

Summary of the Forums on a Public Oversight Program of Law Enforcement
Humboldt County Human Rights Commission, May 2008

The issue of increased citizen oversight over law enforcement activities has been controversial for a number of years; community attention has been focused intensely on this issue during the last two years. The Humboldt County Human Rights Commission recognizes the importance of this matter and has spent much time during the 2007-2008 year addressing this concern in the community. We presented our concerns to the Board of Supervisors, and, with the Board's approval and support, we moved ahead in our consideration of this issue.

Our purposes included increasing public education on the general workings of citizen advisory and oversight committees, identifying more clearly differing perspectives on whether such oversight is needed in this community, and, finally, assessing the practical issues affecting establishment of such a program. We addressed these matters through a series of public forums.

The first and third forums were conducted by the League of Women Voters of Humboldt County, allowing for a good discussion of various viewpoints. The second Open Mike forum was moderated by Rick Botzler, Chair of the Human Rights Commission, giving all those in attendance a chance to air their thoughts and concerns.

The first forum, held on September 26, 2007, addressed the roles and responsibilities of citizens in several advisory and oversight committees in Humboldt County, with the goal of laying a strong foundation for understanding how citizen advisory groups work in general. Presenters included Bonnie Neely, Chair of the Humboldt County Board of Supervisors; Carolyn Crnich, Chair of the Election Advisory Committee; John Hill, Chair of the Mental Health Advisory Board; Rex Bohn, Chair of the Eureka Ad Hoc Public Safety Committee; and Rick Botzler, Chair of the Humboldt County Human Rights Commission. Issues discussed included how citizen committees seek and incorporate input from the general public, the mechanism and weight of their committee's recommendations, and any limitations, problems, and concerns in the work they accomplish. While not addressing directly the issue of law enforcement review, discussions focused on a better understanding of citizen involvement generally.

The second forum, held within Human Rights Awareness month on December 4, 2007, was an open mike format. It was designed to allow local citizens, as well as a variety of professionals from law enforcement and related agencies, to give their personal and professional perspectives on the value and role of a citizen law enforcement review program. A number of people indicated their strong and passionate feelings that such oversight is needed in this community.

The final forum on April 10, 2008 looked at the practical issues of establishing a specific citizen law enforcement review program in Humboldt County. A panel of five experts addressed the potential benefits and problems of instituting a civilian oversight program for law enforcement in Humboldt County. Panelists included in this forum were Sheriff Gary Philp; Eureka City Police Chief Garr Nielsen; Barbara Attard, an independent police auditor from San Jose; Bob Aaronson, a police auditor for Davis and Santa Cruz; and Christina Allbright Chair of the Redwoods American Civil Liberties Union (ACLU). Each presenter gave an overview of his/her ideas, and then all panelists answered questions from the audience. Members of the balanced panel expressed various points of view on the subject. We have attached to this report those summaries which we received from our panelists. We thank all those panelists and other participants who worked to present information to the community. We especially appreciate our local law enforcement officers who willingly participated.

Summary of the notes and ideas presented at the forums.

Key Aspects of any Program—Purposes

- Oversight is essential to good government in a democracy.
- Any program should develop and enhance trust between the community and law enforcement personnel and the general public.
- Any program would need to work with the public in addressing concerns involving law enforcement policies and practices, and in lessening conflict in the community following controversial law enforcement actions.
- Any program should strive to collaborate with law enforcement agencies to help educate the public about law enforcement issues and concerns.
- The program could provide law enforcement with a constructive perspective of the public's concerns relating to any controversial law enforcement action.
- The program could be used to generate advice to the Board of Supervisors regarding issues of public concern on matters of law enforcement.

Important Considerations of the Program Model

- It is possible to have a model that combines a public oversight committee with the use of an Independent Police Auditor. The committee would be advisory and the members should be volunteers.
- There seems to be good support for a hybrid model that would combine an advisory committee and an Independent Police Auditor.
- It is possible that an ordinance should go to the voters in order for any effective model to be established.
- If a successful model is developed at the county level, other municipalities in the county could choose to participate as well.
- There always is a risk that in a public review committee, some individuals may attempt to use the board for their own political purposes.
- The role of the Grand Jury should be integrated into any oversight program.
- Oversight of a review program itself is generally local.

