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CIVILIANS ON POLICE USE-OF-FORCE REVIEW BOARDS: A DELPHI STUDY INVOLVING SIX POLICE DEPARTMENTS

by

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September 2018

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CIVILIANS ON POLICE USE-OF-FORCE REVIEW BOARDS: A DELPHI STUDY INVOLVING SIX POLICE DEPARTMENTS

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ABSTRACT

Some U.S. law enforcement agencies incorporate voting community members on their use-of-force review boards to support transparency, legitimacy, and community relations. This thesis set out to determine whether police departments that incorporate community members on their review boards follow similar standards in structure and operations. Six cities were included in this study: Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson. A comparative case study method was used to evaluate their use-of-force review board practices. A two-round Delphi, which asked nine board members from the six cities to identify ideal structures and operations for these boards, found a wide variety of practices. All Delphi participants expressed support for the practice of including voting community members. The literature review and Delphi results identify several recommendations for improving these boards. Recommendations include increasing training, term limits, the authority to review, and opportunities to question for voting community members as well as improving public reporting.

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LIST OF ACRONYMS AND ABBREVIATIONS

CIRB	Critical Incident Review Board (Tucson)
DPD	Denver Police Department
LVMPD	Las Vegas Metropolitan Police Department
OPD	Olympia Police Department
PPD	Phoenix Police Department
PPB	Portland Police Bureau
TPD	Tucson Police Department
UFRB	use-of-force review board

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EXECUTIVE SUMMARY

Civilian involvement in the oversight of law enforcement has been debated for many years. Much of the debate surrounds the citizen complaint process and the extent to which civilian involvement improves the process and outcomes. On one side, law enforcement claims that civilians do not understand what it is like to be a law enforcement employee. On the other side, members of the public claim that law enforcement agencies cannot be trusted to thoroughly and independently investigate themselves.

In May 2015, the President's Task Force on 21st Century Policing recommended, "Law enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy."[1] One recommendation was to incorporate community members in departments' reviews of officer-involved shootings for the purpose of identifying "any administrative, supervisory, training, tactical, or policy issues that need to be addressed."[2]

This thesis identified six law enforcement agencies—in Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson—that have voting community members on their use-of-force review boards. A collective case study was conducted to analyze the structure and operations of the six identified boards. The research finds there is no established standard for incorporating community members on use-of-force review boards. The boards were different in overall size; number, training, and term limits of community members; and methods for recruiting and selecting community members. One similarity was that all the boards have the authority to identify issues as recommended by the President's Task Force.[3]

The structure and operations of the six boards were then compared against criteria suggested in the literature on law enforcement oversight and citizen involvement in

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[1] President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, May 2015), 12.

[2] President's Task Force on 21st Century Policing, 22.

[3] President's Task Force on 21st Century Policing, 22.

government. The criteria included methods for recruiting and selecting community members, term limits, community-member training, the scope of the boards' authority beyond the incident being reviewed, the compulsion of employees to answer questions from the board, and the departments' public reporting of review board decisions. The research showed that all of the boards met at least two of the suggested criteria and were deficient in at least one.

A two-round Delphi survey was conducted to gather opinions about the structure and operation of review boards with community members. The participants in the survey were associated with the six studied law enforcement agencies and, collectively, have participated in over 100 use-of-force review boards that included community members. The survey participants provided information about the benefits of having community members on review boards; the training, recruitment, and selection of community members; and the number of community members on their boards.

The President's Task Force did not recommend specific structure and process criteria for including community members on department use-of-force review boards. The Delphi survey and criteria from the literature suggest that agencies should consider the following actions if they operate or consider operating a board with community members:

- Survey the involved community members to determine their satisfaction with the board process
- Create a method for objectively recruiting and selecting community members
- Set term limits for community members
- Create policy requiring training for community members in use-of-force law, department policy, and department use-of-force training methods
- Give the board authority to examine issues—policy, training, and equipment—beyond the specific incident being reviewed
- Compel testimony from all necessary department employees

- Provide easy public access to relevant policies, incident information, and board findings

The inclusion of community members on use-of-force review boards is a useful method for agencies to increase their transparency and legitimacy in the communities they serve. By creating transparent policies for the structure and operation of review boards, departments can show the public they are holding employees and the department accountable. In the end, both the departments and communities will benefit.

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I. INTRODUCTION

A. PROBLEM STATEMENT

In December 2014, President Obama issued an executive order creating the President's Task Force on 21st Century Policing. The purpose of the order was to "identify the best means to provide an effective partnership between law enforcement and local communities that reduces crime and increases trust."[1] After numerous hearings, the task force released its final report with the following recommendation: "Law enforcement agencies should establish a Serious Incident Review Board comprising sworn staff and community members to review cases involving officer involved shootings." The report further recommended that "every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."[2]

At the time of the President's Task Force report, use-of-force review boards (UFRBs) had been in existence for over 40 years. The first board, operated by the New York Police Department, is composed entirely of department members and still operates. A few jurisdictions—for instance, Denver, Colorado—include voting community members on department UFRBs. In light of the Task Force's recommendations, how does a department best include community members, and does the inclusion of these community members add anything beyond "tokenism"?[3] In other words, how do community members ensure their input is not just heard but given due consideration?

My two hypotheses are, first, that there are no agreed standards for the addition of community members to department UFRBs and, second, that the addition of community members lends police departments legitimacy, the appearance of transparency, and better

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[1] Barack Obama, Executive Order 13684, "Establishment of the President's Task Force on 21st Century Policing," *Code of Federal Regulation*, title 3 (2014): 312.

[2] President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, May 2015), 22, 26.

[3] Sherry R. Arnstein, "A Ladder of Citizen Participation," *Journal of the American Institute of Planners* 35, no. 4 (July 1969): 216–24, https://doi.org/10.1080/01944366908977225.

community relations—but does not improve department accountability in use-of-force reviews.

B. RESEARCH QUESTION

This thesis has one primary research question and two secondary questions.

Primary Question:

What is the most effective use of civilians on police department use-of-force review boards?

Secondary Questions:

What are the similarities and differences among the use-of-force review boards of the six police departments that were chosen for this study?

Is there an ideal structure and process for incorporating civilian voting members on department use-of-force review boards?

C. PURPOSE AND METHOD OF STUDY

This study intends to shed new light on the incorporation of community members on department UFRBs. It looks at both the structure and operation of the review boards operated by six different law enforcement agencies. The collective case study identifies the similarities and differences among the boards in the hope of recognizing an ideal structure and process for incorporating voting members of the community. The study does not intend to look at UFRBs that have non-voting community members or boards that have a voting member who is employed by the jurisdiction in an auditor/monitor role.[4]

Additionally, this study used a Delphi survey of people associated with UFRBs to identify areas for improvement. The Delphi was conducted in two rounds of questions that identified consensus about structure, operation, and other subjective measures of effectiveness.

[4] For instance, Albuquerque Police Department's Force Review Board includes the director of the Civilian Police Oversight Agency. Albuquerque Police Department, *Force Review Board*, SOP 2-56 (Albuquerque: Albuquerque Police Department, 2016), 2, http://documents.cabq.gov/police/standard-operating-procedures/2-56-force-review-board.pdf.

D. CONTRIBUTION AND SCOPE

Civilian oversight of law enforcement has been studied and debated for many years. Generally, the issue arises in relation to complaints filed against law enforcement officers for something they did or said. This thesis examines a subset of civilian oversight—community members as voting members on department UFRBs. By studying this type of oversight, the thesis seeks to improve police–community relations.

E. ORGANIZATION OF THE STUDY

Chapter II provides a review of the current literature on the issue of civilian oversight of law enforcement, suggestions on how to measure the effectiveness of oversight and citizen participation in government, and the theory of capture. Following the literature review is a discussion about the desired outcomes of civilian oversight: transparency, accountability, and a learning organization.

Chapter III discusses the research methods applied in this thesis including a collective case study and a Delphi survey. For each, there is a discussion of the method and its appropriateness for this thesis.

Chapter IV presents a collective case study and analysis of the UFRBs at six law enforcement agencies—in Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson. Then, it notes the similarities and differences as well as compares the boards to some of the ideals suggested in the literature. From this comparison, an ideal structure and operation were designed.

Chapter V presents a Delphi survey of people associated with the aforementioned UFRBs. It also presents a detailed analysis of the Delphi survey with a discussion of the participants' responses to the first round of questions, development of the second round of questions, and finally, the responses to the second round. The information collected from the participants suggests some ideas on an ideal structure and operation for the incorporation of community members on department UFRBs.

Chapter VI offers recommendations following the Delphi and collective case study and suggests topics for future study.

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II. LITERATURE REVIEW

Law enforcement agencies need to understand how to best incorporate community members into various oversight models to gain legitimacy through increased transparency. To that end, this chapter reviews literature related to the history and measurement of police oversight. Because the literature reveals an absence of criteria for measuring the effectiveness of oversight, this chapter also explores citizen participation in government for new ideas. In addition, due to the risk of the regulator—or oversight entity—being "captured" by the regulated—or police department—it also reviews literature related to the risk of capture for suggestions on prevention. Finally, the chapter examines outcomes of use-of-force review boards (UFRBs) for suggested measurement factors.

A. BRIEF HISTORY OF POLICE OVERSIGHT

Policy makers have discussed civilian oversight of law enforcement since the 1920s and have generally focused on citizen complaints.[5] For example, in 1948, the Complaint Review Board was formed in Washington, D.C., with the purpose of reviewing citizen complaints and suggesting possible resolutions.[6] New York City soon followed with its Civilian Complaint Review Board in 1953.[7] Due to a lack of political support and opposition by police unions, the Washington board disbanded in 1973, the New York board in 1966.[8]

The modern growth of civilian oversight began during the civil rights movement of the 1960s and 1970s, with the creation of the Kansas City Office of Community

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[5] Frank V. Ferdik, Jeff Rojek, and Geoffrey P. Alpert, "Citizen Oversight in the United States and Canada: An Overview," *Police Practice & Research* 14, no. 2 (April 2013): 104–16; and Samuel Walker, *Police Accountability: The Role of Citizen Oversight* (Belmont, CA: Wadsworth Thompson Learning, 2001).

[6] Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature* (New York: Vera Institute, May 5, 2002), 10, http://vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf; and Ferdik, Rojek, and Alpert, "Citizen Oversight," 106.

[7] Miller, *Civilian Oversight of Policing*, 14.

[8] Miller, 10, 14.

Complaints.[9] Since then, civilian oversight has grown steadily. In 1995, Walker and Kreisel estimated that 65 oversight agencies existed.[10] By 2017, the National Association for Civilian Oversight of Law Enforcement listed 120 jurisdictions with some form of civilian oversight of law enforcement.[11]

As discussed by Terrill, law enforcement in the United States is primarily a local government issue.[12] In 2008, there were more than 750,000 full-time sworn law enforcement officers in 17,985 state and local law enforcement departments.[13] Only 83 of these departments employed more than 1,000 officers. Meanwhile, more than 8,500 departments employed fewer than 10 full-time sworn law enforcement personnel.[14]

Due to the vastly different sizes of law enforcement agencies, civilian oversight takes many forms.[15] One way to classify civilian oversight is by its core function:

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[9] Kansas City Police Department, "KCPD Chief: Office of Community Complaints Celebrates 40 Years of Community Oversight," *KCPD Chief* (blog), February 5, 2010, http://kcpdchief.blogspot.com/2010/02/office-of-community-complaints.html; James R. Hudson, "Police Review Boards and Police Accountability," *Law and Contemporary Problems* 36, no. 4 (October 1971): 515–38; Andrew Goldsmith, "Civilian Oversight of the Police Complaints Process in the United States: Concerns, Developments, and More Concerns," in *Complaints against the Police: The Trend to External Review* (New York: Oxford University Press, 1991), 291–322; and Samuel Walker, "Police Accountability: Current Issues and Research Needs" (policy paper, National Institute of Justice, November 2006), https://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf.

[10] Samuel Walker and Betsy W. Kreisel, "Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of Police," *American Journal of Police* 15, no. 3 (1996): 65–88, https://doi.org/10.1108/07358549610129640.

[11] "Police Oversight by Jurisdiction (USA)," National Association for Civilian Oversight of Law Enforcement, accessed September 4, 2018, https://www.nacole.org/police_oversight_by_jurisdiction_usa.

[12] Richard Terrill, "Civilian Oversight of the Police Complaints Process in the United States: Concerns, Developments, and More Concerns," in *Complaints against the Police: The Trend to External Review,* ed. Andrew Goldsmith (New York: Oxford University Press, 1991), 291–322.

[13] Brian A. Reaves, *Census of State and Local Law Enforcement Agencies, 2008* (Washington, DC: Office of Justice Programs, July 2011), https://www.bjs.gov/content/pub/pdf/csllea08.pdf.

[14] Reaves.

[15] Werner Petterson, "Police Accountability and Civilian Oversight of Policing: An American Perspective," in *Complaints against the Police: The Trends to External Review* (New York: Oxford University Press, 1991), 259–90; Peter Finn, *Citizen Review of Police: Approaches & Implementation* (Washington, DC: National Institute of Justice, March 2001), https://www.ncjrs.gov/pdffiles1/nij/184430.pdf; and Walker, "Police Accountability: Current Issues and Research Needs."

investigation focused, review focused, or auditor/monitor focused.[16] Investigation-focused oversight has the authority to conduct investigations that are independent from the police department's internal affairs unit. Meanwhile, review-focused oversight does not conduct investigations but reviews concluded police investigations for completeness—and then concurs or disagrees with the findings and proposed discipline. The auditor/monitor model involves a professional staff at an independent city agency with authority to examine department policy and processes for needed recommendations. Depending on the jurisdiction, the auditor/monitor may address individual citizen complaints or department-wide process issues. No matter the form, oversight is aimed at transparency and accountability.[17] However, the question throughout the literature is how to measure whether oversight is effective.

B. MEASUREMENT OF OVERSIGHT

Agencies need to assess the usefulness of the Task Force's recommendation to include community members on UFRBs. In their study of police oversight agencies in Australia, Prenzler and Lewis note, "Measuring the performance of police oversight agencies is not an easy matter."[18] This observation is particularly true since most studies of civilian oversight of law enforcement are directed at the citizen complaint process.

For instance, Terrill and Ingram have studied the changes in sustained disposition rates depending on whether departments have civilian oversight.[19] De Angelis has studied

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[16] Police Assessment Resource Center, *Review of National Police Oversight Models for the Eugene Police Commission* (Los Angeles: Police Assessment Resource Center, February 2005), https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54caf3abe4b04c8e2a3b6691/1422586795583/Review+of+National+Police+Oversight+Models+%28Feb.+2005%29.pdf; Kevin King, "Effectively Implementing Civilian Oversight Boards to Ensure Police Accountability and Strengthen Police–Community Relations," *Hastings Race and Poverty Law Journal* 12 (2015): 91–119; Cato Institute, "Civilian Review Boards," *Police Misconduct* (blog), July 22, 2015, https://www.policemisconduct.net/explainers/civilian-review-boards/.

[17] Jack R. Greene, "Make Police Oversight Independent and Transparent," *Criminology & Public Policy* 6, no. 4 (November 29, 2007): 747–54, https://doi.org/10.1111/j.1745-9133.2007.00477.x.

[18] Tim Prenzler and Colleen Lewis, "Performance Indicators for Police Oversight Agencies," *Australian Journal of Public Administration* 64, no. 2 (June 2005): 82, https://doi.org/10.1111/j.1467-8500.2005.00443.x.

[19] William Terrill and Jason R. Ingram, "Citizen Complaints against the Police: An Eight City Examination," *Police Quarterly* 19, no. 2 (2016): 150–79, https://doi.org/10.1177/1098611115613320.

procedural justice and the satisfaction of complaining citizens at departments that recently created a civilian oversight process.[20] In the same vein, Schaible et al. have studied the satisfaction of complaining civilians with a civilian oversight agency's mediation process.[21] Meanwhile, in two studies, de Guzman examines officer satisfaction with a department's civilian oversight process and evidence of whether officers "learned" from it.[22]

Several authors have proposed possible measurements for civilian oversight. Prenzler and Lewis suggest using surveys of stakeholders (e.g., complainants and officers), public-opinion surveys, analysis of the implementation of oversight recommendations, and audits of misconduct investigations and outcomes.[23] In their analysis of a civilian oversight agency, Filstad and Gottschalk suggest five performance indicators: "quantity and quality of received complaints; complaints completion process and time; conviction rate from complaints; learning and advice for police agencies; and confidence in the police oversight agency."[24] At the same time, the authors acknowledge, "Some of these indicators are . . . measures of activity rather than achievement."[25] Meanwhile, Udi Ofer proposes eight key components for effective civilian oversight: "board majority nominated by civic organizations, broad scope for review, independent investigative authority, ensure discipline sticks, audit function, secure funding, due process for officers, and public

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[20] Joseph De Angelis, "Assessing the Impact of Oversight and Procedural Justice on the Attitudes of Individuals Who File Police Complaints," *Police Quarterly* 12, no. 2 (June 2009): 214–36, https://doi.org/10.1177/1098611109332425.

[21] Lonnie M. Schaible et al., "Denver's Citizen/Police Complaint Mediation Program: Officer and Complainant Satisfaction," *Criminal Justice Policy Review* 24, no. 5 (2012): 626–50, https://doi.org/10.1177/0887403412455327.

[22] Melchor C. de Guzman, "One for All? Philippine Police Officers' Perceptions of Civilian Review," *Policing: An International Journal of Police Strategies & Management* 27, no. 3 (September 2004): 358–79, https://doi.org/10.1108/13639510410553112; and Melchor C. de Guzman and James Frank, "Using Learning as a Construct to Measure Civilian Review Board Impact on the Police: The Philippine Experience," *Policing: An International Journal of Police Strategies & Management* 27, no. 2 (June 2004): 166–82, https://doi.org/10.1108/13639510410536805.

[23] Prenzler and Lewis, "Performance Indicators," 78–80.

[24] Cathrine Filstad and Petter Gottschalk, "Performance Evaluation of Police Oversight Agencies," *Policing and Society* 21, no. 1 (March 1, 2011): 104, https://doi.org/10.1080/10439463.2010.540653.

[25] Filstad and Gottschalk, 104.

access/reporting."[26] The suggestions of Ofer, Prenzler and Lewis, and Filstad and Gottschalk all focus on civilian oversight of the complaint process. Meanwhile, with Walker and Archbold pushing for police departments to be learning agencies, the question is whether these suggested components or methods of measurement apply to department UFRBs.[27] Maybe the components for effectively incorporating community members on UFRBs are found outside the study of law enforcement—in the study of citizen participation in other areas of government.

C. CITIZEN PARTICIPATION IN GOVERNMENT

Within the study of public administration, Callahan describes citizen participation as "participation in the planning and administrative processes of government."[28] Participation includes open communication between parties willing to listen and consider new ideas. This is not political (voting) participation; it is a "focus on policy issues and service delivery."[29] For Callahan, quality indicators, similar to those suggested by Prenzler and Lewis, answer the following questions: Do process outcomes reflect citizen input or just the administrators? Do stakeholders feel the process is a valuable use of time and energy?[30]

For civilian participation to be effective, the jurisdiction needs to consider its expectations of the type of participation.[31] Within the study of public participation in government, Buckwalter posits that government bureaucrats must truly wish for

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[26] Udi Ofer, "Getting It Right: Building Effective Civilian Review Boards to Oversee Police," *Seton Hall Law Review* 46, no. 2 (2016): 1033. Mr. Ofer is the deputy national political director of the American Civil Liberties Union.

