

# Oversight Developments from Around the U.S.

By Jonathan Trevarthen

**Houston, TX**  
Population:  
2,099,451 (2010 U.S.  
Census)  
Police Force: 5,400  
(HPD website)

In order to restore public trust in the Houston Police Department (HPD), the city's mayor, Annise Parker, has ordered an overhaul of how citizen review of the police is conducted in the nation's fourth most populous city. Calls for greater police accountability rang out after video surfaced in February 2011 depicting numerous HPD officers beating a 15-year-old burglary suspect. In response to public outrage, Mayor Parker's March 15, 2011 executive order created an Independent Police Oversight Board (IPOB) to replace the Citizens' Review Committee, which previously reviewed internal police investigations, but was criticized for being ineffective.

The revamped 21-member IPOB will include retired judges, prosecutors, civil rights attorneys and scholars in the field of criminal justice. The board will be permitted to review all Class I complaints against police officers, which include allegations of criminal activity by officers, and all Class II complaints against police officers, which involve an officer's failure to follow departmental



Photo of Houston Skyline provided by carlmaples.com

procedures. The board will also be required to evaluate all internal investigations involving use of force, discharge of firearms and serious bodily injury or death. After the internal affairs division completes an investigation of a disciplinary case, a panel of board members will review the matter and make a recommendation to the chief of police.

Some community activists have called this reform effort a half-hearted way of implementing citizen oversight of the police. As a result, some members of the public continue to call for a board with more powers, such as the authority to subpoena police officers and other witnesses and post police discipline outcomes on the Internet, in order to fully carry out the board's responsibilities and ensure transparency within the citizen complaint process.

**Sarasota, FL**  
Population: 51,917 (2010 U.S. Census)  
Police Force: 175 (SPD website)

Two years of debating, organizing and planning have finally come to fruition in Sarasota, FL, where two new police oversight panels met for the first time in May of this year. A June 2009 recording of a Sarasota police officer kicking a handcuffed suspect and the subsequent mishandled investigation by the Sarasota Police Department (SPD) prompted residents to lobby for a citizen review board. In response, the city commission created a Police Advisory Panel (PAP) to study the police department's use of force policies and police leadership issues. The June 2010 report, generated by PAP, recommended the establishment of both an Independent Police

Advisory Panel (IPAP) and a Police Complaint Committee (PCC). PAP's recommendation was adopted in a January 2011 city ordinance.

To oversee these two bodies, the city appointed Peter Graham, who has previous police oversight experience with organizations in Asia. Taking over the administrator reins, Graham will draft the panel and committee agendas and give them advice. Graham will also work closely with the SPD and city commission by presenting them with information and recommendations developed by the two police oversight entities.

Both the panel and the committee consist separately of five members, who are appointed to three year terms. The IPAP will meet quarterly to discuss and make recommendations on policy matters while the PCC will advise the chief of police on the processing of complaints and hold monthly meetings to review completed citizen complaint investigations.

**Bay Area Rapid Transit Police Department**  
Population: BART had an average weekday ridership of 334,984 in 2010 (BART website)  
Police Force: 206 (BART Police Department website)

The January 2009 shooting death of Oscar Grant by a Bay Area Rapid Transit (BART) police officer fueled protests and demands throughout the San Francisco metropolitan region for citizen oversight of the transit agency's police department. Grant, who was 22 years old and unarmed, was shot by former BART Police Officer Johannes Mehserle on the

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## Parallel or Consecutive Investigations: Difficult Choices at the Intersection of Crime and Misconduct

By Diana M. Teran

THE FOLLOWING DISCUSSION IS INTENDED to provide talking points about this topic. Each law enforcement agency and any oversight practitioner must recognize the uniqueness of its department. The article should not be read to suggest that the Office of Independent Review is taking an official position on this topic, but is only intended to spur further discussion among the oversight practitioner community.