Relationships with Law Enforcement Agencies

- Whatever model becomes established, it would need to be respectful of law enforcement agencies' legal status and consider the rights of all officers in the agencies
- The committee might be able to work with the law enforcement community and informed members of the public to develop policies that would be used in determining when an independent auditor would be appropriate.
- Membership and training of any oversight committee would be determined by criteria developed in coordination with law enforcement representatives, and would be critical to the success of the program.
- Any program must recognize that the law enforcement executive in charge is the head of his/her agency, and must retain control of all discipline within that agency.
- Cooperation and collaboration with law enforcement personnel will be critical to the success of any program.
- The attitudes of everyone, including those of the heads of the law enforcement agencies, will determine the success of any program.
- Recommendations for education in attitudes and behaviors that are appropriate for the public as well as officers could come from the HCHRC.
- The County Sheriff and Eureka Police Chief are essential participants in developing a successful program; full participation of all law enforcement leaders in the County would greatly enhance the success of any program.

Resources and funding

- A budget would need to be established for the work of any Independent Police Auditor.
- Funds would need to be established for the clerical work and other associated expenses of an oversight committee.
- Funds for an auditor and the committee could be justified by the reduced potential costs from lawsuits.

Policies

- Education, attitude, trust and cooperation are key to the success of any program, and must be addressed with law enforcement personnel as policies and procedures are developed.
- The review board could develop policies and guidelines on what might precipitate an outside investigation.
- In the event of a serious case, the civilian review board could recommend to the Board of Supervisors (for the Sheriff's office) or the Eureka City Council (for EPD), etc., that the circumstances warranted an independent auditor being called in to review the internal affairs investigation on that case.
- It might be determined that an officer-caused death would always warrant an investigation,
- An acute discontent in the community about the results of an investigation could also mean an independent auditor investigation.

Independent Police Auditor

- It is possible to have a model that combines a public oversight committee with the use of an Independent Police Auditor.
- Any Independent Police Auditor should be a trained professional with experience working in similar jurisdictions.
- The auditor should have access to internal reviews (including methods, data, and results) but would only make recommendations (non-binding) to the Executive in charge of the staff (Sheriff/Police Chief/etc).
- The executive in charge would retain all disciplinary authority.
- The auditor may report some findings to the Board of Supervisors/City Council if the entity so requests or the Auditor determines such a report is necessary subject to applicable confidentiality restrictions.
- An Auditor would at all times be restricted by all pertinent laws affecting law enforcement personnel confidentiality.
- An Auditor must have a clear understanding of applicable laws as well as law enforcement policies and procedures.
- An Auditor would need to have the trust of both the public and law enforcement community.

Public Law Enforcement Review (oversight) Committee (commission/ board)

- It is possible to have a model that combines a public oversight committee with the use of an Independent Police Auditor.
- The committee could provide a conduit for enhancing meaningful dialogue between members of the public and the law enforcement community.
- The committee could work with law enforcement agencies and members of the public to address potential public concerns and how best to solve them prior to the onset of problems.
- The committee could provide public education designed to help explain law enforcement policies and procedures to the public prior to the onset of crisis situations.
- The review board or committee might determine when it would be necessary to call in an independent auditor.

Future Direction

- Within the next few months, HCHRC will draft a proposal, in coordination with law enforcement, review committee experts and the public to establish a public law enforcement oversight program, which will be submitted to the Board of Supervisors for their consideration.
- It is absolutely critical that the Sheriff and Police Chief be involved in any draft for a civilian oversight committee.
- A national organization, National Association for Civilian Oversight of Law Enforcement (NACOLE), is NACOLE, establishing standards for oversight committees. HCHRC could tap this resource for suggestions.

Third Public Forum
Thursday, April 10, 2008
Humboldt County Courthouse, Eureka, California

Final Notes from Barbara Attard

I want to thank you for inviting me to Humboldt County to discuss potential civilian oversight of law enforcement. A 25 year veteran in oversight, I believe that oversight is essential to good government, and government in a democracy.

