

CITIZEN OVERSIGHT BOARD ANNUAL REPORT

I. INTRODUCTION – The Beginning

A. The Office of the Independent Monitor

In 2004, the City and County of Denver created a new system for investigating possible misconduct by law enforcement officers and imposing disciplinary sanctions on officers who have engaged in misconduct. The new system stemmed from a series of reforms Mayor John Hickenlooper announced in December 2003 to change the way enforcement personnel interact with Denver citizens and to help restore public confidence in its police force. The reforms were prompted by citizen criticism for a variety of incidents involving uniformed police officers, including controversial shootings and other allegations of improper use of excessive force. This new oversight system replaced the prior civilian oversight system, which was known as the Public Safety Review Commission (PSRC). The PSRC dissolved effective May 2, 2005 and its outstanding cases were transferred to the new oversight system.

One aspect of the reforms announced by the Mayor in December 2003 included creating a task force that would review the creation of an “independent monitor”. The task force recommended the independent monitor with an oversight board approach and the restructuring of Denver’s oversight system began in full swing. The restructuring was done by City ordinance and changes to the City charter. In November 2004, three ordinances were passed and they created two new civilian agencies to oversee the internal investigation and disciplinary processes: the Office of the Independent Monitor (OIM) and the Citizen Oversight Board (COB).

The ordinance creating the OIM identifies the OIM’s primary duties as: 1) actively monitoring Police Department and Sheriff Department internal investigations to ensure that they are thorough and impartial; 2) making recommendations to the heads of the Police and Sheriff Departments and Manager of Safety as to whether officers have violated departmental policies and, if so, the level of discipline that should be imposed upon the officers; and 3) reporting on both an annual and on-going basis to the Mayor, City Council and the public as to trends regarding the internal investigation and disciplinary processes and recommendations for improving those processes.

In addition, the OIM is to provide the COB with regular reports and inform the COB of the status of police, sheriff, and fire department investigations and disciplinary proceedings. The OIM is further required to inform the COB of the OIM actions in monitoring the investigations and disciplinary proceedings. Overall, the COB is pleased with the communication and relationship between the COB and OIM.

The jurisdiction of the OIM is focused on uniformed personnel: (1) who are involved in duty-related incidents which result in serious-bodily injury or death (Police, Sheriff & Fire); (2) who are charged with felonies or certain other crimes (Police & Sheriff); (3) against whom various citizen complaints are brought (Police & Sheriff); and (4) about

whom the Citizen Oversight Board or Manager of Safety has requested the Monitor's involvement (Police, Sheriff & Fire).

In addition, the OIM has limited jurisdiction with respect to the Fire Department. It may only monitor internal investigations of certain types of incidents involving armed arson investigators.

The OIM began its work as of August 1, 2005. Currently, the office consists of six individuals: a Monitor, a Senior Deputy Monitor, a Deputy Monitor, and three staff members.

B. The Citizen Oversight Board

The COB is a very important component of the oversight system. It is essentially the eyes and ears of the community in the new system. The COB's primary function is to assess the performance of the OIM and to report that assessment to the Mayor, City Council, and the public in order to help increase the confidence of Denver's citizen in the efficacy of the law enforcement internal investigation and disciplinary processes and the day-to-day oversight of those processes.

The ordinance creating the COB and the COB's bylaws more precisely define the COB's role in the new oversight system. The ordinance directs the COB to: 1) assess the effectiveness of the monitor's office; 2) make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process; 3) address any other issues of concern to the community, members of the board, the monitor, the manager of safety, the chief of police, the undersheriff, or the fire chief as the COB sees fit; 4) make recommendations as to specific cases; and 5) exercise such other powers and duties as set forth in the ordinance.

In order to determine the effectiveness of the OIM, the COB must receive regular reports from the OIM and, according to the ordinance, be allowed to review pertinent portions of the personnel files of uniformed personnel and IAB files including statements of uniformed personnel. From this information, the COB can make determinations on whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any. Moreover, the OIM has discretionary oversight with regard to certain citizen complaints. In that regard, the COB must be prepared to review the OIM's proper use of that discretionary oversight.

The COB's bylaws state that its mission "is to improve the fundamental relationships between the community and law enforcement and to assess the effectiveness of the [OIM]." The COB's mission is directed toward ensuring that the OIM creates a more accountable and transparent system, which, in turn, will ensure public confidence in the oversight system and the rules that govern it. The COB is extremely pleased that Denver has adopted this new oversight system and has great hopes for what it can accomplish.

The COB consists of seven citizens appointed by the Mayor and confirmed by City Council. Six members of the COB were nominated by the Mayor and confirmed by City

Council as of January 4, 2005 and an additional member was nominated and confirmed in February 2005. The Members of the COB are:

Joseph Sandoval, Chair: Professor Sandoval is chair of the criminal justice and criminology department at Metropolitan State College of Denver, where he has worked since 1973. He spent six years as an officer with the Arvada Police Department. A licensed attorney, Professor Sandoval served on the Mayor's Police Task Force in 2004, the Public Safety Review Commission from 1993 to 2001 and has served on the board of the National Association for Civilian Oversight of Law Enforcement. He has given presentations around the country on the subjects of civilian oversight, racial profiling, community interaction with police and the legal issues surrounding law enforcement.