[27] Samuel Walker and Carol Archbold, *The New World of Police Accountability*, 2nd ed. (Los Angeles: SAGE, 2014), 23.

[28] Kathe Callahan, "Citizen Participation: Models and Methods," *International Journal of Public Administration* 30, no. 11 (August 28, 2007): 1181, https://doi.org/10.1080/01900690701225366.

[29] Callahan, 1181.

[30] Callahan, 1192.

[31] Lyn Kathlene and John A. Martin, "Enhancing Citizen Participation: Panel Designs, Perspectives, and Policy Formation," *Journal of Policy Analysis and Management* 10, no. 1 (1991): 46, https://doi.org/10.2307/3325512.

cooperation.[32] As related to community members on UFRBs, both parties—the police department and civilian board members—must hear and understand the other's input. Most importantly, for Buckwalter, a relationship needs to develop in which citizens appreciate bureaucratic realities, and bureaucrats willingly consider the citizen input.

As described in her article "A Ladder of Citizen Participation," Sherry Arnstein developed a typology for describing levels of citizen involvement in government. Figure 1 shows the typology that runs from the empty rituals of manipulation and therapy, essentially nonparticipation, through tokenism, and finally arrives at genuine power-sharing with delegated power and citizen control.[33]

The lowest rungs of the ladder generally involve one-way communication from the government to the citizens, with no channel for feedback from the citizens. Near the upper rungs, open communication between citizens and government has allowed for agreements on structures, responsibilities, and methods for dealing with an impasse. While originally dealing with community planning, the typology may apply to civilian oversight of law enforcement. Callahan's questions may help place community-member participation in use-of-force reviews on Arnstein's ladder.

[32] Neal D. Buckwalter, "The Potential for Public Empowerment through Government-Organized Participation," *Public Administration Review* 74, no. 5 (September 2014): 573–84, https://doi.org/10.1111/puar.12217.

[33] Arnstein, "Ladder of Citizen Participation," 216–224.

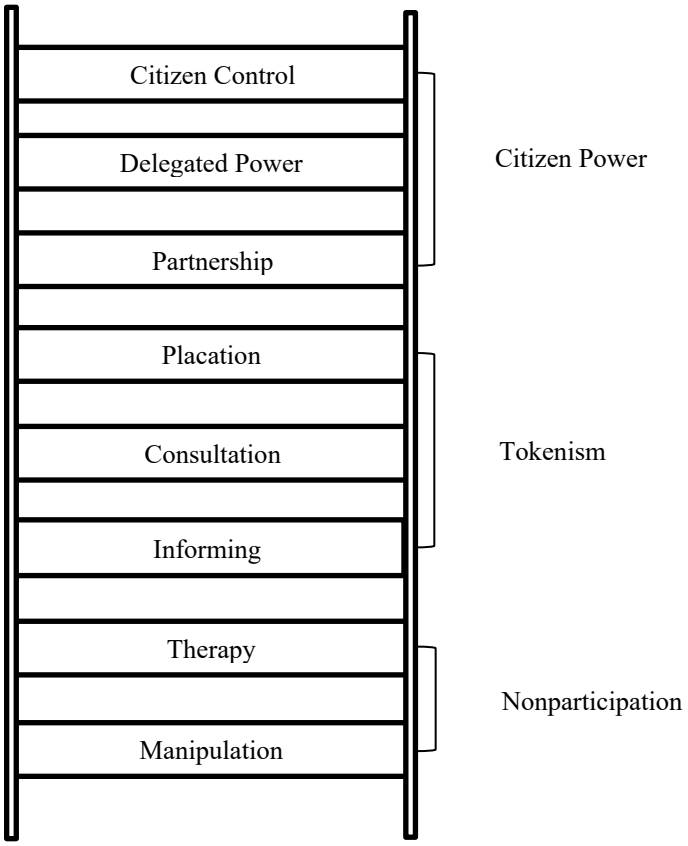

Figure 1. Ladder of participation[34]

Another possible way to assess citizen participation is with the following criteria proposed by Crosby, Kelly, and Schaefer:

> (1) the participant should be representative of the broader public and should be selected in a way that is not open to manipulation; (2) the proceeding should promote effective decision making; (3) the proceeding should be fair; (4) the process should be cost effective; (5) the process should be flexible; and (6) the likelihood that the recommendations of the group will be followed should be high.[35]

In other words, does the police department select the citizen board members, or are they selected by an outside entity? Does the factual presentation of the critical incident provide

[34] Adapted from: Arnstein, "Ladder of Citizen Participation," 217.

[35] Ned Crosby, Janet M. Kelly, and Paul Schaefer, "Citizens Panels: A New Approach to Citizen Participation," *Public Administration Review* 46, no. 2 (March 1986): 171, https://doi.org/10.2307/976169.

accurate and relevant information? Is the involved officer subject to questioning by the board? Is there sufficient time for full deliberations? Does the department actually implement the suggestions of the review board? These are similar to Ofer's recommendations.

Ofer's recommendation for civic organizations to nominate board members closely matches that of Crosby, Kelly, and Schaefer—that participants be selected in a way not subject to manipulation. The suggestion of Crosby, Kelly, and Schaefer that the proceeding promotes effective decision-making ties in with Ofer's ideas of broad scope and independent investigative authority. In addition, the former's desire for fairness matches the latter's need for due process. Lastly, Ofer's need for discipline-sticking matches with the criterion of Crosby, Kelly, and Schaefer that board recommendations be followed. Even with these recommendations, oversight agencies face the risk of "capture."

D. RISK OF CAPTURE

Several authors have discussed capture in the oversight literature. Prenzler describes capture as "techniques by which the group being regulated subverts the impartiality and zealousness of the regulator."[36] Subtle forms of influence can happen when frequent interactions lead to community members identifying with the department's values and way of thinking.[37] Perez, in his landmark book, discusses the risk of civilian oversight becoming captured or co-opted by the police department it is supposed to oversee.[38] He notes that people who volunteer on civilian review boards may be drawn to the profession of policing and "their daily interaction with the police force allow them plenty of opportunities to develop empathy and subliminal ties with those involved in 'real law enforcement.'" Merrick Bobb raises similar concerns in a 2003 article discussing the strengths and weaknesses of civilian review boards. One of his concerns is that because citizens do not have substantial law enforcement experience, they become co-opted by the

[36] Tim Prenzler, "Civilian Oversight of Police: A Test of Capture Theory," *British Journal of Criminology* 40, no. 4 (2000): 662.

[37] Prenzler, 662–63.

[38] Douglas Werner Perez, *Common Sense about Police Review* (Philadelphia: Temple University Press, 1994), 182–83.

department.[39] This lack of experience or qualifications means that the civilians are unable to challenge the thoroughness of police investigative work and end up agreeing with the police nearly all the time. Anecdotally, these ideas are supported by a 2011 *Las Vegas Review-Journal* article, in which former Las Vegas Metropolitan Police Department (LVMPD) Deputy Chief Sullivan mentions that community members on the department UFRB have been sympathetic to law enforcement.[40] He was so sure of the community members' sympathies that he pushed to enlarge the number of community members from its original two to the current four. Sullivan assured the sheriff that the outcomes of the board decisions would not change—and they did not.

E. DESIRED OUTCOME OF USE-OF-FORCE REVIEW BOARDS

Similar to the investigation of citizen complaints, UFRBs are involved in determining whether the officer's use of force was within department policy. However, the boards also have a much larger purpose. Boards are intended to provide transparency, accountability, and learning.

1. Transparency

As part of its *Final Report*, the President's Task Force recommends that agencies "embrace a culture of transparency [and] make all department policies available for public review."[41] The idea is that transparency is a building block toward increased public trust and legitimacy.[42] This recommendation follows logically from a memorandum President Obama issued soon after taking office regarding transparency in government.[43] In essence,

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[39] Merrick Bobb was the first person to fill the role as monitor for the Los Angeles County Sheriff's Department. Merrick Bobb, "New Approaches to Ensuring the Legitimacy of Police Conduct: Civilian Oversight of the Police in the United States," *Saint Louis University Public Law Review* 22 (2003): 163.

[40] Lawrence Mower, "Former Members of Use of Force Review Board Call It Rubber Stamp," *Las Vegas Review-Journal*, November 29, 2011, https://www.reviewjournal.com/uncategorized/former-members-of-use-of-force-review-board-call-it-rubber-stamp/.

[41] President's Task Force on 21st Century Policing, *Final Report*, 13.

[42] President's Task Force on 21st Century Policing, 12.

[43] Barack Obama, "Memorandum of January 21, 2009: Transparency and Open Government," *Federal Register* 74, no. 15, January 26, 2009, https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1777.pdf.

the memorandum defines transparency as the government providing the information citizens need to understand what the government is doing. Maijer, Curtin, and Hillebrant agree that transparency is the ability to observe the decision-making process.[44] Koppell has gone so far as to assert that transparency is "an end in itself."[45] That is well and good, but what are the benefits of transparency?

Using a change in agency policy regarding transparency, Cook, Jacobs, and Kim studied citizen satisfaction with the Social Security Administration.[46] The authors found that citizens who received a newly issued benefit statement with additional objective information about the program had increased confidence in Social Security.[47] Thus, confidence and satisfaction with a specific government agency may increase with transparency. This trust may further increase when trusted third parties disseminate government information.[48]

Transparency, provided by the use of information and communication technology, has also been shown to inhibit corrupt behavior.[49] Bertot, Jaeger, and Grimes provide several examples whereby increased government transparency reduced corruption involving the exchange of money.[50] They also suggest that the benefits of transparency—providing citizens with access to policies, procedures, and data about the discipline

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[44] Albert J. Meijer, Deirdre Curtin, and Maarten Hillebrandt, "Open Government: Connecting Vision and Voice," *International Review of Administrative Sciences* 78, no. 1 (March 1, 2012): 13, https://doi.org/10.1177/0020852311429533.

[45] Jonathan Koppell, "Pathologies of Accountability: ICANN and the Challenge of 'Multiple Accountabilities Disorder,'" *Public Administration Review* 65, no. 1 (2005): 96.

[46] Fay Lomax Cook, Lawrence R. Jacobs, and Dukhong Kim, "Trusting What You Know: Information, Knowledge, and Confidence in Social Security," *Journal of Politics* 72, no. 2 (2010): 397–412, https://doi.org/10.1017/s0022381610000034.

[47] Cook, Jacobs, and Kim, 409.

[48] Gregory A. Porumbescu, "Using Transparency to Enhance Responsiveness and Trust in Local Government: Can It Work?," *State and Local Government Review* 47, no. 3 (September 2015): 211, https://doi.org/10.1177/0160323X15599427.

[49] John C. Bertot, Paul T. Jaeger, and Justin M. Grimes, "Using ICTs to Create a Culture of Transparency: E-Government and Social Media as Openness and Anti-Corruption Tools for Societies," *Government Information Quarterly* 27, no. 3 (July 1, 2010): 264–71, https://doi.org/10.1016/j.giq.2010.03.001.

[50] Bertot, Jaeger, and Grimes, 265–66.

system—might extend to monitoring and controlling the behavior of law enforcement personnel.[51] The business world gives support to this possibility.

In a study of public corporations, Jo and Kim found firms that disclose extensive financial information have better long-term performance than firms that share little.[52] The authors postulate that disclosure eases outside monitoring and promotes ethical decisions. In the context of law enforcement, the President's Task Force suggests that transparency includes disclosure of various types of law enforcement data and facts about critical incidents.[53]

In their article studying trust in government, Welch, Hinnant, and Moon cite a University of Michigan survey about public trust in government.[54] The authors note that trust peaked in 1966 and plummeted during the Watergate scandal. With the advent of government websites, the authors found that citizens generally are satisfied with the transparency of government websites and that this satisfaction relates to trust in government.[55] At the same time, the authors found that citizens are generally dissatisfied with the interactivity of government websites.[56] This lack of interactivity does not satisfy the idea of "openness in government."[57]

While transparency is the ability to observe the decision-making process, it is different from participation, which is the ability to participate in the decision-making process.[58] Meijer, Curtin, and Hillebrant combine the ideas of transparency and participation in the concept of "openness in government." Participation implies two-way

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[51] Bertot, Jaeger, and Grimes, 267.

[52] Hoje Jo and Yongtae Kim, "Ethics and Disclosure: A Study of the Financial Performance of Firms in the Seasoned Equity Offerings Market," *Journal of Business Ethics* 80, no. 4 (2008): 855–78.

[53] President's Task Force on 21st Century Policing, *Final Report*, 13.

[54] Eric W. Welch, Charles C. Hinnant, and M. Jae Moon, "Linking Citizen Satisfaction with E-Government and Trust in Government," *Journal of Public Administration Research and Theory* 15, no. 3 (2005): 373, https://doi.org/10.1093/jopart/mui021.

[55] Welch, Hinnant, and Moon, 386.

[56] Welch, Hinnant, and Moon, 383.

[57] Meijer, Curtin, and Hillebrandt, "Open Government," 13.

[58] Meijer, Curtin, and Hillebrandt, 13.

interaction, as corroborated by Perron's study.[59] For his thesis, Perron studied the amplification of a law enforcement agency's Twitter traffic when the agency engages in two-way interactivity with citizens. Generally, the agencies with two-way interactive Twitter conversations have more followers than those using one-way Twitter posts.[60] When combined with the Welch, Hinnant, and Moon study, this finding shows that an increase in followers may lead to an increase in transparency and, therefore, trust. Strengthening interactivity via department websites could improve transparency.[61]

Leadership is a key factor in transparency.[62] According to Chanin and Espinosa, the transparency level of a police department is partially the function of the goals and vision of the department's leaders who see transparency as one way to increase legitimacy.[63] These leaders may recognize that transparency is a signal of healthy democratic governance.[64]

Notably, access to information is a requirement for transparency, and transparency is one block of accountability.[65] As noted by Bok, "If officials make public only what they want citizens to know, then publicity becomes a sham and accountability meaningless."[66] For police department UFRBs, transparency should include easy public access to relevant

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[59] Zachary P. Perron, "Becoming More than a Digital Bullhorn: Two-Way Engagement on Twitter for Law Enforcement" (thesis, Naval Postgraduate School, 2016), https://calhoun.nps.edu/handle/10945/48577.

[60] Perron, 140.

[61] Vicente Pina, Lourdes Torres, and Sonia Royo, "Are ICTs Improving Transparency and Accountability in the EU Regional and Local Governments?: An Empirical Study," *Public Administration* 85, no. 2 (June 2007): 467, https://doi.org/10.1111/j.1467-9299.2007.00654.x.

[62] Joshua Chanin and Salvador Espinosa, "Examining the Determinants of Police Department Transparency: The View of Police Executives," *Criminal Justice Policy Review* 27, no. 5 (2016): 498–519, https://doi.org/10.1177/0887403415596039.

[63] Chanin and Espinosa, 511.

[64] Daniel A. del Sol, "The Institutional, Economic and Social Determinants of Local Government Transparency," *Journal of Economic Policy Reform* 16, no. 1 (March 2013): 90–107, https://doi.org/10.1080/17487870.2012.759422; and Bertot, Jaeger, and Grimes, "Using ICTs to Create a Culture of Transparency."

[65] Suzanne J. Piotrowski and Gregg G. Van Ryzin, "Citizen Attitudes toward Transparency in Local Government," *American Review of Public Administration* 37, no. 3 (September 2007): 307, https://doi.org/10.1177/0275074006296777.

[66] Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation*, 1st ed. (New York: Vintage Books, 1984), 179.

policies and board findings. However, having transparency does not guarantee accountability—a concept that police departments need to understand.[67]

2. Accountability

The Organization for Economic Co-operation and Development defines accountability as the "obligation to present an account of and answer for the execution of responsibilities through the political and constitutional structure."[68] Another definition includes the idea of a "relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor can face consequences."[69] In either definition, accountability is applied to different actors—individual officers or police departments. As applied here, accountability is concerned with holding officers accountable for using force and departments for their use-of-force policies.

Shilston proposes several dimensions for holding officers and departments accountable. He posits the following six mechanisms: legal, political, administrative, societal, communal, and international.[70] For purposes of use-of-force incidents, legal accountability might include criminal charges against an officer for an alleged illegal use of force or civil litigation for damages. The political mechanism for accountability could be a change in the laws about police use-of-force.[71] Non-government organizations, media, and other institutions independent of government play a role in societal accountability by

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[67] Peter Murphy, Peter Eckersley, and Laurence Ferry, "Accountability and Transparency: Police Forces in England and Wales," *Public Policy and Administration* 32, no. 3 (July 1, 2017): 200, https://doi.org/10.1177/0952076716671033.

[68] Organization for Economic Co-operation and Development, *Modernising Government* (Paris: OECD Publishing, 2005), 86, https://doi.org/10.1787/9789264010505-en.

[69] Mark Bovens, "Analysing and Assessing Accountability: A Conceptual Framework," *European Law Journal* 13, no. 4 (July 2007): 450, https://doi.org/10.1111/j.1468-0386.2007.00378.x.

[70] Timothy George Shilston, "Six Dimensions of Police Accountability: An Aid to Needs Assessment in International Police Development Missions," *International Journal of Police Science & Management* 18, no. 1 (March 2016): 41–42, https://doi.org/10.1177/1461355716638115.

[71] Ben Bradford, "California Lawmakers Look to Restrict Police Use of Force after Sacramento Shooting," Capradio, accessed May 10, 2018, http://www.capradio.org/112544.

moving public opinion.[72] For Shilston, the administrative mechanism of accountability generally covers police internal affairs and discipline processes.[73] The community acts as an accountability mechanism by expressing its concerns via advisory boards, public meetings, and other community-policing events.[74] For the purposes of this thesis, the administrative and communal mechanisms come together with community members on department UFRBs.

In their book *The New World of Police Accountability*, Walker and Archbold write about police accountability as individual officers being accountable for their actions and departments for the services they provide.[75] UFRBs are a method of accountability. For instance, the board for the Metropolitan Police Department in Washington, D.C., is authorized to review the action of all employees involved in use-of-force incidents for compliance with department policy, procedures, and training as well as make recommendations.[76]

Although accountability is important, several authors have expressed concern with it being the goal of law enforcement. For instance, while Walker and Archbold believe a core democratic principle of police accountability is that police are accountable to the public, they warn that this accountability may be misapplied, to the detriment of minorities.[77] Loader recognizes many of the same concerns as Walker and Archbold. For Loader, accountability requires that police departments not respond only to the demands of the majority.[78] Instead, the police need to recognize the priorities of all constituencies and negotiate with them about the application of police services in a manner that respects

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[72] Shilston, "Six Dimensions of Police Accountability," 42–43.

[73] Shilston, 42.

[74] Shilston, 43.

[75] Walker and Archbold, *The New World of Police Accountability*, 8–9.

[76] Metropolitan Police of DC, *Use of Force Review Board*, General Order RAR-901-09 (Washington, DC: Metropolitan Police, March 30, 2016), 5, https://go.mpdconline.com/GO/GO_901_09.pdf.

[77] Walker and Archbold, *The New World of Police Accountability*, 9.

[78] Ian Loader, "Policing, Recognition, and Belonging," *Annals of the American Academy of Political and Social Science* 605, no. 1 (May 1, 2006): 213, https://doi.org/10.1177/0002716206286723.

human rights.[79] Obviously, this objective is not an easy task, requiring that police agencies learn from the things they do wrong or, as Walker and Archbold suggest, focus on organizational change.[80]

3. Learning

One of Walker and Archbold's suggested themes of new police accountability includes the learning organization concept.[81] Geller, in a National Institute of Justice article, discusses what it takes for law enforcement agencies to become learning organizations.[82] Among his points, law enforcement agencies need to learn from their successes and failures as well as those of others, understand the difference between the failure of concept and failure of implementation, and motivate employees to think about creative solutions to issues.

