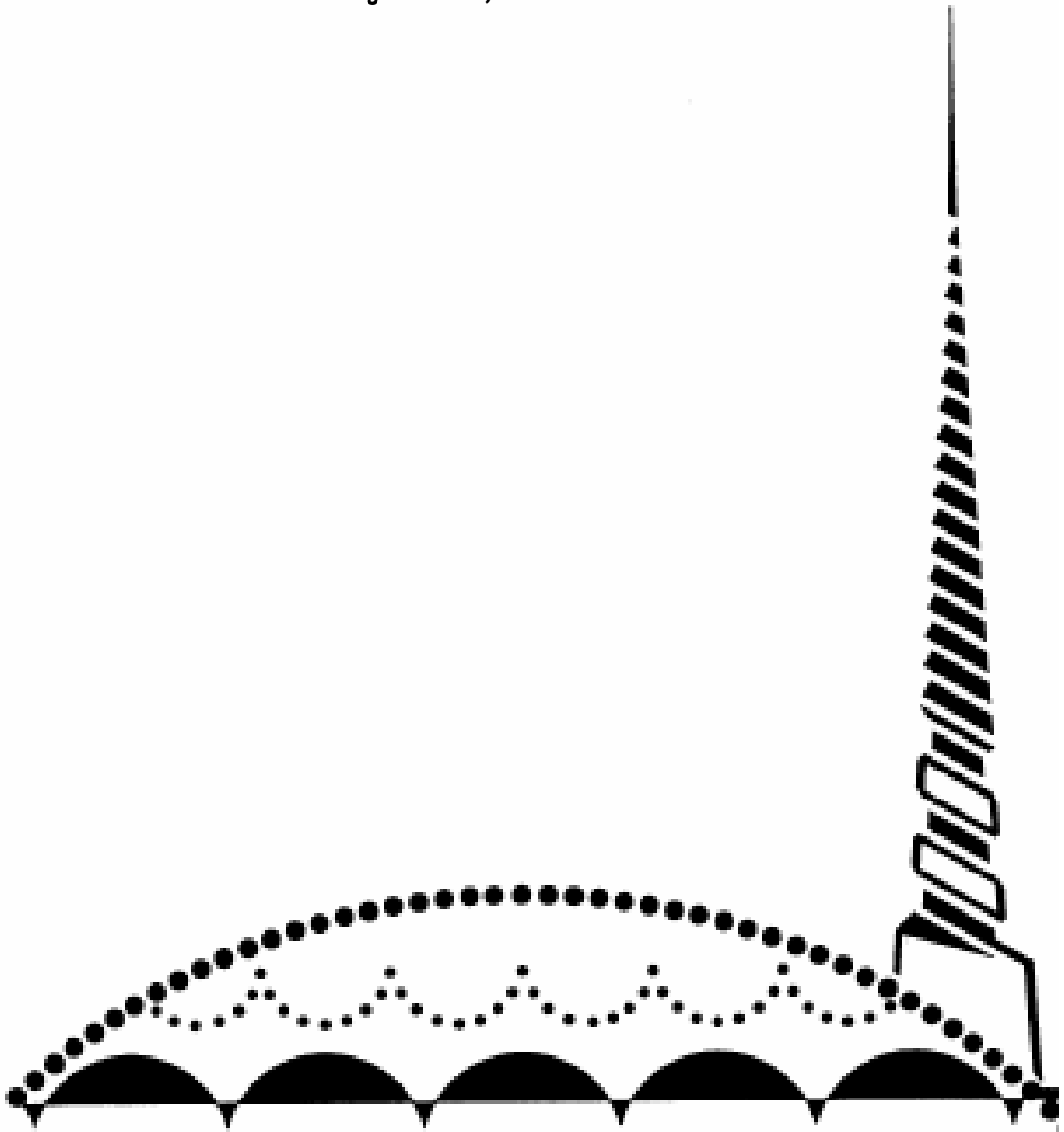
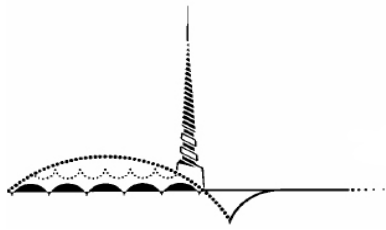


2005-2006 MARIN COUNTY CIVIL GRAND JURY

MARIN COUNTY SHERIFF'S OFFICE:  
THE PUBLIC'S BUSINESS

June 22, 2006





## Marin County Civil Grand Jury

### MARIN COUNTY SHERIFF'S OFFICE: THE PUBLIC'S BUSINESS

#### SUMMARY

*“There is increasingly broad agreement that...law enforcement’s business, in general, is the public’s business, and therefore must be open and transparent.”* — Merrick Bobb,  
Special Counsel to the Los Angeles Sheriff’s Department and  
President, Police Assessment Resource Center

The 2005-2006 Grand Jury’s investigation of the business of the Marin County Sheriff’s Office (MCSO) revealed that the Department is not open to citizen input into its policies and procedures. Information about citizen concerns that is readily available to the Department is under-utilized, and there is evidence that Citizen Complaints are not always thoroughly investigated.