E. Henry "Hank" Knoche, Vice-Chair: Mr. Knoche served two tours of active duty in the Navy in World War II and Korea before joining the Central Intelligence Agency (CIA) in 1953, where he retired in 1977 after serving as Deputy CIA Director under President Gerald Ford and Acting Director under President Jimmy Carter. He received the President's Award for Distinguished Federal Service in 1977. A Denver resident since 1981, Mr. Knoche has served as president of his neighborhood homeowners association, as an appointed member of the Denver Cable Television Board and as a leader of AARP's Colorado's legislative lobbying efforts.

David Montez, Secretary: David Montez is a research development coordinator at the University of Colorado at Denver and Health Sciences Center. He previously worked as the events and publications director for UCD HSC Latino/a Research & Policy Center. and as assistant to an Associate Vice Chancellor. Montez has served on the Denver Public Safety Review Commission. He is a 2004 Leadership Denver graduate, a former member of the Mayor's GLBT Commission, a former advisory member of the El Futuro Gay Community Center, chair of the Denver Center for the Performing Arts Community Relations Council, and is active with the Human Rights Campaign's Colorado chapter.

Pastor Paul Burlison: Pastor Burlison is the president-elect of the Greater Metro Denver Ministerial Alliance. He founded Denver's Friendship Baptist Church of Christ Jesus in 1974 and continues to serve as its pastor. He also spent 28 years as an engineer with US West Communications and four years in the U.S. Air Force. A former dean of the United Theological Seminary's Denver Extension, Pastor Burlison is experienced in the prevention, identification, and counseling of individuals and families with substance abuse and other at-risk behaviors.

Rabbi Steven Foster: Rabbi Foster is the Senior Rabbi at Congregation Emanuel, where has served for nearly 36 years and founding "Stepping Stones", a nationally recognized outreach program for interfaith families. He is a former board member of the American Civil Liberties Union, the Colorado State Civil Rights Commission (which he chaired), the Denver District Attorney's Advisory Committee, and a number of other secular and religious organizations. He currently serves on the executive committee of the United Jewish Committee Rabbinic Cabinet and on the Board of Planned Parenthood.

Cathy Reynolds: Ms. Reynolds served on the Denver City Council as an at large member for a record 28 years and 21 days, as well as Chairing the Urban Drainage and Flood Control District for more than 20 years. She held the position of City Council President five times during her tenure. Ms. Reynolds spent 25 years on the board of the Colorado Municipal League, serving as president twice. She is a past president of the National League of Cities and Ms. Reynolds currently serves on the board of the Convention Center Hotel Authority and the Phoenix Concept, which provides residential mental health and substance abuse services.

Tawanna Mullins: Ms. Mullins currently serves as chief executive officer of T. Mullins and Associates, a training and organizational development consulting company that provides support services for human resources professionals. She also holds adjunct faculty positions at the University of Denver, Regis University and John & Wales University teaching courses in leadership, team-building, and communications. Previously, Ms. Mullins served as the director of training and development for the Children's Hospital of Denver, training director for Pinnacol Assurance, and as a technical trainer for Colorado Compensation Insurance. Consulting for clients such as Oakwood Homes, Qwest, AT&T Broadband, Columbia Healthcare and Denver Water, she has designed and facilitated training classes on a number of topics including conflict resolution, cultural diversity and organizational change.

By ordinance, the COB is mandated to meet at least quarterly in public with the Manager of Safety, the Chief of Police and the Undersheriff and must conduct at least three meetings annually for public comment. The COB is directed to prepare an annual report and furnish it concurrently with the OIM's annual report to the Mayor, the public, and City Council. The OIM's report must be submitted to the Mayor and City Council February 1 of each year beginning in 2006. This document is the COB's first annual report and reports on activities taken in the year 2005 and also provides the COB's assessment of the OIM's work and progress.

At this time, the COB is mindful that the new oversight system has been in operation for a very short time. As a result, it is not possible to reach reasoned conclusions about its effectiveness thus far. In addition, some obstacles prevent the system from operating at 100%. For example, the COB operates with a minimal budget and it operates without dedicated staff support. Also, due to technical reasons, it still does not have convenient or remote access to its e-mail. While we recognize that this may be out of OIM's control, these difficulties do nothing to promote transparency.

C. The COB's Training and Activities

The COB has been in place since January 2005. However, given that its primary role is oversight of the OIM, the COB did not begin its oversight work until August 1, 2005 – the date the OIM opened to the public.