Crucial to Alarid is the connection between human relations theory and organizational learning.[83] She notes, "Human relations perspective [is] focused on individual needs within the organization," and this might include quality circles and problem-solving groups.[84] For the purposes of UFRBs, these suggestions might include having all levels of sworn officers as voting members. Similar to Chanin and Espinosa, Alarid suggests that a department's leadership is key to this learning process.[85] Leaders need useful information, employee feedback, and openness in discussing options.[86] While Alarid is addressing the effectiveness of departments implementing community policing, her ideas about learning organizations apply to all parts of the department.

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[79] Loader, 215.

[80] Walker and Archbold, *The New World of Police Accountability*, 21.

[81] Walker and Archbold, 23.

[82] William A. Geller, "Suppose We Were Really Serious about Police Departments Becoming 'Learning Organizations'?," *National Institute of Justice Journal* 234 (December 1997): 2–8.

[83] Leanne Fiftal Alarid, "Law Enforcement Departments as Learning Organizations: Argyris's Theory as a Framework for Implementing Community-Oriented Policing," *Police Quarterly* 2, no. 3 (September 1999): 322–337, https://doi.org/10.1177/109861119900200304.

[84] Alarid, 322.

[85] Alarid, 328.

[86] Alarid, 329.

The personalities of the department's leaders are also important. Malone describes how the different personality traits of department chiefs affect the way they approach leadership.[87] Some traits work well for patrol and first-line supervisors but are not as beneficial to middle and senior supervisors. Malone suggests that departments are better served by chiefs who are not afraid to listen to opposing viewpoints and are concerned with how long-range plans affect their employees.[88] Since these same personality traits affect how board members look at incidents, having different levels of employees as board members may be beneficial.

Walker and Archbold cite LVMPD's collaboration with the Department of Justice as a learning experience.[89] While that collaboration was happening, Phoenix Police Department (PPD) sent several employees to study what LVMPD was learning.[90] These lessons included recognizing that data need to be collected over several years, not only on individual incidents, so trends in officer-involved shootings could be analyzed and department policies evaluated against the analysis. In the end, PPD was able to compare its policies and practices against the 75 recommendations from the Las Vegas–DOJ review and make appropriate improvements.[91] Learning also fits within one of the four parts of accountability as laid out by Walker and Archbold—review.[92] This criterion specifically includes a post-incident review of critical incidents to see whether department policy, training, or supervision needs modification.[93]

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[87] Marita V. Malone, "Key Thinking Strategies for Future Problem Solving," *Police Chief* 61, no. 4 (April 1994): 29–35.

[88] Malone, 30.

[89] Walker and Archbold, *The New World of Police Accountability*, 23. The collaboration is discussed more fully in Chapter IV, Section D.

[90] Phoenix Police Department, *Officer-Involved Shooting Review 2009–2014* (Phoenix, AZ: Phoenix Police Department, 2015), 10, https://www.phoenix.gov/policesite/Documents/shooting_review.pdf.

[91] Phoenix Police Department, 175–84.

[92] Walker and Archbold, *The New World of Police Accountability*, 20.

[93] Walker and Archbold, 178–79.

F. CONCLUSION

This literature review explored the history of police oversight and research on measuring its effectiveness. This prior research highlighted the potential benefits of police oversight, while acknowledging the difficulty in measuring effectiveness. Therefore, the review also explored public administration literature for additional ideas on assessing citizen involvement in other areas of government. As discussed in Chapter III, the research design, this thesis combines concepts from the literature with the desired outcomes of police UFRBs—transparency, accountability, and learning.

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III. RESEARCH DESIGN

The primary purpose of this thesis is to explore how six law enforcement agencies use voting community members on their UFRBs. This thesis applies two methods of research: a collective case study and a Delphi survey. Mixed methods research allows a researcher to obtain fuller answers to more complicated research questions.[94] The collective case study gathered details about each of the six boards and allowed for comparison and contrasting of their structures and processes. The Delphi survey process collected and analyzed board member responses about their role and value on department UFRBs.

An overarching consideration during the collective case study and Delphi survey was the research questions posed by the thesis:

1. What is the most effective use of civilians on police department use-of-force review boards?
2. What are the similarities and differences among the use-of-force review boards at six police departments that were chosen for this study?
3. Is there an ideal structure and process for incorporating civilian voting members on department use-of-force review boards?

A. CASE STUDY METHOD

A collective case study is a methodology used for the systematic and structured analysis of multiple individuals, programs, or events.[95] In this research, the method involved the application of the research questions to six law enforcement agencies' UFRBs. A collective case study explores the differences among the agencies and their respective operations for UFRBs. Yin suggests that case studies are appropriate for "how" and "why" research questions, when there is no control over behavioral events, and when the focus is

[94] Robert K. Yin, *Case Study Research: Design and Methods*, 5th ed. (Los Angeles: SAGE, 2014), 65–66.

[95] Paul D. Leedy and Jeanne Ellis Ormrod, *Practical Research: Planning and Design*, 11th ed. (Boston: Pearson, 2016), 253.

contemporary.[96] This method allows for an organized assessment of the variables in the structure and operations of the various boards.

For this thesis, the research identified six law enforcement agencies—in Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson—that incorporate voting community members on their UFRBs.[97] Publicly available documents were used to gather descriptive information including total board size, number of voting community members, term limits, member selection, number of sworn employee members, and the board's role in questioning officers.[98] Additionally, department websites were searched for evidence that the departments publish the results of the board review.

These factors were then analyzed against different criteria suggested by Ofer, Crosby, Kelly, and Schaefer, and Walker and Archbold. The analysis addressed the following six questions: How are community members selected? Do community members have term limits? Do community members receive training? Does the board have a broad scope of authority? Is the involved officer subject to questioning by the board? Does the agency issue public reports on board findings and recommendations? The answers to these questions were then placed on a rating table (see Table 1).

Table 1. Suggested measures and available ratings

Suggested Criteria for the Quality of Use-of-Force Review Boards	Rating (described below)
1) How are civilians selected?	Low, Medium, or High
2) Do civilians have term limits?	Low or High
3) Do civilians receive training?	Low or High
4) Does the board have a broad scope of authority?	Low or High
5) Is the involved officer questioned by the board?	Low or High
6) Does the agency issue public reports about board findings and recommendations?	Low, Medium, or High

[96] Yin, *Case Study Research*, 9.

[97] There might be other agencies with voting community members on use-of-force review boards, but in the interest of time, the search for boards stopped at six.

[98] The public documents include city code, department policy, published department reports, and newspaper articles.

The first question is an assessment of how community members are selected. It is based on a criterion by Ofer and Crosby, Kelly, and Schaefer that the selection of community members by civic organizations is not subject to manipulation. If the community members are selected by an outside entity, a high rating is awarded. If the department and an outside entity jointly select the community member, a medium rating is awarded. A low rating is awarded if the department selects the community member.

The second question addresses community-member term limits. This question reflects Perez's and Bobb's concerns about the capture of the police oversight entity. By having term limits, departments seek to limit the risk of community members developing too much empathy from long-term interactions with the police. A high rating is awarded to a department that has publicly stated term limits for community members.

The third question rates departments on community-member training. This question serves two roles. First, it reflects the criterion of Crosby, Kelly, and Schaefer that the process must promote effective decision making. By making sure community members understand the law and policy regarding use-of-force, departments support this criterion. A second benefit is that trained community members may increase their legitimacy with department board members. Departments earn a high rating if their policy specifically requires community-member training.

Question four rates the boards' scope of authority. Two of Ofer's components of effective oversight include a broad scope of review and independent investigative authority. These match the proceedings criterion of Crosby, Kelly, and Schaefer, which promotes effective decision making. If a board is authorized only to review the specific incident for compliance with policy, the department is awarded a low rating. However, if the board is authorized to address issues of policy, training, and equipment, it is awarded a high rating.

The fifth question awards a high rating to a department that provides for the compelled questioning of the involved officer. This question addresses the same concerns as question four as well as provides due process for officers—as proposed by Ofer—and shows fairness—as proposed by Crosby, Kelly, and Schaefer.

Question six addresses transparency by looking at the departments' public access and reporting related to officer-involved shootings and subsequent review boards. Ofer suggests this criterion, which is one of the express recommendations of the Task Force's *Final Report*. High ratings are awarded to departments that provide easy website access to details on officer-involved shootings as well as the boards' findings. A medium rating is awarded if an outside entity provides a summary of the incident and board findings. A low rating is awarded for little to no public reporting.

Each department may receive up to six high ratings. The answers to the research questions may help other law enforcement agencies determine the best way to include community members on department UFRBs.

B. DELPHI METHOD

Considering the difficulty in measuring the value community members bring to department UFRBs, a Delphi survey was chosen as the second methodology for this thesis. The RAND Corporation developed the Delphi survey in the 1950s as a technique for obtaining expert consensus.[99] Turoff and Linstone suggest that Delphi surveys are useful in the following situations: precise analytical measurement is difficult but collective subjective judgments may be useful, the time and cost make group meetings infeasible, disagreements among participants are so severe that anonymity is required, or strong personalities may dominate the discussion.[100] Delphi surveys use a series of questionnaires crafted on the groups' responses to the prior series.

The four attributes of a Delphi survey include controlled feedback, anonymity, iteration, and aggregation of group response.[101] Feedback is provided between rounds of questions. The experts' responses to a round of questions are analyzed and fed back into

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[99] Chitu Okoli and Suzanne D. Pawlowski, "The Delphi Method as a Research Tool: An Example, Design Considerations and Applications," *Information & Management* 42, no. 1 (December 2004): 16, https://doi.org/10.1016/j.im.2003.11.002.

[100] Harold A. Linstone and Murray Turoff, *The Delphi Method: Techniques and Applications* (Boston: Addison-Wesley, 1975), 4, https://web.njit.edu/~turoff/pubs/delphibook/delphibook.pdf.

[101] Gene Rowe, George Wright, and Fergus Bolger, "Delphi: A Reevaluation of Research and Theory," *Technological Forecasting and Social Change* 39, no. 3 (May 1991): 237, https://doi.org/10.1016/0040-1625(91)90039-I.

the next round of questioning. If necessary, a third round of questions can be developed from the experts' second round of input.[102] A second attribute is anonymity. The experts are kept anonymous from each other and the readers of this thesis. Anonymity allows for expert input without direct confrontation with other experts.[103] Rowe, Wright, and Bolger believe that anonymity also allows experts the freedom to change their minds without losing face. Iteration, or the refinement of the group consensus through rounds of questioning, is another important attribute. At the conclusion of the iterative process, the results are aggregated.

The first step in the Delphi process for this thesis was developing the initial round of survey questions. Crafting the questions required an understanding of the differences between the structure and operations of UFRBs that are the subject of the collective case study. Furthermore, an understanding of the issue of civilian oversight of law enforcement, particularly in measuring effectiveness, was necessary. Once the questions were drafted, two people with use-of-force board experience were asked to test the questions but not to participate in the actual Delphi survey.

The second step in the Delphi process was the identification of the participants. This step was crucial, given that the opinions of the participants would provide the data for the subsequent round of questions and eventually recommendations for incorporating community members in UFRBs. Therefore, it was important to find participants with relevant experience at as many of the six law enforcement agencies as possible. Assistance from professional contacts was solicited from each of the six studied departments. Each professional had experience with the review boards. For instance, one participant is a deputy chief for a department, and at least three lead their departments' unit charged with operating UFRBs.[104] An important secondary consideration was the policy of the Naval

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[102] Monica R. Geist, "Using the Delphi Method to Engage Stakeholders: A Comparison of Two Studies," *Evaluation and Program Planning* 33, no. 2 (May 2010): 148, https://doi.org/10.1016/j.evalprogplan.2009.06.006.

[103] Kim Loyens, Jeroen Maesschalck, and Geert Bouckaert, "Delphi in Criminal Justice Policy: A Case Study on Judgmental Forecasting," *Qualitative Report* 16, no. 6 (November 2011): 1479.

[104] To protect the anonymity of the participants, further details are withheld.

Postgraduate School (NPS)'s Institutional Review Board, which limited the number of participants to fewer than 10.

On May 30–31, 2018, an invitation to participate in the Delphi study was emailed to nine people associated with the six law enforcement agencies. The invitation briefly described the purpose of the research and contained a link to the NPS-approved online survey (see Appendix A). If the invitees agreed to participate, they were connected to a consent form. Only after agreeing to the terms of the consent agreement could they participate in the actual survey (see Appendix B).

The first round of the Delphi consisted of 14 questions (see Appendix C). Participants were asked to submit their responses within two weeks. A reminder email was sent one week after the initial invitation. On June 14, 2018, the first round was closed with nine responses, for a 100 percent completion rate. The responses from round one were analyzed, rated, and used to create the seven questions in the second round (see Appendix D). The invitation to participate in the second round was emailed July 9, 2018, to the nine people from the first round. Again, the participants were asked to respond within two weeks, and a reminder email was sent after one week. On July 23, 2018, the second round was closed with nine responses completed. A detailed description of the two rounds of questions and responses is presented in Chapter V.

IV. CASE STUDIES

This chapter reviews the UFRBs of six departments that include voting community members—in Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson. Each review provides city and review board demographics, department size, and board policies. The chapter concludes with a summary table that compares the information across the six departments.

A. DENVER POLICE DEPARTMENT

Denver, Colorado, is a city of approximately 700,000 people. The Denver Police Department (DPD)'s 1,483 sworn law enforcement officers protect the citizens.[105] The department's values, which include integrity, courage, and service, can be found on the internet in the department's *Operations Manual*.[106] In addition, the department has an interest in promoting transparency and fostering a positive relationship with the community.[107] By partnering with the community, DPD strives to prevent crime in a respectful manner.[108]

DPD, along with the Denver Fire Department and Sheriff's Department, is part of the Department of Public Safety, which is led by an executive director and two deputy directors.[109] The department provides oversight to and expects accountability from the DPD. The Director's Office is involved in the police discipline process and may provide

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105 "Full-Time Law Enforcement Employees by State by City, 2016," Federal Bureau of Investigation (FBI), accessed February 21, 2018, https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-26/table-26.xls.

106 Denver Police Department, *Operations Manual* (Denver: Denver Police Department, 2018), 13.

107 Denver Police Department, *2014 Annual Report* (Denver: Denver Police Department, 2015), 15, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/AnnualReports/2014_Annual_Report.pdf.

108 "Denver Police Department," Denver Police Department, accessed April 18, 2018, https://www.denvergov.org/content/denvergov/en/police-department.html.

109 "Department of Public Safety," City and County of Denver, accessed September 6, 2018, https://www.denvergov.org/content/denvergov/en/department-of-safety.html; and "About the Department of Public Safety," City and County of Denver, accessed September 13, 2018, https://www.denvergov.org/content/denvergov/en/department-of-safety/about.html.

policy guidance. The DPD is also subject to oversight by the Office of the Independent Monitor, which was created by the mayor and city council in 2004.[110] By ordinance, the Independent Monitor is required to actively monitor and participate in the investigation of an officer-involved shooting by a uniformed DPD employee.[111] Based on its oversight authority, the Independent Monitor is authorized to make recommendations to the director of public safety but does not have a vote on the DPD's use-of-force review board. The code also requires the Independent Monitor to release an annual report describing the work of the office.[112] In 2016, the Charter for Denver was amended to include the Independent Monitor as part of the Department of Safety.[113] The sponsors of the amendment wanted to make the Independent Monitor a permanent part of city government, like the police department, and protect it from abolishment by a future mayor or city council.[114]

In its *2017 Semi-Annual Report*, the Independent Monitor summarized several officer-involved shootings and critical incidents involving the DPD.[115] The summaries ranged in length from two paragraphs to over one and one-half pages. At the end of each, the Independent Monitor published the decision of the DPD's use-of-force review board and the opinion of the Independent Monitor, which does not have a vote on the review board. However, if the Monitor disagrees with the recommendation of the UFRB or chief, it forwards its recommendation to the executive director for the final decision.[116]

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[110] Denver, Colo., Code of Ordinances, ch. 2, art. XVIII, § 2-371 (2004), https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIIREMUCO_CH2AD_ARTXVIIIOFINMO.

[111] Denver, Colo., Code of Ordinances, § 2-373.

[112] Denver, Colo., Code of Ordinances, § 2-375.

[113] Denver, Colo., Code of Ordinances, § 2.6.7 (2016), https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIHORU_SUBTITLE_BCH_ARTIIMAEXDE_PT6SA_S2.6.7OFINMO.

[114] Erica Meltzer, "Denver Question 2B: What You Need to Know about the Office of the Independent Monitor," Denverite, October 24, 2016, https://www.denverite.com/denver-question-2b-need-know-office-independent-monitor-20528/; and Eliza Carter, "Denver's Independent Safety Monitor Insulated from Political Whims," Colorado Independent, November 8, 2016, http://www.coloradoindependent.com/162297/amendment-2b-denver.

[115] Office of the Independent Monitor, *2017 Semiannual Report* (Denver: Office of the Independent Monitor, October 11, 2017), 31–38, https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/OIM%202017%20Semiannual%20Report.pdf.

[116] Office of the Independent Monitor, 32.

Pursuant to the authority of the chief of police, the DPD operates a five-person UFRB.[117] The members include the commander of the Major Crimes Division, a rotating commander, two community members, and, pursuant to Colorado law, a law enforcement member from an outside agency. Currently, the community members are selected by the DPD and have no time limit on years of service.

Like the other departments, the board is charged with determining whether a use of force was in or out of policy.[118] Additionally, the board can make recommendations on department policy modifications and training. As with the other departments, the Denver board has access to the entire investigative file and can question witness officers. However, the board does not have the authority to mandate the attendance of the involved officer. The DPD's use-of-force policy is currently under review.[119]

In January 2017, the department issued a draft use-of-force policy.[120] After some public discussion, an advisory group was formed to gather public input and provide recommendations on changes to the use-of-force policy.[121] The group issued its suggested policy in October 2017, proposing several significant changes to the DPD's use-of-force review board.[122] Five members, including two voting community members, would comprise the proposed board, but the Independent Monitor would replace the sworn officer from an outside department. In addition, the selection of one community member would

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[117] Denver Police Department, *Operations Manual*, § 105.06.

[118] Denver Police Department, § 105.06.

[119] Gretel Kauffman, "Denver Police Department Becomes the Latest to Rethink Use-of-Force Policies," *Christian Science Monitor*, October 27, 2016, https://www.csmonitor.com/USA/Justice/2016/1027/Denver-police-department-becomes-the-latest-to-rethink-use-of-force-policies.

[120] Robert White, "Denver Police Draft Use of Force Policy" (letter to community members, Denver Police Department, January 4, 2017), https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/Use_of_Force_community_letter_english.pdf; and Denver Police Department, *Operation Manual (Draft)* (Denver: Denver Police Department, December 29, 2016), https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/DPD_UOF_Draft_Policy_12-29-16.pdf.

[121] Noelle Phillips, "Proposed Policy Seeks Tougher Limits on How Denver Cops Can Use Force," *Denver Post*, October 31, 2017, https://www.denverpost.com/2017/10/31/denver-police-use-of-force-policy-changes/.

