

STATEMENT OF MERRICK BOBB

My name is Merrick Bobb, and for the last 15 years, I have been deeply involved in issues of police accountability and police reform. I currently serve as Special Counsel to the Los Angeles County Board of Supervisors for purposes of monitoring the Los Angeles County Sheriff's Department (LASD). Among other things, I monitor the Los Angeles County jails. Los Angeles County has the largest jail in the United States with an average daily inmate population of approximately 20,000. The jail is a troubled institution. Over the years, the LA jail has often fallen short of its obligations to protect inmates and to provide them with adequate medical and mental health care and a safe and clean environment. I attach to this Statement an example of my monitoring reports on the jails. It deals with the death of a mentally ill inmate who died at the hands of sheriff's deputies attempting to put him in four-point restraints.

Over the last 15 years, it seems that a consensus has formed that law enforcement agencies rarely, if ever, confront problems on the streets or in the jails or undertake substantial internal reform on their own. Internal investigations of inmate-on-inmate deaths, excessive force by guards, inmate complaints of failure to provide medical or mental health services, or lapses in security and safety have proved, in many cases, to be slipshod and biased.

Over the same 15 years, different ways to introduce greater civilian involvement and control of internal law enforcement investigations have been tried. These experiments have been conducted more frequently with patrol operations than with jails. One of the most successful models is in Seattle. Seattle has chosen to bring a civilian lawyer from outside the Department to head the Internal Affairs unit, called the Office of Professional Accountability (OPA), with the title of Director. A captain, a lieutenant, and six sergeants report to the Director. In turn, the Director reports directly to the Chief of Police.

The civilian OPA Director is appointed by the Mayor and confirmed by the City Council. The OPA Director reports to the Mayor and City Council about OPA and Department activities, policies, and procedures.

The most serious internal and citizens' complaints are investigated by the sergeants assigned to OPA. Completed investigations are forwarded to the Director who may agree with the findings, direct further investigation, or recommend different findings. Except in the case of sustained complaints, the decision of the Director is final. Sustained complaints go to the Chief of Police for final decision and the imposition of discipline, if warranted.

Another successful model, the Office of Independent Review (OIR) at the LASD, is a group of six highly qualified lawyers who direct and, if necessary, participate in the LASD's internal investigations of possible misconduct on the streets and in the jails. OIR makes recommendations about discipline to the Sheriff and command staff.

In other cities, like San Francisco, the power to investigate and impose discipline is taken away from the police department entirely and given over to a citizens' review board and police commission.

There remains genuine disagreement among advocates for police reform about the wisdom of a wholesale displacement of law enforcement's internal investigative apparatus in favor of outside review panels, particularly where the power to adjudicate and impose discipline is taken away from the department, whether in whole or in part.

Those who advocate in favor such displacement argue that self-policing will necessarily and unavoidably produce a biased result; that even reasonable, honest, and well-intentioned police investigators simply cannot overcome the pressures from all sides that come to bear on internal investigations of an officer-involved shooting, a death in the jail, or a serious use of force on the street. The pressure can come from many sources. It

may come from superiors within the police organization who do not want an embarrassing incident publicly exposed, or who fear the credibility and authority of the police will be undermined if a use of force is held to be against policy. Pressure may come from the police union, which may be inclined to vigorously defend even bad officers. A mayor or city council may not want to hear bad news about the police department, and may encourage suppression of it. Finally, fellow officers may not want to see one of their peers held up to withering scrutiny.

Complicating the issue is the tendency of police officers to close ranks when faced with an investigation, creating what has been called the “blue wall,” enforcing a code of silence by intimidating any officer who shows any willingness to cooperate with investigators or point the finger at a fellow officer.

Thus, many police reform advocates conclude that police organizations are insular, self-referential, and mistrustful of outsiders. Accordingly, these reformers argue, the power of law enforcement to investigate and self-police must be taken away and given to a review board.

On the other hand, there are other reform advocates who argue that the power to adjudicate wrongdoing and impose discipline belongs, at least presumptively, to the law enforcement agency in question. Without responsibility to adjudicate wrongdoing and impose discipline, these reformers argue, senior executives in the law enforcement agency cannot be held personally accountable for dealing with officer misconduct, and will simply blame the civilian review board for its decisions. Their argument continues by stating that unless the police are held strictly accountable up and down the chain of command for actively managing the risk of police misconduct, the self-protective habits of the police will never change. It is one thing to achieve a fair result in a given investigation; it is far more powerful, these reformers contend, to change police culture in general by requiring strict accountability.

Yet, even police reformers who question the wisdom of displacing a police department's power to investigate internal misconduct do not contend that self-policing is an inalienable right. Rather, both sides agree that the ability to police oneself is a rare privilege afforded only to certain, highly trained and disciplined professionals—be it university faculty, lawyers, doctors, or certified public accountants. The privilege comes with heavy obligations to demonstrate upon demand, in any individual case or in general, that the results reached by self-policing are fair, reasonable, and based on thorough and dispassionate investigation. If that burden cannot be met, then the privilege is no longer merited, and should be taken away; or, at least, the power to investigate must be shared with civilian overseers.

I personally favor the Seattle and OIR models. They promote internal accountability for management of the risk of police misconduct in the jails and on the streets while providing a failsafe against incompetent or biased internal investigations. It is too late in the day to have internal police investigations not accountable to a balanced and fair outside monitor or observer.