To prepare for its oversight role, the COB received training and information in areas that would facilitate proper execution of its role in the new oversight system. Specifically, the COB attended several briefings with the Chief of Police, the Manager of Safety, the Fire

Chief, the Undersheriff; and members of the Denver District Attorney's office; met with several law enforcement agency personnel; participated in tours of the Police Academy and Denver County's jails; read volumes of material; received training from the Internal Affairs Bureau; participated in discussions with officials of the Police Protective Association (PPA) and representatives of the Police Assessment Resource Center (PARC); and one member attended a conference held by the National Association for Civilian Oversight of Law Enforcement (NACOLE).

In addition, the COB initiated outreach to the community. As required by the ordinance, the COB conducts regularly scheduled meetings that are open to the public. At this time, it meets twice a month, on the 2nd and 4th Friday beginning at 10:00 a.m. at its offices located at the Webb Building. In 2005, the COB also has held an evening meeting for purposes of receiving and responding to public comments. The meeting was held in September, 2005 and was attended by the Mayor, the Monitor, the Manager of Safety, the Undersheriff, the Chief of Police and the Chief of the Fire Department and DPD and DFD chiefs. There were various City Council members present as well as other city officials, police officers, and sheriff officers. Former members of the Police Task Force attended and three Denver residents made comments on their views of police and citizen interaction. The COB is scheduled to convene four public meetings in 2006, as required by the Ordinance.

II. OIM'S GOALS AND PROGRESS

A. The OIM's Stated Goals

In July 2005, the OIM presented to the COB and Denver City Council an Action Plan for 2005. In the Action Plan presentation, the OIM listed its 2005 Goals as follows:

- Work with the COB to adopt "Case Handling Guidelines", and create a filtering and monitoring process for handling citizen complaints and improving accessibility to the Internal Affairs Bureau process by citizens.
- Create a citizen/police mediation program.
- Retain an expert to review Denver's deadly force policies, training, tactics and review processes relating to officer-involved shootings and in-custody deaths.
- Begin preparation of the 2006 annual report which will provide transparency for the complaint handling and disciplinary processes.
- Work with the COB on outreach and assist in creating protocols to evaluating the OIM.

B. OIM's Progress

According to the OIM's annual report, submitted concurrently with the COB annual report, the OIM in general has made progress towards the implementation of its stated goals. Specifically, according to the OIM, the following has been accomplished:

- OIM and PARC entered into a contract whereby PARC will review deadly force policies and review past deadly force investigations. A report is expected to be published in the last quarter of 2006;
- The Denver Police Department (DPD) initiated new policies permitting citizen complaints to be handled in alternative ways;
- As of October 21, 2005, community members were offered the alternative of handling their complaints through the mediation process;
- For complaints received after August 1, 2005, the DPD agreed to include more detail in their letters to complainants describing formal investigations and findings. As of August 1, 2005, the Denver Sheriff's Department (DSD) began including greater detail in their disposition letters.
- On October 18, 2005, the OIM received access to the DPD's administrative investigation database. As of September 26, 2005, the OIM received access to the DSD's administrative investigation database.
- New policies regarding complaint handling are being adopted by both the DPD and DSD; written complaint handling criteria were created and adopted by OIM after consultation with the Citizen Oversight Board (COB) as of August 1, 2005;
- The OIM reviewed and made recommendations regarding the administrative review of two DPD officer-involved shootings, one DPD use-of-force resulting in hospitalization, three DPD animal shootings and three DSD in-custody deaths that occurred between May 2, 2005 and December 31, 2005.
- The OIM reviewed the handling of all Internal Affairs complaints made after August 1, 2005 and made recommendations regarding the handling of investigations into those complaints.
- A survey of citizen complainants for the last three years and all DPD sworn personnel was distributed during the week of November 7, 2005.
- As of December 1, 2005, the DPD and OIM created a process by which tort claims alleging police misconduct receive managerial review by the OIM and the IAB Commander. The OIM verified that the DSD has

appropriate processes in place to ensure similar managerial review of similar claims.

- As of December 12, 2005, the Monitor's Office created a draft standard of Professional Conduct for OIM staff which is expected to be finalized by January 31, 2006. These standards can be found on the OIM website, located at www.denvergov.org/oim.

The COB believes that these accomplishments are notable particularly given the fact that the OIM did not begin official activities until August of 2005. While the complaint handling guidelines within OIM were available for public comment since September 2005, OIM has since adopted the guidelines, and are being reviewed within the police department. During the public meeting in September 2005, COB and OIM made copies available for dissemination and public review.

III. THE COB'S OBJECTIVES AND GOALS FOR OIM

In reviewing the history that prompted the creation of the new oversight system and the ordinance that created it, the COB has set forth its own goals for the OIM and for itself. In many respects, these goals are not significantly different than those set forth by the OIM, but they do go beyond the simple creation of rules, guidelines and procedures. The COB wants to ensure that the system and the policies and procedures that have been implemented are responsive to the public and address the public's concerns. To that end, the COB now describes what it believes are the appropriate objectives and goals for the oversight system.