[122] Denver Police Use of Force Advisory Committee, *Revised Use of Force Policy Proposed by DPD UOF Advisory Committee* (Denver: Denver Police Department, October 2017), https://www.documentcloud.org/documents/4164293-Dpd-Use-of-Force.html#document/p1.

shift from the department to the city council president. The revised policy also sets a five-year term limit for the community members.

B. PORTLAND POLICE DEPARTMENT

Portland, with over 620,000 people, is the largest city in Oregon. The Portland Police Bureau (PPB)'s 908 sworn officers provide law enforcement services to the citizens of Portland.[123] To keep the citizens informed, the PPB provides access to its policies and procedures on the department's website.[124] Among the published directives include the bureau's mission, values, and goals, which describe integrity, accountability, and enhancement of the community–police relationship.[125]

Bureau Directive 1010.10 sets out the policy and procedures for investigating deadly force events.[126] By policy, the Detective Division conducts a criminal investigation while the Professional Standards Division conducts a concurrent administrative review. Once the criminal investigation and administrative review are completed, the officer's supervisor and Bureau Training Division conduct a review and analysis of the incident. All of this information is then provided to the Police Review Board.

Starting September 1, 2010, the Portland City Code eliminated the PPB's Use-of-Force and Performance Review Boards and required that all officer-involved shootings be reviewed by the Police Review Board.[127] The board has seven voting members: two citizen members, two peer officers, the assistant branch chief of the involved officer, a commander or captain who supervises the involved officer, and the director of the Independent Police

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[123] FBI, "Law Enforcement Employees."

[124] "Directives," Portland Police Bureau, accessed September 4, 2018, https://www.portlandoregon.gov/police/29867.

[125] Portland Police Bureau, *Mission, Values, and Goals*, Directive 0020.00 (Portland: Portland Police Bureau, n.d.), https://www.portlandoregon.gov/police/article/525126.

[126] Portland Police Bureau, *Deadly Force and In-Custody Death Reporting and Investigation Procedures*, Directive 1010.10 (Portland, Portland Police Bureau, September 27, 2017), https://www.portlandoregon.gov/police/article/656780.

[127] Portland, OR, City Code, title 3, ch. 3.20 § 140 (2014), https://www.portlandoregon.gov/citycode/article/479642.

Review. The citizen members are drawn from the Citizen Review Committee, which is described in another city code.[128]

Portland's Citizen Review Committee consists of 11 citizens, selected to "reflect the demographic make-up of the community."[129] The citizens serve three-year terms and must attend orientation and training activities. In addition to serving on the Police Review Board, committee members meet at least quarterly to evaluate police policy, hear citizen and officer complaint appeals, and gather community concerns.[130] Members, chosen on a rotating basis, are limited to two three-year terms on the Police Review Board.[131]

In addition to the Citizen Review Board, Portland has the Independent Police Review, which answers to the City Auditor and has broad authority to address issues related to the PPB.[132] These include recommending policy changes, dealing with appeals on complaints, monitoring and conducting investigations, hiring outside expertise to audit closed investigations of officer-involved shootings, and sitting as voting members on the Police Review Board.[133] The Independent Police Review also has the authority to publish reports of officer-involved shootings.

For several years, the Independent Police Review has retained the services of OIR Group to conduct reviews of the PPB's officer-involved shootings.[134] These reports are

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[128] Portland, OR, City Code, title 3, ch. 3.21 § 080 (2017), https://www.portlandoregon.gov/citycode/article/640401.

[129] Portland, OR, City Code, §080.

[130] Portland, OR, City Code, title 3, ch. 3.21, § 090 (2011), https://www.portlandoregon.gov/citycode/article/379528.

[131] Portland, OR, City Code, § 090.

[132] Portland, OR, City Code, title 3, ch. 3.21 (2017).

[133] Portland, OR, City Code, title 3, ch. 3.21 § 010, 070; and Portland, OR, City Code, title 3, ch. 3.20 § 140.

[134] OIR Group is a California based consulting organization that specializes in police oversight, department assessments, and critical incident reviews. "OIR Group," OIR Group, accessed September 6, 2018, https://www.oirgroup.com; and Michael Gennaco, Robert Miller, and Julie Ruhlin, *Report to the City of Portland: Portland Police Bureau Officer-Involved Shooting* (Playa del Rey, CA: OIR Group, February 2018), https://www.portlandoregon.gov/ipr/article/672343.

then released on the Independent Police Review's website. In addition, the PPB also releases information about officer-involved shootings on its website.[135]

Portland City Code provides one more interesting requirement for the PPB. When it created the Police Review Board, the city mandated the use of a "facilitator" to lead it.[136] The facilitator cannot be a bureau employee and is required to write a summary of the board's decision. The code also requires at least semiannual public reports, written by the facilitator, which include a factual summary of the incident, a summary of the decision, a record of the board's vote, any board recommendations, and the final decision of the Chief.[137] The PPB provides the public access to these reports on its website.[138]

C. OLYMPIA POLICE DEPARTMENT

Olympia, the capital of Washington State, is a city of about 51,000 people served by a police department with 67 sworn officers.[139] In a message posted on the Olympia Police Department (OPD)'s website, Chief Ronnie Roberts discusses trust, transparency, accountability, legitimacy, and procedural justice, as well as their benefit to both the police and the community.[140] Supporting these goals is the OPD's policy on the use of deadly force and review of deadly force incidents. The use-of-force policy, published on the department's website, states, "Protection of life is more important than apprehension of criminal offenders or the protection of property."[141] On the review of deadly force events, the policy states that the department "will objectively evaluate the use of deadly force . . .

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135 "OIS Incident Summaries" Portland Police Bureau, accessed September 6, 2018, https://www.portlandoregon.gov/police/52175.

136 Portland, OR, City Code, title 3, ch. 3.20, § 140 (E).

137 Portland, OR, City Code, title 3, ch. 3.20 § 140 (I).

138 "Police Review Board Public Reports," Portland Police Bureau, accessed September 6, 2018, https://www.portlandoregon.gov/police/55365.

139 FBI, "Law Enforcement Employees."

140 Ronnie Roberts, "Chief's Message," City of Olympia, October 19, 2016, http://olympiawa.gov/city-services/police-department/chief-s-message.aspx.

141 Olympia Police Department, *Law Enforcement Role and Authority: Use of Force*, General Order 1.4 (Olympia, WA: City of Olympia, February 1, 2017), II, http://www.codepublishing.com/WA/Olympia/?opd/OlympiaOPDNT.html.

by its members to ensure that the use of force was within department policy and was consistent with . . . training standards."[142]

The current OPD policy requires a voting community member on the department's UFRB. The remaining four members of the board include a command representative, a training sergeant, an officer, and a department instructor for the device or technique used.[143] According to Deputy Chief Aaron Jelcick, for several years, the community member was a non-voting observer of the UFRB. In 2015, the OPD's policy changed to give the community member a vote.[144]

As with other UFRBs, the OPD board is charged with determining whether the use of force was within or in violation of policy. While the board does not recommend discipline, it may make recommendations on training or policy. In making these determinations, the board considers the entire investigation file and may question the involved officer.[145] In keeping with the chief's message on transparency, documents, videos, audios, press releases, and relevant policies are posted on the OPD's website.[146]

D. LAS VEGAS METROPOLITAN POLICE DEPARTMENT

The Las Vegas Metropolitan Police Department (LVMPD) is one of the 10 largest police departments in the United States.[147] With over 3,000 sworn officers, it covers Las Vegas and unincorporated Clark County, Nevada. Unlike most local police departments, an elected sheriff heads the LVMPD.[148] The department's goals include integrity and

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[142] Olympia Police Department, § 1.4.10, I.

[143] Olympia Police Department, § 1.4. The policy does not specify how the community member is selected.

[144] Aaron Jelcick, personal communication, March 29, 2018.

[145] Olympia Police Department, *Use of Force*, § 1.4.10.

[146] "Officer Involved Shooting - May 21, 2015," Olympia Police Department, last modified September 30, 2015, http://olympiawa.gov/city-services/police-department/news-and-notifications/officer-involved-shooting.aspx.

[147] FBI, "Law Enforcement Employees."

[148] Nevada Revised Statutes § 248.010 (2014).

accountability, and its values, leading though accountability and maximizing transparency.[149] On its website, the LVMPD provides a link to its use-of-force policy.[150]

In 1992, on the authority of Sheriff John Moran, the LVMPD created a UFRB with five department members and two community members.[151] The current board, chaired by an assistant sheriff who does not vote, still has seven voting members, but the ratio has changed. Four community members and three officers—a peer member, a captain from the Professional Standards Division, and the bureau commander of the involved officer—make up the voting members.[152] The community members, who do not have explicit term limits, are selected through a process that includes an interview with the board's co-chairs and involvement in community focus groups.[153]

In 2011, the *Las Vegas Review-Journal* ran a five-part series on the LVMPD and officer-involved shootings.[154] In the second of its articles, the *Las Vegas Review-Journal* noted that the LVMPD used deadly force more often than most urban police departments.[155] The authors found that in the first decade of the 21st century, the LVMPD

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149 "About LVMPD," Las Vegas Metropolitan Police Department, accessed February 19, 2018, https://www.lvmpd.com/en-us/Pages/AboutLVMPD.aspx.

150 "Force Related Policies," Las Vegas Metropolitan Police Department, accessed April 21, 2018, https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Pages/ForceRelatedPolicies.aspx.

151 Daniel Patrick Barry, "Handling Police Misconduct in an Ethical Way" (master's thesis, University of Nevada, Las Vegas, 1999), http://static1.1.sqspcdn.com/static/f/1196634/16845874/1330391479267/HandlingPoliceMisconductEthicalWay-barrythesis.pdf?token=Ad9K9yZsv%2Fokq53Ue79cId13LiA%3D; and Mower, "Call It Rubber Stamp."

152 Anonymous, personal communication, September 27, 2017.

153 Anonymous.

154 Lawrence Mower, "Elected Officials See Need for Changes in Handling of Police Shootings," *Las Vegas Review-Journal*, December 4, 2011, https://www.reviewjournal.com/news/elected-officials-see-need-for-changes-in-handling-of-police-shootings/; Lawrence Mower, "Inquests Undercut by Prosecutorial Inaction, Deference to Police," *Las Vegas Review-Journal*, November 30, 2011, https://www.reviewjournal.com/uncategorized/inquests-undercut-by-prosecutorial-inaction-deference-to-police/; Alan Maimon, Lawrence Mower, and Brian Haynes, "Las Vegas Police Rank High in Shootings," *Las Vegas Review-Journal*, November 28, 2011, https://www.reviewjournal.com/uncategorized/las-vegas-police-rank-high-in-shootings/; Alan Maimon, "Surviving Families Lack Support to Handle Grief after Fatal Shootings," *Las Vegas Review-Journal*, December 1, 2011, https://www.reviewjournal.com/uncategorized/surviving-families-lack-support-to-handle-grief-after-fatal-shootings/; and Lawrence Mower, "To Shoot or Not Shoot Is Quandary for Veteran, Rookie Officers," *Las Vegas Review-Journal*, November 27, 2011, https://www.reviewjournal.com/uncategorized/to-shoot-or-not-shoot-is-quandary-for-veteran-rookie-officers/.

155 Maimon, Mower, and Haynes, "Las Vegas Police Rank High in Shootings."

had the third most officer-involved shootings per capita. In response to the lack of trust, then-Sheriff Douglas Gillespie worked with the Office of Community Oriented Policing Services (COPS) under the Department of Justice to audit the department's use-of-force practices.[156]

The COPS audit took place over several months and involved nearly 100 interviews. It also included direct observations of LVMPD operations, a review of internal documents, and analysis of officer-involved shootings. In October 2012, a final report was issued with 75 recommendations.[157] As related to this thesis, several recommendations involved the LVMPD's use-of-force review process and board.

Prior to the COPS review of the LVMPD, the UFRB was authorized only to make a finding of "justified or not justified."[158] Since the review, the UFRB now makes one of four findings: administrative approval, tactics/decision making, policy/training failure, or administrative disapproval.[159] The sheriff must then agree with, modify, or reverse the board's decision.

The COPS review also recommended that the LVMPD create a policy to release more information about deadly force incidents.[160] Current LVMPD policy allows the release of the review board's decision.[161] In addition, the LVMPD publishes various officer-involved shooting documents on its website.[162] These may include the investigation report, the district attorney's decision letter, or various press releases.

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156 Timothy Pratt, "U.S. Finds Lack of Accountability in Las Vegas Police Shootings," Reuters, November 15, 2012, https://www.reuters.com/article/us-usa-lasvegas-police/u-s-finds-lack-of-accountability-in-las-vegas-police-shootings-idUSBRE8AF05U20121116.

157 George Fachner and Steven Carter, *Collaborative Reform Model: Final Assessment Report of the Las Vegas Metropolitan Police Department* (Alexandria, VA: Center for Naval Analysis, October 2012), https://ric-zai-inc.com/Publications/cops-p287-pub.pdf.

158 Fachner and Carter, 139.

159 Anonymous, personal communication.

160 Fachner and Carter, *Report of the Las Vegas Metropolitan Police Department*, 113–19.

161 Anonymous, personal communication.

162 "Internal Oversight and Constitutional Policing," Las Vegas Metropolitan Police Department, accessed February 20, 2018, https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Pages/InternalOversightConstitutionalPolicing.aspx.

E. PHOENIX POLICE DEPARTMENT

The Phoenix Police Department (PPD), with 2,762 sworn officers, provides services to the more than 1.5 million people of Phoenix, Arizona.[163] Among the core goals of Phoenix Police Chief Jeri Williams are community engagement, transparency, and accountability.[164] To further express these goals, the PPD released the *Strategic Plan* for 2017–2019.[165]

The *Strategic Plan* promotes five general goals: crime suppression and prevention; community engagement and outreach; hiring, training, and retention; employee well-being; and increase legitimacy.[166] These general goals are then broken down into subparts. Enhancing the effectiveness of its review boards and advisory boards is part of fostering community trust and increasing collaboration.[167] In a related goal, the department has a goal of improving internal and external transparency about critical incidents.[168]

One way that the PPD attempts to increase trust and collaboration is through Citizen Advisory Boards.[169] The boards, representing 15 different communities, have an assigned detective liaison. Boards provide a forum for communication and problem solving. A second way to increase trust is by making its *Operations Orders* available via the internet.[170] Operations Order 1.1 reiterates the department's guiding values, including accountability, integrity, and personal responsibility. Operations Order 1.5 addresses the use of force.

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[163] FBI, "Law Enforcement Employees."

[164] "Executive Team," Phoenix Police Department, accessed September 6, 2018, https://www.phoenix.gov/police/executive.

[165] Phoenix Police Department, *Phoenix Police Department Strategic Plan* (Phoenix: Phoenix Police Department, 2017), https://www.phoenix.gov/policesite/Documents/police_stratigic_plan_2017-2019.pdf.

[166] Phoenix Police Department, 4.

[167] Phoenix Police Department, 11.

[168] Phoenix Police Department, 16.

[169] "Police Chief's Advisory Boards," Phoenix Police Department, accessed September 6, 2018, https://www.phoenix.gov:443/police/neighborhood-resources/citizen-advisory-boards.

[170] Phoenix Police Department, *Phoenix Police Operations Orders* (Phoenix: Phoenix Police Department, June 2017), https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.

When a PPD employee is involved in an officer-involved shooting, the Professional Standards Bureau, Homicide Unit, and Incident Review Unit conduct concurrent investigations. The completed investigation is then forwarded to the PPD's use-of-force review board.[171]

The PPD uses three Phoenix citizens on its review board.[172] A peer officer and commander join the citizens as board members with an assistant chief as chair. The role of the chair is to facilitate discussions and provide a tie-breaking vote, if necessary.[173] Citizen members are selected by the department, often from Citizen Advisory Boards or block watch groups, and do not have term limits.[174] Board members review all documentation of the incident and may interview the involved officer.[175] The board is then tasked with determining whether the incident was consistent with policy.[176] Additionally, the board may make recommendations for changes to policy and training. Policy recommendations are forwarded to the police chief, and any out-of-policy finding is sent to the department's Disciplinary Review Board.[177]

To learn from its officer-involved incidents, the PPD operates a Tactical Review Committee.[178] The committee reviews individual incidents for training deficiencies and may make suggestions for policy amendments. In the spirit of transparency, the committee issues an annual report about officer-involved shootings.[179] The reports do not disclose the board's decision of whether the incident was in or out of policy.

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171 Phoenix Police Department, § 3.18.

172 Phoenix Police Department, § 3.18 (9) A.

173 Phoenix Police Department, *Officer-Involved Shooting Review*, 22.

174 Anonymous, email message to author, February 24, 2018.

175 Phoenix Police Department, *Phoenix Police Operations Orders*, § 3.18 (8), (11) B 6.

176 Phoenix Police Department, § 3.18 (8).

177 Phoenix Police Department, § 3.18 (11) B.

178 Phoenix Police Department, § 1.5 (8).

179 "Police Outreach Initiatives," Phoenix Police Department, accessed September 13, 2018, https://www.phoenix.gov/police/outreach-initiatives.

F. TUCSON POLICE DEPARTMENT

Tucson, home of the University of Arizona, is a college town of over 500,000 people. The Tucson Police Department (TPD), with 870 sworn officers, is one of the 50 largest in the United States.[180] In its 2013–2020 *Strategic Plan*, the TPD states that its mission "is to serve the public in partnership with our community."[181] The department's vision is to "constantly evaluate and improve [its] efforts to enhance public safety." The plan further lists several strategic goals with underlying objectives. Relevant to this research are two objectives: improving "external communication" and establishing "processes [and] systems for accountability [and] compliance." In 2016, a new chief took charge of the TPD.

Chris Magnus became the 47th chief of the TPD in January 2016. He had been the chief of police for Richmond, California, for the previous 10 years. During this time, Chief Magnus became highly regarded for his expertise in community policing and testified before the President's Task Force on 21st Century Policing on the subject.[182] In 2017, Chief Magnus made a significant change to the TPD's use-of-force review process.

For several years, the TPD had conducted use-of-force reviews using a Board of Inquiry.[183] Pursuant to policy, the boards were held to review police actions that caused a death or serious injury or the discharge of a firearm. The board consisted of a minimum of three voting members, one of whom could be the same rank as the involved officer. While the board did not have subpoena authority, it did have the authority to interview witnesses and involved employees.

If the board of inquiry reviewed a firearms discharge, the voting members of the board included two lieutenants and a peer representative. Additionally, an attorney from

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[180] FBI, "Law Enforcement Employees."

[181] Tucson Police Department, *Tucson Police Department Strategic Plan 2013-2018* (Tucson: Tucson Police Department, 2013), https://www.tucsonaz.gov/files/police/SPFinal.pdf.

[182] "Chief of Police Chris Magnus," Tucson Police Department, accessed September 6, 2018, https://www.tucsonaz.gov/police/chief-police-chris-magnus.

[183] Tucson Police Department, *Boards of Inquiry*, General Order 3200 (Tucson: Tucson Police Department, November 9, 2011), https://www.tucsonaz.gov/files/police/general-orders/3200BOARDS_OF_INQUIRY.pdf.

the city attorney's office, a representative from the Independent Police Auditor's Office, and a city council member from the affected ward were included as "participating observers." The participating observers received all investigative reports and participated in the discussion, asked questions, raised issues, and were expected to visit the scene, but they could not vote.

