**Best Practices for Contract Reform:   
Obama’s Department of Justice told America’s Cities to Reform Police Contracts**

In its final years of activity, President Obama’s Department of Justice issued detailed recommendations designed to improve oversight of police and heal the mistrust that pervades communities of color. These recommendations related to policy, training, and contract provisions. This summary is based on the DOJ’s report on Baltimore and Chicago, the final two reports released before the change of administration.

The pillars of effective community oversight, based on President Obama’s DOJ recommendations, would require the changes to the contract between Austin and the Austin Police Association:

* Civilian oversight requires powers of independent investigation
  + Subpoena power
  + Immediate access to the scene and evidence
  + No long wait to interview officers, witnesses (eliminate “48 hour” rule)
  + On scene independent investigator participates in preliminary assessment
  + Expand types of cases that get independent investigation to include additional types of force incidents and cases where the subject has been charged with a crime
  + End practice of allowing officers to view video evidence before making a statement
* Facilitate the filing of anonymous, online and phone complaints and eliminate sworn affidavit barriers (the new contract does this)
* Encourage through notice and access the participation by complainants in appeals of disciplinary action.
* Develop and formally adopt a video release policy for critical incident video

**Chicago, Jan. 13 2017**

The DOJ investigated the Chicago Police Department in 2016. During that period, Chicago took significant steps to improve. The city was prepared to immediately adopt many of the DOJ recommendations by the end of 2016. The city established the Police Accountability Task Force, which issued its own recommendations in April of 2016. In June, the city issued a “transparency” policy mandating the public release of video of police shootings within 60 days of an incident. In December of 2016, the city released a progress report outlining the steps it had taken to address the Task Force recommendations, among them the creation of the Civilian Office of Police Accountability, which replaced the Independent Police Review Authority (IPRA). IPRA already enjoyed subpoena power, but the new entity is structured to be more independent, have earlier and better access to evidence, and be able to conduct its own investigations.

Before the rollout of the new Civilian Office of Police Accountability in 2017, the DOJ recommended changes to the city’s contract with the police union designed to strengthen citizen oversight. The following page numbers refer to the “Investigation of the Chicago Police Department, Jan. 13, 2017” final report. For recommendations also made with respect to Baltimore’s different structure of accountability, the reference to Baltimore’s DOJ report is incorporated in the source reference.

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| **DOJ recommendation for Chicago** | **Proposed APA contract** |
| Civilian oversight process should ensure **independent investigation**: Chicago’s Independent Police Review Authority was found lacking largely around problems of independence. While it already has subpoena power and authority to look at a wider range of cases than our CRP (p. 18), the review determined that witnesses were frequently not interviewed, questioning was biased in favor of officers and investigators routinely failed to collect probative evidence. (Chicago p. 47 and 59-68; Baltimore p. 103, 148) Chicago has replaced IRPA with a new agency with **expanded investigative authority, authority to hire independent counsel, and limits on hiring employees with police backgrounds**. DOJ agreed that these changes would enhance independence (p. 92), but called for additional contract changes to eliminate the overuse of mediation (see below). | Similar investigative shortcomings have been identified by our own CRP, which has no independent investigatory powers and can only point out shortcomings in internal affairs investigation practices.  Art. 16, Sec. 1 (d) “the Civilian Oversight process, regardless of its name or structure, shall not be used or permitted to gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint of misconduct by an Officer." P. 49 also Art. 16, Sec. 3 (b)(1) “The OPM shall not gather evidence, contact or interview witnesses, or otherwise independently investigate a complaint or other information of police misconduct.” |
| **Access to scene, direct access to witnesses. Contract changes should eliminate 24 hour notice rule before officers can be interviewed. (p. 58)** DOJ identified a number of barriers that prevented the IPRA’s independent investigators from gathering evidence. IPRA came to the scene of critical incidents but all evidence gathering remained in the hands of CPD, in large part because IPRA could not interview officers less than 24 hours after an incident. IPRA investigators were required to wait outside a taped area and were allowed to interview witnesses much later at the station. Officers had many private conversations prior to speaking to IPRA. Investigation practices encouraged collusion among officers. DOJ says the independent investigating agency should “interview the shooting officer as soon as possible after the incident and should not delay it due to a possible criminal investigation. Neither constitutional rights under Garrity nor any other valid investigative principle requires delaying such an interview….” (Chicago, p. 58-59. Also Baltimore, p. 108 on “parallel investigations” and p. 144-145 on compromised investigations.) | APA contract gives officers **“at least” 48 hours** before having to give a statement. The City of Portland eliminated the “48 hour rule” in its contract last year, and a legal debate about compelled testimony has produced a range of legal material that Austin can review if it decides to accept this recommendation. |
| **Require independent investigators participate in the preliminary assessment** during the immediate aftermath of an officer involved shooting to the same extent as the commander in charge. (p. 152) | CRP and OPM prohibited by the contract from involvement in investigation. |
| **Consider prohibiting involved officers, witness officers and civilians from viewing video evidence** before interview with independent investigator. In all cases, inquire whether witnesses have viewed video before answering questions. (p. 153) | During the 48 hour waiting period, investigators **must** give the officer access to all video and photo evidence, a copy of any complaint, copies of his or her own incident or use of force reports, and a full list of allegations. In the event that the complaint does not contain all the allegations, the department must list all the allegations being investigated. It must do this before “the initial oral or written interrogation.” (p. 67) |
| **More types of cases should be independently investigated**, including all taser discharges, all officer involved shooting even if no one is actually hit, and complaints by subject who are arrested and may be in jail (p. 50-52). DOJ noted that IPRA almost never went to the jail to interview subjects who were charged during an incident that might include officer misconduct. IPRA already had jurisdiction over a wider set of cases than Austin’s CRP: all allegations of excessive force, domestic violence, bias-based verbal abuse, coercion, weapons discharges and deaths in custody. Failure to investigate “results in a large number of potentially serious policy or constitutional violations going undetected and undeterred.” (Also Baltimore, p. 148, on failure of the department to refer to the oversight board all the cases that qualified for independent investigation.) | No change to CRP jurisdiction. Based on a review of CRP letters, the **CRP in Austin reviews relatively few cases**, mostly officer involved deaths. The panel may review other kinds of cases involving a “pattern” of misconduct, serious injury, or take a second look at any complaint if the complainant requests that review within 30 days after being notified of the outcome. The panel does not review force incidents involving non-deadly force unless there is a complaint. It isn’t clear from the limited public information whether or how the department investigates (or CRP reviews) misconduct related to cases where the subject has been charged. Since a subject can be charged with a range of criminality in a force incident, from assaulting a police officer to “resisting” to “evading,” a great deal of misconduct may fall in this category. |
| **Facilitate complaints.** Contracts should not limit investigation of older complaints, limit investigation of anonymous complaints, and should not require a sworn affidavit for complaints to be investigated. (p. 50-51, Baltimore p. 140) | **New contract facilitates complaints** by allowing anonymous complaints and removing sworn affidavit requirement. New contract still limits investigation of older complaints unless the issue rises to a criminal charge. |
| In cases where a complaint results in a suspension that is appealed to mediation (the standard system in Chicago), require notification to complainant and allow complainant to participate in mediation process. (p. 154) | Some low level complaints can go directly to mediation between a complainant and the officer, but if this occurs the issue cannot be referred for disciplinary action. P.76 Complainants are not part of the appeals process after discipline has been determined. |
| **Develop and formally adopt a video release policy** with consideration to expanding the universe of complaints the video release policy covers. (p. 159) Chicago has adopted a 60 day public video release policy for critical incidents. (p. 159) | Current contract prohibits public release of video during an investigation. Most video related to investigated misconduct goes into the 143.089g file. Some critical incident video is eventually released, usually about a year after an incident, after a case is no-billed by a grand jury. Several contract changes would be required to develop a policy of transparency around incident video. |