A. Improving the Complaint Handling Process

In assessing the OIM's effectiveness with respect to improving the complaint handling process, the COB is concerned primarily with whether the complaints are addressed in a timely fashion, whether the system makes it easier to register complaints and whether overall the public is satisfied with the complaint process and the resolution of those complaints.

Timeliness and Access

Prior to the creation of the new oversight system, citizens, DPD and DSD officers and city government officials were frustrated by the length of time involved in conducting investigations and the submission of findings. For example, in the case of officer-involved shootings, it used to be the rule that the District Attorney's (DA) office would initiate its investigation and only after that investigation was complete, DPD would begin its internal review of the shooting. Accordingly, the OIM and the COB have been involved in developing a more efficient process for the receipt of complaints and investigations into officer-involved shootings.

Specifically, the OIM created a new complaint/commendation brochure, which was distributed throughout the community. The OIM's new Complaint/Commendation form

is available only in English at this time. OIM promises to have this form available in Spanish by early 2006.

The complaint process now allows community members to file a complaint or commendation directly with the OIM by dropping a postage paid form in the U.S. mail. Community members may also file complaints or commendations on the websites of the OIM, the COB, or the Police and Sheriff Departments. Citizens may make complaints and commendations via mail, fax, the internet, or email directly to the OIM or the COB. Citizens can also make police complaints and commendations in person, by phone, or by mail directly to IAB, or the various Police Districts or Bureaus.

Significantly, the OIM and DPD Internal Affairs have worked collaboratively to change how DPD processes complaints it receives from the community. According to statistics provided to the COB by OIM, the most common type of complaint received involved "improper procedure" by DPD officers. In 2005, the Denver Police Department investigated 997 complaints. Of the total complaints, 689 or 69% were categorized as formal complaints compared to 308 (31%) informal complaints.

Citizen-initiated complaints accounted for 50% of the total complaints received. Other types of complaints included complaints by the court when an officer fails to appear in court; complaints by DPD when an officer is involved in a traffic collision involving a DPD vehicle; and complaints against officers who fail to complete continuing education requirements. The complaints generated within the department for such offenses as failing to appear in court do not seem to be the type of complaints contemplated under the ordinance. Nevertheless, subjecting all complaints to full investigations has created internal overload and lack of timeliness in resolution of those complaints.

In general, DPD's past practice was to subject all complaints to a full investigation at either the District/Bureau level or by Internal Affairs. This policy, although sound in some respects, resulted in a backlogged system and created untimely formal findings and results. The new system advocated by the OIM provides for review of *all* complaints, but grants discretion to the Internal Affairs Commander to decide the type of investigation a particular complaint will receive. The OIM is permitted to review decisions regarding the type of investigation that is granted to each complaint. The Board applauds the intent to insure that the process works in a timely and efficacious manner and will maintain watchful vigil over its development.

The data available shows that DPD closed 221 cases with the median number of days to close the cases were 33. The data also shows that DPD takes, on average, 36 days to close each case with a standard deviation of 26 days. For the Sheriff's Department, the standard deviation suggests that a small percentage of cases took significantly longer to close than the majority of cases. Approximately, 10% of the cases took longer than 76 days to close.

At this time, it is difficult to assess the true effectiveness of DPD's new policies given their infancy. The COB will continue to monitor and oversee the new policies and procedures advocated by the OIM. The COB expects these policies will significantly

improve the timeliness of investigations and, as result, give some confidence to the citizens that their complaints are being addressed. More importantly, DPD's policies and procedures acknowledge that, under the Denver ordinance, the OIM is given the right to challenge all IAB decisions with regard to the type of investigation and the OIM is further empowered to conduct an independent investigation of any citizen complaint.

The DSD has also implemented policies and procedures for complaint handling. The DSD policies acknowledge the role of the OIM and promise to work "cooperatively with the OIM." These policies were adopted in December 2005 and are still too preliminary to assess.

There is also an issue of timeliness with respect to the handling and investigation of officer-involved shootings and other critical incidents involving uniformed personnel.

Investigation of officer involved shootings is subject to a separate procedure than other citizen complaints. As previously noted, in the past, the District Attorney's (DA) office would initiate an investigation into officer-involved shootings. DPD would wait until the DA's office completed its review before it would begin its administrative review of the shooting. A review of shootings that took place during the years 2003-2005 reveal that it took anywhere from three (3) to eight (8) months for the DA to complete its investigation and issue its findings. As a result, the internal review would not even begin until 3 to 8 months after the incident.

The ordinance creating the OIM and the COB establishes a new procedure for investigations into officer-involved shootings. Under the ordinance, IAB, within 60 days of a shooting, is required to begin an administrative investigation into the incident regardless of the status of the DA's investigation, unless the Manager of Safety, after conferring with the District Attorney's Office, concludes that the administrative review will jeopardize a pending criminal investigation.

The OIM has concluded that unless there are unusual facts or concerns regarding an officer-involved shooting, the administrative review of such a critical incident should be completed within six months. There was only one officer-involved shooting in 2005 which resulted in an injury or death. It occurred on May 25, 2005 and was closed out administratively by the DPD on November 16, 2005.