I think that the power-point presentation (see attached) that I sent has good background for why oversight is important, also, please visit the NACOLE website: www.nacole.org. The section "Information and Guidance" may be helpful to you. The National ACLU has an excellent publication, "Fighting Police Abuse: A Community Action Manual" available on the website: www.aclu.org

I think that layers of oversight are important and ensure that complaints are being reviewed at many levels. With an auditor/review board oversight configuration a "professional" would be conducting the audits and a review board would weigh in with community values.

Auditor Model:

If you are interested in an auditor form of oversight, you would keep internal affairs intact and the auditor would review the internal affairs investigations. In many cities the auditor has the ability to take complaints and oversee or have joint classification authority. Recent auditor forms of oversight also have authority to audit all officer-involved shooting cases and other critical incidents resulting in death or serious injury. Many recent auditor models have the authority to investigate complaints or critical incidents if there is an issue with the law enforcement agency conducting the investigations. You may look at the Boise Ombudsman, Denver Auditor, Portland Auditor agencies for some of these attributes. I think they are important.

Civilian Review Board:

Civilian review or police review boards, depending on the model, would hear appeals of complaints or policy review. We discussed at the forum the importance of having some standards for commissioner/review board members. I think that Denver and Seattle both have auditors with civilian review boards. The boards allow members of the community to weigh in on the process.

Oversight can be brought in through legislative action on the part of a Board of Supervisors or a City Council, or through a voter initiative. With interest in oversight at both the city and county level, a ballot initiative might be the best method to bring oversight to Humboldt County and the City of Eureka. Whatever oversight you recommend, it must have adequate authority to have an impact and funding to hire staff and do the work. Depending on the complaint level, a part time auditor may be enough.

Oversight over death cases could take more than a part time professional person. There should be clerical support staff as well.

I was impressed with both of your law enforcement officials' openness to appearing on the panel and consider oversight. It will be much more likely to come into fruition without strong opposition from your executives.

Final Notes from Bob Aaronson

Thoughts in connection with working toward implementing civilian oversight in Humboldt County:

1. A realistic plan today is better than a fantasy plan tomorrow. The issue is not what's on the menu; the issue is 'what will the waiter be willing to bring us?'
2. In implementing a new plan of oversight, obtaining the consent of all the stakeholders (including POAs [Police Officers' Associations]) is a far more preferable way to go: it is less expensive, less confrontational, begins sooner and establishes the cooperative framework that can pay greater dividends down the road.
3. Oversight must have credibility, particularly in the eyes of those agencies being overseen. This is probably the hardest piece of meaningful oversight.
4. Oversight of law enforcement requires expertise in order to have any success. Unfortunately, independent expertise usually has to be paid for.
5. The ability to conduct 'independent investigations' is NOT a critical component of small scale oversight; what is essential is the access and ability to audit investigations conducted by the agency overseen.
6. Oversight that focuses only on citizen complaints misses an enormous proportion of legitimate oversight material. Oversight should be doing ride alongs, observing organizational meetings, conferring with POA officers and talking to first line supervisors as well. The most serious personnel investigations are typically internally generated and not as a result of citizen complaints.
7. 'Confrontation' should be employed by oversight only as a last resort. The goal is cooperation, whenever possible.
8. Finally, to steal the wonderful title from Anita Hill's book, oversight must also have the courage to 'speak truth to power' when it's necessary.

Final Notes from Christina Allbright

TEN PRINCIPLES FOR EFFECTIVE CITIZENS REVIEW

1. Independence – power to conduct hearings, subpoena witnesses and report findings and recommendations to the public.
2. Investigatory power – the authority to independently investigate incidents and issue findings on complaints.
3. Mandatory police cooperation – complete access to police witnesses and documents through legal mandate or subpoena power.
4. Adequate funding – should not be a lower budget priority than police internal affairs systems.
5. Hearings – essential for solving credibility questions and enhancing public confidence in process.
6. Reflect community diversity – Board and staff should be broadly representative of the community it serves.
7. Policy recommendations – Citizen oversight can spot problem policies and provide a forum for developing reforms.
8. Statistical analysis – Public statistical reports can detail trends in allegations, and early warning systems can identify officers who are subjects of unusually numerous complaints.
9. Separate offices – should be housed away from police headquarters to maintain independence and credibility with public.