Once the incident had been investigated and all relevant information was ready, a board of inquiry was scheduled. The subject employee was notified of the date and authorized to bring a union representative. Although the proceedings were confidential, at the conclusion of the hearing, the chairperson prepared a report addressing policy, training, supervision, tactics, and equipment. Additionally, the board was required to make one of the following findings: justified, within departmental policy; justified; policy violation; justified, tactical/training improvement opportunity; or not justified, not within departmental policy. The chief then concurred, did not concur, or sent the report back for more action. If the determination was *not justified*, the findings were sent to the involved employee's chain of command for disciplinary or corrective actions. The board did not have authority to determine discipline. This process changed after the arrival of Chief Magnus.

In January 2017, the TPD issued an operations pamphlet creating the Critical Incident Review Board. In the spirit of transparency, the pamphlet, along with links to the use-of-force policy, was published on the department's website.[184] The board is authorized to conduct reviews of any "critical incident, officer-involved shooting, or collision resulting in death or serious injury to a person." In following the recommendation of the President's Task Force on 21st Century Policing, the board membership includes "community representatives" and a member of the Citizen Police Advisory Review Board. The pamphlet notes that the board "seeks to promote trust and legitimacy with [the] community by including community representation."[185]

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[184] Tucson Police Department, *Critical Incident Review Board Operations* (pamphlet, Tucson Police Department, February 15, 2018), https://www.tucsonaz.gov/files/police/CIRB/CIRB_OPS_Pamphlet_021518.pdf; Tucson Police Department, "General Orders," accessed September 13, 2018, https://www.tucsonaz.gov/police/general-orders.

[185] Tucson Police Department, *Critical Incident Review Board Operations*, 1.

After a critical incident, the TPD conducts simultaneous criminal and administrative investigations. Once the criminal investigation is complete, it is referred to the prosecuting authority for a charging decision. Under the former Board of Inquiry process, the administrative review was stayed pending the criminal review. In the new policy, the Critical Incident Review Board's review is not delayed, and the board may issue a report prior to a charging decision.[186]

In performing its responsibilities, the board is expected to review the investigative file, interview appropriate witnesses, ensure the adequacy of the investigation, and prepare a written report for the chief. The board is authorized to review relevant department policy for adequacy, review training for areas of improvement, assess actions for critical decision-making, and render findings of compliance or noncompliance with department policy. If needed, a dissenting member may submit a memorandum documenting his or her concerns.[187]

In making findings, the board has four options: justified, within department policy; justified policy violation; justified, tactical/training improvement opportunity; or not justified, not within departmental policy. If the board votes *not justified*, it does not have the authority to make disciplinary recommendations. By policy, the board has several added considerations in use-of-force reviews: de-escalation, proportionality, and provocation.[188]

Local news in Tucson reported the change and published information about the involvement and training of community members. The articles expressed the hope that increased transparency, through having community members on the board, would improve the community–police relationship.[189] These news articles also note that the Independent Police Auditor recruits the community representative.

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[186] Tucson Police Department, 12.

[187] Tucson Police Department, 1, 5–6.

[188] Tucson Police Department, 13–15.

[189] "TPD Creates Board to Review Officers' Use of Force," Tucson News Now, July 22, 2017, http://www.tucsonnewsnow.com/story/35948677/tpd-creates-board-to-review-officers-use-of-force; and "Tucson Police Train Citizens to Join Board Overseeing Physical Force," KVOA (Tucson), July 22, 2017, http://www.kvoa.com/story/35948230/tucson-police-train-citizens-to-join-board-overseeing-physical-force.

In February 2018, the TPD released reports about two incidents that had been reviewed by its new board.[190] One incident involved a traffic accident between a police car and a motorcycle. The other was an immigration protest. The reports, 61 and 107 pages respectively, which are available on the department's website, document the investigation, board interviews, recommendations, and findings.[191]

G. SUMMARY OF SIX POLICE DEPARTMENTS

The six departments have distinctive structures for their boards. The voting membership size ranges from five to 16, with five being the most common. Except for the DPD, all departments include at least one peer member. The DPD, following Colorado law, includes a law enforcement officer from a neighboring department. Most of the boards have one or two community members. Interestingly, the two largest departments use a majority of community members—Phoenix with three and Las Vegas with four.

How the departments recruit and select community members is also very different. By city code, Portland community members are selected by the city council. Meanwhile, Tucson uses its Independent Police Auditor to recruit community members. A second community member is selected from the Citizen Police Advisory Review Board (CPARB). By city code, the mayor and city council members each appoint one member to the CPARB. At the other end of the spectrum, Olympia's and Denver's community members are selected by the department. Somewhere in the middle, Las Vegas selects members in conjunction with community groups, and Phoenix generally selects its members from one of the many Police Chief's Advisory Boards.

Transparency is also treated differently. Denver and Phoenix do not publish information about the board's decisions on the departments' websites. In Denver, by code, the Independent Monitor provides a summary as part of its semi-annual reports, which

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[190] Priscilla Casper, "Police Release Critical Incident Review Board Findings," KGUN, February 16, 2018, https://www.kgun9.com/news/local-news/police-release-critical-incident-review-board-findings; and Shaq Davis, "2 Tucson Police Officers Face Discipline over Actions at Immigration Protest," *Arizona Daily Star*, February 16, 2018, http://tucson.com/news/local/tucson-police-officers-face-discipline-over-actions-at-immigration-protest/article_80162af8-2f8b-5c6b-8164-1b7959f0bf24.html.

[191] "Critical Incident Review Board (CIRB)," Tucson Police Department, February 14, 2018, https://www.tucsonaz.gov/police/critical-incident-review-board-cirb-0.

include the Independent Monitor's position about the board's decision. Phoenix publishes an annual report by the Tactical Review Board that briefly describes the officer-involved shooting. The remaining four departments all publish summaries of the boards' decisions with varying degrees of information. Portland has the added requirement, by city code, that the vote totals be included in the Police Review Board's report.

Table 2 provides a summary of the similarities and differences among the structure and operations of the six UFRBs.

Table 2. Comparison of use-of-force review boards

	Denver	Las Vegas	Olympia	Phoenix	Portland	Tucson
Population 2016	699,259	1,592,178	50,972	1,586,611	642,129	533,663
Sworn Officers 2016	1,483	3,326	67	2,762	908	870
Total Voting Board Members	5	7	5	5	7	11+/-
Civilian voting members	2	4	1	3	2	1 or 2
Peers	0	1	1	1	2	1
Voting monitor/ auditor	Concur/defer	n/a	n/a	n/a	Y	Y
Selection of Civilian	By department	Jointly between department and community group	By department	By department-often from community advisory groups	Selected by City Council	Independent Police Auditor & CPARB
Term Limits	None listed	None listed	None listed	None listed	Two 3-year terms	None listed
Public reports	Not by department Summary in Independent Monitor report	Department website	Department website	Annual Report by Tactical Review Board, not UFRB – hard to locate	Department website and Independent Police Review	Department Website
Involved Officer Interviewed by board	Not compelled	Can be compelled	Can be compelled	Can be compelled	Not compelled	Can be compelled

Chart based on department policies as cited in the collective case study.

H. CASE STUDY ANALYSIS

The collective case study method allowed for the systematic application of the research questions across all six law enforcement agency UFRBs. The collective case study revealed the similarities and differences among the boards, which when combined with the literature review allowed a more comprehensive assessment. This section begins with a review of the relevant criteria for assessing the effectiveness of police oversight. These criteria were used to determine how well the various use-of-force boards met the suggested standards.

1. Description of Criteria Used to Rate Departments

Ofer suggests eight key components for effective oversight, five of which are observable: the method for selecting community members, the scope of review, independent investigative authority, due process, and public reporting.[192] Crosby, Kelly, and Schaefer suggest several similar criteria: representative and open selection of community members and a neutral presentation allowing deliberations that encourage effective decision making. Meanwhile, Perez and Bobb have expressed concern that civilians, due to a lack of training and experience, may become too empathetic with, or captured by, the departments they oversee. Perez's and Bobb's concerns about capture are combined with suggestions from Ofer and Crosby, Kelly, and Schaefer to create six criteria, as shown in Table 3. For each department, the criteria are scored on a scale of low, medium, or high. Some criteria may only be scored low or high.

a. Civilian Selection

One criterion is whether the community members are selected by the department or by an outside entity. This item is based on Ofer's suggestion of community-member nomination by civic organizations and the criterion of Crosby, Kelly, and Schaefer of selecting members in a way to avoid manipulation. Both Ofer and Crosby, Kelly, and Schaefer suggest that this is the most important criterion. Ratings were based on how the

[192] The three criteria not addressed in this study include "ensur[ing] discipline sticks, audit[ing] policies and practices, and secur[ing] funding." Ofer, "Getting It Right," 1033.

community members are selected for the boards. If an outside entity selects the community member, the department received a high rating. If both the department and outside entity are involved together, the department received a medium rating. If a department selects the community member, it received a low rating.

b. Term Limits

A second criterion is whether community members have term limits on their review board service. This item is used as a reflection of Perez's and Bobb's concerns of community members becoming captured by the department. Having term limits is a stand-in measurement that shows a department's interest in preventing capture. If a department has publicly stated term limits, it received a high rating. A lack of policy earned a low rating.

c. Civilian Training

A third criterion documents whether the community members are required to receive training related to their board service. This factor is based on the criterion of Crosby, Kelly, and Schaefer that the proceedings promote effective decision making. Training has the added benefit of minimizing Bobb's concerns that community members have insufficient experience or qualifications to make decisions independent of the department and are, therefore, captured or co-opted. If a department requires training, by policy or city code, it received a high rating. A lack of policy earned a low rating.

d. Scope of Authority

A fourth criterion reflects whether the board is authorized to address issues beyond the question of whether the incident was within department policy. This factor addresses Ofer's requirement of a broad scope of review and the criterion of Crosby, Kelly, and Schaefer about effective decision making. If a department authorizes its boards to address issues of training, equipment, and policy, among others, it received a high rating. A lack of such authorization earned a low rating.

e. Officer Questioned

A fifth criterion, which addresses whether the board can compel the questioning of the involved officer, represents two of Ofer's suggestions—independent investigative authority and due process for the involved officer—and two of Crosby, Kelly, and Schaefer—the proceeding should promote effective decision making and be fair. A high rating was awarded to a department if the involved officer can be compelled to answer questions from board members. Otherwise, a low rating was awarded.

f. Public Reports

The final criterion ranks transparency by looking at the departments' public access and reporting related to officer-involved shootings and subsequent review boards. Many departments post their use-of-force policies on department websites. However, not all departments post details about individual incidents or use-of-force board findings. Because of the importance of transparency, a high rating was awarded to departments that provide easy website access to detailed information about officer-involved shootings as well as the board's findings and recommendations. A medium rating was awarded if an outside entity provides a summary of the incident and the board's findings. A low rating was awarded for little to no public reporting. The last row totals the high ratings earned by each department, with six being the maximum.

2. Rating the Departments' Boards

One of the thesis research questions asks whether there are an ideal structure and process for incorporating civilian voting members on department UFRBs. The six criteria from Ofer, Crosby, Kelly, and Schaefer, Perez, and Bobb were applied to each of the six studied department review boards to assist in answering this question. The application of the criteria allows these departments to better understand the incorporation of community members on their review boards.

a. Portland

Portland earned five high ratings for its independent method of selecting community members, specified term limits, training requirements, a broad scope of

authority, and public reporting. The only criterion missed was the compelled questioning of the involved officer by the review board.

b. Tucson

Tucson also earned five high ratings for its critical incident review process. Having the community members selected by the Independent Police Auditor, or, in the case of the Citizen Police Advisory Review Board, by the city council keeps the department out of the selection process. Tucson also earned high ratings for requiring training of community members, its broad scope of authority, the ability to compel the questioning of the involved officer, and public reporting. The only missed criterion was a lack of explicit term limits for community members.

c. Las Vegas

Las Vegas earned four high ratings and one medium for its use-of-force review process. Las Vegas earned a medium rating for its community-member selection process, which uses its two community-member board co-chairs and community focus groups in the recruitment, interview, and selection process. Las Vegas also earned high ratings for requiring training of community members, a broad scope of authority, compelled officer questioning, and public reporting. As with most of the agencies, Las Vegas does not have explicit term limits for its community members and missed that point.

d. Olympia

Olympia earned three high ratings for its critical incident review process. Olympia earned high ratings for the broad scope of authority, the ability to compel officer questioning, and thorough public reporting. Olympia missed high ratings for not specifically requiring community-member training, not having term limits, and not having an outside entity recruit and select the community members.

e. Denver

Denver earned two high ratings and one medium rating for its use-of-force review process. High ratings were earned for required community-member training and scope of

authority. In addition, while DPD does not report the board's findings, it received a medium rating because the Independent Monitor provides annual and semi-annual reports that include a summary of the event, the board's findings, and the Monitor's opinion. Denver misses high ratings for not having term limits, not providing compelled questioning of the involved officer, and allowing the department to recruit and select the community members.

f. Phoenix

Phoenix earned two high ratings for its use-of-force review process. The high ratings were earned for the ability to compel the questioning of the involved officer and the broad scope of the board's review authority. Phoenix lacks specific community-member term limits, required community-member training, and—most important—public reporting and outside selection of community members.

3. Discussion

As shown in Table 3, two departments, Portland and Tucson, tied with five high ratings. Las Vegas, with four high ratings, was next, followed by Olympia, Denver, and Phoenix.

Table 3. Rating of use-of-force review boards against suggested criteria

	Portland	Tucson	Las Vegas	Olympia	Denver	Phoenix
1) Civilian Selection	High	High	Medium	Low	Low	Low
2) Term limits	High	Low	Low	Low	Low	Low
3) Civilian training	High	High	High	Low	High	Low
4) Scope of Authority	High	High	High	High	High	High
5) Officer questioned	Low	High	High	High	Low	High
6) Public reports	High	High	High	High	Medium	Low
Total high ratings	5	5	4	3	2	2

1) Civilian selection: H = outside entity selects, M = outside entity and department selects, L = department selects

2) Term limits: H = community members have term limits, L = no term limits on community members

3) Civilian training: H = community members receive training, L = no requirement for community-member training

4) Scope of authority: H = board has authority to review the incident, policy, training, etc., L = board only review incident for policy compliance

5) Officer questioned: H = involved officer subject to compelled questioning by the board, L = officer not subject to compelled questioning by board

6) Public reports: H = public reporting of board findings and information about the reviewed incident, M = outside entity publishes board findings, L = no public reporting

One objective of this thesis is to examine whether there is an optimal way to incorporate community members on a department's UFRB. As the case study shows, there are similarities and differences in the structure and operations of the six UFRBs. The boards range in size from five to 16. Community memberships range from one to four. This translates to two of the boards having majority community membership and four with minority community membership. While just having community members provides some legitimacy to the process, the method of selecting the members should provide more objective legitimacy.

a. The majority of the departments studied could improve their review process by using an external entity to recruit and select community members.

Ofer and Crosby, Kelly, and Schaefer express concerns about whether the selection of community members is subject to manipulation and does not adequately represent the community. Arguably, this criterion is the most important in the study and the most difficult to implement. The two highest-ranked departments understand the importance of this criterion. As required by city code, the Portland City Council makes the selections based on Portland's demographics and appears to use the most transparent selection process. In the case of Tucson, with the Civilian Police Advisory Review Board members selected by the mayor and city council, the TPD is a close second. However, its current use of the Independent Police Auditor in the recruitment process is not specified in policy and, therefore, subject to change. As for Denver, Phoenix, and Olympia, more openness with the selection of community members should increase legitimacy—as discussed in the section on Denver's use-of-force policy. The suggestion of Denver's use-of-force working group—that one community member be selected by the city council president—indicates the public's preference that the department not select the community member.

Interestingly, in June 2008, Merrick Bobb and his Police Assessment Resource Center issued a report on the DPD's use-of-force policy.[193] At the time of the report, the DPD had a disciplinary review board whose community members were selected by the manager of safety, the executive director of the Denver Civil Service Commission, and a city council member. The department then selected the UFRB members from this pool of candidates. It was Bobb's recommendation that the UFRB members be selected by the manager of safety, the executive director of the Denver Civil Service Commission, and a city council member. Bobb noted, "Providing the power to the DPD creates an appearance

[193] Merrick Bobb et al., *The Denver Report on Use of Deadly Force* (Los Angeles: Police Assessment Resource Center, June 2008), https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54bd2e54e4b02ad58c24e074/1421684308961/Denver+Report+on+Use+of+Force.pdf. At the time of the report, Merrick Bobb had functioned as an independent monitor for the Los Angeles County Sheriff's Department for many years.

that the DPD could handpick citizen members who it thought would be favorable to its point of view."[194] With the current process, it seems as if Denver has gone backward.

b. Term limits are the least met of the suggested criteria.

Only Portland has a specific policy regarding term limits for community members. While Portland's term limits are specified by city code, the remaining departments could easily add term limits to their relevant policies. In fact, as mentioned in the case study, one of the proposed changes to the DPD's use-of-force policy is a five-year term limit for board community members.

c. Training community members is one way to improve review boards.

Requiring training for community members serves two important purposes—it lessens the risk of community members be co-opted or captured and increases the legitimacy of law enforcement. One of law enforcement's objections to civilian oversight is the idea that civilians do not possess the training, skill, or experience to understand what officers face on the street.[195] For community members on UFRBs, departments can provide training to address some of these issues. Denver policy requires that community members receive training on the state and department use-of-force policy, hands-on training with less-lethal techniques, and an overview of the Crisis Intervention Team and firearms training.[196] Laying out the training requirements should lend community members legitimacy from the position of the officer being reviewed.

d. All the departments provide a broad scope of review.

Walker and Archbold have pushed for law enforcement agencies to become learning organizations. UFRBs violate this idea when they review a particular incident in

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[194] Bobb et al., 97.

[195] Ryan P. Hatch, "Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution," *Ohio State Journal on Dispute Resolution* 21 (2006): 454; and Mark Iris, "Police Discipline in Chicago: Arbitration or Arbitrary?," *Journal of Criminal Law and Criminology* 89, no. 1 (1998): 219, https://doi.org/10.2307/1144221.

[196] Denver Police Department, *Operations Manual*, § 105.06 (5)e, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf.

isolation and determine only whether the use-of-force was within policy. In the cases reviewed for this thesis, all boards have the authority to look beyond the isolated incident. For instance, the Las Vegas board has a finding that applies when "policy and specific training protocol is inadequate, ineffective, or deficient."[197] In the case of Tucson, the policy requires a process for tracking board recommendations on policy and practices.[198] In Phoenix, the UFRB is "responsible for making recommendations for change necessary for maintaining Department policy accountability, control and integrity, or training methods."[199] All six of the studied departments meet Walker and Archbold's push to be learning organizations. All departments met this one criterion.

While department learning is important, UFRBs are also charged with determining whether the use of force complied with law and policy. In 1989, the United States Supreme Court issued the seminal opinion on law enforcement's use of force.[200] The court held that an officer's use of force must be reasonable—when judged from the perspective of a reasonable officer—and seen as a split-second decision. Olympia Police Department's policy words it differently:

> The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, department policies, procedures and approved training to those facts. Facts later discovered but unknown to the officer at the time of the use of force being reviewed shall neither justify nor call into question an officer's decision regarding the use of force.[201]

The authority to question the involved officer matches squarely with a couple measurements for effectiveness proposed by Ofer and Crosby, Kelly, and Schaefer.

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[197] Anonymous, personal communication.

[198] Tucson Police Department, *Critical Incident Review Board Operations*, 6.

[199] Phoenix Police Department, *Operations Orders* § 3.18, 8.

[200] *Graham v. Connor*, 490 U.S. 386 (1989).

[201] Olympia Police Department, *Use of Force*, § 1.4.10 V, D.

e. Most departments allow compelled questioning of the involved officer.

