandated changes by an inspector general, the public will continue to distrust the police and will continue to believe they are not transparent and accountable.

“Quality of Life” Enforcement

Another controversy involving NYPD policies and practices involves what is known as “quality of life enforcement.” Quality-of-life enforcement focuses on misdemeanor offenses such as disorderly conduct, public consumption of alcohol, graffiti, public urination, panhandling, and unlicensed street vending. The theory is that left unchecked, such behaviors will lead to a proliferation of more serious crimes (Wilson & Kelling, 1982). Although NYPD claimed that quality-of-life enforcement was a key tool in fighting more serious crime, the OIG’s report found no evidence demonstrating “a clear and direct link between an increase in the summons and misdemeanor arrest activity and a related drop in felony crime” (New York City Department of Investigation, 2016, p.3).

Following this report, Mayor Bill De Blasio signed into law on June 13, 2016, the Criminal Justice Reform Act. This Act directed the NYPD to create documentation to assist officers on the proper enforcement of quality-of-life offenses (New York City Department of Investigation, 2016). Under this law, NYPD officers have the option of issuing civil summonses rather than criminal warrants which cause incarceration. This Act has the potential to reduce the tendency to incarcerate people rather than considering alternative measures to deal with minor offenses.

The Misdemeanor Justice Project conducted by John Jay College in New York did a six-months, post-implementation review of the Criminal Justice Reform Act. This review “shows that there continues to be a decline in the issuance of summonses for the five CJRA behaviors. When issued, the vast majority (89%) of summonses for these five behaviors were issued as a civil rather than a criminal summons post-implementation” (Misdemeanor Justice Project, 2018, p. 7). The Mayor’s Office of Criminal Justice supported this independent report.

Focus on Transparency

In New York State, Civil Rights Law §50-A states explicitly that “all personnel records of police, firefighters and correction officers used to evaluate performance toward continued employment and promotion...shall be considered confidential and not subject to inspection or review without the express written consent of such officer...except as mandated by lawful court order” (New York State Senate, 2018, para. 1). Under the Freedom of Information Law (FOIL), the CCRB requested ten years of final disciplinary records, and NYPD refused the request based on Law 50-A. Due to a group of criminal justice professionals addressing accountability and transparency, the NYPD resolved to make many changes to its officer disciplinary system after this group suggested that the police department take steps to increase its accountability and transparency (Toussaint, 2019).

On December 11, 2018, in the case of *New York Civil Liberties Union v. New York City Police Department*, filed in a New York State Court of Appeals, the judge ruled that Law 50-A can be used by the NYPD to withhold personnel records. However, the Court of Appeals reversed the State Supreme Court and ruled that these records cannot be made public based on the State Civil Rights Law (Robbins, 2018). Although Law 50-A was not repealed, NYPD continues to support an amendment that focuses on serious misconduct cases in which they will release records involved in the case (Tarinelli, 2019).

On February 19, 2019, the State Appeals Court ruled that, under New York law, police body camera videos are open for public viewing; however, the Police Benevolent Association, the officers’ union, derided the decision because it would invade the officers’ privacy (Parascandola, 2019). However, NYPD’s Police Commissioner, James O’Neill, stated that “this ruling is an important step forward for transparency and affirms what the NYPD believes”

(Sisak, 2019, para. 5). In order to buttress police accountability with accessibility to this footage, *The Associated Press* and other media outlets supported this decision by participating with various court filings (Sisak, 2019). Since the Police Commissioner agreed with the decision and noted that it is a step forward for transparency, the NYPD may become more transparent and accountable in the future.

Communities United for Police Reform (CPR) is a grassroots organization whose goal is to address and change police policies that are discriminatory and lead to abuse of New Yorkers. There are more than 25 voting members and over 100 supporting members and partners (Communities United for Police Reform, 2012). CPR developed the Safer NY Act, a package of bills designed to increase police transparency, one of which is the PoliceStatAct (A05472-Lentol/S1830-Hoylman). This Act requires police statewide to maintain records on misdemeanor offenses, especially related to race, ethnicity and sex as well as deaths while in police custody. In June of 2017, Assemblyman Lentol successfully moved this act (A05472) for passage in the NY State Assembly (the lower house of the New York legislature) (Communities United for Police Reform, 2017). The Senate version of this act (S.1830-B), sponsored by Senator Brad Hoylman (D-NYC), was stalled in the finance committee as the legislative session closed for the year. The 2020 legislative session begins in January. Senator Hoylman will introduce this act again for the committee process and has designated this act as a priority for his office (B. Phillips. personal communication, October 31, 2019).

CPR also successfully advocated for the “Right to Know Act,” which became effective on October 19, 2018. The Act requires officers to give every person they stop a business card which includes their name and rank. Additionally, if the officer does not have an objective reason for conducting a search, the person has the right to refuse the officer’s request for a search

and officers must record the giving or refusing consent, either by body camera or in writing (NYC Civilian Complaint Review Board, n.d.). It is too early to assess whether this Act will be effective and if the community believes it will be a vehicle of transparency and accountability.

A Major Policy Change Affecting Civilian Oversight

On Tuesday, November 5, 2019, NYC approved Ballot Question 2, “Civilian Complaint Review Board Charter Amendment.” This amendment to the NYC charter made a number of important enhancements to the ability of the CCRB to conduct meaningful oversight of NYPD, including the following:

- Increased the size of CCRB from thirteen to fifteen members and allowed the city council to appoint board members without mayoral approval;
- Significantly increased CCRB’s budget;
- Required that the City Police Commissioner provide an explanation whenever CCRB’s disciplinary recommendations are not followed;
- Allowed CCRB to delegate its subpoena power to the Executive Director to make investigations more efficient (Ballotpedia.org).

Assessing Civilian Oversight in New York City

Although the NYPD was established in 1845, it wasn’t until 1965 that the mayor appointed four citizens to the CCRB. Since this was not popular with the police, in 1986 the city council instructed the CCRB to include six non-uniformed officers and six civilians supervised by NYPD employees. Because of the violent incidents in Tompkins Square Park in 1988, the city

council created a new CCRB in 1993 with an all civilian composition which, unfortunately, was underfunded which hindered investigations. By 2012 the CCRB and NYPD entered into an agreement in which the CCRB would handle the administrative prosecution of all civilian complaints against officers. Unfortunately, the Police Commissioner could deny or reduce CCRB's recommendations.

Research conducted in 2012 cited statistics showing that Inspector General exonerates its officers more often than not in contrast to the CCRB's recommendations:

- NYPD followed the CCRB's recommendations in fewer than 10% of cases.
- Of the more than 5,700 complaints filed in 2012, only 258 were found to have merit, and in only 104 of these cases were officers disciplined.
- Of the 175 cases in which CCRB recommended criminal charges, NYPD sought charges in only seven. And in 76 of these cases, police officers received no discipline.
- In half of the 70 cases where CCRB recommended disciplinary action, officers were given verbal instructions only, and officers received no discipline in 24 of these cases (Ofer, 2016).

While CCRB was investigating complaints against NYPD, there were a number of precincts where officers would not provide a complaint form to a citizen (Quigley & Hurowitz, 2018). Because of this, CCRB hand-delivered prepaid envelopes for mail-in complaint forms to 79 percent of precinct stations citywide. CCRB's website advises complainants that they can go to any precinct to request a complaint form, however, most complaints to CCRB are received via phone, email and its website. In 2017 CCRB received 4,483 complaints, and some precincts

gave citizens the correct CCRB form. However, there were numerous precincts that either gave an internal affairs form or no form (Quigley & Hurowitz, 2018).

Starting in 2014 and due to a judge's order, an Inspector General was appointed to review all policies and practices and to make recommendations for changes where needed. The Inspector General has made numerous recommendations in a series of reports. NYPD has implemented only a few of them, is considering other recommendations, and has refused to implement others. When the CCRB recommends discipline, the Police Commissioner either reduces the discipline or refuses to issue any discipline. The main avenue for citizens to reach any justice or settlement on NYPD's excessive use of force is through litigation. New York City has spent millions of dollars settling such lawsuits.

In June 2019, the Office of the Inspector General published its latest report on NYPD's compliance with mandated changes. It noted that the NYPD had made some required policy changes relating to ethnicity, national origin, race and other protected statuses. Due to these changes, the police cannot use these statuses as a means to initiate police action (Office of the Inspector General, 2019). The public's trust in police officers is negatively affected when officers engage in biased policing.

Since the creation of the Racial Profiling and Bias-Based Policing complaint category in 2014, the public has made nearly 2,500 complaints of racially biased policing, all of which resulted in investigations. "NYPD's investigators have not substantiated any claims of the 1,918 complaints that were closed as of December 31, 2018" (Office of the Inspector General, 2019, p. 2).

The CCRB and the Inspector General are effective in producing some changes to NYPD; however, there is much work needed for citizens to believe that NYPD is transparent and accountable. Hopefully, the Right to Know Act will improve citizens' opinions. However, if the Police Commissioner has the final say on what, if any, discipline is imposed, citizens will continue to distrust NYPD because of the belief that police protect their own. As noted above, CCRB and NYPD are at cross purposes when CCRB delivers mail-in complaint forms to precincts, but many police precincts still give citizens their internal affairs complaint form.

Transparency and accountability cannot exist when citizens do not have access to the proper complaint form. The CCRB needs to have additional powers if they are to stay relevant and earn the trust of the community. With the Police Commissioner having the final word on any discipline, it is not surprising that NYPD and CCRB are at odds. To describe this contention, "...the Police Commissioner departed from the board's recommended penalties 73 percent of the time...almost half of the most serious cases that were closed in 2017 *ended with no discipline* [emphasis added]" (Mueller, 2018, para 8).

Nor can accountability and transparency exist when NYPD officers continue to lie, even under oath in a courtroom. *The New York Times* investigation "found that on more than 25 occasions since January 2015, judges or prosecutors determined that a key aspect of an NYPD officer's testimony was probably untrue" (Goldstein, 2018, para 9). Videos of an officer's actions refuted what the officer said in court. In one case, an officer said that a woman in the hallway dropped a laundry bag which he kicked, hit a hard object and found a gun in the bag. The hallway surveillance video showed that there was no laundry bag and no gun. Testilying has

been a problem within the NYPD for many years. “By 1994, a commission appointed to investigate police corruption noted that lying to make cases stick was common enough for ‘testilying’ to become a well-known portmanteau” (Goldstein, 2018, para 64). New Yorkers, or any community’s residents, deserve honest and credible police. Testilying is an issue for NYPD that has not been adequately addressed by the command staff. In the case above about the laundry bag, the woman had to appear in court 16 times and the officer was promoted to detective.

Accountability will only happen when NYPD decides to *become* accountable and transparent by partnering with CCRB and allowing thorough civilian investigations, handing citizens the correct complaint form and ensuring that policies and procedures are followed by its officers. NYPD has an inspector general, however, it is not easy to change an institution that has been in existence for over 150 years. But with groups like CPR and continuing lawsuits, there is the possibility of real accountability and transparency by NYPD in the future.

Another opening for transforming a police department is when a new chief of police is hired. For example, in Syracuse, NY, a new police chief was hired on December 3, 2018. The new chief, Kenton Buckner, was formerly chief in Little Rock, Arkansas, where there was no civilian oversight. The Civilian Review Board received little cooperation from the Syracuse Police Department when it came to information regarding citizen complaints, primarily use of force issues. “While use of force complaints are a small fraction of total incidents that come to the Board, the city has paid more than 5 million dollars over the past several years to settle them” (Willis & Hatchett, 2018, para 7). Buckner has watched a forum on the department’s use of

force and plans to meet with the Board before the end of the month. Although the Board is preparing for a level of cooperation between the Board and the Syracuse Police Department, it is too early to gauge what type of collaboration Buckner will develop. However, any work on accountability may not be a priority since he was granted a one-year extension to become certified as a sworn police officer in New York. The mayor and city hall's lawyer believe that Buckner can remain as a 'civilian police chief,' whether or not he passes a series of physical fitness exams (Baker, 2019).