These matters and all other business of the Sheriff could be openly debated by the public in a contested election. However, the current Marin County Sheriff has never faced opposition in an election, so the citizens have not had the opportunity to evaluate alternative views on law enforcement, and the Sheriff has not had the benefit of hearing citizens’ priorities and concerns. To his credit, the Sheriff has conducted citizen surveys and has appointed an Advisory Council of citizens representing many of his constituencies. However, these do not assure that citizen input is considered in policy decisions. In fact, MCSO officials told us that their Policy Committee does not consider citizen input.

MCSO’s “Citizen Involvement Policy” brochure invites citizen complaints about both personnel and procedures but does not tell citizens about how to complain about the Sheriff’s procedures. The Department does not track the policies and procedures inherent in citizen complaints, so it is unable to step back and systematically examine its policies and procedures from the perspective of citizens.

The California Penal Code requires law enforcement agencies to establish a citizen complaint procedure, but it does not define how that procedure should be implemented. Our study indicated that in most cases, MCSO conducted a thorough and complete investigation of citizen complaints but not always.

If a citizen files a complaint against a Marin County Sheriff’s Office employee and doesn’t talk with MCSO about it, the complaint may not be thoroughly investigated.

Twenty percent of the citizens who filed complaints did not talk with the Department about them. The Grand Jury found that not all of those complaints were thoroughly investigated. The fact that a citizen is not interviewed should not render his allegations any less worthy of investigation.

The Grand Jury found that citizens are not warned that any information they provide in a citizen complaint can be used against them in criminal proceedings. Additionally, the citizen complaint form has been translated into Spanish, but the brochure explaining the process has not.

Communities around the country have established citizen review boards to oversee the citizen complaint process. However, the California Constitution does not permit “general law” counties like Marin to establish citizen review boards in contrast to “charter” counties like Los Angeles. The Marin County Board of Supervisors is, nevertheless, empowered to establish a panel to study problems within the Sheriff's Office, if those problems are of “general or special interest” to the Board. (See Government Code 31000.1)

The Marin County Board of Supervisors could establish a citizen panel, not to review complaints, but to study problems within the Sheriff's Office such as the lack of citizen input in MCSO policy review. Such a panel would give the citizens the opportunity to record, publicly discuss, and report their concerns. Since “law enforcement's business is the public's business,” we should expect no less.

The Grand Jury recommends that:

- The Board of Supervisors establish an independent Blue Ribbon Policy Panel to study MCSO policy that is identified by the Panel, the Sheriff, or Board of Supervisors or that may arise from lawsuits or the Policy Review Report. The Panel would make recommendations to the Board of Supervisors and would distribute their report to MCSO leadership, the citizens, and the Grand Jury.
- MCSO revise its citizen complaint procedures and the “Citizen's Involvement Policy” brochure to make them more informative and accessible.
- MCSO include space on the citizen complaint form for a citizen to register a complaint about department policies or procedures.
- MCSO record and thoroughly investigate every complaint, including every allegation mentioned in every complaint.
- MCSO create comprehensive reports on citizen complaints and on the practices, policies, and procedures of concern to citizens.

## GLOSSARY

**Charter county:** County government structured and guided by a Charter that outlines the powers and duties of local government officials. Citizens approve the Charter. The Charter can constitute, regulate, and govern local law enforcement and can give the board of supervisors the statutory duty to supervise the conduct of all county officers.

**Citizen:** Throughout this report, the term citizen refers to any person regardless of that person's legal status, as that is the convention used by the Marin County Sheriff's Office (MCSO).

**General law county:** These counties have only those powers expressly conferred upon them by the Legislature. There are no statutes that specifically authorize a general law county to establish civilian review boards to investigate citizen complaints, and case law has supported that position. Marin is a general law county.

**Internal investigation:** An official inquiry into the facts and circumstances of allegations of employee misconduct initiated by another employee to determine whether or not misconduct occurred. It is known as a Special Investigation at MCSO, but we have used the more familiar 'internal investigation' in this report.