The Los Angeles County Sheriff announced a shift in protocols this year on how administrative investigations against deputies accused of breaking the law are handled by the Sheriff's Department. The new protocols enable, but do not require, the Department to proceed with an administrative investigation prior to the filing of criminal charges against a deputy accused of criminal misconduct. Deputies in Los Angeles are required to immediately notify a supervisor if they are arrested or detained as a potential suspect in a criminal matter. Depending on the alleged crime or policy violation committed and whether it rises to the level of a potential discharge, the deputy may be relieved of duty and reassigned to his home or to a non-sworn position pending the results of an administrative investigation. Before any

criminal charges are filed, a deputy may be relieved of duty but is still entitled to receive full salary and benefits. If felony charges are filed, however, the deputy may be suspended without pay.

Historically, any time a sheriff's deputy had been accused of breaking the law, the case was presented to the District Attorney's Office's for a filing decision. An administrative investigation based on the underlying conduct would be delayed until the case was either rejected or resolved in court. Although most filing decisions involving deputies are rendered within a year, on at least several occasions, there have been instances where the District Attorney's Office has taken up to two years to review cases which it ultimately rejected. The



time it takes for the District Attorney's Office to make a filing decision differs based on the Office's caseload, staffing, and internal policies and procedures. These factors are further complicated by complexities of individual cases, as well as the need for follow-up investigation.

Under the Sheriff's new procedures, the facts underlying the alleged misconduct are evaluated on a case by case basis to determine whether the Department should proceed with their internal administrative investigation prior to either the filing of criminal charges or the resolution of a criminal case. In one recent case where a deputy was accused of assaulting his ex-fiancée's boyfriend with a handgun, the Sheriff discharged the deputy before the prosecutor filed criminal charges. In another case, the Sheriff served letters of intent to discharge upon six deputies under criminal investigation for assaulting co-workers at a holiday party due to the egregious nature of the circumstances surrounding the alleged assaults.

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## "New Orleans"

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cate this year or those wishing to participate in the NACOLE Trained Practitioner Program (NTP). Information regarding both is available on the NACOLE website.

This year we are pleased to partner with the Astor Crowne Plaza, located on the edge of the French Quarter. We have secured a rate of \$115 per night for conference attendees. The Astor is offering this rate three days prior and three days following the conference for those wishing to extend their stay and take advantage of all that New Orleans has to offer. Please visit [www.nacole.org](http://www.nacole.org) for more information regarding hotel reservations. For information regarding recreation, dining, and events please visit [www.Neworleanscvb.com](http://www.Neworleanscvb.com).

We believe that attendees of this year's conference will not only benefit from the agenda and presenters we have brought together, but will thoroughly enjoy all that New Orleans has to offer. ■

## "Melekian"

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The program was unique in that it simultaneously worked to resolve an individual complainant's concerns through mediation while at the same time working to resolve concerns in the community through ongoing public dialogue.

Director Melekian also served with the Santa Monica Police Department for 23 years where he was awarded the Medal of Valor in 1978 and the Medal of Courage in 1980.

Director Melekian was Chairman of the California Attorney General's Blue Ribbon Committee on SWAT Policy, and is the former President of the 2009 Los Angeles County and California Police Chiefs Associations. He also served on the National Board of Directors of the Police Executive Research Forum. ■

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Fruitvale station platform in Oakland. In response, Assembly Bill 1586 was introduced in the California state legislature to enhance police accountability and improve police-community relations. The bill was signed into law last year by former California Governor Arnold Schwarzenegger.