There are many hurdles for CCRB to be perceived as an agency that can change the NYPD into a transparent and accountable department. CCRB, unfortunately, needs to improve its visibility with New Yorkers. "Even when it's functioning at its best, the CCRB is burdened with overcoming at least a generation of New Yorkers who have perfectly good reasons to doubt its legitimacy" (Quigley & Hurowitz, 2018, p. 32). The ballot measure approved in November of 2019 did serve to increase CCRB's visibility, and the fact that the measure passed so easily suggests strong public support for CCRB's mission. Since the hiring of the IG, the NYPD has made some progress, though much work remains to be done. With the NYPD being the largest police department in the nation, the changes being sought by the Inspector General may take many years.

CHAPTER FIVE

CASE STUDY: KANSAS CITY

The Office of Community Complaints (OCC) for Kansas City was established on September 25, 1969. In existence for more than fifty years, it is the oldest, civilian oversight of law enforcement in the nation (National Association for Civilian Oversight of Law Enforcement, 2014). Part of OCC's mission is "to examine carefully each investigative file so as to ensure that all efforts have been made to resolve the complaint" and "to report to the Board of Police Commissioners any and all relevant issues and policy matters that may arise" (Kansas City Police Department, 2019, n.d.). The Kansas City Police Department (KCPD) and OCC both report to the Board of Police Commissioners (Board), which is appointed by the Governor of Missouri. Kansas City is the only city in the nation whose police are governed by a governor-appointed board; other police departments are governed by the mayor or city manager (International City/County Management Association, 2016).

The incident that created the momentum for the creation of the OCC occurred February 5, 1967, when an African-American male was detained by a KCPD officer. During the encounter, the man was beaten and had to be hospitalized. This incident was representative of Kansas City's history of "allegations of improper treatment, brutality or excessive force or other wrongful conduct by the police towards minorities, especially African Americans" (Bushnell, 2014, p. 1). The man was charged with careless driving, failure to obey a lawful police order, and resisting arrest. Attorney Sid Willens, who is white, represented him in court and was

successful in having the charges dismissed. Even though he won this case, Willens understood that the issue of racial bias would continue to surface (Bushnell, 2014, p. 11)

On April 4, 1968, Martin Luther King, Jr., was assassinated in Memphis, TN. King had led the civil rights movement since the mid-1950s, and his assassination reverberated throughout the nation with many cities erupting in riots. One of the cities experiencing these riots was Kansas City, and on April 9, 1968, hundreds of young African Americans sought to have schools closed in honor of King (Kansas City Public Library).

In the wake of the Kansas City riots, attorney Willens decided to study how other cities were handling citizen complaints against police. “In a letter dated February 26, 1969, which accompanied his proposal to the Chief of Police Clarence M. Kelley, Willens summarized the considerable dissatisfaction in the manner in which the Department responded to citizens’ complaints” (Bushnell, 2014, p. 11). After numerous meetings among Willens, Board of Police Commissioners, Police Chief Kelley, and citizens, the Office of Citizen Complaints opened on September 25, 1969. Dr. Ben Morris Ridpath, a highly-respected minister, was appointed the first director; Willie Walton and John Harvey assisted Dr. Ridpath (Garnett, 1971, p. 41). OCC staff would review the complaints and, if feasible, Dr. Ridpath would preside over a conciliation meeting between the officer and the complainant or he would refer the complaint to the police Internal Affairs Unit (IAU) for investigation. As Director, Ridpath was responsible for all communications among interested parties. Between September 25, 1969 and March 31, 1970, OCC received 78 complaints, 64 of which were closed prior to March 31. Of those 64, 18 resulted in a reprimand to the officer or officers involved. The harshest penalty imposed was forfeiture of days off.

Evaluations of OCC

In 1972 the Kansas City Advisory Commission on Human Relations conducted a series of public hearings on the effectiveness of OCC. In June, it released its report, which concluded that OCC:

- was “too closely identified with the police department to render it sufficiently effective as an independent mechanism”
- had a “a predilection toward assuming the citizen’s word to be less trustworthy than the officer’s”
- showed an “over-reliance on polygraph test and under-reliance on the conciliation process”
- suffered from an “absence of full-time leadership on the part of the director as well as his apparent lack of adequate skills and training in the field of investigations” (Advisory Commission on Human Relations, 1972, pp. 5-6).

Some of the Advisory Commission’s recommendations included:

- OCC should maintain a direct line of communication with the Board rather than the Chief of Police,
- right of appeal by citizens to the Board should be guaranteed,
- OCC should make increased use of the conciliation process,
- use of polygraph or lie detector should be strictly limited,
- OCC should conduct independent investigation in addition to those of the IAU, and
- the director should be a full-time position and additional staff with an adequate budget to facilitate staffing. (Advisory Commission on Human Relations, 1972, p. 8).

Under Missouri law (Chapter 84, Section 350, Revised Statutes of Missouri), city auditors have authority to audit their city's police department. Because OCC is technically part of KCPD, the city auditor's office in Kansas City has conducted a series of audits of OCC. The first audit, concluded in March 2000, resulted in the following recommendations:

- filing a citizen complaint alleging police misconduct should be easier;
- improved communications on what OCC does;
- increased use of mediation;
- barriers exist that restrict access to the complaint process;
- all complaints should be accepted for initial review;
- complaints should be accepted at more locations;
- complaint forms should be available without staff assistance;
- the annual report should provide more information;
- a single database of OCC complaints (City's Auditor's Office, 2000, pp. 5-6).

The timeliness of the investigations needs to be improved. Between 1995-1998, the audit found that IAU completed only 14% of investigations within the prescribed 30-day time frame and 65% were completed within 60 days. On the other hand, between 1994 and mid-September 1999, OCC resolved 51% of complaints within the required ten days.

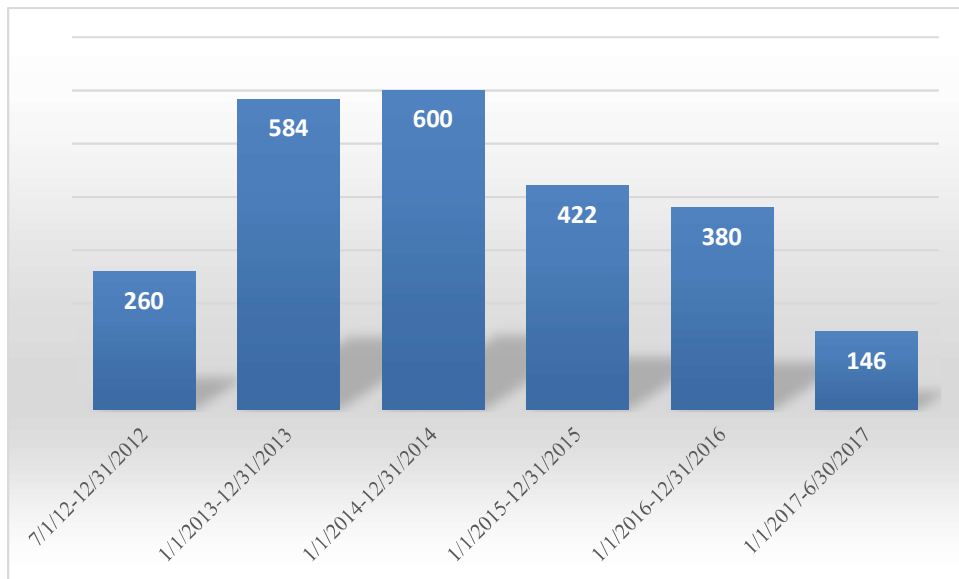
A follow-up audit was completed in April 2005 to further assess the effectiveness of OCC. The 2000 Audit recommendation to add non-police locations for citizens to file a complaint was implemented as well as the creation of a mediation program. Both IAU and OCC

continued to miss prescribed deadlines for complaint processing (City's Auditor's Office, 2005, p.5). Because citizens do not understand the OCC process, the auditor recommended that OCC should survey both complainants and officers who are involved in the complaint (City's Auditor's Office, 2005 p. 9). The auditor found that residents believe that OCC favors the police; and the police believe OCC favors complainants (City's Auditor's Office, 2005 p. 6). One audit recommendation was that the Board of Police Commissioners permit OCC to be included in KCPD's policy reviews, and that recommendation was implemented. Another recommendation was for OCC to have complaints investigated by independent investigators (City's Auditor's Office, 2005 p. 19). However, this recommendation was rejected by the Board of Police Commissioners in April of 2007 (M. Benneken, OCC Executive Director, personal communication, November 6, 2019).

In 1997, Pearl Fain succeeded Dr. Ridpath as OCC director, and she served in that capacity until 2017. In 2014 the name of the office was changed to the Office of Community Complaints in order to stress that anyone—not just citizens—can file a complaint. In January 2017 Merrell Bennekin became OCC's newest executive director. "Among his priorities, Bennekin said he wants to build on many of the changes Fain implemented. The changes include increasing the agency's transparency and public accountability and further strengthening its ties to various communities in Kansas City. Another priority is to enhance the agency's mediation efforts" (Rice, 2017b, para. 9).

The total number of complaints filed between July 1, 2012, and June 30, 2017, was 2,392 (Figure 5.1). Out of 2,392, only 350 complainants decided to continue with the entire

investigatory process. Of that 350, only 57 complaints were sustained, or 16% (K. Williams, OCC Senior Legal Analyst, personal communication, July 20, 2017).



Source: Kansas City Office of Community Complaints

Figure 5.1: Complaints against KCPD Officers, 2012-2017

Civilian complaints against police can be costly for cities. Between January 1, 2013, through December 31, 2017, the City of Kansas City paid \$6,033,249 due to civilian complaints in the categories of assault/battery, excessive force, false arrest, false imprisonment, and negligence (M. Luster, KCPD Paralegal, personal communication, July 10, 2018).

OCC: Structure and Process

OCC's structure is very simple and its resources are very meager. The organization is headed by an executive director who is appointed by and serves at pleasure of the Board of Police Commissioners. The structure includes an assistant executive director and three legal analysts who investigate citizen complaints, however, since 2016 the Board of Police Commissioners has not approved filling the assistant director position. OCC does not have subpoena power. Its review of complaints utilizes the record developed by Internal Affairs in their in-depth investigation.

Any person can file a complaint against a KCPD officer by filling out a complaint form which can be found online, at any police facility, via mail or with OCC. All complaints are forwarded to OCC for the initial processing and possible resolution. If a resolution is not reached, then OCC forwards all materials to IAU for an in-depth investigation. At this point, IAU determines whether there was a violation of police policy and forwards that decision to OCC. If OCC agrees with that determination, the file is closed; however, if OCC does not agree, the investigation continues. Should OCC determine that there was a violation of policy and an officer should be reprimanded, OCC sends the recommendation back to IAU.

Although there is an opportunity for IAU and OCC to agree on the resolution, an agreement may not be possible at which point the case is forwarded to the Board who then makes the final decision. These procedures are also outlined in KCPD's Procedural Instruction No. 15-12 (KCPD, 2014). This procedural instruction also covers who can file a complaint,

which complaints cannot be investigated, how to process and investigate a complaint and recommendations. KCPD also has Personnel Policy 308-3 which specifically addresses how IAU will investigate a complaint and the proper responses of a police officer in this situation (Kansas City, Missouri Police Department, 2014).

OCC has various terminology for case decisions: conciliation – informal resolution of a complaint; mediation – informal resolution of a complaint through mediation; secretary/attorney- the secretary/attorney for the Board is appointed. There are six categories for alleged improper actions:

- bias-based policing – police actions were based on the race, ethnicity, gender, age, sexual orientation, religious beliefs, disabilities or national origin of a person;
 - discourtesy – actions in violation of the Code of Ethics and Rules of Conduct, for example, racial slurs;
 - excessive use of force – police used more force than is reasonably necessary to arrest a suspect;
 - harassment – repeated contact with a person without lawful police justification;
 - improper member conduct – when the behavior of a department member was unprofessional, unjustified, beyond the scope of the authority of the member;
 - improper procedure – when an administrative or procedural requirement was not met
- (Kansas City, Missouri Police Department, 2014).

Additionally, OCC has specific designations for their findings:

- exonerated – alleged act occurred but there was no misconduct on the part of the department member;

- not sustained – evidence fails to prove that misconduct happened;
- sustained – evidence proves the act occurred and was without lawful police justification;
- unfounded – alleged act did not occur.

Other options are:

- closed – complaint was closed for various reasons, i.e., pending litigation or lack of jurisdiction;
- non-cooperation- complainant did not cooperate;
- resolved without investigation – a complaint that was resolved through mediation or another method;
- withdrawn – complainant did not want to pursue the complaint (Kansas City Missouri Police Department, 2014).