**Officer:** Peace Officer; any sworn employee of MCSO

**Policy:** A plan or course of action intended to influence and determine decisions, actions, and other matters

**Practice:** A habitual or customary course of conduct

**Procedure:** A set of established methods for conducting the affairs of an organized body

## 1 BACKGROUND

California's Constitution mandates that all sheriffs be elected and answer only to the State Attorney General. Marin County's Sheriff affirmed this independence of his office when he stated, "As an elected official, I do not answer to the County Administrator and only answer to the Board of Supervisors during the development of my budget. Neither entity has any authority over the Marin County Sheriff's Office."<sup>1</sup>

Citizens can exercise their authority over the Sheriff at election time. But the ballot box is a hollow system of accountability when the elections for Sheriff are repeatedly uncontested and when citizens hear no opposing viewpoints from challengers. The last contested election for Sheriff in Marin County was in 1982.

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<sup>1</sup> Sheriff Robert T. Doyle, Official response to the 2004-2005 Grand Jury report: "Looking Between the Lines – A Review of the County's Budgeting Process," addressed to Grand Jury Foreperson Patrick Burke, June 29, 2005.

The California Constitution does not permit “general law” counties like Marin, as opposed to “charter” counties, to establish citizen review boards.<sup>2</sup> These boards review citizen complaints against officers and set and review department policies, practices and procedures.<sup>3</sup> However, the Marin County Board of Supervisors is empowered to establish a panel to study problems with the Sheriff’s Office, if those problems are of “general or special interest” to the Board.<sup>4</sup>

Irrespective of how counties are established, the State of California mandates minimum requirements for a citizen complaint process regarding the actions of individual employees. Penal Code § 832.5 states:

“Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of those departments or agencies and shall make a written description of the procedure available to the public.”

This report is not the first time the Grand Jury has considered the topic of MCSO accountability. The 1997-1998 Grand Jury recommended oversight of the citizen complaint process for the Sheriff’s Office and all municipal police departments in the County. In response, Sheriff Robert T. Doyle wrote, “We believe that the Grand Jury should be our system’s ‘checks and balances.’”<sup>5</sup>

There are citizens who apparently agree. Ten percent of the complaints from citizens received by the 2005-2006 Grand Jury referenced the policies and practices of the Sheriff’s Office.

The objective of this report is twofold: 1. to provide the Sheriff’s Office with recommendations that would enhance the effectiveness of MCSO policies, procedures, and the citizen complaint process; and 2. to provide opportunities for citizens and the Board of Supervisors to have an appropriate and helpful voice in the work of MCSO.

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<sup>2</sup> Martin Mayer, “Civilian Review Boards—An Overview.” Mr. Mayer is an attorney in Fullerton, CA, and serves as counsel to the California Police Chief’s Association, the California State Sheriff’s Association, and the California Peace Officers’ Association.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid. Government Code § 31000.1 permits the Board of Supervisors to “Appoint commissions or committees of citizens to study problems of general or special interest to the board and to make reports and recommendations to the board.”

<sup>5</sup> Sheriff Robert T. Doyle, Official response, dated January 6, 1998, to a 1997-1998 Marin County Grand Jury report, “Reforms Needed in Police Complaint Investigation and Oversight” suggesting a citizen oversight committee be formed to monitor complaints about the Sheriff and local police departments.

## 2 APPROACH

The Grand Jury examined the Sheriff's Department from four perspectives:

- We reviewed the processes for initiating and investigating citizen complaints against officers.
- We reviewed the mechanisms citizens use to register complaints about department practices.
- We explored the way the Department reviews its policies.
- We researched how other jurisdictions approach the accountability of their law enforcement agencies.

The Grand Jury interviewed selected members of the Human Rights Commission, ACLU, Marin Women's Commission and Marin Abused Women's Services, among others. We reviewed the minutes of some of the meetings of those groups that addressed MCSO operations.

We anonymously visited the Sheriff's Office in the Civic Center and substations in Kentfield and Marin City to request citizen complaint information. We reviewed the online availability of information about citizen complaints and the complaint forms.

We interviewed members of the Sheriff's Office and received from them:

- A report detailing all citizen complaints and internal investigations between January 1, 2002, and November 1, 2005
- Access to all citizen complaint and internal investigation files. We reviewed 31 of the 61 citizen complaints and 3 of the 41 internal investigations.
- Department policies covering citizen complaints
- Reports prepared for the Board of Supervisors
- Results of a 2004 constituent survey conducted by the Sheriff's Office

We attended a meeting of the Sheriff's Citizen Advisory Council and interviewed selected members of County government, the Board of Supervisors, and local law enforcement.

Our research included reviewing:

- Sections of the Penal Code that address citizen complaints
- Court records of outstanding lawsuits against the Sheriff's Office
- Grand Jury reports and responses focusing on citizen complaints from San Diego, Marin, and Los Angeles Counties

- Citizen complaint and oversight procedures in Novato and Sausalito and other jurisdictions, including San Jose; Berkeley; San Francisco; San Diego; Los Angeles; Albuquerque, NM; and Boise, Idaho

To better understand models of oversight programs, we interviewed a representative of the National Association for Civilian Oversight of Law Enforcement (NACOLE), and we reviewed materials from the Police Assessment Resource Center (PARC).