10. Disciplinary role – Board findings should be considered in determining appropriate disciplinary action.

Final Notes from Chief Garr Nielsen

I am a strong proponent of transparency and accountability in our local law enforcement. I am also a strong advocate of maintaining my ability as the chief of police to investigate citizen complaints and administer discipline to my employees. I believe that a police review board with investigative and subpoena power is redundant and a waste of public resources in this community. However, I believe there is some merit to a hybrid model consisting of an advisory group and a professional auditor to review policies, procedures, and possibly citizen complaints.

In the year I have been chief of EPD we have materially revised our citizen complaint form to make it more user friendly. Our quality control and public trust depends upon citizen input. And while our staff generally provides extraordinary service to the community, there are times when we do not meet their expectations. In those instances it is important that individuals believe they have an accessible avenue for having their concerns addressed. And while there was some initial internal trepidation over making the process more accessible, it has actually reaffirmed my conviction that we are providing exceptional service while remaining transparent and willing to accept responsibility.

Additionally, we have instituted a process for conducting random quality control inquiries regarding our delivery of service. Our line supervisors are conducting periodic and random follow up calls to persons who have utilized the services of EPD. The purpose of these calls is to determine whether we are providing the level of service that the community expects and deserves.

We also conduct an extensive internal review of every instance where the use of force by our officers results in significant injury or death. The purpose of this review is to determine whether officers acted in accordance with policy and training, and to examine whether improvements could be made in how we handle such incidents. For example in the tragic death of Martin Cotton, we conducted an internal review of that incident and determined that we should change our policy to require that in every instance where a person sustains substantial injury or is involved in a confrontation that involved the significant use of force a medical evaluation will be conducted separate and apart from what may occur at the jail.

I believe that the department is best situated to address allegations of misconduct and other critical incidents involving department personnel, but that meaningful citizen involvement can make those processes more effective while increasing public confidence in their integrity. In that vein I have been and continue to be a supporter of a police advisory committee or chief's forum which would include citizens who would meet periodically with the chief of police to discuss policies, training, practices, etc. And to the extent that I am permitted by our legal counsel and personnel rules, I am willing to include topics related to specific incidents. However, I will continue to oppose efforts to usurp my ability to manage my department, including disciplinary actions. I support the concept of a professional auditor, approved by the chief of police, to serve as a source of expertise to a citizens' advisory group. However, ultimately, responsibility for police conduct rests with the chief of police who is accountable to the city council and the community.

Final Notes from Sheriff Gary Philp:
(not received)

Notes taken by Jean Munsee, Secretary
Humboldt County Human Rights Commission
April 10, 2008

The purpose of the public forum was to explore the feasibility of establishing some kind of mechanism for civilian review of law enforcement in Humboldt County and to educate The Human Rights Commission and the public regarding the current situation and possibilities for change.

The forum was organized and sponsored by the Humboldt County Human Rights Commission and conducted by The League of Women Voters. The format was one whereby panelists gave opening statements followed by questions from the audience. Following established League procedure, questions were submitted in written form, organized by League members, and addressed to the panel by the moderator, Carol Johnson. The forum was in session from 7:00 till 9:00 with a mid-way recess of fifteen minutes.

The panelists included:

Sheriff Gary Philp: Humboldt County Sheriff's Department
Chief Garr Nielsen: Eureka Police Department
Ms. Barbara Attard: Independent Police Auditor – city of San Jose
Attorney Robert Aaronson: Independent Police Auditor – cities of Davis and Santa Cruz
Attorney Christina Allbright: Chair of Redwood ACLU and Coalition for Police Review

Questions directed to the panel covered the following topics.

1. Could we and should we establish some kind of citizen oversight of law enforcement mechanism in Humboldt County?

Allbright indicated a significant need for some kind of law enforcement review mechanism. She gave a history of the issue in the county stretching back to 1992 and the recommendation of the 1993-94 Grand Jury that a citizen advisory committee be formed. The committee was formed and existed until 1997. In 1998 The Human Rights Commission indicated a need for a liaison to help citizens with complaints regarding law enforcement. In 2000 the Commission took the issue to the Board of Supervisors who directed the Commission to gather information and report back. In 2005 The Coalition for Police Review was formed to help The Human Rights Commission gather data, and the two organizations have been working since that time to prepare a recommendation to present to The Board of Supervisors. Recent events in the county including several deaths of citizens involved with law enforcement personnel have made the issue of law enforcement review more significant to many members of the community. Allbright's feeling is that the time is long past due for the establishment of a law enforcement review board in Humboldt County.