Questioning of the involved officer promotes independent and effective decision making, allows the review board to obtain all necessary information about the circumstances and decision process of the use-of-force incident, and aligns with the goals of accountability and transparency. Fairness and due process are also made manifest in the use of constitutional protections.[202] Tucson, Las Vegas, and Phoenix join Olympia in allowing compelled questioning of the involved officer by the UFRB. Depending on collective bargaining agreements, this criterion may be slightly more difficult to add to department policy.

f. Most departments provide public reporting of review board findings.

Several of the departments reiterate the need for open communication and transparency, specifically regarding the use of force. For instance, in the pamphlet laying out the operations of its review board, Tucson Police Department states that the board "seeks to promote trust and legitimacy . . . fostering transparency . . . and holding the agency and its members accountable."[203] Meanwhile, Portland Police Bureau, "to ensure public accountability, . . . is committed to establishing open communication and transparent practices with the public in an effort to cultivate and build community trust."[204] Transparency, as measured by this thesis, takes different forms at the various departments.

Las Vegas has a page on its website entitled "Transparency." After just two clicks, the public has easy access to deadly force incident videos on a YouTube channel or reports and review board summaries for all the incidents since December 2010. In a similar fashion, the Olympia Police Department has its 2015 officer-involved shootings listed under the heading "Incidents" on its website. There, the public can access various press releases, the prosecutor's findings, review board summaries and memoranda, and audio of

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[202] In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the Supreme Court ruled that statements compelled as part of an administrative investigation cannot be used against a police officer in a criminal prosecution.

[203] Tucson Police Department, *Critical Incident Review Board Operations*, 1.

[204] Portland Police Bureau, *Deadly Force and In-Custody Death Reporting and Investigation Procedures*, policy 5.

initial 9-1-1 calls. These two departments, along with Portland and Tucson, embrace the recommendation of the President's Task Force that "agencies should establish a culture of transparency and accountability."[205] While the DPD gets some credit for the public reporting of the Independent Monitor, both the DPD and Phoenix could provide better public reporting of both incident information and board findings.

4. Summary

As hypothesized, the collective case study has shown a wide variance in the structure and operations of UFRBs that incorporate community members. In general, the boards have either five or seven total members with minority community membership. The one criterion that all six boards meet is the authority to review department policy, training, procedures, and the actual use of force. On the other hand, only Portland has explicit term limits for its community members. The biggest area for improvement is in the selection of community members. In this study, the three lowest-rated departments all select the community members. Ofer and Crosby, Kelly, and Schaefer are clear that citizen involvement in government should represent the community at large.

Improving a department's rating for the missing criteria may face different levels of difficulty. For instance, modifying department policy to include community-member training and term limits might be relatively easy. Meanwhile, changing policy to allow compelled questioning of the involved officer might involve discussions with the employee's union. However, the departments that are accountable in the review of critical incidents as well as transparent in the selection of board members and release of board findings hope their communities view them as legitimate. This legitimacy may then earn the benefit of the doubt when they have to use force.[206]

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[205] President's Task Force on 21st Century Policing, *Final Report*, 12.

[206] Jason Sunshine and Tom R. Tyler, "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing," *Law & Society Review* 37, no. 3 (2003): 535.

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V. DELPHI SURVEY

The goal of the thesis was to answer three research questions:

1. What is the most effective use of civilians on police department use-of-force review boards?
2. What are the similarities and differences among the use-of-force review boards of the six police departments that were chosen for this study?
3. Is there an ideal structure and process for incorporating civilian voting members on department use-of-force review boards?

One method of answering the research questions was through the collective case study discussed in Chapter IV. The second method was through the use of a Delphi survey, which asked nine people—associated with the six studied law enforcement agencies—a series of 21 questions in two rounds. The questions took a variety of forms: ratings of statements using a five-point Likert scale, yes-or-no questions, multiple-choice questions, and open-ended questions. Most questions had space for elaboration. The comments from the first round were used to formulate the second-round questions. Details of the survey method appeared in Chapter III.

A. DELPHI ROUND ONE RESULTS

Round One, Question One: As a way to measure the experience of the nine participants, the first survey question asked participants to indicate their participation in use-of-force review boards (UFRBs). As shown in Figure 2, a majority of respondents (seven out of nine) participated in more than 15 UFRBs.

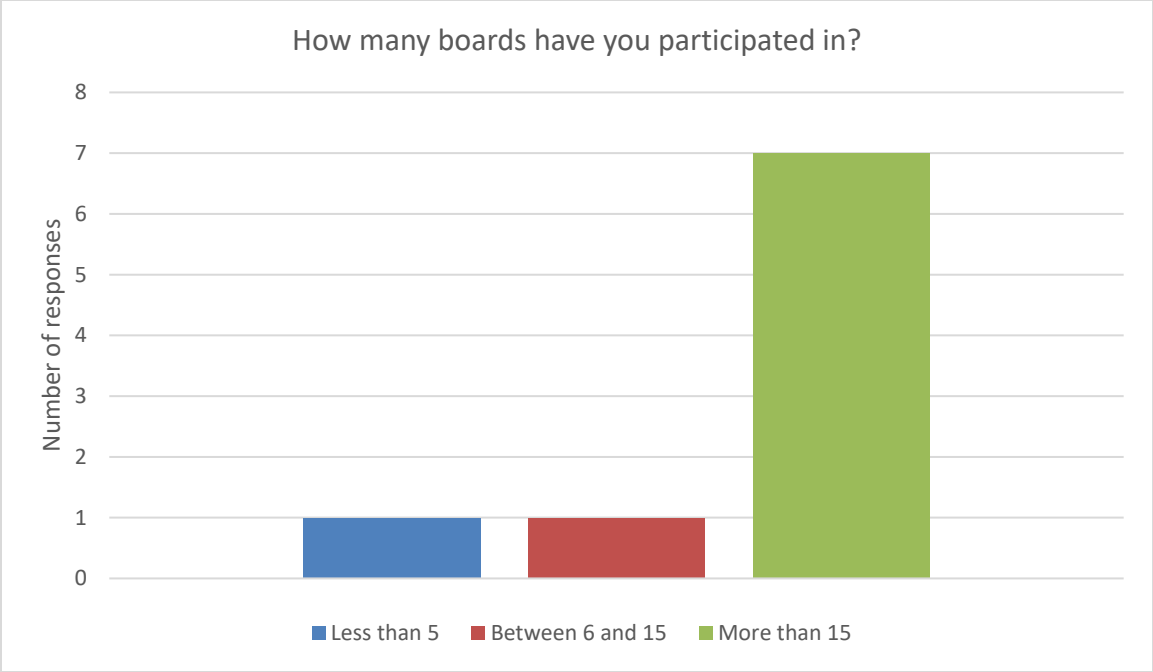

Figure 2. R1, Q1: How many boards have you participated in?

Round One, Question Two: The second question asked the participants to indicate the number of voting community members on their department's UFRB. As shown in Figure 3, two participants work with boards that have one voting community member, five participants work with boards that have more than one but are minority-voting community members, and two participants work with majority-voting community-member boards.[207] There is some overlap, since the nine participants are associated with six different department review boards.

[207] Given the author's research of the department policies, one of the five participants who answered "more than 1, but minority of board" should have chosen "majority of board" as the correct answer.

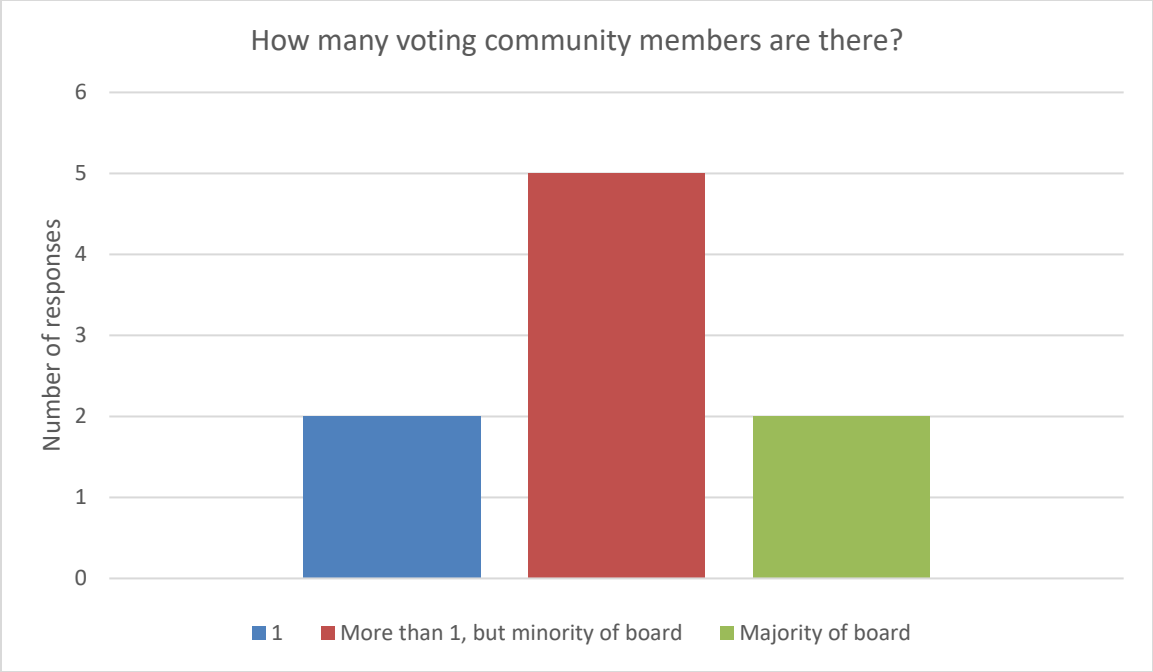

Figure 3. R1, Q2: How many voting community members are there?

The remaining first-round questions consisted of nine questions that used a five-point Likert scale, one yes-or-no question, three open-ended questions, and one multiple-choice question. The rating and yes-or-no questions all asked for elaboration. The 14 questions appear in Appendix B.

Round One, Question Three: On a scale of 1 to 5, where 1 meant *strongly disagree* and 5 meant *strongly agree*, participants were asked to rate their level of agreement with the idea that community members serving on review boards provide value to the department. As shown in Table 4, 77 percent agreed or strongly agreed that community members provide value, and one respondent strongly disagreed.

Table 4. R1, Q3: Community members provide value to the police department.

Community members on critical incident review boards provide value to the police department.	Number of responses	Percentage
5 = Strongly agree	4	44.4%
4 = Agree	3	33.3%
3 = Neutral	1	11.1%
2 = Disagree	0	0
1 = Strongly Disagree	1	11.1%

Respondents expressed general agreement that police departments benefit from having community members on their review boards. Along with rating their levels of agreement, the participants were asked for comments. As was expected from the ratings, there were generally positive comments to support the idea that the goal of civilian oversight of law enforcement is to provide transparency and accountability.[208] Among the comments from those who strongly agreed, one participant said, "[the] civilian perspective has been critical in policy making as well as the ability to hold ourselves accountable and be transparent," and community members "provide a needed component of transparency." At the "agree" level, respondents noted that community members offer a more objective or unique perspective. The participant who voted "neutral" noted that those who volunteer for UFRBs can be biased and often "go along" with the group rather than disagree with uniformed members of the board. The participant who strongly disagreed did not provide any comments. As explored in the second round, two participants noted that community members need training to be effective.

Round One, Question Four: Respondents were asked to rate the following statement: "Community members provide insightful input into board discussions." This question also used a five-point scale, where 1 meant *never* and 5 meant *every time*. As shown in Table 5, seven respondents believed that community members provide insightful input almost every time or every time.

[208] Greene, "Make Police Oversight Independent and Transparent," 747–54.

Table 5. R1, Q4: Community members provide insightful input into board discussions.

Community members provide insightful input into board discussions.	Number of responses	Percentage
5 = Every time	1	11.1%
4 = Almost every time	6	66.6%
3 = Occasionally	2	22.2%
2 = Almost never	0	
1 = Never	0	

With 77 percent of respondents voting "almost every time" or more, it is clear that the participants think community members usually provide insight on review boards. As with the prior question, seven participants provided comments. Several noted that community members ask good questions, and another noted that community members tend to provide the community perspective. The two participants who rated community-member input the lowest noted that community members tend to acquiesce in the group, but critical thinking and a willingness to speak are necessary. One participant commented that community members should not be hand-picked by the department. The participant suggested an external process to ensure the members represent the community. This suggestion, which aligns with one of the criteria reviewed in the case study, was followed in the second round with two related questions.

Round One, Question Five: Respondents were asked to rate the following statement: "Community members are willing to challenge the opinions of department board members." This question used a five-point scale, where 1 meant *strongly disagree* and 5 meant *strongly agree*. As shown in Table 6, six respondents agreed or strongly agreed that community members are willing to challenge the opinions of department members.

Table 6. R1, Q5: Community members challenge the opinions of department members.

Community members are willing to challenge the opinions of department members.	Number of responses	Percentage
5 = Strongly agree	1	11.1%
4 = Agree	5	55.5%
3 = Neutral	1	11.1%
2 = Disagree	2	22.2%
1 = Strongly disagree	0	

With 66 percent of participants voting *agree* or *strongly agree*, participants generally appear to support the idea that community members challenge the opinions of department board members. However, there are a couple of noted qualifications. For instance, the participant who strongly agreed with the premise commented "not usually." At the same time, the two lowest-rating participants commented "never in my experience" and "some can be intimidated by . . . high ranking sworn officers." In addition, the participant who voted "neutral" did not provide comments. More supportive comments included "our citizens are not afraid to express their views," and once they feel comfortable, "they seem to be vocal and engage in challenging conversations."

Round One, Question Six: This was a yes-or-no question: "Does the willingness of community members to challenge the opinions of department members change as they serve on more review boards?"

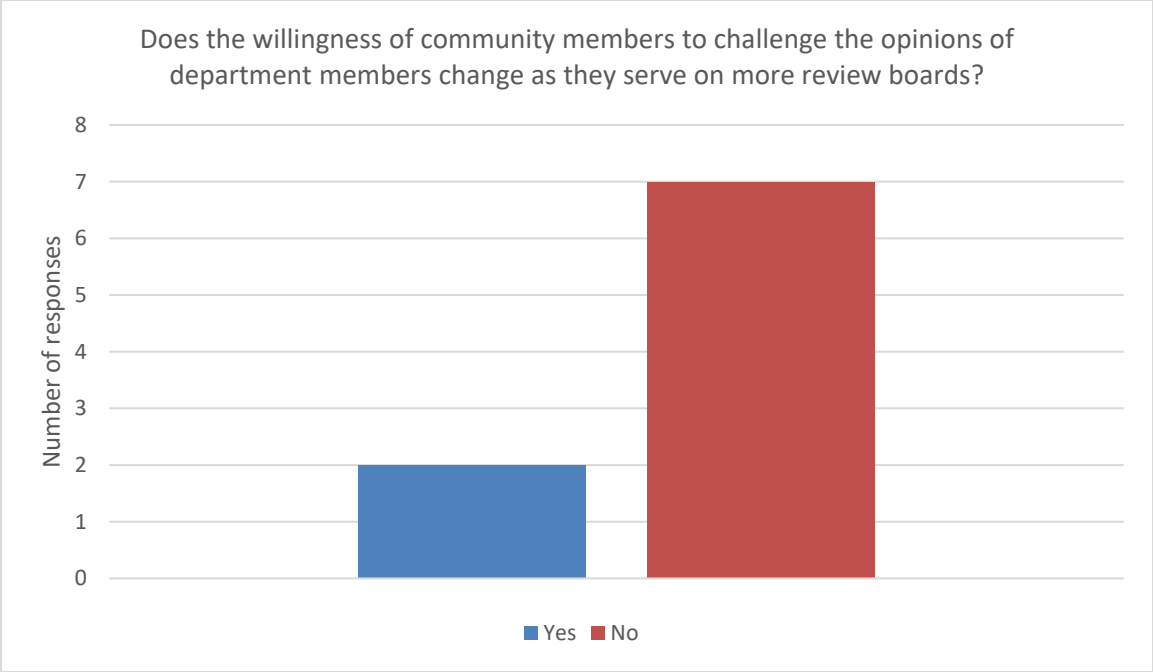

Figure 4. R1, Q6: Does the willingness of community members to challenge the opinions of department members change as they serve on more review boards?

The two participants who said "yes" both provided comments indicating that with experience, community members become more willing to ask challenging questions. A less supportive participant commented that "most [community members] seem to go along with whatever the sworn members of the board say." Two other participants believed that the critical issue is the personality of the community member, implying that the recruitment and selection process is important.

Round One, Question Seven: This question asked respondents their opinion on the following statement: "Community members possess the skill and experience to question the thoroughness of the critical incident investigation being reviewed." This question used a five-point scale, where 1 meant *strongly disagree* and 5 meant *strongly agree*. As shown in Table 7, four respondents agreed, four voted "neutral," and one strongly disagreed. Fewer than half, or 44 percent, agreed with the statement.

Table 7. R1, Q7: Community members possess the skill and experience to question the thoroughness of the critical incident investigation being reviewed.

Community members possess the skill and experience to question the thoroughness of the critical incident investigation being reviewed.	Number of responses	Percentage
5 = Strongly agree	0	
4 = Agree	4	44.4%
3 = Neutral	4	44.4%
2 = Disagree	0	
1 = Strongly disagree	1	11.1%

This question sought feedback on the knowledge and skills of community members. Not surprisingly, several (seven) respondents mentioned training in their comments. The respondent who strongly disagreed noted, "Training . . . is superficial if it exists at all." Among the comments with "neutral" votes were suggestions that training is critical and that trained community members can ask good questions. Even the respondents who agreed with the statement acknowledged the necessity of training. For instance, one respondent stated, "I believe they can with suitable and relevant training by the department." The issue of training was addressed again in the second round.

Round One, Question Eight: Respondents were asked to rank the following statement: "Community members cause the department to question or justify policies and training standards." This question used a five-point scale, where 1 meant *never* and 5 meant *always*. As shown in Table 8, two respondents voted "very often," three voted "sometimes," three voted "rarely," and one voted "never."

Table 8. R1, Q8: Community members cause the department to justify policy and training standards.

Community members cause the department to question or justify policies and training standards.	Number of responses	Percentage
5 = always	0	
4 = very often	2	22.2%
3 = sometimes	3	33.3%
2 = rarely	3	33.3%
1 = never	1	11.1%

This question sought the respondents' experience with community members making the department a learning organization. With an average rating of 2.67, or less frequently than "sometimes," the respondents did not seem to believe that this is an area where community members do much to assist the department. In fact, the respondent who voted "never" commented, "The media challenges the department and politics challenge the department, but not the community members." A couple of respondents who voted "rarely" commented that the "department [is] more critical" and that the learning environment usually "happens [only] in concert with department members who have recognized issues."

Round One, Question Nine: Respondents were asked to rate their agreement with the following statement: "Experts in the oversight of law enforcement suggest that one of the most important functions of a critical incident review board is helping the department learn from the actions of its employees. Having community members on a department review board assists with this learning process." This question used a five-point scale, where 1 meant *strongly disagree* and 5 meant *strongly agree*. For this question, two respondents strongly agreed, five agreed, one voted "neutral," and one strongly disagreed.

Table 9. R1, Q9: Community members assist with the learning process.