### 3 DISCUSSION – CITIZEN COMPLAINTS AGAINST OFFICERS

Our research confirmed that an effective citizen complaint process encourages citizen participation and instills public confidence in the integrity of law enforcement. In a model program, experts recommend that information about the process be readily available to all citizens; every complaint should be thoroughly investigated and an appeal process be independent and impartial.<sup>6</sup> In progressive jurisdictions, reports on citizen complaints are public information except for confidential personnel data.<sup>7</sup>

In this section of the report, we discuss the scope of our review of complaints, accessibility, and the processing of complaints.

#### 3.1 Scope of Review of Citizen Complaints against Officers

Table 1 provides an overview of the Citizen Complaints received by the MCSO from 2003 to November 2005.<sup>8</sup>

**Table 1 Citizen Complaints**

Year	Citizen Complaints Received
2003	12
2004	10
To 11/1/05	14
Total	36

We evaluated the quality of the Department's investigations, the openness of the complaint process, and the integrity of the Department's findings.

<sup>6</sup> See especially Merrick Bobb, "Review of National Oversight Models for the Eugene Police Department," Police Assessment Resource Center, February 2005, <http://www.parc.info/pubs/index.html> and Samuel Walker, "Best Practices in Police Accountability," <http://policeaccountability.org>.

<sup>7</sup> An example of a report on an investigation of a citizen complaint by the Boise Ombudsman can be found at <http://www.boiseombudsman.org/2006investigativerpt.htm>.

<sup>8</sup> The jail and San Quentin have their own inmate grievance processes, and sometimes inmates file complaints against officers with the Sheriff's Office. The Grand Jury did not review the inmate grievance procedures nor did we include in our study the twenty-five inmate complaints filed with MCSO.

## 3.2 Accessibility

### 3.2.1 *The Citizen Complaint Form and Brochure*

MCSO policy states that “Complaints shall be accepted from any person, by any method, in person or anonymously.”

The Sheriff’s Office provides a citizen complaint form upon request by mail, online, at the Civic Center, and at the three substations. Additionally, citizen advocacy groups make copies available. A printed brochure describes the MCSO “Citizen Involvement Policy.”

The brochure states:

“The Sheriff’s Department will readily accept compliments, inquiries, constructive criticism, and valid complaints about personnel and procedures from the citizens of Marin. A thorough and impartial investigation will be conducted on all complaints, and the complainant will be notified of the results of the investigation.”

Our investigation of citizen complaint procedures found that:

- When the Grand Jury anonymously requested citizen complaint information from two MCSO substations, the brochure was not given to us.
- Citizen complaint forms are available in Spanish, but the brochure has not been translated.
- Complaint forms and brochures are not available in patrol cars. MCSO officials state that the potential complainant can talk with the highest-ranking official at the scene of an incident, or a deputy will offer to mail or deliver the information to the citizen.
- Citizens filing complaints against MCSO personnel are not warned of the potential risk of filing a complaint. If a citizen is the subject of a criminal investigation, information in a complaint could be used against him in court. A comparable complaint brochure produced by the San Francisco Office of Citizen’s Complaints states: “If a criminal case is pending against you, you should speak with your attorney before filing a complaint.”

### 3.2.2 *Citizens’ Fears*

Citizen advocacy groups told us that some citizens have not filed complaints because they fear retaliation. In response, the leadership of MCSO emphatically stated that if retaliation is taking place, they want to know about it immediately because it would not be tolerated.

When a citizen picks up a citizen complaint form at the Civic Center, the complainant is asked to speak with a senior officer. To the Sheriff’s Office, this is seen as an opportunity

to educate the citizen about standard procedures in law enforcement that might have been misinterpreted. We heard from citizen advocacy groups that some citizens feel this is an intimidating interview and an attempt to discourage them from filing a complaint.

“A lot of citizens” decide not to file complaints after talking with staff according to MCSO officials. Because no records are kept of these conversations, we do not know how many citizens considered filing complaints, nor do we know the nature of those complaints.

### 3.3 Processing Citizen Complaints

According to Penal Code § 832.7(b), a copy of the Citizen Complaint must be provided to the complainant:

“A department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.”

According to an MCSO official, this is not happening. This is a violation of the Penal Code.

When the copy of the complaint is furnished to the citizen, the department should give the citizen the MCSO-assigned complaint number and inform him that if he is involved in criminal proceedings related to his complaint, he should speak with his attorney before being interviewed by the Investigator.