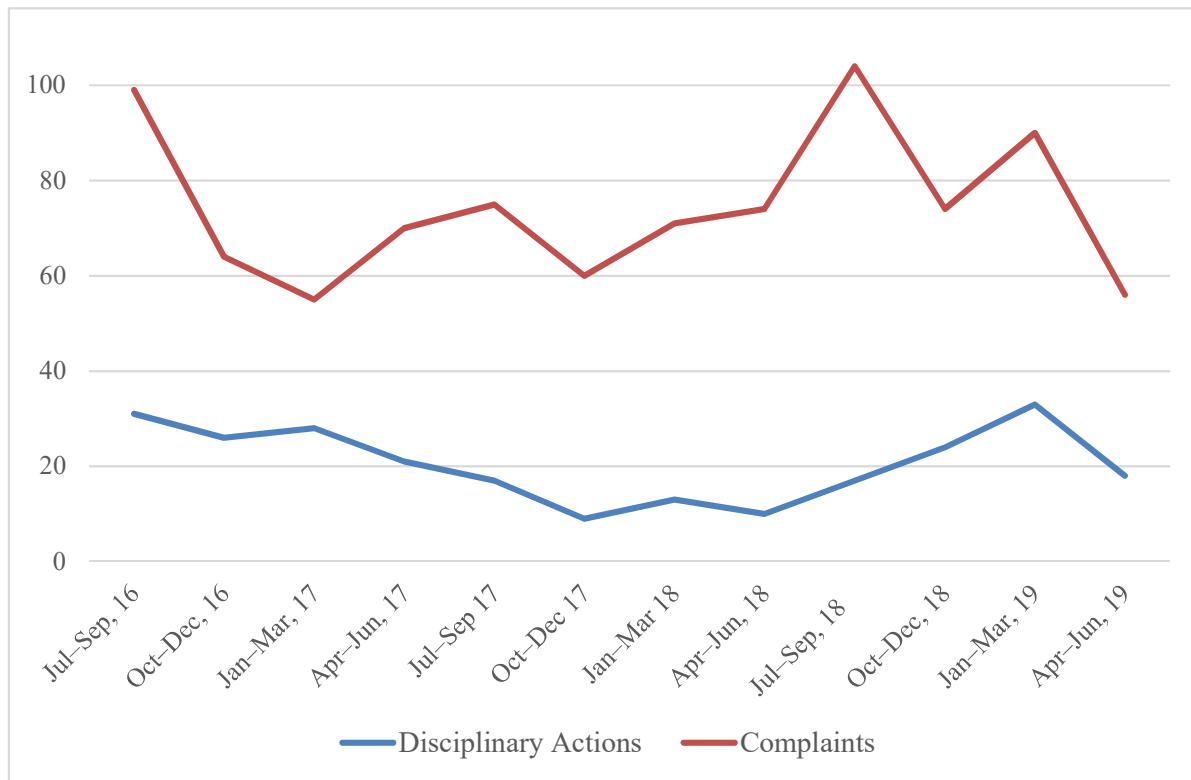
Although most complaints do not result in disciplinary measures being taken against officers, in the three-year period beginning July 1, 2016 and ending June 30, 2019, 247 complaints resulted in disciplinary actions. 45 percent of these actions involved required counseling for officers. 24 percent of these actions were letters of reprimand; another 24 percent resulted in suspensions. In only 6 percent of cases were officers terminated, and demotions occurred in 1 percent of cases (see Table 5.1 below).

Table 5.1: Disciplinary Actions by KCPD, July 2016- June 2019

	Termin- ation	Demo- tion	Suspension	Repri- mand	Coun- seling	Total
Jul-Sep, 16	3	2	5	10	11	31
Oct-Dec, 16	2		7	3	14	26
Jan-Mar, 17	2		5	8	13	28
Apr-Jun, 17			2	4	15	21
Jul-Sep 17			7	6	4	17
Oct-Dec 17			4	2	3	9
Jan-Mar 18			4	4	5	13
Apr-Jun, 18	1		2	3	4	10
Jul-Sep, 18	1		5	4	7	17
Oct-Dec, 18	3		6	4	11	24
Jan-Mar, 19	1		8	8	16	33
Apr-Jun, 19	2		4	3	9	18

Source: B. Ruoff, Kansas City Police Department, July 30, 2019

Figure 5.2 below tracks the total number of complaints received either by KCPD or OCC during the period beginning July 2016 and ending June 2019. It also tracks the disciplinary actions taken against KCPD officers over the same time frame. The two series are weakly correlated ($r=.27$).



Sources: B. Ruoff, Kansas City Police Department, July 30, 2019; K. Williams, Office of Community Complaints, November 15, 2019.

Figure 5.2: Citizen Complaints and Police Disciplinary Actions, July 2016-June 2019

From July 2016 through December 2017 there is a downward trend in disciplinary actions. On August 15, 2017, Rick Smith was sworn in as KCPD’s 45th Chief of Police. Shortly after Chief Smith’s arrival there is an upward trend in disciplinary actions. However, in the period April-June 2019, there is a noticeable drop in disciplinary actions. This appears to coincide with a reduction in citizen complaints. In a telephone interview with Chief Smith conducted November 19, 2019, the Chief suggested that officers “had gotten the message” and were acting in a more professional manner.

Chief Smith has embraced a trend that may help to improve police-community relations: the hiring of social workers. On becoming Chief, Smith hired one social worker and by the end of 2019 there were six. The plan is for these six social workers to become full time in 2020. The idea is that police officers can call these workers when they need assistance with residents who require specialized attention. According to the Chief,

When our officers have a situation involving an individual or family who needs long-term or special assistance, the officers engage our social workers. Social workers have the time and resources to help individuals and families make long-term changes for the better. We have seen their interactions truly change lives, build trust, and set an example for others. In addition to assisting community members, this partnership has projected policing in a very positive sense and the community has responded with more respect for our officers (R. Smith, Kansas City Police Chief, personal communication, October 3, 2019).

Hiring social workers to work with police is not unique to Kansas City—it is a national trend. Whether this measure is successful, it certainly suggests that Chief Smith is receptive to reform and is intent on improving the relationship between his department and the community it serves.

The Survey

In order to learn more about the OCC and how it is regarded by officials, complainants, and police, I conducted an online survey (using the Qualtrics platform). The populations surveyed

were: 1) relevant officials, including OCC staff, the mayor and members of City Council, and members of the Board of Police Commissioners; 2) complainants over the last five years for whom email addresses could be obtained; and 3) all current officers of the KCPD. All contacts, including two reminders, were sent by email. KCPD staff distributed the survey through their internal database to all police officers, and this was accomplished four times. Respondents were anonymous, but did self-report their race, gender and position in the community.

Unfortunately, neither the mayor nor the members of the city council responded to the survey (although I was able to interview two members of the council). Nor did anyone on the Board of Police Commissioners answer the survey (but I was able to interview four former members of the Board and one current member). On the other hand, all five members of the OCC responded to the survey. Thus, the response rate from public officials was 23 percent (see Table 5.2 below), but 100 percent from OCC. Henceforth, in the analysis, I will compare OCC responses (as opposed to “officials”) to the other groups surveyed.

Table 5.2: Survey Response Rates

Group	Number Targeted	Number of Respondents	Response Rate
Officials	22	5	23%
Complainants	546	32	6%
KCPD	1,292	289	22%

As Table 5.2 above indicates, the response rate from the police was 22 percent, the same response rate as for public officials. “Survey research is generally notorious for its low response rates. A response rate of 15-20 percent is typical in a mail survey, even after two or three

reminders” (lumenlearning.com, n.d.). Unfortunately, my survey of complainants did not achieve this level of responsiveness; only 6 percent of those surveyed responded.

Limitations of the Study

Due to budget constraints, a mail survey to a random sample of all Kansas City residents was not possible. This survey could have identified whether Kansas City residents: knew that OCC existed, if they knew it existed, what was their opinion of its effectiveness, and whether they perceived the police as being biased or abused their use of force authority.

Another improvement would be to survey and interview more complainants. Between July 1, 2012 and June 30, 2017, there were approximately 2,392 complainants. Out of that number, I had email addresses for approximately 546 complainants (information was provided to me by OCC). Unfortunately, only 32 complainants responded to the survey. Of these, only seven agreed to be interviewed. Had I been able to conduct a broader survey by mail, I could have obtained more data from complainants and personally interviewed more of them.

Demographics of Respondents

As Table 5.3 below indicates, complainants are more diverse, i.e., more likely to be African American and/or female than the police. The fact that police officers are overwhelmingly white and male may well contribute to the lack of understanding between police and the communities they serve.

Table 5.3: Race and Sex of Respondents by Group

	OCC	Police	Complainants	All Respondents
<u>Race</u>				
White	40% (2)	76% (172)	54% (15)	73% (189)
African American	60% (3)	10% (22)	29% (8)	13% (33)
Hispanic/Latino	0% (0)	5% (11)	7% (2)	5% (13)
Other	0% (0)	9% (21)	11% (3)	9% (24)
<u>Sex</u>				
Female	80% (4)	26% (59)	50% (14)	30% (77)
Male	20% (1)	73% (167)	50% (14)	70% (182)
Other	0% (0)	1% (2)	0% (0)	1% (2)

Perceptions of OCC

Eighty-four percent of complainants were aware that OCC exists, yet only 56 percent expressed an awareness of OCC's activities. Because OCC has been active for a very long time, it is surprising that some community members were not aware of its existence. Relatively few complainants manifested an awareness of how OCC members are selected or when and where OCC meets. However, 91 percent indicated that they knew how to file a complaint (see Table 5.4 below).

Table 5.4: Awareness of OCC by Police and Complainants

	Police	Complainants
I am aware that OCC exists for citizen complaints.	---	84% (27)
I am aware of the activities of the OCC.	81% (217)	56% (18)
I am aware of how the members of OCC are selected.	33% (87)	16% (5)
I am aware of when and where the OCC meets.	27% (73)	13% (4)
I am aware of how to file a complaint against the police.	---	91% (29)

As shown in Table 5.5, most complainants do not have a favorable perception of the process by which their complaints were addressed. Notably, they are no more likely to agree that the OCC process is fair, as compared with that of the KCPD.

Table 5.5: Complainants' Perceptions of Fairness in the Resolution of Complaints

Citizens receive a fair result when their complaint is investigated by ...	OCC	KCPD
Agree	14% (4)	16% (5)
Not Sure	29% (8)	25% (8)
Disagree	57% (16)	59% (19)

Figure 5.3, below, compares the perceptions of OCC across respondent categories. The most obvious takeaway is that complainants consistently have a more negative view of OCC than do the police or members of OCC itself. Complainants give OCC lowest marks for transparency.