The legislation, now CAL. PUB. UTIL. CODE § 28767.8, grants BART directors the ability to establish an independent police auditor and a citizen review

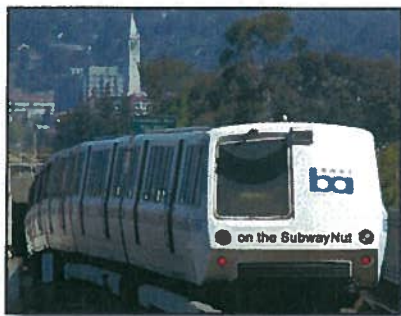


Photo of Bay Area Rapid Transit system by Jeremiah Cox, [Subwaynut.com](http://Subwaynut.com).

board. Both the auditor and board have the power to receive and investigate citizen complaints of police misconduct. After investigating a complaint, the auditor and board can recommend disciplinary action against police personnel for complaints that are sustained. The citizen review board will also have the power to recommend changes to police policies and practices.

In March 2011, BART directors approved 11 members to sit on the transit agency's Citizen Review Board, and in April 2011, BART directors named Mark T. Smith as its independent auditor. Smith is the former deputy chief administrator of Chicago's Independent Police Review Authority. BART officials delayed convening the board until an auditor was named. Now that he has been selected, the board is expected to begin fulfilling its duties soon.

#### West Virginia

Population: 1,852,994 (2010 U.S. Census)

Police Force: 5,520 (Total number of sworn officers in state and local law enforcement agencies, local police departments, and sheriffs' offices according to 2004 Bureau of Justice statistics)

Citizen oversight of the police has yet to catch on in West Virginia, but the recent passage of Senate Bill 193 in March 2011 is a step in that direction. The bill gives more authority, including subpoena power, to the Law-Enforcement Professional Standards Subcommittee. This state-level entity is made up mostly of people in law enforcement. Under the new legislation, the group is responsible for establishing procedures for the reporting of complaints and disciplinary actions against West Virginia police officers. Reports of complaints and disciplinary actions will be stored in a database created by the subcommittee and intended for use by law enforcement agencies throughout the state.

The creation of a complaint database is a response to the problem of itinerant police officers who change jobs by traveling from department to department within the state when job performance or conduct issues arise. With the new legislation, once an officer leaves a department, the person's certification automatically becomes inactive and can only be reinstated by the subcommittee. The subcommittee will use its investigatory powers and the newly created database to decide whether to reactivate an officer's certification.

Some members of the public have urged the creation of more citizen review agencies for local police departments throughout West Virginia, or even a statewide approach. Charleston Gazette staff writer Gary Harki authored a three-part series, "Policing the Police," which ran December 25-27, 2010, and recounted specific instances of police misconduct. In response to the series, some editorials in the same paper urged the establishment of more citizen review in West Virginia. In the final installment of the series, Harki wrote about the citizen oversight commission in the city of Montgomery, which is one of only two independent review boards in West Virginia; the other one is Bluefield's Citizen Review Panel. Montgomery City Councilman Terrance Hamm told the Gazette that the external review of the police is spreading in West Virginia, and officials from other cities and towns have contacted him to inquire about establishing citizen oversight in their communities. ■

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The following is a list of pros and cons of proceeding with an administrative investigation based on allegations of criminal misconduct prior to the filing or resolution of a criminal case:

#### Pros

- A prompt resolution of an administrative investigation is beneficial to the subjects of the investigation because it reduces the amount of time they are under investigation and removes the cloud of uncertainty about administrative repercussions.
- An administrative investigation conducted soon after the incident will result in a more accurate assessment of the allegations because witnesses' memories are still fresh and their availability more certain.
- In cases where the discipline is short of discharge, prompt resolution of the administrative investigation together with the appropriate discipline will effectively remediate the violation. When discipline or other corrective action is imposed years after a violation, it has little effect on changing the behavior which led to the policy violation.
- While a case is pending a filing decision by the District Attorney, the officer receives his salary and benefits even if he has been relieved of duty. The cost to a police department can be substantial if the case remains pending for years. Prompt resolution of an administrative investigation can save a police department money and possibly enable it to hire a replacement officer when the likely outcome is a discharge.
- A police department may garner more public trust by disciplining an officer who has clearly deviated far from

## The NACOLE Review

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