The Board notes that the Denver District Attorney modified its previous officer-involved protocol with "Officer-Involved Shooting Protocol 2005" issued and incorporated in the decision letter from Mitchell R. Morrissey, Denver District Attorney to Chief of Police Gerald Whitman dated October 28, 2005 regarding the investigation of the shooting death of Harrison Owens. In the revised protocols, the District Attorney wrote that "...[i]n most officer-involved shootings the filing decision and release of the brief decision letter will occur within two-to-three weeks of the incident, unless circumstances of a case require more time."

This new procedure places the burden on the administrative investigation and review of the incident with the Denver Police Department and the Manager of Safety. The District

Attorney was emphatic that the decision letter will be “intentionally brief to avoid in any way impacting the integrity and validity of the Denver Police Department administrative investigation and review.” It is a change from the thorough decision letters previously made by the DA.

In addition, the DA candidly pointed out that few officer-involved shootings resulted in the filing of criminal charges against officers because of the high standard of proof necessitated in criminal cases. He also pointed out that the administrative standard is less stringent and amenable to investigative processes and techniques not appropriate in criminal cases. Thus, the DA has placed the responsibility on the police department and the manager of safety with the oversight from OIM and COB to insure that administrative reviews are thorough and comprehensive and that details of the incident are provided in a timely fashion to the public.

While this revised and simplified decision process and subsequent letter demonstrate the reality of the criminal remedy in controversial situations, that is there are few prosecutions in police involved shootings and even fewer convictions, one of the major benefits has been the availability of information to the public. Now the DA will not open the criminal investigation file for public scrutiny under the new protocol until the Manager of Safety has released his letter at the conclusion of the administrative review. Thus, oversight from OIM and COB will become critical for the public to be fully apprised of the facts.

The second area of critical concern is the emphasis that the DA places on the Use of Force Review Board and the Tactic Review board. Philosophically, these boards within the police department seem to be the appropriate place for any exhaustive administrative review of the actions of the officer and of the efficacy of the policy and procedure. It places additional vigilance on the oversight mechanisms in place through the OIM and COB.

The DA may have addressed an issue that perplexed many in some communities of interest in Denver. Individuals seemed to confuse the criminal law standard with the administrative review standard. This modification of officer involved protocols, while initiated through the DA, over which neither the OIM nor the COB has jurisdiction, has the effect of making that line brighter than it has been. Many times in the past, so the criticism evolved, the police used the decision letter of the DA as evidence that there was no administrative violation and that the policy was sound. With this 2005 enunciation, the DA has marked a line that seems clearer and makes oversight critical.

Insofar as the OIM was a participant in the process leading to the new protocols, the COB is pleased. However, the challenges will be there for the COB to insure that the mandatory monitoring is done in a timely, effective and thorough fashion. In addition, COB notes that the Denver District Attorney has provided the Office of Independent Monitor with a letter detailing shooting-scene expectations; this has served as a quasi MOU as contemplated by the Ordinance.

With respect to the establishment of policies and procedures to improve timeliness of investigations into certain incidents involving DPD or DSD officers, the OIM has advised DPD and DSD of the need to be notified and the intent of the OIM to “roll out” to the scene of the following critical incidents:

1. Officer/Deputy-Involved Shooting where the involved officer intentionally shoots at a human being or accidentally shoots and hits a human being.
2. Officer/Deputy-Involved Uses of Force resulting in death or serious bodily injury.
3. In-Custody deaths, including suicides and inmate-on-inmate homicides.
4. Vehicular Pursuits resulting in death or serious bodily injury.
5. Any officer-civilian involved traffic collision resulting in death or serious bodily injury where it is likely that the officer was at-fault.

In addition, the OIM asked DPD to notify the OIM whenever there is reason to believe that mandatory monitoring will be necessary. (For example, regarding any incident where an officer is under investigation for a felony, any offense set forth in Article 3 (Title 18) of the Colorado Revised Statutes (offenses against the person), or any incident involving a misdemeanor in which a use of force or threatened use of force is an element of the offense). Upon notification, the Monitor will determine whether to roll out to the scene of such an investigation. The COB will review the OIM’s progress on its “roll out” plan and determine whether it produces results compatible with its mission.

The COB has some concerns about the manner in which the COB is informed of on-going investigations. The COB and the OIM are working to prepare a case-flow process that will insure that the COB is kept adequately informed of all cases pending in the OIM’s office.

Tracking the timeliness of investigations into officer-involved shootings and other critical incidents is made difficult due to the current lack of technology to track timing. The Police Department database, known as CUFFS (Complaint and Use of Force Filing System) was developed in 1994 in Access, and began accepting use of force and complaint data in 1995. Due to data accuracy issues and the fact that the database had exceeded its capacity, CUFFSII was designed in 2004 in Microsoft SQL Server. The benefits of CUFFSII being in SQL Server is that it allows for more efficient storage and retrieval of records which increases the accuracy of the data and makes for more reliable queries. At the time of this report, the database is in transition as new data fields and tables are added to better serve the needs of Internal Affairs and OIM. Access to CUFFSII was granted to OIM on October 18, 2005.