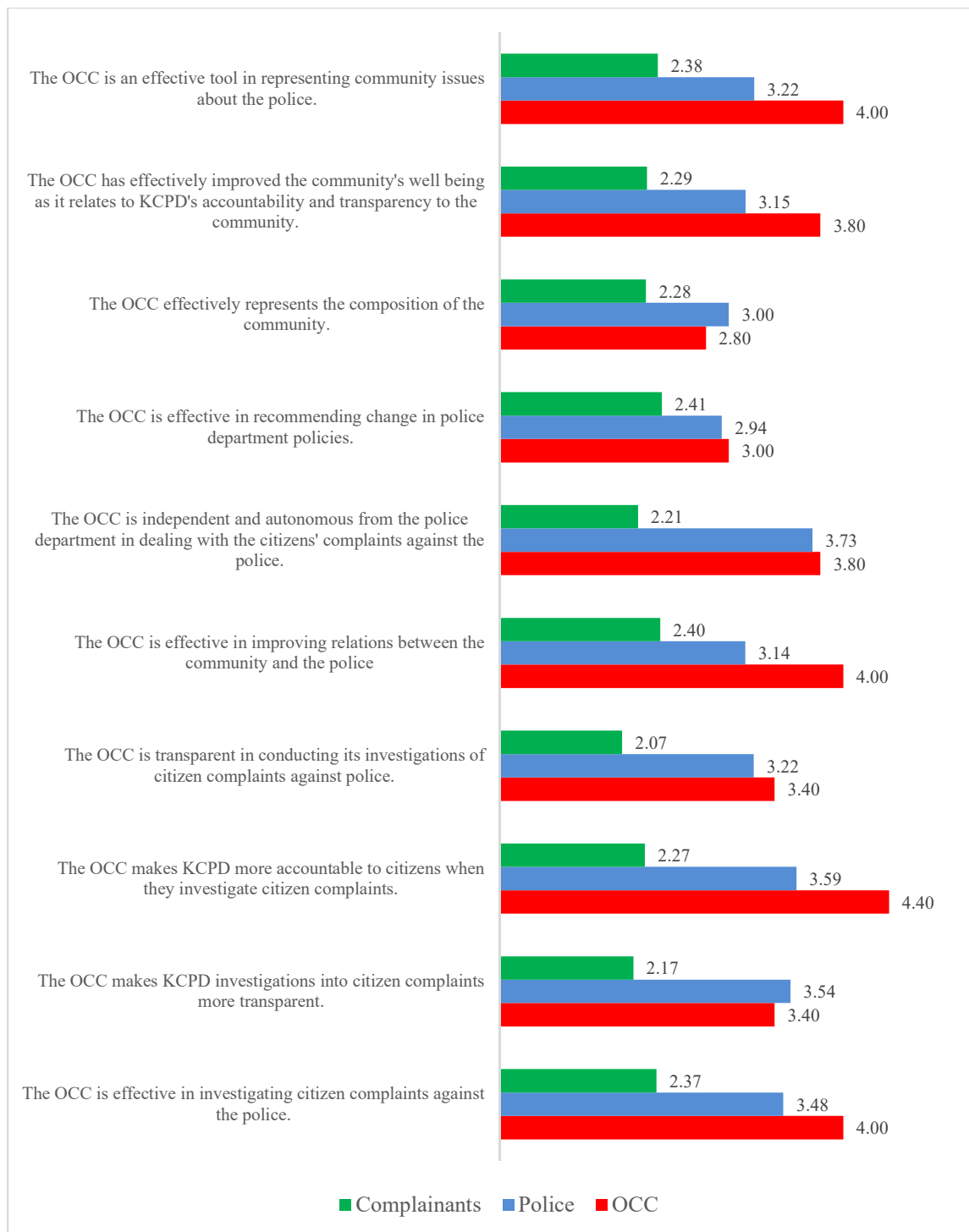


Figure 5.3: Perceptions of OCC

The complainant's comments in the survey are also revealing:

- "I was pressured to have it [the complaint] investigated by KCPD, not OCC.
- "OCC makes it difficult to actually file a complaint and complete the complaint process."
- "One call to a complainant that is not returned in a day or so will result in the file being closed."
- "It [the complaint process] is designed to protect the officer and not the citizen/complainant."
- "Officers are found to not have done anything wrong in almost the majority of cases."
- "After sharing on social media about the offense, a former member of the OCC contacted me to urge me to file a complaint and explained how to do it. I would not have known about this without her help."
- "I have never heard of OCC."

The police are moderately favorable in their assessments of OCC. The police are most likely to agree with the statement that "OCC is independent and autonomous from the police department...", which they may or may not perceive to be a good thing. They are least likely to agree with the statement that "OCC is effective in recommending change in police department policies." The following comments made by police officers who responded to the survey suggest that the police think OCC is biased toward the complainant. And they think that the OCC process of reviewing a complaint and making a decision takes too long.

- “OCC complaints take entirely too long.”
- “The OCC has taken complaints with very little substance and turned them into major conspiracies with the police being the bad guys for years.”
- “I have observed a definite bias against officers by the leadership of OCC in their recommendations of officers’ actions, with regard to the action of white officers and minority complainants.”
- “Members of OCC seem biased to minorities and reflect poorly on the police department.”
- “...[W]e are not well informed on the OCC and how members are selected.”
- “While I believe the OCC is transparent to the community, it is not transparent to the department members and is not trusted by the rank and file officers.”

Members of OCC are, on the whole, quite positive about the organization, but there is one glaring exception: they do not believe that OCC effectively represents the composition of the community it serves. The following comments were offered by three OCC members:

- “I think having an OCC Office in the Kansas City area has prevented our City and police department from having the serious issues that other police departments have had throughout the country. Citizens need an outlet to voice their concerns and grievances and OCC provides that avenue. Also, not being under City control creates a very fair process without political influence from the Mayor or City Council.”

- “OCC provides a great service to the Kansas City community, never taking one side, but always investigating what the issue (the truth) is between them and the officer(s). The OCC office helps to bridge the gap between the officers and the citizens and building trust, especially during mediation between the two individuals (officer and citizen). OCC is a positive resource in helping to teach the citizens and children about police etiquette.”
- “Although investigations are done thoroughly, there should be an allowance for OCC members to question complainants and/or department members in the course of the investigation, if warranted.”

Perceptions of the Police

It comes as no surprise that, when surveyed, complainants manifest a low degree of respect for, and trust in, the police (see Table 5.6 below). Nor is it shocking that they are much more likely to agree than disagree with the statement that, “In general, police officers are biased against minorities.” Two-thirds of those who agreed that police officers are biased also disagreed that they respected the police. Clearly, the perception of bias is linked to disrespect and distrust.

Table 5.6: Complainants’ Perceptions of the Police

	Agree	Neutral / Not Sure	Disagree
I have a great deal of respect for KCPD officers.	44% (14)	16% (5)	41% (13)
KCPD officers are held accountable for their misuse of power.	22% (7)	19% (6)	59% (19)
In general, police officers are biased against minorities.	45% (12)	30% (8)	26% (7)

Figure 5.4, below, displays attitudes toward the police in more detail; it also compares attitudes across the three groups of respondents. Complainants are much more negative about the police than are the police themselves, which is not surprising. It is noteworthy that, on every item in Figure 5.3, members of OCC are more favorable to the police than are complainants. Indeed, on most items, OCC members are closer to the police than to complainants. However, there are two notable exceptions. First, OCC members are more likely to agree with complainants that “KCPD officers cover up abuses of their fellow officers.” Second, OCC members are more likely to agree with complainants that “KCPD officers take advantage of their position of power.”

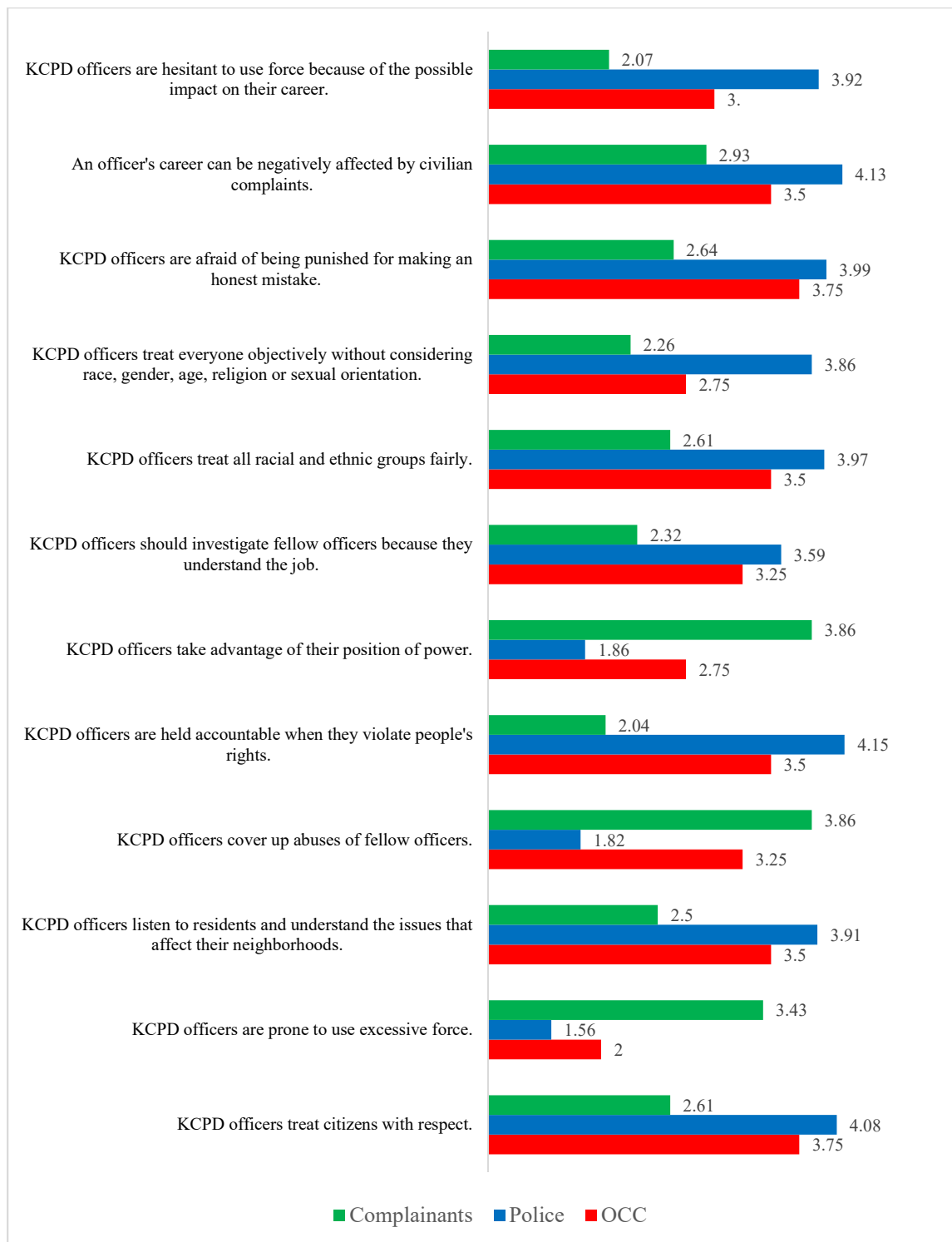


Figure 5.4: Perceptions of KCPD

Police Perceptions Revealed in the Survey

As indicated in Figure 5.4 above, police officers who responded to the survey were most likely to agree with the statements that “KCPD officers are held accountable when they violate people’s rights” and “An officer’s career can be negatively affected by civilian complaints.” They were least likely to agree that “KCPD officers are prone to use excessive force” and that “KCPD officers cover up abuses of fellow officers.” The survey also asked police officers about their perceptions of negative publicity. As showing in Table 5.7, officers were overwhelmingly likely to agree that negative publicity surrounding the police has adversely affected their own feelings about their job and made them more apprehensive about using force against citizens.

Table 5.7: Police Perceptions of Negative Publicity

	Agree	Neutral / Not Sure	Disagree
Negative publicity of police has made it more difficult to be motivated at work.	82% (194)	9% (21)	9% (22)
Negative publicity of police has made it less enjoyable to have a career in law enforcement.	83% (196)	9% (22)	8% (19)
Negative publicity of police has caused officers to be more apprehensive about using force, even though it may be necessary.	83% (196)	10% (24)	7% (17)

Figure 5.5 below examines police officers’ perceptions of KCPD by officers’ race. Not surprisingly, there are substantial differences between the perceptions of African-American officers and their white colleagues. Interestingly, though, Hispanic and Latino officers tend to be closer in their perceptions to those of white officers.



Figure 5.5: Officers' Perceptions of KCPD by Race of Officer

It is noteworthy that when police were asked about whether they cover up abuses of other officers, those who disagreed were predominantly older white males. Those who agreed were more likely to be black, female and younger.

In-Depth Interviews

In addition to the survey previously discussed, I conducted a series of interviews with members of the OCC, KCPD officers, complainants, City Council and current and former members of the Board of Police Commissioners. The interviews inquired about police relations with the community and about OCC and its role. As Table 5.8 indicates, most of these interviews were with KCPD officers, as they were more willing to be interviewed.

Table 5.8: Number of Interviews by Group

Group	Number of Interviews
Complainants	7
OCC members	3
Members of City Council	2
Board of Police Commissioners	5
KCPD officers	38

Interviews with Complainants

Complainants expressed skepticism about OCC but also a lack of understanding of its functions. They also noted the difficult relationship between the police and the minority community and expressed trepidation about dealing with officers.