Experts in the oversight of law enforcement suggest that one of the most important functions of a critical incident review board is helping the department learn from the actions of its employees. Having community members on a department review board assists with this learning process.	Number of responses	Percentage
5 = Strongly agree	2	22.2%
4 = Agree	5	55.5%
3 = Neutral	1	11.1%
2 = Disagree	0	
1 = Strongly disagree	1	11.1%

More than three-quarters, or 77 percent, of respondents agreed with the statement that community members assist departments with learning. However, since only five respondents commented, it is difficult to get a full sense of the rating—especially since the two who strongly agreed did not comment. However, two "agree" voters commented. One noted that community members bring a different perspective. The other suggested that while community members provide useful ideas, the department members need to learn to listen. The most negative voter commented that "citizens involved in these matters do not contribute perspective and their status on the board lack[s] legitimacy."

Round One, Question 10: Respondents were asked to respond to the following statement and follow-on question: "Some research suggests that community members are more lenient than department members in how they view use-of-force incidents. Based on your experience, how would you rate community members compared to department members?" This question used a five-point scale, where 1 meant *most lenient* and 5 meant *most rigorous*. As shown in Table 10, six of the respondents believed that community members are more lenient than department members are, and only one believed community members are more rigorous.

Table 10. R1, Q10: How would you rate community members compared to department members?

Some research suggests that community members are more lenient than department members in how they view use-of-force incidents. Based on your experience, how would you rate community members compared to department members?	Number of responses	Percentage
5 = Most rigorous	0	
4 =	1	11%
3 = Same as department members	2	22%
2 =	3	33%
1 = Most lenient	3	33%

The average rating of 2.11 suggests community members are more lenient than department members are. Based on the literature, this result is not surprising. The six comments generally followed the rating. For instance, one respondent noted that community members are generally "pro-police and less likely to be critical of the police." A second respondent noted, "Community members are more apt to view use of force as reasonable without question." The one respondent who rated community members as more rigorous than department members noted that it might be city specific, "but the community members are usually less lenient."

Round One, Question 11: This was a free-form question: "What gets in the way of community members contributing to the review board process?" One common theme was a lack of experience or confidence on the part of community members. Another was overpowering or patronizing personalities of department members. Two respondents noted that a lack of training might interfere with community members contributing. Another respondent noted that it takes time for board members to develop the trust and confidence in each other that allows for healthy discussions.

Round One, Question 12: Respondents were asked to articulate what, if anything, they would modify on their departments' review boards. Two respondents would increase the number of community members. Two other respondents would like to have more community-member involvement in the tactics and policy questions. One respondent

would like to make the hearing open to the public, and another wanted to involve community members who are "not as evidently pro-police."

Round One, Question 13: Respondents were asked the following question: "If you were making recommendations to another department on creating a review board, what concerns would you tell them about the inclusion of voting community members?" Overall, the comments were supportive of including community members on review boards. For instance, one respondent noted they have no concerns using community members, and a second "absolutely" recommended using community members as a way to improve the "quality of analysis" and provide "external legitimacy." Another respondent recommended that the department "consider the diversity of the community members [and] have someone outside of the law enforcement agency select or identify suitable individuals." Yet another respondent noted the need for a specific policy for community-member selection, term limits, training, job expectations, etc. Two noted the importance of building trust and confidence between community and department members. Two reiterated that community members need to receive relevant training.

Round One, Question 14: The last question of the first round asked respondents how many community members they would suggest be included on a review board. The choices were as follows: zero; one; more than one, but a minority of the board; and a majority of the board. Eight voted for "more than one, but a minority of the board," and one voted for "a majority of the board."

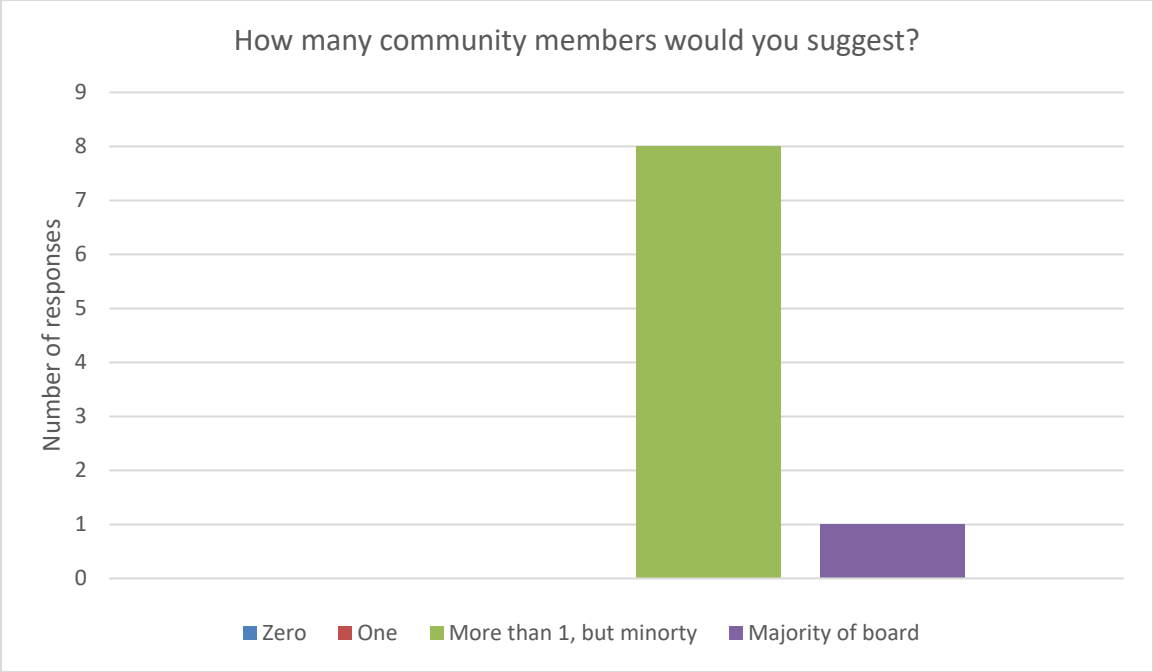

Figure 5. R1, Q14: If you were making recommendations to another department on creating a review board, how many community members would you suggest?

Even with the occasional negative rating or comment about community members on review boards, the respondents were clear that there should be more than one community member on department review boards. For instance, the one respondent who strongly disagreed with the statements that community members have the skills and experience to question the thoroughness of incident investigations and that community members contribute to department learning nevertheless suggested equal numbers of community and department members should serve together. Another vote of interest is a respondent who works with a majority community-member board yet recommended a minority community-member board. In addition, a second respondent, in comments on an earlier question (Q12), suggested that community members and department members should be in equal or nearly equal numbers.

B. DISCUSSION OF ROUND TWO RESPONSES

There were seven questions in round two. Several of the questions were developed by examining common themes from the first-round answers and comparing them with

criteria from Ofer and Crosby, Kelly, and Schaefer and the themes presented by Walker and Archbold. Four included yes-or-no questions as well as comments. Three questions asked for free-form comments. The seven questions appear in Appendix C.

Round Two, Questions One and Two: The first question of the second round asked respondents the following: "What types of training would benefit community members?" The follow-on question was as follows: "Should community-member training be a specific requirement of policy?" Eight respondents voted for training to be a requirement of policy, and the respondent who voted "no" still provided a list of trainings that would benefit community members.

Figure 6. R2, Q2: Should community-member training be a specific requirement of policy?

As shown in Figure 6, the respondents clearly believed that training community members is beneficial and should be required. As for the types of training, the participants suggested use-of-force law and policy, some scenario-based training, police ride-along, and board procedures. One respondent noted the concern of over-training and causing the community members to become "pro-police." Overall, it is clear from the four questions

that provoked responses about training that the respondents recognized the need to educate community members.

Round Two, Question Three: Respondents were asked to respond to the following yes-or-no question: "Some articles on citizen participation in government suggest that community membership should represent the diversity of the community. With that in mind, would departments benefit from having an external entity, outside of the department, recruit and select community members?" Respondents were also prompted for comments.

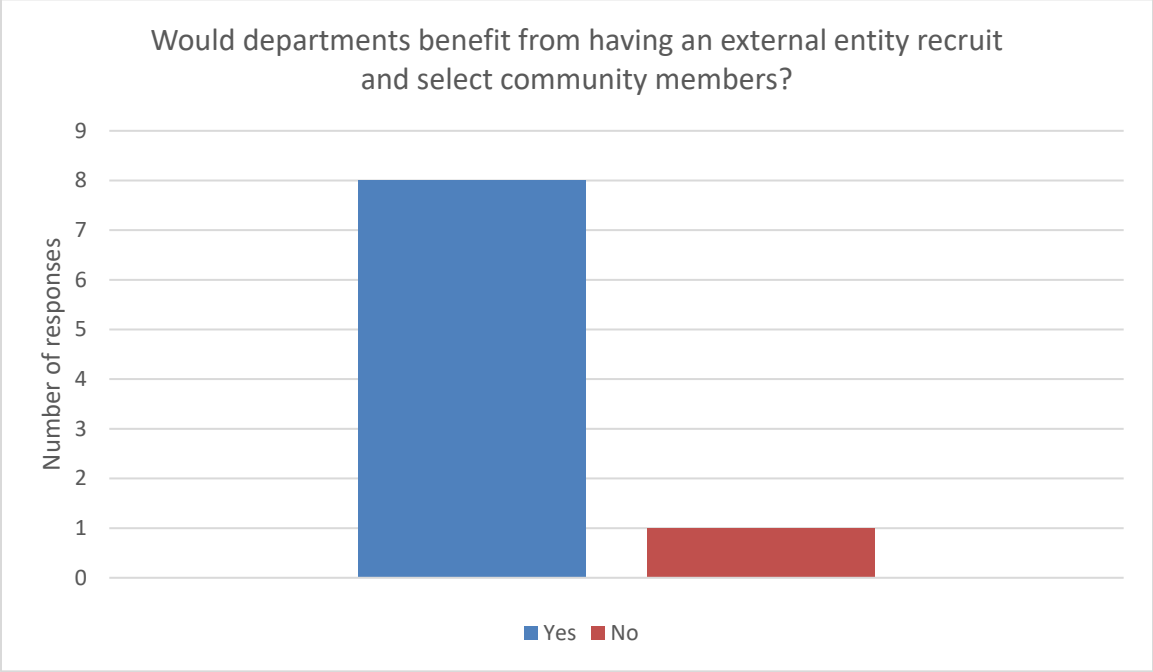

Figure 7. R2, Q3: Would departments benefit from having an external entity recruit and select community members?

Even though the vote looks overwhelmingly positive, the comments provide more nuance. For instance, the comments with the "no" vote indicate that creating a new third party to staff the board would be redundant. However, the respondent went on to say that if there is already an external monitoring or civilian oversight entity, this could become part of its duties. On the support side, a couple respondents expressed concern that if not done correctly, boards might end up with community members with agendas that are not

compatible with the review board process. A more unqualified supporter noted that "allowing the department to hand-pick its own community members erodes the perception [of an] independent, outside perspective."

Round Two, Question Four: This question asked respondents, "How would you suggest improving the community-member selection process?" Responses that directly related to external selection included the following:

- "independently selected,"
- "independent review and selection outside of the law enforcement agency,"
- "our [oversight agency] selected our community members," and
- "selection similar to jury selection."

Other suggestions for improving the selection process included better use of social media, better articulation of the department's expectations for community members about scheduling and time commitment, and better marketing of community-member involvement to benefit recruitment.

Round Two, Question Five: Respondents were asked the following question: "Outside of improved training, how can boards improve/facilitate community-member involvement in board proceedings?" Eight of the respondents provided a broad range of suggestions. One respondent, understanding the importance of transparency, suggested quarterly reports of board decisions and detailed annual reports. A couple respondents suggest adjusting the schedule of board meetings to times that work better for the community members. Another respondent noted that their city uses a professional facilitator—not employed by the department—to lead the board meeting and make sure everyone participates. A couple of respondents suggested community members ride along with police officers to better understand the issues officers face. Finally, a couple suggested similar ideas about having either a community-member leader who can present issues to the department or regular department meetings with community members to listen to any concerns.

Round Two, Question Six: The final two questions in the second round dealt with the issue of community-member eligibility. Respondents were asked the following: "Should criminal convictions disqualify community members from serving on a use-of-force review board? Felony v. misdemeanor." Eight respondents voted "yes," and one voted "no."

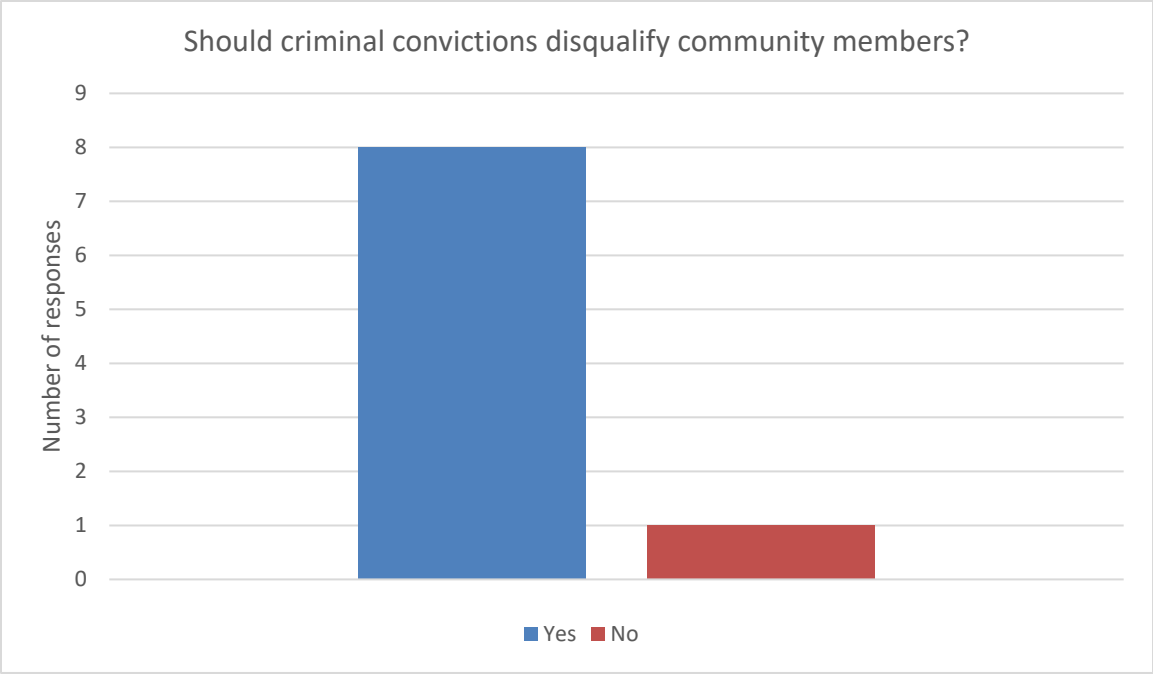

Figure 8. R2, Q6: Should criminal convictions disqualify community members?

The lopsided vote was tempered by the comments. Generally, the respondents did not believe people with felony convictions should serve as community members. As one respondent noted, "If [a felony] excludes one from being a police officer it should also exclude one from judging a police officer as it does in court proceedings." In addition, respondents generally believed convictions for crimes of dishonesty and crimes against the police should disqualify potential members from service. However, misdemeanor convictions should not be an automatic bar—so long as the community member has complied with the terms of the sentence, and some appropriate time has passed.

Round Two, Question Seven: Respondents were asked the following: "Should prior work as a sworn law enforcement employee disqualify board membership?" Two respondents voted "yes," and seven voted "no."

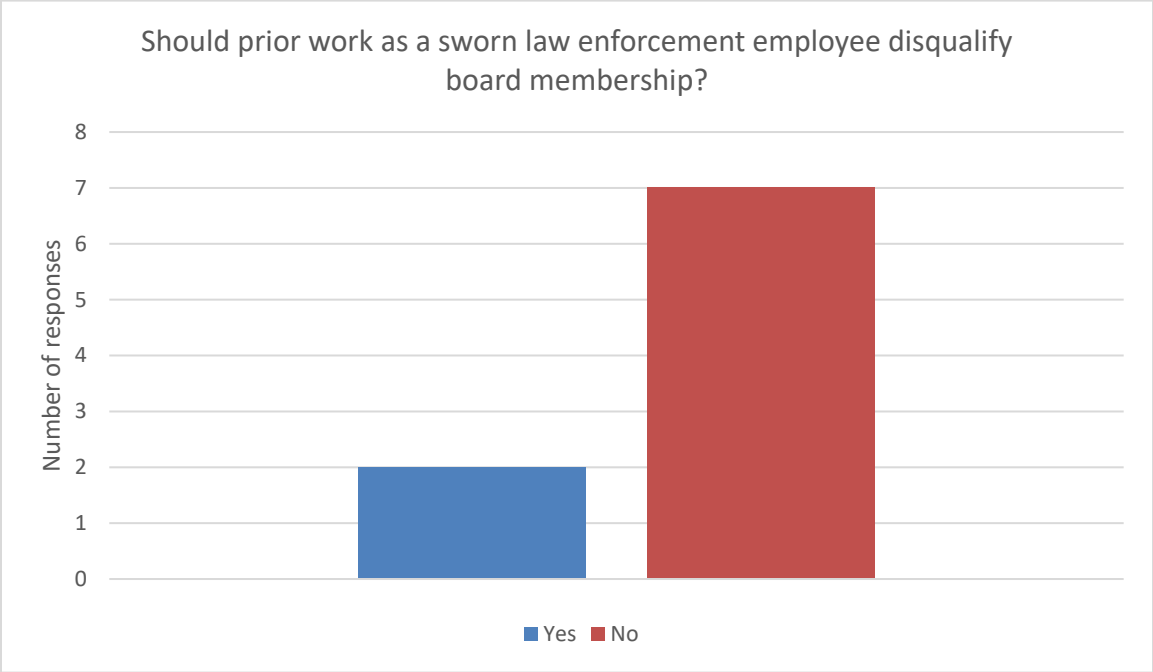

Figure 9. R2, Q7: Should prior work as a sworn law enforcement employee disqualify board membership?

Again, the lopsided vote did not adequately reflect the comments of the respondents. One of the respondents who voted "yes" noted, "This would take away from the transparency element of the process." The other suggested that prior law enforcement "will automatically give the perception of being biased." However, two of the "no" voters said the following: "If one has been prior law enforcement, one is not really a 'citizen' member," and "I don't think putting a former police officer on a use of force review board is in the best interest of the department. It would raise questions of objectivity." A third respondent noted he or she would leave it up to the agency but "would not recommend that the individual be a former member of the agency being reviewed." On the side that supports former law enforcement on review boards were comments such as the following: "There

are retired individuals who can be fair and objective," and "Unless the member was discharged from duty with cause or under investigation."

C. ANALYSIS

Two of the research questions of this thesis were crucial in the two survey rounds: What is the most effective use of civilians in police department use-of-force review boards? Is there an ideal structure and process for incorporating civilian voting members on department use-of-force review boards?

1. What is the Most Effective Use of Civilians in Police Department Use-Of-Force Review Boards?

Overall, respondents clearly support incorporating voting community members on department UFRBs.

a. With training, community members can provide value and insightful input.

In answering the question of whether community members on review boards provide value, both the rating and the comments show that the respondents believe departments benefit from having community members serve on the boards. Seven of the nine respondents agree or strongly agree that departments benefit from having community members on review boards. Additionally, seven respondents believe community members provide insightful input almost every time they participate in boards. The articulated reasons for this support include transparency, more objective or community perspectives, accountability, and the ability to ask questions that highlight community concerns. Transparency and accountability are themes promoted by the Task Force's *Final Report* and the general literature on oversight.