#### 3.3.1 *Complaints Classified as “Citizen Concerns”*

According to MCSO policy, citizen complaints that are withdrawn or “resolved merely as an issue of concern” are called Citizen Concerns and are filed in a binder and retained for 12 months. There is no further action taken or consideration given to the complaint, unless an officer has committed a violation; in that case, an internal investigation is initiated.

According to MCSO policy, complaints can be filed “by any method, in person or anonymously.” Of the eight Citizen Concerns received in the last year, there was one complaint from an individual who could not be reached by phone or by registered mail, and who did not use a Citizen Complaint form. The Grand Jury questioned why this complaint had not been investigated. MCSO stated that, based on the information provided in the correspondence, there was no merit to the allegations and thus the complaint was treated as a Citizen Concern. These allegations were not fully investigated, and MCSO violated its own policy.

#### 3.3.2 *Investigation*

Once a complaint is accepted and logged in, it is assigned to an Investigator who interviews the complainant, the MCSO employees named in the complaint, and any witnesses named in the complaint. All interviews are taped and transcribed but according

to MCSO leadership, citizens are not informed that statements they make could be used in criminal proceedings against them.

Following the interviews and after a review of all materials, the Investigator recommends a "finding."<sup>9</sup> The burden of proof to sustain a finding is a "preponderance of the evidence."

Of the investigations completed in the three years under review, one complaint in 30 was sustained. The California Attorney General's Report "Crime in California"<sup>10</sup> shows that in 2003, 1 in 9.5 citizen complaints was sustained statewide.

A citizen often makes multiple allegations of misconduct in a complaint and sometimes names multiple officers. In fact, the 36 complaints under review were submitted by 38 citizens, contained 48 allegations, and named 44 officers. For example, a citizen might make two allegations in his complaint: mistreatment during an arrest and an officer failing to identify himself. At MCSO, the result of the investigation would be one finding, not one finding for each allegation. There were no incidents when multiple allegations within one citizen complaint resulted in different findings. However, internal investigations often resulted in multiple findings. Of the files the Grand Jury reviewed, most were thoroughly investigated and reasonably resolved.

However, in one case we reviewed, a complainant refused to be interviewed by the Sheriff's Office. This case was not thoroughly investigated, and four officers were exonerated. In reviewing this complaint for the Grand Jury, the supervising officer was convinced that an investigation would not have changed the outcome. Nevertheless, by not investigating this complaint, MCSO violated its own policy.

The burden of proof is borne by the citizen in a citizen complaint because an accused employee is innocent until proven guilty. In the cases we reviewed, 20% of the complainants did not want to be interviewed or could not be reached. MCSO told us that when they cannot talk with the complainant, they cannot conduct an adequate investigation and they sometimes close the case.

The Grand Jury found that all citizen complaints were not thoroughly investigated. The Marin County Sheriff's Office should thoroughly investigate every complaint, including every allegation mentioned, even when the claimant is not interviewed and when the complaint is not submitted on a citizen complaint form.

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<sup>9</sup> MCSO policy lists possible findings as "sustained, not sustained, exonerated, unfounded, frivolous, or referred disposition."

<sup>10</sup> Office of the Attorney General, California Department of Justice, "Crime in California," Table 56, "Citizen Complaints Against Peace Officers, 1981-2003," <http://caag.state.ca.us/cjsc/publications/candd/pub.htm>

### 3.3.3 *Final Disposition of Citizen Complaints*

The Sheriff reviews the completed investigation file and makes the ultimate determination of the findings and any corrective action. His initials appear on each of the final reports.

There is no statutory requirement for the Sheriff to provide an appeal process to citizens' complaints in either "general" or "charter" counties. Citizen review boards in charter counties can handle citizen complaints, receive and evaluate appeals, and change findings. Because Marin is a general law county, its citizens do not have these options. Their only recourse is litigation.

## 4 DISCUSSION -- POLICY REVIEW

"There is increasingly broad agreement that whether or not the police retain the power to police themselves, law enforcement's business, in general, is the public's business, and therefore must be open and transparent." Merrick Bobb<sup>11</sup>

In contrast to the MCSO's citizen complaint process where the voice of citizens is heard, there is no independent citizen input into, or review of, MCSO policies. This became apparent as we investigated the citizen complaint process. We expanded our study and looked at how MCSO policies are reviewed, the elements of a policy review, how other jurisdictions conduct policy review, and what could assure a more open and transparent MCSO.