- “I don’t see the purpose of OCC because if you have a criminal background, you are always wrong.”
- “I would also say that the level of cooperation; I felt that I was very much on the defensive since it was very much up to me to prove myself versus having the support of the people who are involved at OCC.”
- “Maybe it’s [OCC] a success. I think in my situation it was better to have it than not have anything at all.”
- “OCC or any board needs to publicize more so the community knows.”
- “Boards [OCC] need to do a lot publicity and letting people know what their options are if they think their situation was not fair and be more collaborative, and more cooperative with the citizen when they are involved.”
- “There is still work to be done between police and the African American community. The police officers fear minorities.”
- “The presence of the police is very visible, but what are they doing to help the people in the community?”
- “I think they [KCPD] are as transparent as any other police department.”
- “The black community and the police don’t really get along. They are pretty wary of police because we do have cases of people getting shot.”
- “Most of my interactions with the police haven’t been bad. I never followed up with my complaint because a week after I filed it, I noticed the officer and his partner kept driving by my home. I just didn’t want to be harassed.”

- “I have to admit since I’ve been here the last 5 years the police have been pretty good.”
- “I believe that they [KCPD] are transparent. Even when they are following up on some drugs, I have seen them be respectful.”
- “In the power and light district there is some racial profiling.”
- “Most white officers seem to be culturally aware of how to deal with African Americans, particularly in areas of conflict.”
- “The community also needs to be engaged with the police, including the African-American community.”
- “In public housing there is no snitching.”
- “When I tell people about the incident where the officer retired before the case was investigated, we all wonder what would have happened to this officer if it was his fourth or fifth incident with a resident.”
- “KCPD needs for the community to fully understand how things work.”
- “The officer’s manner put me so much on the defensive, his manner was so abrasive. I thought to myself, here we are college-educated people with a family and full-time jobs and we are being treated as criminals.”
- “I thought to myself, no wonder there is so much violence against the police because I didn’t have much to lose. I would have ended up in the back of the police car if I had said how ridiculous this was.”
- “My family including my kids have a negative impression of the police, based on knowing what happened to me. My impression is forever changed, and when I see news

stories about police misconduct, I think that they are a hundred percent right because that is what happened to me.”

- “I did not know that they [OCC] existed. It didn’t seem to me at the time that there was some kind of board or group that researched complaints.”
- “No, and I think it’s [KCPD] corrupt and some day that cop will go down for doing something else corrupt which is unfortunate. In a city troubled by race relations, it’s sad that a white woman is suspicious of her police department.”
- “The cops are at schools or libraries sitting in his car checking his phone, but they are there to police the areas and not meet the people. I think that is a missed opportunity.”
- “It’s [OCC] been a total disservice to the community.”
- “If you file a complaint against an officer, the officer is made aware that you filed the complaint and get the particulars about it. Then the officer will harass you. So citizen oversight does no good.”
- “OCC needs to be independent from the police department, and not have IAU do the investigations.”

Interviews with OCC Staff

While OCC staff members recognize problems in the relationship between the police and the community, they are fairly positive about the role of OCC.

- “OCC has been around 45 years, so it has figured something out that’s working.”
- “OCC and internal affairs may not agree on everything, but that doesn’t mean they can’t work together and get it right.”
- “OCC needs to rebrand itself as a kinder, gentler OCC since in the beginning the word was stay away from OCC, it’s some silent organization.”
- “If OCC and the department can’t agree on the decision, then they have a reconsideration meeting. If they still can’t agree, then it goes to the board of police commissioners.”
- “There have been some policy changes that have made it harder for OCC to sustain a complaint. Some of the older policies were more specific as to what an officer can and cannot do; and now they are grayer.”
- “Have we stopped all misconduct in the city by the police? No. So we are not successful in that area. Have we given a voice to the people who feel they have been wronged? Yes. In that regard, we are successful.”
- “An officer told me that the community support for the police is at an all-time low, and ‘I am miserable out here.’”
- “You talk to some people and you ask them if they had a bad experience with police. When they say no, I ask why they hate police and it’s because someone told him about bad experiences.”
- “The relationship between the community and the police has never been so bad.”

- “The people in the community say it’s horrible out there. These people are the gang bangers, etc., who are telling me that it’s rough out there because we are hearing that the police are backing off.”
- “Most of the stations now have community rooms with a gym, a community room for meetings and things like that. That makes people more comfortable. To know that it is there and that the police don’t ask anything of you.”
- “There are police out there who think that the people that work for oversight agencies, whether they’re volunteers or employees, have not walked in their shoes, they don’t know what it’s like.”

Interviews with City Council Members

Members of the city council offered divergent views on OCC and the police department.

- “I can tell you from my interaction with OCC, they are very responsive, they are out in the community, they want to help as many people as they can.”
- “OCC is here to provide some level of accountability and so for that reason it seems to work well enough.”
- “There are those in the community who I run into or go to community meetings and say things like ‘we’ve gone through OCC, and they are no help to me’; ‘I can’t get answers.’”
- “If I go into my district in xxxx, there’s a high opinion of the police, there’s a high opinion of the uniform.”

- “I think that if you were to take the general population of the city, the police department is looked upon very favorably.”
- “I can’t recall someone who has had a positive feeling to share.”
- “The reality of it is that in communities across this country, we continue to see the tensions between police and the community.”
- “I’ve had people on the east side of the city when I suggested that we will meet at the patrol division, they suggest not going there because people are uncomfortable going there.”
- “Police need to get out of their cars and meet with the community.”

Interviews with Board of Police Commissioners

Again, we see divergent views on OCC and the police department. There does appear to be a sense that OCC needs to be more visible in the community.

- “It [OCC] has been a success in making the police officers more accountable.”
- “OCC needs to pass out literature so that the community knows that it exists and what it can do, do PSAs on the radio.”
- “Our OCC has limitations. They cannot discipline an officer; they simply make a recommendation on the policy that was violated.”
- “It’s [OCC] not as transparent as we would like because if you are the complainant unless you go to court you never know what happened.”
- “To continue to be successful OCC needs to be visible in the community, so they know there is a resource to help them with complaints against police.”

- “People say they [KCPD] needs to hire more minority officers. One black officer went into the chief’s office, put his gun and badge on his desk and quit saying ‘I didn’t know they would be shooting at me.’”
- “Mayors don’t want review boards because it is too political. Mayors want those officers in uniforms standing behind them. No mayor is going to actively do something against the police.”
- “Some incidents are examples of how the police use the phrase ‘I was afraid for my life.’”
- “Majority of incidents have been against black residents.”
- “In fact, the police board only has jurisdiction over a termination or suspension over 14 days.”
- “Certainly in areas of KC, I suspect it’s far more racial minorities that feel oppressed than white folks.”
- “My personal opinion, a police department is not going to seem transparent unless there’s an external body doing the investigating.”
- “If I were chief of police of a major metropolitan area, I would have all female officers. They absolutely talk first and have the ability to talk and not let it escalate out of control.”
- “That’s the biggest difference with KC, the board of police commissioners appoint the chief.”

- “People think they don’t want to get involved, or they don’t think anything’s going to happen. That’s the main reason people don’t complain because they think they’re supposed to get beat up.”
- “... so a lot of people in the community felt like, well you should hire your own investigators. But the other side of that was, will the police cooperate? If you’re trying to investigate something and they see internal affairs coming, no one likes internal affairs. There’s a different standard on lying to internal affairs vs. lying to you and me.”
- “So internal affairs just do the facts. Sometimes you must stay on them to move the cases. You don’t want cases hanging on and on.”
- “There is nobody in the press that publishes at the end of the year any of the facts like how many [complaints] were substantiated.”
- “You have good relations [with the African-American community] until something happens. The law has changed in Missouri, not only can you carry a concealed weapon, you can carry any kind of weapon. Now that more people have guns, the police aren’t that ready to shoot.”
- “It is through engagement with the community and it is through building relationships and whether they are walking the streets, getting out of the car and going to meetings,

being available before and after church services, being available before and after neighborhood association meetings, getting involved with youth groups, schools.”

- “It's incumbent on law enforcement to find out what is the best way to engage with a community and make the community a safer place.”
- “So many guys I grew up with are either in the penitentiary or dead. I went on a ride-along when I was on the board and I have so much empathy for these officers; no way I could do that job.”
- “I am still concerned about internal affairs doing the investigatory part of process.”

Interviews with KCPD Officers

Of the 289 police officers who responded to the survey, 69 (24%) agreed to be interviewed. My impression was that the officers were eager to share their viewpoints, which they felt were not being fairly represented in the media.

By and large, police officers manifested skepticism about the OCC and its procedures. Interviews with the police are consistent with the survey results about OCC not being effective regarding complaints. The police know that internal affairs conducts the actual investigation of the facts from the complaints, and they perceive OCC as being biased against officers when they apply policies and procedures to the action of the officer.

- “Having an entity like OCC to investigate any part of the police department is nothing other than a PR tool to say investigations are transparent.”
- “I believe OCC is entirely too concerned with just giving citizens what they want unless it is impossible to do so.”
- “...due to poor decisions made by OCC in sustaining complaints not due to evidence, but due to their dislike for a particular officer.”
- “KCPD commanders used OCC complaints as a means of putting pressure on officers even if some complaints were unfounded.”
- “Most OCC members are way too close to the command staff of the police department.”
- “The additional review of complaints by OCC was more fluff than substance.”
- “OCC used the number of complaints, including those found to be false, against officers by including the total number of complaints filed when making recommendations to the Police Board about disciplinary action”
- “Based on my interaction with OCC personnel [having worked in internal affairs for 3 years], it was my impression they went into each case with a presumption of guilt against the officer, rather than the presumption of innocence, which is the cornerstone of the criminal justice system.”
- “OCC complaints take entirely too long. The resolutions should be quick both for the sake of the citizen and the officer.”

The officers expressed concern about false complaints made against the police. They are frustrated with having to spend a lot of time defending themselves when the complaint is false. The officers' opinion is that they will be reprimanded when they do something wrong; however, there are no consequences for citizens filing a false complaint. Because there are no consequences, officers have negative beliefs about OCC.

- "...because a citizen can walk into OCC and say I am a racist officer or I called them a name, and I still have to go through the process, and when it is unfounded there are no repercussions on the citizen for lying and making us have to stress and go make statements, they are just free to go do it again."
- "The OCC has taken complaints with very little substance and turned them into major conspiracies with the police being the bad guys for years."
- "It's well known in the community how to get your charges dropped by filing a complaint against an arresting officer. It's no coincidence that complainants have multiple complaints filed."
- "What is done to citizens who falsify OCC forms and make bogus complaints against officers? Nothing!"
- OCC never addresses the community member who is blatantly making false accusations that are proven not to be true. The citizen is never held accountable for their false allegations..."

Not surprisingly, police officers tend to be supportive of the use of force as a reasonable and necessary measure.

- “Ever-rising standards of what force is ‘reasonable’ with regard to circumstances has defined almost every force tactic that police must use as ‘unreasonable’ or ‘unjustified’ in an over-abundance of daily or common scenarios.”
- “Officers do not use force by choice; force is used by necessity.”
- “For someone to actually investigate a use of force incident they need to have been properly educated on all the Supreme Court rulings as we have been and then at the bare minimum be exposed to use of force incidents.”
- “The newer the officer, the more intimidated and responsive they are, to being questioned or goaded. A more tenured officer has generally learned to let those things go in one ear and out the other.”
- “It is important to remember that what is and what is not excessive force is a sliding scale of reasonableness.”
- “It seems the more we progress, the more restrictive we have become with regard to the use of force and police incidents.”
- “The rules of force are written so that those, especially in the field who are often required to make decisions in a split second, have to stop their actions to consider way too many factors before applying use of force.”