Attard stated that citizens should have oversight over law enforcement. She noted that civilian oversight can only add to a chief's ability to make good decisions regarding discipline. Aaronson said that there needs to be a process whereby law enforcement people are held accountable.

Philp gave a summary of procedures for handling complaints now in use. He said that he feels that it is his responsibility to oversee his officers and to make the final decisions regarding citizen complaints. However, he is not opposed to getting input from a trained and knowledgeable person.

Nielsen indicated that he supports transparency in his department but feels that it's important that he retain control of the department. He feels that members of the department are best suited to investigate police behavior, especially regarding disciplinary action. He supports the idea of an

advisory committee or a chief's forum formed to facilitate communication and to give input from the public to the police.

Aaronson indicated that he represents people on all sides of this issue. He feels that the auditor models bring more expertise to bear and thus accomplish more. He feels that civilian oversight is a dilemma. Most officers are good people, but 10-15% are problematic, as in all groups of people. The majority of agencies don't want to have bad cops. If you publicly embarrass people, you're ineffective. One point of view is that the best way to be effective is to review police decisions.

2. How are concerns regarding law enforcement practices dealt with now?

A question from the audience dealt with the idea that the District Attorney has said that his office has the necessary independence to investigate police misconduct, but all panelists agreed that this is not an appropriate venue for the kind of oversight being discussed here. The District Attorney investigates criminal behavior, not police complaints. Philp and Nielsen indicated that adequate procedures are in place in their departments to deal with citizen complaints. Nielsen said that every allegation must get a fair hearing, evidentiary review, before a decision is made. Both Philp and Nielsen stressed the importance of retaining control over discipline of officers, indicating that this is a complicated and demanding procedure calling for training and expertise. Allbright pointed out that this way of dealing with public dissatisfaction makes a huge assumption that members of the public feel safe going to the law enforcement personnel to complain about the very same agency they're addressing. Her feeling is that this procedure indicates the need for a law enforcement review board. Aaronson pointed that, actually, public use of video may be the best tool for citizens to hold law enforcement personnel accountable.

3. Another questioner asked how an advisory board would differ from The Grand Jury.

Nielsen pointed out that The Grand Jury has the ability to provide the oversight, but Allbright said that there are a number of problems with The Grand Jury. It is not diverse, and it changes composition. Aaronson said that grand juries rarely do helpful investigations, and Attard said that grand juries are rarely taken seriously. She suggested that we would want a model that has input into the disciplinary process. The Grand Jury does not. Philp indicated that The Grand Jury looks at a narrow range of items, and an advisory committee would look at a broader range. Other ways of having public input were mentioned such as letters to the editor and The Human Rights Commission. It was agreed by panelists that these methods are not adequate to affect change. Attard reiterated the need for something independent with direct input to the chief law enforcement officer.

4. If we were to have some kind of law enforcement review entity, what form would it take?

Attard pointed out that oversight can take many forms. She detailed three. One is the Office of Citizen Complaints in San Francisco where all complaints are investigated by civilians. This office has replaced the police department's internal affairs office. Berkeley has a commission which investigates complaints, holds public hearings, and makes advisory recommendations to the police chief. This commission also has the authority to make policy recommendations, an authority she considers very important. San Jose has a police auditor who can review all cases from the internal affairs office. She has the authority to sit in on interviews of witnesses and police officers, very important capabilities. She also has some authority in dealing with police-related shootings. Aaronson said that, in his opinion, police auditors accomplish more than boards.

Allbright envisioned an independent police review board, adequately funded with investigatory power, the ability to hold hearings and to affect policy decisions and disciplinary actions. The board would work cooperatively with law enforcement agencies and would be composed of citizens reflecting the diversity of the community.

Philp reiterated his idea that complex situations call for trained investigators and people familiar with the complexities of police work. He would be amenable to getting input from a trained person.

Nielsen supports the idea of the formation of an advisory committee or chief's forum to facilitate communication between the police department and the public, but he feels it is important that he retain control of his department. It is his contention that the department is best suited to investigate police behavior.