### 4.1 Current Practice by MCSO

Policies are reviewed on an ad hoc basis by a Policy Committee of sworn and civilian employees at all levels in the chain of command at the Sheriff's Office. Ideas for new policies or revisions to existing policies can come from anyone in the Department. Policies are reviewed when they become obsolete, or when flagged by individual citizen complaints or internal investigations, or as a result of changes in the law or allegations raised in lawsuits. Officers attending classes and seminars with other agencies often return with suggested policy changes. However, there is no systematic review of policies, and input from outside the department is not considered by the committee.

The Sheriff voluntarily submits 10-12 policies each year for review by County Counsel.

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<sup>11</sup> "Review of National Oversight Models for the Eugene Police Department," Police Assessment Resource Center, February 2005. Mr. Bobb is president of PARC and special counsel to the Los Angeles Sheriff's Department.

## 4.2 Triggers for a Policy Review

There are at least three sources of information that could trigger a policy review: statistics generated from citizen complaints, input directly from citizens, and management reporting.

### 4.2.1 *Statistical Data from Citizen Complaints*

MCSO currently regards a citizen complaint as one citizen alleging misconduct by one officer. Dr. Samuel Walker,<sup>12</sup> a foremost researcher on law enforcement oversight, concluded:

“Focusing only on individual complaints tends to make officers on the street the scapegoat for police problems. In fact, a lot of police misconduct is the result of poor management. In the long run it does little good to focus on punishing individual officers and to ignore the underlying causes. Policy review addresses these management shortcomings.”<sup>13</sup>

We were unable to determine if MCSO analyzes the policies and procedures that form the basis of citizen complaints to determine if there are patterns of behavior or trends that should be reviewed or further studied.

The Grand Jury learned that eleven officers had more than one complaint filed against them in the three-year period reviewed. One officer had four complaints filed against him in the first 10 months of 2005. When asked if the Department knew that one officer had multiple complaints against him, MCSO leadership responded they “[didn’t] remember anything in recent past that’s caused us to alarm on [sic] any one or two officers... We’re not a large agency and if the same name keeps popping up, that’s a message to us.” For some reason, MCSO did not know about this officer’s complaint history.

For the three-year period under review, 70% of the officers named in the allegations were “exonerated,” meaning that according to the Department, the allegations of wrongdoing were not true because the officers were acting in accordance with Department policy and the law.

Does this exoneration rate of 70% raise questions about the integrity of citizen complaint investigations? Does it suggest citizen complaints are misunderstood? Are there policies and procedures that generate citizen complaints? How much of a communication gap is there between the complaining public and MCSO?

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<sup>12</sup> Professor Emeritus, Criminal Justice Department, University of Nebraska, Omaha

<sup>13</sup> “Best Practices in Police Accountability” Dr. Walker’s Web site is: <http://policeaccountability.org>

In the MCSO database, the following allegations were identified in the exonerated complaints.

**Table 2 Allegations Identified in Exonerated Complaints**

<b>Allegation</b>	<b>Number</b>
Deputy refused to accept citizen arrest	1
False arrest, battery, false imprisonment	1
Falsified police report	1
<b>Harassment</b>	<b>5</b>
Illegal search	1
Inadequate search	1
Unlawful application of 5150	1
<b>Unlawful detention</b>	<b>5</b>
Unlawful force during off-duty arrest	1
Unlawful force, unlawful arrest	1
Unlawful search, arrest with force	3
Unprofessional conduct	1
Violated 4 <sup>th</sup> Amendment	1
Total	23

Two categories stand out: Harassment and Unlawful Detention. Of those 10 allegations, six came from citizens in Marin City or arose from confrontations in Marin City. Are there MCSO policies or practices that cause Marin City residents to file complaints about harassment and unlawful detention? Are there policies or procedures that cause officers working in Marin City to receive unnecessary citizen complaints? A review of where complainants reside, the nature of the complaints, and the officers involved, can provide the Department data to identify whether policies, procedures, and training need to be improved.

#### **4.2.2 Input from Citizens**

Thirty-eight percent of the citizen complaints received by the Los Angeles County Sheriff's Department between 1998 and 2002 were complaints covering policies and procedures of the Department.<sup>14</sup> However, there is no formal mechanism for all citizens of Marin County to register complaints about Sheriff's Department procedures.

The Marin Sheriff's Office periodically conducts a survey of approximately 300 citizens who recently had contact with the Sheriff's Department. The questionnaire asks citizens to rate the quality of service, identify concerns, and offer suggestions for improvement. Citizens often mention specific procedures in their responses, and that information could be an additional source of data for analysis.

<sup>14</sup> "Law Enforcement and the Citizen Complaint Process," 2002-2003 Los Angeles Grand Jury, <http://grandjury.co.la.ca.us/gjury02-03/grandjury02-03.pdf>

### 4.2.3 *Management Reporting*

MCSO officials indicated that comprehensive reports about citizen complaints against officers and about potentially troublesome procedures do not exist. Much of the information needed for analysis is readily available on the citizen complaint database, in the Sheriff's Survey results, and in the binder of Citizen Concerns, but that information is not combined in a comprehensive report that would enable management to analyze patterns of behavior and policy trouble-spots.