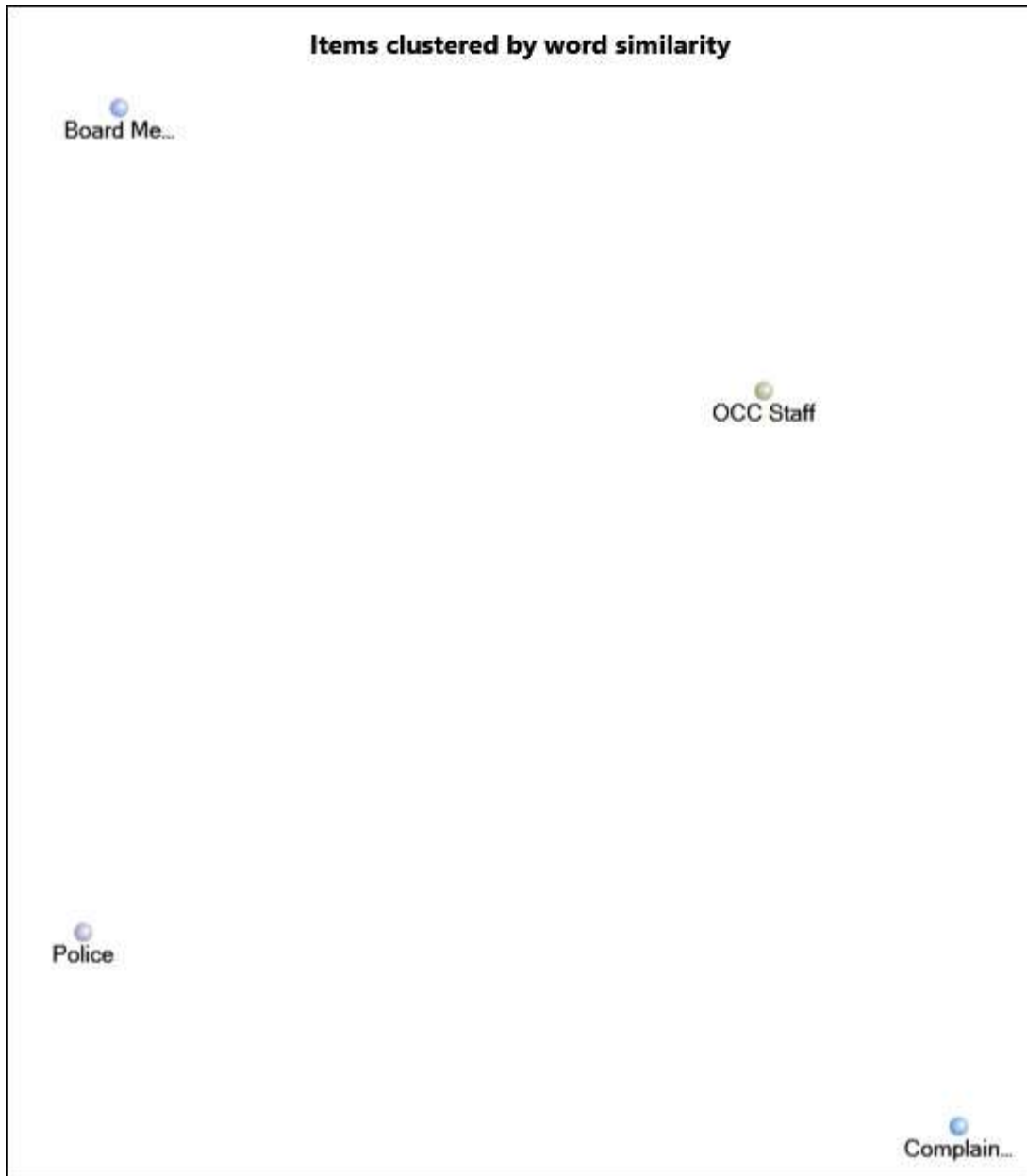
Police officers manifested low morale and expressed particular disdain for how they are portrayed in the media.

- “The culture of today’s street officer is to sit in the patrol car and answer 911 calls versus put themselves out there doing self-initiated work, which is the backbone of keeping the community safe. The fear of being in a critical incident and crucified on the news...it’s not worth it.”
- “The media has ruined the careers of good police officers, with the false narrative reporting.”
- “The department is struggling with keeping the morale up with district officers.”
- “The negative view of the police in the media has made officers hesitant to use force when necessary thus resulting in more officers being injured or killed.”
- “In my 21 years in law enforcement, I have never seen the level of disrespect and pure hatred towards law enforcement that I am experiencing now.”

In August 2017, the Community Oriented Policing Services (COPS) office of the U.S. Justice Department assembled a group of forty police officers to discuss concerns about morale. When asked why there is low morale in the profession, officers noted a lack of resources and an expectation of officers doing more with less. “However, the issue that dominated the discussion was the undercurrent of negativity law enforcement officers feel is coming from their communities” (Robinson & Smith, 2018, p. 3). These officers believe that bad police-community relations is a significant reason why this negative perception exists. Certainly, this attitude was manifest among the KCPD officers interviewed for this dissertation.

Comparing the Similarity of Responses Across Groups

To assist in the analysis of the interviews, I employed NVivo, which is a program used for the analysis of unstructured text. One of the functions provided by NVivo is the determination of the similarity of responses by groups of respondents. Figure 5.6 below graphically depicts the similarity of responses among the police, the complainants, and the members of City Council and the Board of Police Commissioners. As the graph suggests, these groups have very different perspectives. Interesting, though, it is the Board Members and complainants that are farthest apart.



**Figure 5.6: Similarity of Interview Responses:
Board Members, Police, OCC Staff, and Complainants**

Figure 5.6 above disguises the within-group variance. For example, there may be a tendency for outside observers to assume that police officers think alike. My interviews suggest otherwise. To represent the variation of officer's comments graphically, I employed the NVIVO program, which generated Figure 5.7.

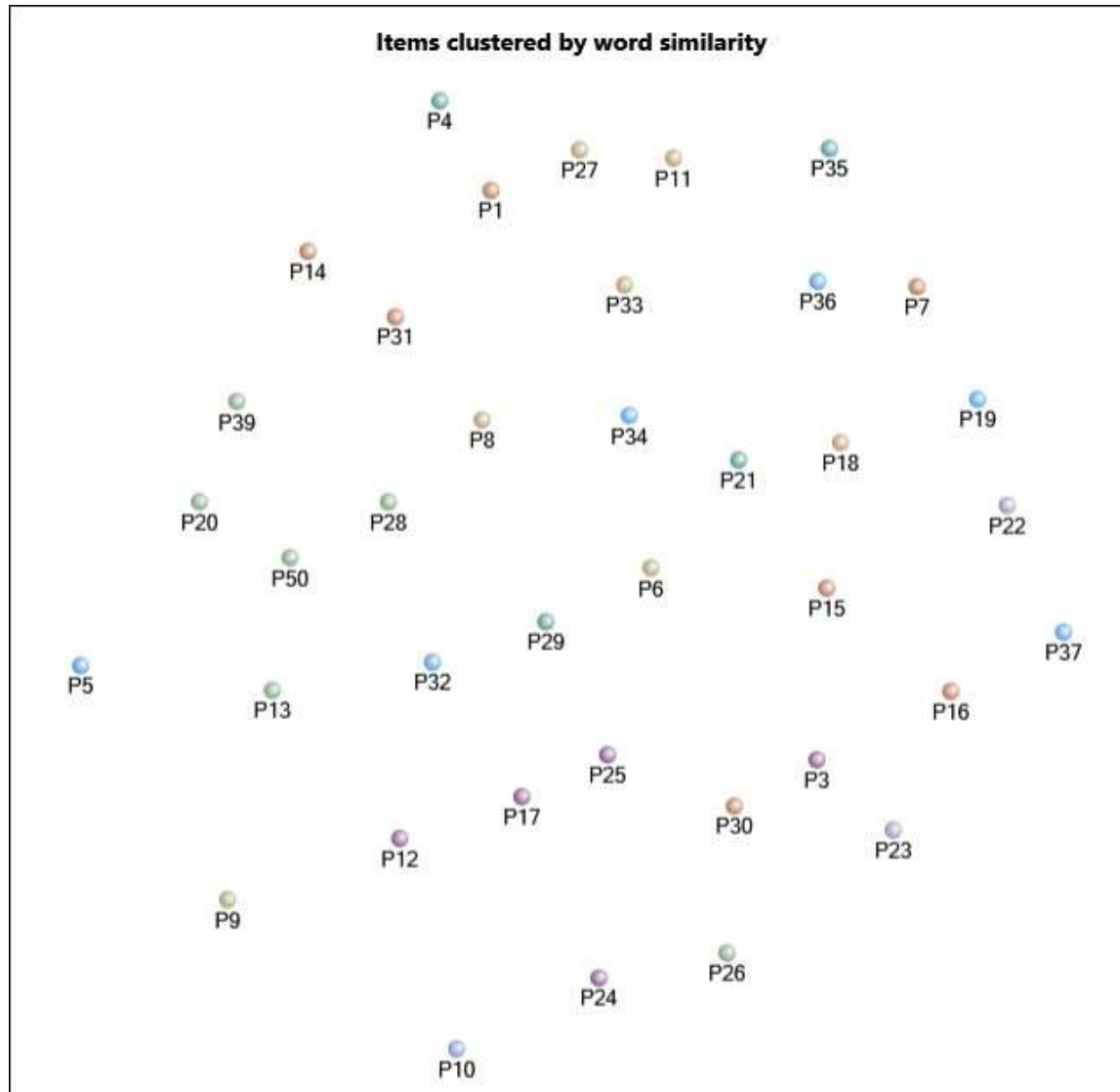


Figure 5.7: Similarity of Police Officers' Responses to Interview Questions

While there are many differences of opinion or emphasis among the officers interviewed, here are two illustrative contrasts. First, let us consider the comments of P10 and P4, which define the range on the vertical dimension. Officer P4 supports civilian oversight and believes that OCC lends some semblance of fairness to the complaint process. In contrast, officer P10 believes that officers do not back civilian oversight because civilians don't understand what officers do. Officers P5 and P37 define the range on the horizontal dimension. P5 believes that residents have erroneous and negative opinions of the police based on media coverage. However, P37 opines that there are many opportunities to work with the media, build bridges and communication so that there is more trust between police and the media.

Assessing Civilian Oversight in Kansas City

The Office of Community Complaints (OCC) has existed for more than 45 years. It has a simple structure, a bare-bones staff, and very limited authority. Its function is to review determinations made by the Internal Affairs Department of the KCPD in response to civilian complaints. It has no subpoena power and can only recommend that officers be disciplined. Disciplinary decisions are made ultimately by the Chief of Police, who serves at the pleasure of the Board of Police Commissioners.

As revealed through a survey and follow-up interviews, OCC staff members generally hold positive assessments of the role and function of their agency. That view is generally not shared by complainants or police officers. Complainants, in particular, tend to hold very negative views as to OCC's role and function. Considering the close relationship between OCC and the

police department, it is understandable that citizens could perceive OCC as an extension of the police and, therefore, would rule in favor of the officer. Going forward, it would be better if OCC had its own website so that citizens do not see it as merely an appendage of the police department. If you search for OCC, you will be directed to the KCPD's webpage which infers that OCC is part of KCPD and not necessarily independent.

Police officers also are generally negative in their assessments of OCC, but for very different reasons. Officers tend to believe that OCC is biased against them. In general, police officers manifested low morale. They tend to believe that their position is not well understood and that they are often unfairly vilified in the media.

Although there are no perfect structures for a citizen review board, Kansas City's OCC has developed a reasonably efficient and effective process for managing complaints. Whether OCC has improved the transparency and accountability, and ultimately the legitimacy, of the police is far from clear.

CONCLUSION

“Across the nation, in the wake of highly-publicized events, it is an important and evolving time for law enforcement. Agencies face increased scrutiny from the media, as well as the communities they serve, presenting new challenges and opportunities” (Police Foundation, 2016, p.3).

As the Nation has witnessed, minority communities across the country have demonstrated, both violently and peacefully, against police abuse. The Trump Administration, which has consistently supported the police, has even threatened to retaliate against communities that demonstrate their displeasure with law enforcement. In a recent Justice Department ceremony to honor police officers, Attorney General William Barr said that “if communities don’t give that support and respect, they might find themselves without the police protection they need” (Elfrink, 2019, para. 2). Barr has also halted any pattern-or-practice discrimination suits from being filed by the Justice Department and has attacked Philadelphia and St. Louis district attorneys for instituting accountability measures (Elfrink, 2019). This high-level lack of support for accountability has the potential to be a major hindrance to reform efforts across the nation.

Police Attitudes in the 21st Century

Police attitudes stem from a crime control culture that has evolved over many decades. The police tend to believe that they need to demonstrate their authority in order to engender respect

of citizens. Police officers are molded by the attitudes and perceptions of other officers as well as the department's leadership. The decisions that cops make in dealing with the citizens they encounter are based on their judgments as to which people need to be treated more harshly (Bayley et al., 2015).