5. What would be the best model for us?

Attard felt that the community should decide on the best model. All models have good points and bad. She suggested using experts to help set up whatever we choose.

Aaronson said that he favors the auditor model for small communities. He voiced a concern that in the review board model individuals may highjack the board for political purposes. He also mentioned a hybrid model like that used in Los Angeles where a board holds an auditor accountable.

Nielsen said again that his preference is a citizens' advisory board to the chief, but he feels that an auditor could work in this community.

6. Do our local people want an oversight committee?

Nielsen said that if oversight can help deal with problems, he'd welcome it, but he doesn't want his ability to manage his organization taken away from him.

Philp feels that it is his responsibility to investigate officers' behavior and to administer discipline. He does not want an independent board telling him what to do with his employees.

Attard said that she observed an openness on the panel, not a "no way!" to oversight, and she cautioned that whatever we establish, it needs to be respectful of the law enforcement agencies.

7. What would be the response of law enforcement officers?

Allbright said it would depend on the type of model chosen. Success and support would depend on the attitude at the top. The chief and the sheriff would be influential.

Nielsen said that officers are resistant to change, so only a cooperative effort would work.

Philp said that the rank and file would react negatively. Oversight can be done, but not by an outside board.

Attard said that it depends on how much push there is in the community, and Aaronson said that if a threat is perceived, police behavior would reflect it. He agreed that whatever is done must be done cooperatively.

8. What would be the task of the overseer(s)?

Attard said that this is determined differently in different places. Investigating actions related to death or serious injury should always be overseen even if there is no citizen complaint. She emphasized the importance of the review board having input before disciplinary action is administered. Allbright said that policy issues, in addition to citizen concerns, should be the concern of a review board, but Aaronson said that it becomes problematic to look at things more broadly than citizen complaints.

9. Who would oversee the overseer?

Attard said there is a national organization (NACOLE) establishing standards. This is in progress but not yet available

Aaronson said that oversight is generally local. In Santa Cruz he reports to the city council, and in Davis he reports to the city manager

Allbright indicated that checks and balances can be built into the design of the review board to perform this function.

10. What would be the criteria for board members?

Philp and Nielsen agreed that board members should be people who are familiar with police procedures and the law. Nielsen mentioned a knowledge of police practices and employment rights. He also felt that a member of the board should be interested in the daily work of officers and be willing to do ride-alongs.

Attard said that members should be thoughtful people who can read the law, police reports, and other documents. She agreed that investigative work is complicated but felt that people can learn and can make decisions.

Allbright said that, in her opinion, members would need some, but not extensive training.

11. What will be the cost?

Philp said that he has no idea of the cost but knows that any organization entails cost.

Nielsen felt that the cost would be related to the role of the group. If advisory, the members could be volunteers, but, in his opinion, for real review, you need paid experts.

Attard said that the cost is part of the cost of policing. Even if the board members are volunteers, it is important that they be paid. It is necessary to have a professional staff to provide information to the board so they can make informed decisions

Aaronson agreed that a board can be run without a paid staff, but a paid staff is necessary to be effective.

Allbright said the cost would be offset by the money saved.

Panelists' Closing Statements (not verbatim)

Philp – We're talking about a very complex profession. Every incident and every day is different. I try to train officers well. People who have an in-depth knowledge of the work done should be the ones making judgments. I have no problem with reviewing policies and procedures, but I need to make the final decision of finding and the final action.

Aaronson –He said a lot of law enforcement conduct is legal but ill-advised and creates problems. He contrasted the general approach to the public by officers in Santa Cruz and in Davis to illustrate the need to look at each department holistically.

Attard – She encouraged us to pursue civilian oversight and stressed the importance of independent investigation. She pointed out that review boards can be very important in increasing public confidence in the police and in ensuring that police do their jobs as expected. In looking at the formation of a review system, we should remember to look at independence, adequate funding, and a trained staff. She offered to serve as a resource for us.

Nielsen – Police serve the people. We should be accountable to the community. I must be the one accountable for the behavior of my officers. I can use help and advice, but the buck stops with me. Assistance is a good thing.

Allbright – She remains optimistic about the establishment of a law enforcement review board and looks forward to a more peaceful community where all people are treated fairly.