## 4.3 Citizen Policy Review

Citizen review organizations began in the 1960's as a result of law enforcement's overzealous response to demonstrations by citizens. More than 100 organizations exist today and primarily oversee the citizen complaint process.<sup>15</sup> Some review policies and make recommendations for change. Generally, the review is conducted by an individual, Auditor or Ombudsman, or by a board or commission.<sup>16</sup>

Marin, as a general law county, is statutorily prohibited from establishing a review board to oversee the citizen complaint process. The County could, however, create a citizen panel to review problems within MCSO as identified by the Board of Supervisors. According to Government Code 31000.1:

“[t]he board of supervisors may appoint commissions or committees of citizens to study problems of general or special interest to the board and to make reports and recommendations to the board. The members of such commissions need not be specially trained or experienced with respect to the matters to be studied...”

The Sheriff's Citizen Advisory Council or the Grand Jury could conceivably serve as a review panel; however as explained below, these options are not viable.

The Advisory Council is composed of 20 citizens selected by the Sheriff from his various jurisdictions and constituencies. This group discusses how to promote MCSO and educate the public about MCSO's work. But the Council meets infrequently and does not meet publicly. More importantly, because it is appointed by the Sheriff, the Council is not the impartial group needed to provide an independent, objective review and analysis of policy.

The Grand Jury is the only outside agency with subpoena power that has the statutory authority to comprehensively review policies and procedures and make recommendations that the Sheriff must respond to publicly. The Sheriff characterized the Civil Grand Jury

<sup>15</sup> Samuel Walker, *Police Accountability* (2001) <http://policeaccountability.org>

<sup>16</sup> Sue Quinn, “Varieties of Civilian Oversight: Similarities, Differences, and Expectations,” NACOLE, Revised 12/2004

as MCSO's "checks and balances" in his letter of January 6, 1998.<sup>17</sup> However, the Grand Jury has no statutory obligation to study the policies of the Sheriff's Office or to review citizen complaints. In fact, the Sheriff's Office is just one department within the jurisdiction of the Grand Jury that also includes all county and city governments, their boards, commissions, departments and bureaus, and their elected or appointed officials.

Given the lack of independence of the Sheriff's Citizen Advisory Council and the absence of a statutory mandate to the Grand Jury, neither the Sheriff's Citizen Advisory Council nor the Grand Jury is an appropriate body to act as a citizen review board.

## 5 WHAT IS NEEDED AT MCSO?

The problem at MCSO is that there is no independent citizen input into or review of MCSO policies, nor is the review of MCSO policies open and transparent.

The Board of Supervisors should establish a Blue Ribbon Policy Panel of citizens directed to study MCSO problems, thus adding the necessary citizen perspective to the work of the Department. Most importantly, the findings and recommendations of the Panel could provide the Board of Supervisors and MCSO leadership with the analysis and independent view that MCSO needs and the citizens deserve.

"Law enforcement's business, in general, is the public's business."<sup>18</sup> The voice of the citizens of Marin County must be heard by the Sheriff's Office. An independent Blue Ribbon Policy Panel would ensure that citizen voices are recorded, reported, and publicly discussed.

## 6 COMMENDATIONS

Sheriff Doyle is known for his honesty and integrity. There is no crisis of confidence in the leadership of the Sheriff's Office. We have not had riots in our jail or a news exposé outlining excessive force by rogue deputies. Sheriff Doyle is praised by municipal law enforcement officials for running an efficient jail and for being collaborative in law enforcement matters. To many County government officials, he is responsive and thorough.

In August 2005, citizen complaint investigations were centralized in MCSO's Bureau of Administration and Support Services rather than being conducted by various officers throughout the Sheriff's Office. MCSO officials believe this change provides tighter control over the investigative process, enables the department to manage the

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<sup>17</sup> Sheriff Robert T. Doyle, Official response, dated January 6, 1998, to a 1997-1998 Marin County Grand Jury report, "Reforms Needed in Police Complaint Investigation and Oversight," suggesting a citizen oversight committee be formed to monitor complaints about the Sheriff and local police departments.

<sup>18</sup> Merrick Bobb, "Review of National Oversight Models for the Eugene Police Department," Police Assessment Resource Center, February 2005.

organizational culture, and makes personnel problems immediately apparent. The Grand Jury commends the Sheriff's Office for this change.

We commend the Sheriff's Office personnel for their openness and willingness to explain MCSO policies and to assist us in our investigation. They were most welcoming and helpful.