Policing in the 21st Century has drastically changed with new technologies, terrorism, new crimes, and diverse communities. Police leaders need a different mindset and skills than those applied 20 years ago (Flynn & Herrington, 2015).

In addition to reducing crime, police leadership needs to address the problem of new officers becoming disillusioned, mainly because they become discouraged by the leadership and internal workings of the department. For the most part, police leadership is still based on the para-military structure, and what is needed in the 21st century is forward-thinking leadership that understands the changing times. Veteran officers need to realize that they, as well as the rank and file, should participate in ongoing training to lead in the 21st century.

Police leadership can benefit from the Police-Citizen Interaction (PCI) Survey which is conducted by the National Police Research Platform and measures the quality of police-citizen encounters at the local level. Although police will instill trust in communities as they solve and prevent crime, they will foster greater legitimacy when these communities believe that they engage in fair procedures (Rosenbaum, Lawrence, Hartnett, McDevitt, & Posick, 2015). How officers are compensated and promoted will guide officers on how to accomplish their mission – protect and serve. How officers perceive their compensation and advancement will affect how much they adhere to procedural justice (Schulhofer, Tyler, & Huq, 2011).

Hiring and retaining officers has become a serious challenge for police leadership. If there is an inability to hire quality officers, then police departments across the country will struggle with enhancing police-community relationships. Across the country, interest in becoming a police officer has declined significantly. For example, in Nashville, the number of applications plummeted from 4,700 in 2010 to 1,900 in 2017 (Jackman, 2018, p. 1). In a revealing interview with *The Washington Post*, Chuck Wexler, head of the Police Executive Research Forum, recounted that “he asked a roomful of chiefs to raise their hands if they wanted their children to follow them into law enforcement – *not one hand went up* (emphasis added)” (Jackman, 2018, p. 1).

Police chiefs around the nation are members of the International Association of Chiefs of Police (IACP) which produces conferences, research and networking. As IACP promotes the policing profession in various ways, one goal is to produce safer communities on the worldwide stage (International Association of Chiefs of Police, 2019). In a rare moment, the president of the IACP, Terrence M. Cunningham, announced to the 2016 national convention of IACP in San Diego:

While we obviously cannot change the past, it is clear that we must change the future. For our part, the first step in this process is for law enforcement and the IACP to acknowledge and apologize for the actions of the past and the role our profession has played in society’s historical mistreatment of communities of color (Jackman, 2016, para. 6).

Training of new officers is an important aspect of changing police culture. As Tyler and Wakslak (2004, p. 279) note, “It is good to speak of ‘respect,’ ‘neutrality,’ and ‘fairness,’ but what seems to us to be a necessary next step is work that identifies exactly what those terms mean in the context of police-citizen interactions.” More research is needed to discover the best means of training police officers on to how to interact with the communities they serve.

Transparency and Release of Information

A critical aspect of transparency is the release of information to the appropriate stakeholders. Unfortunately, law enforcement has been reluctant to release data on dangerous police actions. Citizens are more inclined to participate in their community when they have dependable, transparent information, especially as it relates to law enforcement. “Further, transparency strengthens, and the perception of secrecy weakens, public confidence and trust in law enforcement” (Breachner Center for Freedom of Information, 2018, p. 5).

The Freedom of Information Act (FOIA) allows the public, especially the media, access to documents that are in possession of a government agency. If citizens are legally entitled to certain information and if that information will eventually be disclosed, it is judicious for the police department to quickly reveal the information rather than waiting for the media to publicize it (Breachner Center for Freedom of Information, 2018). Increasingly, due to litigation, courts of law are becoming more involved with whether or not records, data, or other information are allowed to be released. When California’s SB 1421 became effective on January 1, 2019, the police unions attempted to have the court exempt cases prior to the effective date. However, San

Diego's Superior Court Judge Eddie Sturgeon mandated that these records be released, including those prior to January 1, 2019 (Jones, 2019).

When there is excessive use of force, especially in cases of a fatality, the Internal Affairs Department of the police department is the entity that investigates whether or not there is cause for discipline. If discipline is required, the case is referred to the local prosecutor. Is this the best avenue by which to search for the truth? "[A]sking local prosecutors to become adversaries of their closest professional allies raises process-oriented and democratic legitimacy issues, particularly in our racially-charged criminal justice system" (Levine, 2016, p. 1447). An alternative would be to create an outside prosecution board, similar to a civilian oversight board, but with subpoena power and the authority to decide if an officer should be charged (Levine, 2016). If an outside prosecution board were to be established, the selection process would need to ensure that the people chosen are not biased toward either the police or victims.

In *Brady v. Maryland* (1963), the U.S. Supreme Court held that in a criminal case, due process of law requires disclosure of evidence favorable to the defense. In *Assn. for Los Angeles Deputy Sheriffs v. The Superior Court of Los Angeles County*, the California Supreme Court decided unanimously that law enforcement agencies do not violate California law "by sharing with prosecutors the fact that an officer, who is a potential witness in a pending criminal prosecution, may have relevant exonerating or impeaching material in that officer's confidential personnel file" (*Assn. for Los Angeles Deputy Sheriffs v. The Superior Court of Los Angeles County*, p. 33). As we move forward in ensuring a transparent criminal justice system, Attorney General Becerra noted that this decision is a step in the right direction (Dolan, 2019).

Gag orders are legal maneuvers by which attorneys persuade judges to mandate that certain information in a legal proceeding should not be published or released. The original intent of the gag order was to ensure that defendants had a fair trial and no prejudicial information was released (Geragos, et al., 2017). Since there are no firm rules regarding when, or when not, to issue a gag order, judges must manage each trial on its merits. Gag orders are also utilized at the conclusion of a trial or settlement so that all parties are restrained from revealing any specifics about the settlement. This occurs frequently in cases of wrongful death by police.

In *Overbey v. Mayor & City Council of Baltimore*, the plaintiff argued that a gag order violated her First Amendment rights. Although she signed the gag order, she was later denigrated by people's comments on a blog at which point she defended herself, in violation of the gag order. Because she commented, the Baltimore Police Department did not allow her to receive half of her settlement. However, on July 11, 2019, the United States Court of Appeals for the Fourth District "ruled that the City's practice of requiring non-disclosure agreements, or "gag orders," on people settling police misconduct cases brought against the Baltimore Police Department (BPD) violates the First Amendment" (ACLU of Maryland, 2019, para. 4). This verdict was an impressive win for free speech, especially for the minority residents of Baltimore who are usually the survivors of police abuse. It is too soon to predict whether this milestone will reach other communities.

The *Overbey* decision prompted legislative action by the City of Baltimore. Championed by Councilmember Shannon Sneed, the Baltimore city council passed an ordinance entitled "Transparency and Oversight in Claims and Litigation." The ordinance, which went into effect on January 1, 2020, provides:

For the purpose of requiring the Baltimore City Department of Law to post on its website certain claims against Baltimore City regarding police misconduct and unlawful discrimination; requiring the Baltimore City Department of Law to report to the City Council on certain litigation involving Baltimore City; prohibiting the Baltimore City Department of Law from approving certain settlement agreements that require claimants to waive certain rights; prohibiting the Board of Estimates from approving for execution certain settlement agreements that require claimants to waive certain rights; defining certain terms; and generally relating to improved transparency and oversight of claims against Baltimore City (Baltimore City Council, Legislation, 2019).

The Role of Police Unions

As noted frequently in previous chapters, police unions represent an impediment to reform. When a police chief fires an officer for misconduct, it is likely that the officer will eventually have his job reinstated as the result of union intervention. For example, in the past eight years, Florida attorney Gene Gibbons has successfully had over 22 officers reinstated to their jobs, despite the chiefs having fired them (Bennett & Sullivan, 2017). Since 2006, a *Washington Post* report which covered 37 of the largest cities identified more than 1,881 officers were fired, and 451 of them were rehired due to arbitrators' decisions. The 37 departments noted one common factor in these rehiring – contracts drafted by police unions (Kelly, Lowery, & Rich, 2017).

During the 1960s, states allowed public workers the right to collective bargaining, which included salary negotiation. At this point, police unions spread rapidly and were successful in negotiating multiyear contracts. These contracts “ensured that discipline may be appealed – typically through arbitration...” (Kelly, Lowery, & Rich, 2017, para. 34). In analyzing 178 collective bargaining agreements, Rushin (2017) established that a significant number of these agreements limit and interfere with measures meant to hold police accountable.

There needs to be more research on the relationship between state labor laws and internal police discretionary procedures. Since the collective bargaining process is not open to the public, states must amend laws so that the disciplinary procedures are no longer subject to collective bargaining. Some consent decrees mandate that nonpartisan investigators should immediately report to the scene of a serious use of force to obtain statements from officers and witnesses. Officers should also be separated and not allowed to speak with each other (Rushin, 2017). However, many union contracts do not allow this process.

In San Francisco, some key changes to the use of force policy were introduced. This policy would bar officers from shooting at moving vehicles as well as not being able to use the carotid restraint (chokehold). The police union vehemently opposed this new policy and filed for a preliminary injunction. However, San Francisco Superior Court Judge Richard Ulmer denied the union’s motion. Since the union alleged the city refused to continue negotiations, Judge Ulmer advised the union that use of force policies come under the umbrella of managerial decisions (Weeks, 2016).

New York City's Police Benevolent Association is the largest union in the world. After the tenth officer committed suicide this year—double what occurs in a typical year—Police Commissioner James O'Neill and Terrence Monahan, chief of the department, determined that hiring psychologists to be in the field and improving access to mental-health professionals would be a judicious decision (Bellafante, 2019). Patrick Lynch, president of the union, advised officers that “operating according to standard protocols could result in dismissals and threats to personal safety” (Bellafante, 2019, para. 12). This warning is a way to suggest that the officers should slow down on the job, and as a result, felony arrests had fallen by the end of August. There is no doubt that police unions wield considerable power and impede reform efforts that would increase accountability and transparency (Bies, 2017).

After the firing of NYPD Officer Pantaleo, who killed Eric Garner, a resolution of no confidence in Commissioner O'Neill and Mayor de Blasio was unanimously approved by the union's delegate assembly (Bellafante, 2019). In addition to the no confidence vote, “felony arrests are down about 11%, misdemeanor arrests are down 17% ... and ... [there is] a 32% drop [in citations] for moving violations” (Sisak, 2019, para. 2). What has been documented in New York City may well be taking place in Kansas City. KCPD officers, both in their response to the survey and in interviews, said that many officers are no longer being proactive in arrests and are being reactive to the calls that the dispatcher relays.

The Impact of Insurance Companies

Because insurance companies control police liability insurance, they play a role in reducing

police misconduct. More numerous incidents of police malfeasance result in higher deductibles that cities must pay. However, even though the deductibles may be higher, the risk of paying out millions to an injured party moves from the city to the insurance company (Rappaport, 2017). As has been noted in this dissertation, millions of dollars have been paid to victims of police misconduct. Is it possible that insurance companies can effect change in police departments? “What we see is that insurers transform vague, uncertain liability exposure into finely-grained policies backed by differentiated premiums and the threat of coverage denial. *That* is a substantial part of how civil liability deters misconduct in insured jurisdictions” (Rappaport, 2017, p. 1547).

Some ways that insurance companies attempt to reduce liability issues are: policy development (ensuring that police departments have adequate policies), education and training (providing new training and sharing educational materials), audits (going to the department to ensure compliance with policies). Loss prevention is important to insurance companies which explains their interest in requiring that police departments ensure that their policies adhere to constitutional requirements. For example, insurance companies will be particularly interested in the policies involving use of force and vehicle hot pursuit (Rappaport, 2017).

Many police departments, like Chicago, IL, and Kansas City, MO, have chosen the path of self-insurance or have joined a pool which is created by a group of cities to share the financial risk (Rappaport, 2017). Chicago and Kansas City are both self-insured. In 2013, a comparison of many police departments outlined the percent of the police budget that was allocated to insurance premiums for the police. For Chicago, that percent was 3.92% whereas for Kansas City it was 1.18% (Rappaport, 2017, p. 1560). According to the 2013 census numbers for

population, Kansas City is 17% smaller than Chicago; but when looking at budgets for insurance, Chicago is 30% higher than Kansas City.