Due to the data that has been historically tracked and not tracked, the OIM was only able to measure timeliness in certain situations and then only for those cases that were opened and closed after July 27, 2005. The reason for this is that there was no date case closed field in CUFFS (the Access database). New methods of handling complaints are

emerging within DPD. To effectively measure timeliness, the OIM has stated that it will be necessary to include new date fields into CUFFSII. The COB will remain watchful of the OIM's and DPD's progress with respect to receiving the data necessary to show that timeliness no longer is a lingering concern.

Mediation

One important component in the OIM's case handling process is creation of voluntary mediation as a means of resolving certain citizen complaints. The OIM introduced this option in Denver 2005. Mediation is a viable alternative to the normal complaint handling process whereby community members and police officers can talk out their issues in a neutral, non-confrontational and confidential environment with the aid of a professional mediator. Mediation allows each party to gain a better understanding of the other's perspective and opportunity to speak candidly about their issues.

Only four mediations were conducted in 2005. According to the OIM, all officers involved in these mediations indicated some level of satisfaction with the process. Three out of four community member participants indicated that they were either satisfied or very satisfied with the mediation process. Because there were only four mediations conducted in 2005, the COB cannot adequately assess the effectiveness of the program. The COB is pleased that the early comments on the program are favorable.

Beginning in October 2005, DPD policy permits mediation as an option in excessive force complaints and other potentially serious complaints, but only if the Chief of Police, the Manager of Safety and the Monitor all agree to this assignment decision. The COB will closely monitor this approach to excessive force complaints. So far, nothing has been assigned to mediation in this category of complaints.

The paradigm for mediation program and the published rationale for its use in citizen initiated complaints are supplied through the Department of Justice Report entitled *Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders*, written by Walker, Archbold and Herbst. Walker et al. suggests that while some mediation programs on citizen initiated complaints against police allow use of force complaints, the weight of the evidence and the overall experience is against those categories of complaints allowed in mediation. Here is what the 2002 report said:

“Experienced complaint mediation officials generally agree that use-of-force allegations should be ineligible for mediation. Police officials support this position....”

Walker and his associates conclude that:

We support the policy that complaints involving use of force and threats to use force should not be mediated. Based on conversations with experienced mediators, we do not endorse the mediation of complaints involving threats by police officers. People in the mediation field agree

that no complaint involving potential criminal charges against the officer should be eligible for mediation.

Although the justification for its use in use of force complaints seems to be that community members are disappointed when use of force complaints result in a dismissal or no imposition of discipline, the remedy of allowing mediation may fail to allay the disappointment and resultant disappointment. Perhaps, the onus falls to increased public awareness that police work has an inherent characteristic of force, including the physical use of force which may seem excessive, and on sound explanations in letters explaining the disposition of dismissal or no imposition of discipline. Perhaps, this is an area that OIM should have a careful and wary review for tendencies of officers involved in such incidents. OIM may also consider having a comprehensive review of use of force reports to insure that department policy is followed and to detect any training needs for officers or educational needs for the community. Mediation for circumstances that are volatile or threatening to the public does not seem sound public policy. The use of force is an area of concern for COB. Mediation and its proper usage is also an area of concern.

B. Evaluating Use of Force Policies and Compliance

As previously noted, the OIM has proposed a certain “roll-out” procedure it will follow in instances of officer-involved shootings or other critical incidents. This alone, of course, does not render use of force less likely to occur. A review of DPD’s and DSD’s policies is now in effect. OIM hired outside consultants to review the Denver Police Department’s deadly force policies, procedures and training as well as the quality of DPD investigations and the DPD review process for closed officer-involved shootings that have occurred since January 1, 1999.

On December 1, 2005, the OIM entered into a contract with the Los Angeles based Police Assessment Resource Center (PARC) to provide the following services:

- Evaluate closed DPD officer-involved shootings from January 1, 1999 to the present;
- Compare DPD policies and training to other communities, in order to identify best practice approaches in this area;
- Identify any areas where quality of investigations can be improved;
- Identify any areas where the quality of DPD training practices can be improved;
- Evaluate DPD management of information relating to officer-involved shooting incidents;
- Identify information that can be gathered by the DPD and OIM to improve the quality of future anticipated annual reviews, while reducing the cost and time required for such reviews.

As part of the contract, representatives of PARC shall be required to meet with:

1. The Independent Monitor to develop an understanding of the issues and process;
2. The Citizen Oversight Board (COB) to develop an understanding of community issues and concerns;
3. The Chief of Police and his designees to develop an understanding of DPD issues and concerns;
4. Representatives of the Police Protective Association and other officer associations, as necessary, to develop an understanding of police officer issues and concerns;
5. Members of the City Council or their staff, as necessary; and
6. The City Attorney and his designees to develop an understanding of City Attorney issues and concerns.