While acknowledging the benefits of having community members on department UFRBs, the respondents clearly recognize the need to provide relevant training to the community members. The training should cover use-of-force law and policy, weapons demonstrations, scenario-based training, basic standards of force investigations, and

operations of the review board. After being provided appropriate training, the respondents believe that community members can better contribute to board deliberations.

b. Review boards should have more than one community member.

After several questions in which respondents commented on the benefits of having community members on department review boards, respondents were specifically asked whether they had concerns with recommending the idea to other departments. All the comments support the inclusion of voting community members. A couple of respondents are unequivocal in their support. They note that community members "help build and retain trust" and "provide external legitimacy." The rest express suggestions, based on their experiences, for improving the structure and process of new departments. In the follow-on question, respondents voted overwhelmingly for including two or more community members on UFRBs.

c. Community members should be recruited and selected by an external entity.

During the first round of questions, two respondents suggested the need for community members to be selected by an entity other than the law enforcement agency. During the second round, a vast majority of respondents recognized and supported the idea of an external entity recruiting and selecting community members. Elected officials or an oversight entity—if one exists—could comprise this entity.

2. Is There an Ideal Structure and Process for Incorporating Civilian Members on Department Use-Of-Force Review Boards?

Collectively, the nine respondents have participated in over 110 department UFRBs. Based on their experience, respondents' survey answers support the following structure and processes for other departments that include community members on their UFRBs.

a. Review boards should have at least two community members who are recruited and selected by an entity external to the law enforcement agency.

All nine respondents recommend that a department UFRB contain more than one community member. In addition, a majority of respondents understand the benefit of having these community members being recruited and selected by an entity outside the law enforcement agency. This entity might be an oversight agency or perhaps an elected official.

b. Agencies need to provide relevant training to community members.

All nine respondents recognize that community members who serve on UFRBs are at a disadvantage in their understanding of the laws and policies regarding police use of force. Therefore, respondents overwhelmingly endorse the idea that training of community members should be required. The respondents suggest that the training include use-of-force law and policy, police ride-alongs, scenario-based training, review board procedures, and basic force investigations.

D. SUMMARY

The Delphi survey collected the opinions of nine people who have participated in over 110 review boards at six law enforcement agencies. As hypothesized, respondents support the idea that departments benefit from an increase in transparency when they include community members on critical incident review boards. Respondents also believe that community-member contributions to board discussions improve with relevant use-of-force related training. Also, as hypothesized and supported by a majority of respondent's opinions, community members are more lenient than department members, and therefore, departments may see no increase in department or employee accountability. However, this should not diminish department interest in including community members on UFRBs. The respondents' collective opinion is that the increase in transparency justifies having at least two community members serve on UFRBs. The survey results, case study, and suggestions from the literature are combined in the analysis, ideas for future research, and recommendations in the final chapter.

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VI. CONCLUSION

Since the New York Police Department created the Firearms Discharge Review Board in 1972, conducting internal reviews of use-of-force incidents has become standard practice for law enforcement agencies in determining whether an officer complied with department policy.[209] In some smaller agencies, the head of the agency conducts the review, but in many departments, a use-of-force review board (UFRB) conducts this review. Six agencies—in Denver, Las Vegas, Olympia, Phoenix, Portland, and Tucson—have voting community members who sit on the departments' UFRBs. By including community members, these departments hope that the increase in transparency, along with traditional review-board accountability, will lead to more public trust and legitimacy.

A. COMPARATIVE ANALYSIS

This thesis conducted a collective case study of these six agencies with community members on their review boards. Additionally, a two-round Delphi survey, of nine people associated with the six agencies, was conducted to gather opinions about the operations of UFRBs that include community members. This mixed methodology was then applied to criteria suggested in the literature for assessing civilian oversight of law enforcement and citizen participation in government. This thesis had one primary research question and two secondary questions, which are addressed in the following subsections:

1. What are the Similarities and Differences among the Use-Of-Force Review Boards at Six Police Departments That Were Chosen for This Study?

As might be expected, all of the studied department review boards exhibit similarities and differences. The similarities include the following:

- All allow their boards to examine policy and training issues in addition to assessing the specific incident under review.

[209] Walker and Archbold, *The New World of Police Accountability*, 178.

- Five of the six departments have some form of public reporting of the boards' decisions. In the case of Denver, the reporting is done by the Independent Monitor.

On the other hand, the differences are more significant:

- Two of the departments, Portland and Tucson, use entities outside the police department to recruit and select the community members. Las Vegas uses a hybrid of the department and the civilian board co-chairs to select new members.
- Only one department, Portland, has explicit term limits on community members' service.
- Four of the departments—Denver, Las Vegas, Portland, and Tucson—require training for community members in use-of-force law, policy, and training methods. Olympia and Phoenix do not have specific policies regarding the training of community members.
- Four of the departments—Las Vegas, Olympia, Phoenix, and Tucson—provide for compelled questioning of the involved officer by the review board. In these departments, officers are obligated to answer the boards' questions with the constitutional protection that their answers cannot be used against the officers in criminal proceedings.

2. Is There an Ideal Structure and Process for Incorporating Civilian Voting Members on Department Use-Of-Force Review Boards?

The literature and Delphi survey suggest some ideal structures and processes for incorporating voting community members. They include the following:

Selection of Community Member

One of the strongest suggestions from the literature is about the process of selecting community members. Ofer and Crosby, Kelly, and Schaefer are clear that the department being reviewed should not pick the community members who serve on the review

board.[210] The case study reveals that Portland and Tucson are the only departments that satisfy this recommendation. In the case of Portland, city code mandates that the city council select the community members who are eligible to serve on the review board. In Tucson's case, the Independent Police Auditor recruits and selects the community members. However, Tucson's process could be strengthened by explicitly describing the process in policy.

During the first round of the survey, a couple of the respondents suggested the need for community members to be selected by external entities. In the second round, the respondents recognized the potential benefits of using an external entity to recruit and select community members.

Training

The criterion of Crosby, Kelly, and Schaefer—that the process should foster effective decision making—implies training.[211] As suggested by Bobb, training in use-of-force law and policy may also provide community members the experience or qualifications to resist becoming too empathetic with, or captured by, the departments they review.[212] As shown in the case study analysis, this dynamic can be measured by examining a department's policy for a training requirement for community members.

In the first round of the Delphi survey, seven of the respondents mentioned the importance of training. During the second round, all provided examples of training that would benefit community members. Again, the experience-based input of the experts supports the systematic case analysis, which is based on the literature. A potential yet unmeasured benefit of properly training community members is the increased legitimacy of the process among members of the department being reviewed.

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[210] Ofer, "Getting It Right"; and Crosby, Kelly, and Schaefer, "Citizens Panels," 170–78.

[211] Crosby, Kelly, and Schaefer, 171.

[212] Merrick Bobb, "Ensuring the Legitimacy of Police Conduct," 163.

Term Limits

The third measurement, term limits for community members, is used as a surrogate measurement of how departments avoid capturing the review board community members. During the first round of the survey, one respondent noted the importance of having a policy that sets term limits. The case study shows that Portland is the only department that sets explicit term limits on community-member service.

Authority to Review Incident, Department Policy, and Employee Training

Both Ofer and Crosby, Kelly, and Schaefer suggest that UFRBs need to do more than just review whether a particular use of force is within policy. Ofer calls this concept a "broad scope to review," while for Crosby, Kelly, and Schaefer, such proceedings are "fair" and "promote effective decision making."[213] Both of these criteria are strongly supported by Walker and Archbold's idea that police agencies need to be learning organizations.[214] A learning organization is one that proactively studies what it and similar organizations do—both right and wrong—so it can make informed decisions about necessary changes. The collective case study shows that all examined departments authorize their UFRBs to look beyond the specific use-of-force and review policies and training for improvements.

Questioning of Involved Officer

Ofer suggests that effective oversight of law enforcement requires that the oversight board have independent investigative authority.[215] For Crosby, Kelly, and Schaefer this is part of proceedings that promote effective decision making.[216] When applied to UFRBs, these criteria become a measurement of whether the involved officer is subject to questioning by the review board. The case study shows that Las Vegas, Olympia, Phoenix, and Tucson provide compelled questioning of the involved officer. Additionally,

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[213] Ofer, "Getting It Right," 145; and Crosby, Kelly, and Schaefer, "Citizens Panels," 171.

[214] Walker and Archbold, *The New World of Police Accountability*, 23.

[215] Ofer, "Getting It Right," 1046.

[216] Crosby, Kelly, and Schaefer, "Citizens Panels," 171.

compelling the questioning provides the officer with constitutional and due-process protections, which are another component of Ofer's elements of effective oversight.[217]

Public Reporting

Ofer's final criterion is public reporting, which helps provide transparency, as recommended in the Task Force's *Final Report*, and may lead to an increase in public trust and legitimacy.[218] The case study shows that Las Vegas, Olympia, Portland, and Tucson release reports about UFRB decisions on their websites. During the second round of the survey, one of the respondents suggested that departments could improve the review process by issuing quarterly and annual reports that cover the demographics of the review board, cases reviewed, results of the reviews, and trends. Ofer would support these suggestions for all the departments.

3. What is the Most Effective Use of Civilians in Police Department Use-Of-Force Review Boards?

There is an abundance of literature on oversight of law enforcement. The vast majority discusses the various types for dealing with citizen complaints. This thesis focused on a narrow type of oversight—UFRBs that include citizens as voting members—not usually covered in the literature. Through the use of a Delphi survey, which involved nine people associated with six department review boards with voting community members, this thesis adds to the extant literature in several significant ways:

1. It shows that people who participate in board operations believe that the involvement of community members benefits the departments.
2. The experts recommend including voting community members to departments that are considering the idea.
3. All of the experts believe that there should be more than one voting community member on a department's review board.

[217] Ofer, "Getting It Right," 1050.

[218] Ofer, 1051; and President's Task Force on 21st Century Policing, *Final Report*, 12.

4. The experts support the idea that the community members should be recruited and selected by an entity external to the department.
5. The experts believe that community members need to receive use-of-force law and policy training to be effective.

B. LIMITATIONS OF RESEARCH

This study had at least three limitations. First, the Delphi survey was limited to the input from nine people due to the restrictions of the Naval Postgraduate School's Institutional Research Board. Because of this nine-person limit, the study did not include community members in the Delphi survey. This was the second limitation. The third was the limited number of departments studied—six. All of these limitations provide fertile areas for future research.

C. AREAS OF FURTHER RESEARCH

This thesis has looked at effectively using community members on department UFRBs. However, it has also identified several areas for future research.

Increase survey size

Future surveys should include more sworn law enforcement members and, more importantly, community members. This would provide a much larger pool of opinions about the effectiveness of community members on UFRBs. Additionally, by including community members in the survey, researchers could determine where the community members are on Arnstein's ladder of participation. In other words, is there only one-way communication between the department and the community members—the lowest rungs of the ladder—or is there genuine partnership and two-way communication of community-member concerns—the upper rungs of the ladder?

Increase the number of departments studied

Future studies should look for more departments that use community members on UFRBs. Such research would provide a broader understanding of how community members are incorporated on review boards.

Compare results of department review boards

Future research should look at the voting patterns of sworn law enforcement vis-à-vis community members to determine whether there are differences in the understanding and application of policy. Additionally, researchers could analyze actual board proceedings to determine the level of community-member participation and whether department members give community members due consideration.

Analyze departments as learning organizations

This study did not attempt to determine whether departments apply any of the lessons identified by the UFRB. Researchers should look at how lessons learned are implemented by the department and then shared across the law enforcement industry.

D. RECOMMENDATIONS

The inclusion of community members on UFRBs is a useful method for departments to increase their legitimacy with the communities they serve. In following the recommendations of the President's Task Force, agencies should consider the following suggestions, which are based on the Delphi survey and suggestions from the literature:

- Survey the involved community members to determine their satisfaction with the board process
- Create a method for externally recruiting and selecting community members
- Set term limits for community members
- Create policy requiring community-member training in use-of-force law, department policy, and department use-of-force training methods.
- Give the board authority to examine issues (policy, training, and equipment) beyond the specific incident being reviewed
- Compel testimony of all necessary department employees

- Provide easy public access to relevant policies, incident information, and board findings

This thesis has shown that departments can benefit from including voting community members on UFRBs. By creating transparent policies for the structure and operations of the review board, a department can show the public that it is holding employees and itself accountable. Additionally, by allowing community members—selected by an outside entity—to serve on a review board with authority to review department policy, training, equipment, and the specific use-of-force incident, the department should see an increase in public trust and legitimacy.

APPENDIX A. EMAIL INVITATION TO PARTICIPATE

To: _____

Subject: Thesis research - voting community members on police use-of-force review boards

I am in a Department of Homeland Security Master's program at the Naval Postgraduate School in Monterey, CA. I am requesting that you participate in a Delphi survey that I am conducting for my thesis.

My thesis is exploring police department use-of-force review boards that incorporate voting community members. I am specifically looking to determine if a consensus can be reached on the structure and operation of such a review board.

The survey will consist of two rounds of questions. I will keep your responses anonymous and only my advisor and myself will have access to the raw data. Individual responses will be aggregated and reported in a way that will allow your individual response to remain confidential and anonymous.

If you are willing to participate, please continue with the survey below. The first page is required by the Naval Postgraduate School's Institutional Review Board for all research. It describes your protections in participating in this voluntary study. I would appreciate it if you could complete this survey within the next two weeks.

https://survey.nps.edu/779866/lang-en

If you have any questions about what this would entail, please call or email me.

Thank you for your time.

John Breckenridge

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APPENDIX B. NPS CONSENT TO PARTICIPATE

Naval Postgraduate School
Consent to Participate in Research

Introduction. You are invited to participate in a research study entitled Effective Use of Civilians in Police Use-of-Force Review Board: A Delphi Study Involving Six Police Departments. The purpose of the research is to attempt to obtain expert consensus as to the structure and operation of police department use-of-force review boards that include civilian voting members.

Procedures. If you agree to participate in this study, you will be asked to participate in two on-line surveys designed to determine if consensus can be reached in the structure and operation of police department use-of-force review boards. The surveys are expected to take less than 30 minutes each and will be performed by people associated with police departments that utilize civilian voting members on their use-of-force review boards.

No personally identifying information will be sought during the surveys.

Compensation. No compensation will be given for your participation. A copy of the completed thesis will be available through the Homeland Security Digital Library, or from the author.

Location. The surveys will be collected on-line using any compatible Internet-capable device of the subject's choosing.

Voluntary Nature of the Study. Your participation in this study is strictly voluntary. If you choose to participate you can change your mind at any time and withdraw from the study. You will not be penalized in any way or lose any benefits to which you would otherwise be entitled if you choose not to participate in this study or to withdraw.

Potential Risks and Discomforts. The potential risks of participating in this study are: Any breach of confidentiality could result in your opinions related to the inclusion of civilians as voting members on your department's use-of-force review board becoming public.

Anticipated Benefits. You will not directly benefit from your participation in this research. However, this study may be able to identify ways to improve the structure and operation of department use-of-force review boards that have civilian voting members.

Confidentiality & Privacy Act. Any information that is obtained during this study will be kept confidential to the full extent permitted by law. All efforts, within reason, will be made to keep your personal information in your research record confidential but total confidentiality cannot be guaranteed. The study will consist of two on-line surveys. You

will not be asked any personal identifiable information as part of the study. At the conclusion of the research, all data will be collected, removed from the survey tool, and maintained in a locked cabinet that prevents access.

Points of Contact. If you have any questions or comments about the research, or you experience an injury or have questions about any discomforts that you experience while taking part in this study please contact the Principal Investigator, Dr. Gail Thomas, or the Researcher, John Breckenridge. Questions about your rights as a research subject or any other concerns may be addressed to the Navy Postgraduate School IRB Chair, Dr. Larry Shattuck.

Statement of Consent. I have read the information provided above. I have been given the opportunity to ask questions and all the questions have been answered to my satisfaction. I have been provided a copy of this form for my records and I agree to participate in this study. I understand that by agreeing to participate in this research and signing this form, I do not waive any of my legal rights.

1. I agree to participate in this study. I understand that by agreeing to participate and clicking "yes," I do not waive any of my legal rights.

○ **Yes** **No** ○

APPENDIX C. DELPHI SURVEY FIRST ROUND QUESTIONS

President Obama's Task Force on 21st Century Policing recommended that police department utilize community members on serious incident (use-of-force) review boards.

For purposes of this survey, community member means (1) someone who is not a law enforcement employee of any jurisdiction or (2) someone not employed by the jurisdiction, for instance city attorney.

GENERAL

1) How many review boards have you participated in? (Lime list radio)
    Less than 5
    Between 6 and 15
    More than 15

2) In regards to your participation on the boards, how many community members are voting members? (Lime list radio)
    1
    more than 1, but minority of board
    majority of board

EFFECTIVENESS

Based on your experiences with voting community members on your department review board, rate the following and provide a brief explanation:

3) Community members on critical incident review boards provide value to the police department.
    0 No experience
    1 strongly disagree
    2 disagree
    3 neutral
    4 agree
    5 strongly agree

        Explain

4) Community members provide insightful input into board discussions.
    0 No experience
    1 never
    2 almost never
    3 occasionally

4 almost every time
5 every time

Why or why not?

5) Community members are willing to challenge the opinions of department member.
0 No experience
1 strongly disagree
2 disagree
3 neutral
4 agree
5 strongly agree

Explain

6) Does the willingness of community members to challenge the opinions of department members change as they serve on more review boards?
Yes
No
Why

7) Community members possess the skill and experience to question the thoroughness of the critical incident investigation being reviewed.
0 No experience
1 strongly disagree
2 disagree
3 neutral
4 agree
5 strongly agree

Why or why not?

8) Community members cause the department to question or justify policies and training standards.
0 No experience
1 never
2 rarely
3 sometimes
4 very often
5 always

Give examples

9) Experts in the oversight of law enforcement suggest that one of the most important functions of a critical incident review board is helping the department learn from the actions of its employees. Having community members on a department review board assists with this learning process.

0 No experience
1 strongly disagree
2 disagree
3 neutral
4 agree
5 strongly agree

Why do you believe this?

10) Some research suggests that community members are more lenient than department members in how they view use-of-force incidents. Based on your experience, how would you rate community members compared to department members?

0 No experience
1 most lenient
2
3 same as department members
4
5 most rigorous

Explain.

11) What gets in the way of community members contributing to the review board process?

RECOMMENDATIONS

12) If you were to modify anything about your department's review board, what would you change?

13) If you were making recommendations to another department on creating a review board, what concerns would you tell them about the inclusion of voting community members?

14) If you were making recommendations to another department on creating a review board, how many community members would you suggest?

Zero
1
more than 1, but minority of board
majority of board

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APPENDIX D. DELPHI SURVEY SECOND ROUND QUESTIONS

1) During the first round, some of you suggested the need for community-member training as a way to increase their understanding and contribution to the board. What types of training would benefit community members?

2) Should community-member training be a specific requirement of policy?
(Yes or no, with comment box)

3) Some articles on citizen participation in government suggest that community membership should represent the diversity of the community. With that in mind, would departments benefit from having an external entity, outside of the department, recruit and select community members?
(Yes or no, with comment box)

4) How would you suggest improving the community-member selection process?

5) Outside of improved training, how can boards improve/facilitate community-member involvement in board proceedings?

6) Should criminal convictions disqualify community members from serving on a use-of-force review board? Felony v. misdemeanor.
(Yes or no, with comment box)

7) Should prior work as a sworn law enforcement employee disqualify board membership?
(Yes or no, with comment box)

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