**Baltimore, April 2016 DOJ Report**

The Department of Justice made similar recommendations in Baltimore, a city that also had a civilian oversight system already empowered to independently investigate certain cases of alleged misconduct. Baltimore’s Civilian Review Board could accept complaints and independently investigate both directly accepted complaints and complaints forwarded from the police department. It conducted a parallel, independent investigation and recommended discipline in cases involving use of force and certain kinds of disrespect. Its powers were limited however by **inconsistent referral of complaints from the department and insufficient investigatory resources**.

In many respects, Baltimore’s structure for reporting issues and reviewing them is similar to Austin, and the DOJ identified many issues related to both contract and policy. Baltimore’s force incidents are reviewed by the officer’s direct supervisor, and *only if that supervisor decides there’s a violation* does the incident get referred for independent investigation, a rare occurrence. DOJ’s main recommendations focus on the internal reasons why cases were not referred for independent investigation.

In Austin, we do not know how frequently supervisors report force incidents (1,838 incidents are recorded in the 2016 response to resistance report) for IA review, or whether our CRP gets to review all cases that fall within its limited jurisdiction. We know that suspensions in force incidents are rare (8 in 2016.) In Austin the structure for referral and investigation is a matter of policy, but the contract strictly limits the kinds of incidents the CRP can review, a far smaller subset than authorized in Baltimore. Independent investigation is critical. DOJ noted that the lack of independent investigation for most incidents in Baltimore, and the direct involvement of the immediate supervisor in the first review, resulted in outcomes biased towards the officer, dismissal of conflicting witness statements (where they were even collected) and the acceptance of “boilerplate” explanations from officers.

The DOJ summarized the reason why Baltimore’s civilian review process – despite having some independent investigatory powers – fell short as follows:

“The Board has faced several impediments to serving as a meaningful community backstop for accountability. First, the Board relies upon BPD to forward complaints that fall within its authority, except when a complaint is filed directly with the Board, and BPD often fails to forward complaints in a timely manner. Indeed, CRB staff members told us of cases BPD forwarded to the Board only after BPD had already closed its investigation, despite BPD’s obligation to share the complaint with the Board within 48 hours of receipt. The Board has no authority to audit BPD to determine if it has received all the complaints that should have been forwarded to it. Second, the Board has insufficient resources and authority to conduct its own investigations. During 2010 to 2015, the Board only had a single investigator to investigate all the complaints that fell within its authority. The Board also cannot compel officers to participate in investigations; indeed, LEOBR provides that sworn law enforcement officers can only be “interrogated” by other sworn law enforcement officers. Finally, when the Board makes recommendations to the commissioner about investigative findings, or recommends that the IID conduct additional investigation, the Board has no way of knowing if BPD acts on its recommendations, much less requiring that BPD do so. The lack of resources and authority that the City currently invests in the Board render it ineffective, heightening community perceptions that BPD is resistant to accountability.” (Baltimore, p. 148)

The issues here are similar to issues under Austin’s contract. The CRP can only review cases forwarded by the Department and has to assume it is seeing all the cases that fall under its jurisdiction. The CRP cannot audit the department for compliance. The CRP has NO independent investigative powers and NO investigators. The CRP cannot compel officers to participate. When the CRP makes recommendations, it has no authority to compel action. The new contract will require the Chief to at least respond in writing to a letter of recommendation, but the Chief does not need to change policy or practice. Historically, the Chief has rarely made changes to policy or practice based on CRP recommendation letters.