The COB will dedicate one of its quarterly public meetings for purposes of discussing PARC's role in evaluating DPD's use of force policies. The COB is pleased that DPD has been cooperative with respect to PARC's role and, according to OIM, DPD has agreed to provide PARC access to all investigative files, training materials and general orders necessary to conduct this review. The City Attorney has also agreed to provide access to non-confidential portions of litigation files that will assist in conducting this review.

Once its work is complete, PARC is required to present a final report to City Council. The COB has been told that PARC will complete its final report within 10 months from the date PARC receives all of the materials required to complete its analysis. The final report will be a public document published by the OIM and OIM will be solely responsible for managing the PARC audit. The COB awaits PARC's review and analysis.

C. Efforts at Community Outreach

The OIM has met formally and informally with individuals and community leaders to build relations with various interest groups. It also hopes to gain a better understanding of the issues of concern to various stakeholders.

As part of its outreach to the law enforcement community, the OIM attended roll calls at all the DPD District Stations, as well as at the Airport and the Traffic Operations and Investigations Bureaus. The OIM is available for the monthly meetings of the PPA and other police officer affiliated groups such as the Brotherhood of Denver Police Officers, the Black Police Officers Association, the Latino Officers Association, the Women's Advisory Group, the Gay and Lesbian Officers Association, and the Fraternal Order of

Police. The OIM and its Ombudsman met with representatives of a number of deputy sheriff affiliated groups as well.

In 2006, the OIM has committed to expand its outreach to include attending Sheriff Department roll calls and meeting with members of the Fire Department Arson Unit.

Finally, the OIM is an organizational member of NACOLE.

D. OIM's Progress in Achieving its Goals

The initial goal of the OIM as set forth in its July 2005 presentation was to adopt case handling guidelines, develop a filtering system for addressing complaints and providing easier accessibility by the general citizenry to the IAB complaint process. The OIM created Case Monitoring Guidelines which are posted on the OIM website. The guidelines are used by the OIM to evaluate DPD case assignment decisions to ensure that the decisions are subject to objective criteria by the OIM. In addition, the guidelines give IAB numerous options to addressing citizen complaints.

The guidelines were developed and posted for public comment on August 1, 2005. They are based, in large part, on guidelines developed by Portland, Oregon's Independent Police Review Division (IPR) after the review of almost 2,000 citizen complaints over a three-year period and in consultation with the Portland Police Bureau, the Portland City Attorney's Office, and the taking of public testimony by the IPR's Citizen Review Committee. The OIM conferred with the COB on development of these guidelines. The guidelines have been adopted, in large part, by the Police, Sheriff and Fire Departments and became effective January 1, 2006.

The COB is very supportive of case monitoring guidelines, but the COB cautions the OIM about its heavy reliance on Portland's experience in developing those guidelines for Denver. Denver is unique in many ways and the COB is concerned that the Monitor's heavy reliance on his Portland experience may overshadow the uniqueness of Denver's community.

The next goal of the OIM was to create a mediation program. As of October 21, 2005, the OIM introduced the option of mediation to DPD for citizen-initiated complaints. As noted earlier, the COB is hopeful that the mediation process will assist in resolving some of the timeliness issues. However, it cautions the OIM to monitor DPD's decisions not to fully investigate all cases and, instead, forward them to mediation.

The next goal of the OIM for 2005 was to retain an expert to review Denver's deadly force policies, training, and tactics and review processes relating to officer-involved shootings and in-custody deaths. The OIM entered into a contract with PARC and PARC will review Denver's deadly force policies and investigations. PARC's report is expected to be complete during the last quarter of 2006.

The next goal of the OIM was to begin preparation of the 2006 annual report which will provide transparency for the complaint handling and disciplinary processes.

Finally, in July 2005, the OIM stated that it would work with the COB on outreach and assist in creating protocols to evaluating the OIM. The OIM provides no information regarding this goal in its Annual Report. However, the COB notes that the OIM's efforts at outreach have been significant. *See infra.*, p. 13.

IV. 2006 GOALS

In 2006, the COB will continue to assess the OIM's policies and procedures and the OIM's ongoing efforts to put systems in place. As noted earlier in this report, the OIM's systems and policies and procedure have been in place for only a brief period and, as a result, there has been little chance to assess their effectiveness. The coming year will be prove to be a critical one.

COB will maintain a vigilant eye on how well OIM monitors those incidents investigated by Internal Affairs Bureau as set forth for mandatory monitoring under the Ordinance creating OIM and COB. COB is satisfied with OIM in its review and monitoring of critical incidents detailed in OIM's report Chapter 5. Items that had noticed previously mentioned in PSRC comments are noted as well in the critical incident review portion of the report.

Those items included firing at moving vehicles and the manner in which some questioning of witnesses and officers is conducted (use of leading questions). COB notes with favor the promptness with which OIM "rolls out" to critical incidents and is impressed with its review of in-custody deaths.