## 7 FINDINGS

- F1. The "Citizen Involvement Policy" brochure:
- Is not always distributed with the citizen complaint form
  - Is not printed in Spanish
  - Does not explain how citizens can complain about procedures even though it says they can
  - Does not warn citizens that information they supply on the citizen complaint form could be used against them in a criminal proceeding
- F2. Citizen complaint forms and "Citizen Involvement Policy" brochures are not available in patrol cars.
- F3. There is no formal mechanism for citizens to register complaints about policies and procedures with the Marin County Sheriff's Office.
- F4. Interviews conducted before a complaint is filed intimidate some citizens and discourage others from filing a complaint.
- F5. MCSO does not provide citizens with copies of their complaints pursuant to the requirements of Penal Code § 832.7(b).
- F6. No records are kept of complaints by citizens who decide not to file formal complaints after talking with MCSO officials.
- F7. Citizens are not warned that information on the citizen complaint form, or disclosed during an interview, could be used against them in a criminal proceeding.
- F8. Not all complaints are thoroughly investigated:
- One citizen complaint was not thoroughly investigated when the citizen could not be reached for an interview.
  - One complaint was classified as a Citizen Concern when it was not submitted on the citizen complaint form and subsequently was not thoroughly investigated.
- F9. In the 30 citizen complaints with findings, all allegations within each complaint received the same finding.
- F10. In the 30 citizen complaints with findings, only one complaint was sustained.

- F11. Marin County, as a general law county, cannot establish an independent citizen review board to oversee the citizen complaint process.
- F12. MCSO does not prepare reports that analyze citizen complaints or the implications of its policies.
- F13. There is no independent citizen input into or review of MCSO policies, nor is the review of MCSO policies open and transparent.
- F14. The Board of Supervisors has statutory authority to establish a citizen panel to review problems of interest to them.

## 8 RECOMMENDATIONS

The Grand Jury recommends:

- R1. That the Marin County Sheriff's Office revise the "Citizen Involvement Policy" brochure and:
  - Attach it to every complaint form
  - Translate it into Spanish and put it online in Spanish
  - Include information on how to submit complaints about procedures and how those complaints will be processed
  - Warn citizens that information they supply on the citizen complaint form could be detrimental to them in a court case
- R2. That MCSO include space on the citizen complaint form for a citizen to register a complaint about department policies or procedures.
- R3. That MCSO revise the Citizen Complaint procedures as follows:
  - Keep Citizen Complaint forms and "Citizen Involvement Policy" brochures in patrol cars at all times
  - Discontinue interviews with citizens before complaints are filed
  - Provide complainants a copy of their complaint with the assigned complaint number
  - Record every complaint and tally the data for analysis
  - Advise complainants to consult with their attorneys if they are involved in criminal proceedings related to their complaint, before filing and participating in a citizen complaint:
    - in the "Citizen Involvement Policy" brochure
    - in the letter sent with the copy of their citizen complaint form
    - before the interview with the investigator begins

- R4. That MCSO thoroughly investigate every complaint, including every allegation mentioned, even when:
- The claimant is not interviewed.
  - The complaint is not submitted on a citizen complaint form.
- R5. That MCSO annually prepare an internal citizen complaint report based on data from citizen complaints to include the tabulation of:
- Each type of complaint (force, department, procedure, policy, etc.)
  - Allegations and type of allegations within each complaint
  - Complaints against each officer
  - Complaints in selected geographical areas
  - Citizens making complaints
  - Other statistical data as may be helpful to MCSO.
- R6. That MCSO create a Policy Review Report to identify and analyze the policies of most concern as identified by citizens in the:
- Sheriff's survey responses
  - Citizen complaints against officers
  - Citizen complaints about policies
  - Citizen Concerns

This report should be sent annually to the Blue Ribbon Policy Panel, the Board of Supervisors, and the Grand Jury.

- R7. That the Board of Supervisors establish an independent Blue Ribbon Policy Panel to study MCSO policy that is identified by the Panel, the Sheriff or the Board of Supervisors, or that may arise from lawsuits or from the Policy Review Report.

The Panel would make recommendations to the Board of Supervisors, would distribute their report to MCSO leadership, the citizens and the Grand Jury, and would meet annually with the Board of Supervisors.

The Sheriff and the Board of Supervisors would select the members of the Panel from citizens recognized for their impartiality, integrity, community leadership, and commitment to service.

## REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Grand Jury requests responses as follows:

From the following individuals:

- Marin County Sheriff: F1- F13; R1-R7

From the following governing bodies:

- Marin County Board of Supervisors: F14; R6, R7

The governing body indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933(c) and subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

The California Penal Code section 933(c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

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Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person, who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.