Police Expertise

The police are perceived as being society's protector from crime and, in the case of a catastrophic event, the leaders who will attempt to ensure the safety of citizens. Police understand and know how to deal with criminals since they are the experts. Starting in the 1950s, there was a movement to professionalize the police and with that came the concept of police as professionals with expert knowledge and training. Judges quickly learned that the police could assist in a myriad of ways, like analyzing probable cause. With the embrace of police professionalism, what soon occurred was "structural spillover: a process by which different areas of the law impact each other through not only their substantive content, but also their procedural logistics and often inadvertent analytic effects" (Lvovsky, 2017, p. 2002-2003). To the police, professionalism meant being considered an expert as they had specialized training and education to support this statement.

Judicial deference to the police as experts is seen vividly in the Supreme Court case of *Terry v. Ohio*, 393 U.S. 1 (1958). *Terry* was a landmark decision in that police do not violate a person's Fourth Amendment rights when they stop someone, question and possibly frisk him without probable cause to arrest (Mackey, 2019). When judges dealt with investigatory stops, judges leaned on police expertise as it related to the Fourth Amendment (Lvovsky, 2017).

When police accountability is a concern, the reliance on police testimony can be an impediment to that accountability. In a New York City case, Officer Daniel Nunez stopped driver Mr. Hill, said he smelled marijuana, searched the car, photographed the marijuana (which the judge said was likely staged) and found a gun in the trunk. Judge April Newbauer is the first judge to challenge police deference and in a scathing opinion said “the time has come to reject the canard of marijuana from nearly every vehicle subject to a traffic stop. So ubiquitous has police testimony about odors from cars become that it should be subject to a heightened level of scrutiny if it is to supply the grounds for a search” (Goldstein, 2019, paras. 4,5).

Structural Reform Litigation (SRL)

Structural reform litigation (SRL) refers to a lawsuit that seeks a judicial order or consent decree to force structural change in a police department. SRL is based on the concept that police departments, not lone officers, are responsible for a culture that condones violence and fails to respond to wrongdoing. SRLs have led to “many of the nation’s largest police departments including Los Angeles, Detroit, Seattle, Albuquerque, Newark, Pittsburgh, Cincinnati, Washington, D.C., and New Orleans have undergone or are currently undergoing SRL” (Rushin, 2015, p. 1347). SRLs are a powerful tool to reduce misconduct (Rushin, 2015).

When consent decrees are established, the Civil Rights Division of the U.S. Department of Justice is the main organization that structures the agreement. Once the Department of Justice has the evidence to prove a pattern or practice of police misconduct, the city and police department enter into a federal court consent decree. Reform agreements began in 1997, and

many of these agreements are still active (Civil Rights Division, 2017). Although there have been issues with compliance, for the most part consent decrees have been effective in compelling cities to reform a police department. Four independent studies of consent decrees “provide strong evidence that reform under the Division’s reform agreements generally succeed in bringing about more effective constitutional policing practices and improved police-community relations” (Civil Rights Division, 2017, p. 38).

However, the Trump administration has hindered reform efforts. One of former attorney general Jeff Sessions’ goals was to radically reduce federal oversight of the police. He denounced consent decrees because, in his view, they diminish police morale and because it is inconceivable that there are systemic problems in police departments (Balko, 2019). Sessions ordered the Justice Department to review all existing agreements to ensure that they are consistent with President Trump’s goal of promoting officer safety (Horwitz, Berman, & Lowery, 2017). Jonathan Smith, executive director of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, was aghast at Sessions’ order and said that “this raises the question of whether, under the current attorney general, the Department of Justice is going to walk away from its obligation to ensure that law enforcement across the country is following the Constitution” (Horwitz, Berman, & Lowery, 2017, para. 7).

Although there has been very little publicity, President Trump signed an executive order on October 28, 2019, establishing the Commission on Law Enforcement and the Administration of Justice. President Obama’s 21st Century Task Force on Policing recommended the creation of a commission that would be dedicated to criminal justice reform as well as national police issues.

A similar commission was created in 1965 by President Johnson which resulted in the 911 system as well as additional police training. Civil rights groups and law enforcement have solicited for such a commission to address *extensive* changes to the criminal justice system, some of which include policing, rising incarceration costs, victims' rights (Jackman, 2019).

Congress was developing legislation to create this commission which would have ensured that the “co-chairs [be] appointed by the president *and* [emphasis added] congress and required at least four law enforcement and two tribal law enforcement officials” (Jackman, 2019, para. 5). However, before Congress could finalize the legislation, Trump signed the Executive Order which mandated that all facets of this Commission, including procedures, composition, chairman, will be controlled by the Attorney General. Regrettably, there are a number of impediments within this Executive Order. The Commission must complete its work within in one year from October 28, 2019, which would be only ten months. When reading this Order, there is a focus on “the need to promote public respect for the law and law enforcement officers” (Federal Register, 2019, p. 58596) as well as many issues related to the police.

According to Walker, police reform has gained momentum, however, its success is not ensured (Walker, 2019). Some examples of success are St. Louis, Missouri, Seattle, and Sacramento, all of which implemented new civilian review boards in 2015. There are a number of impediments that could halt future success, for example, police unions that continue to secure contracts and state laws that dilute efforts to hold police accountable. Walker noted that “the current broad-based police reform movement can be sustained by a vigilant, active, and informed public, supplemented by a news media that digs below surface events and examines long-term

trends.” (Walker, 2019, para. 17) “Much has changed in policing in just the past few years. And the result is that the prospects for genuine police accountability are stronger than ever before. To be sure, success is far from guaranteed, but the building blocks for reform are in place (Walker, 2019, p. 294).

Many police professionals have struggled with ways to stop the officers’ code of silence. The consent decrees for Cleveland and Newark required these departments to “establish duty to report and duty to intervene which necessitates that officers must report any use of force incident as well as reporting use of force by another officer” (Walker, 2019, p. 125).

Effective Civilian Oversight

We come finally to the central concern of this dissertation: civilian oversight of the police.

Creating an effective citizen review board is a very challenging endeavor due to the many variables – police department, police unions, mayor and city council, community members. To date, there is no definition of what is an effective citizen review board because of these variables, and the fact that each city is a unique entity that requires a unique structure. There are many obstacles to forming an effective oversight board, but it is essential that a review board is empowered to investigate police misconduct and ensure that discipline is enforced. Ideally, a review board should be independent from the police department and local politics. One means of achieving this independence is by establishing a fixed budget (Ofer, 2016).

There is a large body of information on review boards that covers advantages/disadvantages, various models, and implementation. The National Association for

Citizen Oversight of Law Enforcement has an abundant database of pertinent information regarding oversight as well as conducting conferences and seminars. However, empirical research on the effectiveness of civilian oversight is very limited, and there is no systematic evaluation on board functions and outcomes.

To date, the actions taken so far have not improved public perception of police accountability (Stephens et al., 2018). According to a 2016 CATO Institute survey, “46 percent of Americans (including 64 percent of African Americans) say the police are ‘generally not’ held accountable for misconduct, and 79 percent of Americans support outside law enforcement agencies conducting these investigations” (Stephens et al., 2018, p. 27).

As more and more cities attempt to create civilian oversight of the police, politics may be a significant hindrance. The mayor and city council, police department, police union, and individual police officers will all have opinions on how to establish such a board, if at all, and advocate for their positions. The citizens may have some input, but the politics will compel the stakeholders to negotiate what they want/don’t want. The obvious choice should be to support the structure of the board that is beneficial to the community, not any one entity.

Citizen review boards can only be effective if they are created with the intent of being successful in the goal of reducing police misconduct. Although each review board is unique, some of their weaknesses are limited authority, long delays between the filing and resolution of complaints, as well as the collapse of holding department supervisors accountable. Merrick Bobb, the Executive Director of the Police Accountability Research Center, has noted that a “lack of expertise in police tactics, strategy and policy has prevented many review boards from

effectively overseeing the police and has often resulted in boards agreeing with the police 90 percent or more of the time” (Hammonds, Moy, Suhr, & Vanderwall, 2016, p. 14).

It is imperative that a review board succeeds in its mission of reducing police misconduct. Communities look upon these review boards as a way to ensure proper police activities. Unfortunately if the review board is in a weakened state, the city would fare better with no review board. Having a review board tells the community that there is independent accountability. But if the review board cannot produce results for residents, then there is a high probability of increasing community resentment (Ofer, 2016).

Civilian oversight of police is one way to limit police misconduct. However, the cities I researched have had mixed success with oversight, especially New York City and Los Angeles. In many cities, civilian oversight was either strengthened or created due to federal consent decrees. The potential reforms listed below can have an impact:

- Race relations: This issue has existed for decades, and it will continue to be until society accepts the value of how all people, regardless of race, enrich the U.S.
- Police and procedural justice: Police departments need to ensure that their officers are adhering to procedural and constitutional policing. That directive will only occur if the cities and police administrations develop a plan by which the rank and file officers understand and are trained to do so.
- Transparency and release of information: There have been many instances where both the cities and the courts are mandating the release of police videos, personnel files, discipline records, and other pertinent evidentiary documents.
- Unions: Police unions have too much power, especially in the area of negotiating lenient and favorable contracts to protect officers from being disciplined or fired.

Cities need to negotiate contracts that will balance the need for safeguarding officers of unwarranted discipline and the need for transparency in the release of police records.

- Insurance companies: As more lawsuits arise due to police abuse of power, insurance companies will increasingly play an essential part in advising cities and police departments to change procedures.
- Police expertise: It is true that police officers have a very specialized job that requires rigorous training. However, the courts are beginning to question this expertise. With new laws requiring the release of police records, courts will have additional information upon which to base any decisions.

As seen in New York City, body-worn camera footage can make an enormous difference in the effectiveness of a review making the proper decision. However, access to this footage is not always provided to the CCRB in a timely manner. In order to rectify this issue, a unique development occurred whereby CCRB and the NYPD signed a memorandum of understanding in November 2017 stating that: "...CCRB investigators will have access to an on-site, secure facility where they'll search and review body-worn camera footage directly" (Davie, 2020, para. 9). This memorandum eliminates the need for the CCRB to file a request to see the footage and having to wait for NYPD to respond. This memorandum signifies how important it is for police departments and review boards to compromise on sensitive issues in order to deliver more efficient and effective police oversight.

If there are measurable efforts to change or modify the above-referenced areas, it may be feasible to envision an era of very little police abuse of force. The police are our line of defense against crime and with that comes the responsibility to ensure that police officers are trained properly and treated with procedural justice by the department. That could entail an infusion of monies to properly staff a department and acquire more equipment. As a society, we need to assure that the police are well prepared to “protect and serve.”

My research suggests that civilian oversight of police can be effective in improving police accountability and transparency. However, the enacting legislation must provide oversight agencies sufficient independence, staffing, budget, and political support to ensure they are effective. Civilian oversight cannot be the primary method of restoring legitimacy of the police. It will take the courts, unions, police administrations, city councils, and communities to join in the effort of ensuring that the police are transparent and accountable.

With more transparency and accountability, citizens will be more informed of how and why police do what they do. This can be a double-edged sword. In one way, the citizen could learn about the how well the officers are handling their jobs with no misconduct. Or, they could learn that there has been a massive spike in officer misconduct and it appears nothing is being done to fix the problem. Either way citizens have the opportunity to learn what is happening in the law enforcement arena and, if displeased, they can join like-minded individuals and attempt change.

Based on this dissertation, some future directions and further research would include police unions, insurance companies, police expertise as perceived by judges, and structural reform litigation. Moreover, we need to better understand how training and socialization of

police officers can improve their commitments to the values of transparency, accountability and procedural fairness.

Reflecting on what I have learned about civilian oversight, I believe that societal and global advancements have impacted humans with such force that most institutions are having a difficult time in grasping how they should adjust their interaction with citizens. Law enforcement is no exception. The police began as part-time watchmen and evolved into today's police who have the latest technology and weapons. What hasn't changed is the hierarchical structure of top-down management, which is out of touch with the human aspect of being respected for your profession, being respected by upper management, and being respected by your community.

As shown in the interviews conducted with Kansas City police, officers are struggling with the negative publicity, how to deal with transparency in all facets of law enforcement and how to achieve a well-balanced life. It will take time, understanding, inventiveness, willingness to change and, most importantly, being engaged with peers and superiors in promoting the profession. It has been noted that "there must be an effective bottom-up as well as top-down flow of ideas in any organization" (Quigley, 1993, p. 55).

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