In addition to continuing its ongoing efforts, the COB would like the OIM to lend some focus to areas that are within the OIM's discretionary oversight role. For example, according to the ordinance, the OIM has the discretion to monitor any internal police or sheriff department investigation of a citizen complaint alleging discrimination based upon race, color, creed, national origin, gender, sexual orientation, gender variance, disability, religion or political affiliation. Consistent with this provision, we hope that the OIM will review DSD's and DPD's racial profiling policies and procedures.

As noted earlier, COB has a concern regarding the discretionary monitoring of IAB investigations especially those involving use of force and discrimination. OIM in response to an inquiry provided this brief summary on discrimination:

"There are two other internal complaints that allege racial discrimination, along with other complaints, including departing from the truth. One of these cases has resulted in the termination of three academy recruits and one is currently under investigation and being monitored. ... [T]here have been three [citizen] complaints - two from the same person - of racial profiling. In all three cases the complaint arose out of traffic stops and in all three mediation has been approved by both the OIM and the Department and is pending. On a fourth case, the citizen complaint was of an inappropriate ethnic based remark. That citizen wanted mediation, as did the officers. The mediation has gone forward and the case is closed.

There was one other case in which the husband of a woman who received a speeding ticket made a complaint of racial profiling; however the woman herself would not join in the complaint and there was a radar lock on the speed which resulted in the ticket. That case was declined.

[B]oth departments are very aware that [OIM] want[s] to be advised of any complaint which alleges bias or discrimination. Those cases are on their radar screen and they have been very good at letting [us] know when there is such a complaint.

OIM is sensitive to monitoring discrimination cases and has taken a close look at serious use of force cases. In both instances, the Board approves and will continue its watchful review.

Under the ordinance, the OIM is mandated to make recommendations regarding policy issues. In 2006, the COB will be looking to the OIM to evaluate DPD and DSD policies and procedures regarding: 1) an early warning system that may help prevent police misconduct; 2) training for DPD and DSD in improving and maintaining community relationships; 3) effective and equitable discipline policies; and 4) the role that supervisors and managers can play in improving and maintaining officer performance.

The Board notes that OIM has had success in asking IAB to provide detail to letters to complainants. In addition, OIM provides a separate letter to complainants after reviewing the letter from IAB in the sheriff and police departments. OIM has informed the Board that it has asked IAB for greater detail in some letters and there are currently four of those requests outstanding. COB will continue to monitor this area as it is important in providing complaints with a rationale for the decision made and lends itself to openness in the internal decision process. These letters may become increasingly important as the full impact of the *Harris v. The Denver Post* (Colorado Supreme Court November 15, 2005) and the *Nash v. Whitman* (Denver District Court December 7, 2005) decisions become known.

Also, the COB understands that there were some unresolved issues noted by the PSRC. In 2006, the COB will conduct a review of those items and determine their path forward.

In 2006, the COB will continue its own education and learn more on how to work with the OIM and the various law enforcement agencies. It will have the opportunity to meet more often with the public for the sole purposes of accepting public comment on newly enacted or proposed OIM policies and procedures. Finally, the COB will have more data with which to evaluate the OIM's processes and procedures enacted in 2005.

V. RECOMMENDATIONS

At this time, the COB recommends that the OIM continue with its ongoing efforts.

As previously noted, the COB currently operates with a minimal budget and no dedicated staff support. The COB believes it necessary to have some funds that would further assist

it in effectuating its oversight role. Some level of staff support would greatly enhance the COB's ability to operate more efficiently.

VI. CONCLUSION

Given that the City's new oversight system has been in operation for just six months, it is difficult to provide an in-depth assessment of the system's effectiveness. However, the COB believes solid progress is being made. Although it is too soon to judge impacts of this progress on either the Safety Departments or the public's view of them, the COB is pleased that vigorous strides have been made to improve Denver's law enforcement establishment.

The OIM has already put in place a variety of measures that shows real promise in improving the handling of allegations of police misconduct. The intent is to add substance to the process and make it timelier. The goal is improved efficiency, fairness and transparency. The objective is to build better understanding between all elements of the Denver community and law enforcement.

The coming year will provide better opportunity to assess the progress and sharpen the process. The COB will play an active role, as required by the ordinance, in weighing the performance of the OIM and law enforcement agencies (DPD, DSD, and DFD) in responding to the need for effective oversight. The COB is impressed thus far by the cooperative approaches of all involved agencies in meeting this objective. We congratulate the OIM and the many members of the Denver law enforcement community for their cooperation and efforts.

Key to our 2006 assessment will be having reliable data upon which to base analysis and recommendations. To date, some of the data within the DPD is lacking for this purpose. In 2006, we expect much improvement in data systems available for good oversight.

In the COB's relationship with OIM to date, we commend the degree to which the Monitor has kept us informed of his plans and policies. In some few cases, we would have preferred more detail in advance. However, we recognize the system is a new one and we are confident the necessary relationships between the COB and OIM will be maintained and built upon.