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THE POLICE-COMMUNITY PARTNERSHIP: CIVILIAN OVERSIGHT AS AN EVALUATION TOOL FOR COMMUNITY POLICING

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I. Abstract

Citizen review boards[1] (CRBs) tend to act as unofficial criminal courts for police misconduct. Without the binding, legal powers of a court, these civilian oversight bodies are often ineffective and draw resistance from law enforcement. "Community policing,"[2] or community-oriented policing (COP) is a law enforcement strategy that emphasizes the use of problem-solving skills through community engagement and partnerships, but remains limited so long as it evaluates "community-friendly" officer performance through arrest/citation statistics only. Without a process to evaluate public relations skills, the COP strategy encourages officers to reduce distance between them and the community while retaining a crime-fighting focus—a dynamic that increases tension and violence between police and crime-prone neighborhoods.

If civilian oversight organizations were to review both positive and negative instances of police conduct, and law enforcement were to use this input to evaluate individual officers, then the review board would be able to promote community-friendly officers over problematic ones, thereby deterring police misconduct. This proposal presents an optimal use of civilian oversight and a partnership that would improve the effectiveness of both the CRB, and the COP strategy currently utilized by the police.

II. Introduction

This article proposes an alternative vision for civilian oversight of law enforcement. Currently, civilian oversight organizations review instances

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1. Samuel Walker, Police Accountability: The Role of Citizen Oversight 5 (Sabra Horne et al. eds., 2001) ("Citizen oversight is defined as *a procedure for providing input into the complaint process by individuals who are not sworn officers.*") (emphasis in original). *See also* Peter Finn, Citizen Review of Police: Approaches and Implementation, at vii, 6 (2001), http://www.ncjrs.org/pdffiles1/nij/184430.pdf (describing the four types of civilian oversight methods, including the citizen review board). For the purposes of clarity and consistency, the author will refer to these bodies as "citizen review boards" and refer to the broader category of similar processes as "civilian oversight."

2. "Community policing is . . . a collaborative effort between law enforcement and citizens to identify crime and disorder and work together to solve ongoing problems and create an atmosphere in which serious crime will not occur." W. Va. Advisory Comm., U.S. Comm'n on Civil Rights, Coping with Police Misconduct in West Virginia 20 (2004), https://www.law.umaryland.edu/marshall/usccr/documents/cr122004024296.pdf.

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of police misconduct using a process that mirrors criminal trial proce-
dures, even though they often do not have the resources to independently
investigate these situations and consequently cannot punish officers.
Meanwhile, police departments are in need of structured community in-
put in evaluating officers' problem-solving and community policing skills.
The two ideas set forth below aim to maximize the effectiveness of CRBs
by tailoring the process and function of civilian oversight to also meet the
needs of the modern police department.

First, CRBs should replace the adversarial trial model used for review-
ing police misconduct with facilitated discussions on effective policing in
the community. Second, these oversight organizations should review not
only police misconduct, but also exemplary instances of police action. To-
gether, these changes should allow citizen oversight to better monitor the
low-visibility instances of problem-solving[3] by law enforcement officers
and serve as an evaluation tool so that police executives can promote
officers who exemplify the modern COP strategy.

This argument is supported by a review of the purposes, powers, and
problems of CRBs, and an examination of the COP movement. An anal-
ysis of these various factors supports a number of significant conclusions.
First, CRBs currently use criminal trial-like procedures to investigate po-
lice misconduct. CRBs, however, are not equipped to carry out these
investigatory duties because individual members of the CRB do not have
the training necessary, nor does the CRB as a whole possess the power to
effectively investigate misconduct (or duplicate internal affairs' investiga-
tions). Instead, CRBs should organize the community's perspective con-
cerning both positive and negative police action. Second, the core
function of CRBs is to channel input from opinionated members of the
community and mediate their interaction with individual police officers.
If CRBs apply this valuable insight, police departments could utilize CRB
input as an important evaluation tool to monitor police conduct, measure
the effectiveness of the COP strategy in the community, and promote
community-friendly officers. An effective application of these findings
would bring together the community and the police to work towards the
common goal of promoting a safe environment by deterring officer
misconduct.

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3. Low-visibility instances of problem-solving describe police decisions that do not
"invoke the criminal process . . . and consequently are seldom the subject of review." Jo-
seph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Deci-
sions in the Administration of Justice*, 69 YALE L.J. 543, 543 (1960).

III. THE POWERS AND LIMITATIONS OF THE CITIZEN REVIEW BOARD

As originally conceived, citizen oversight introduces the input of individuals who are not sworn officers into police practices and instances of police-community contact.[4] This function is largely carried out by CRBs that examine officer complaints and make disciplinary recommendations for police misconduct occurring within the community.[5] Responsibilities of CRBs can vary depending on the respective jurisdiction,[6] but duties usually involve investigating complaints, reviewing internal affairs (IA) investigations, handling appeals of IA decisions, or working alongside a professional auditor.[7]

The basic goal of these CRBs is to deter police misconduct and improve police practices by adding a layer of non-police oversight.[8] Independence from the police is a unique characteristic[9] that lends legitimacy (from the community's view) to the mechanism's monitoring of police conduct.[10] A key concern, however, is that CRBs lack authoritative power.[11] This limitation ranges from the inability to compel officer testimony and conduct independent investigations in some cases, to the inca-

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4. *See* WALKER, *supra* note 1, at 5 (defining citizen oversight).

5. *See* Reenah L. Kim, *Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 476 (2001) (stating civilian oversight schemes are an established method for handling citizen complaints involving police officers).

6. *See id.* (describing the lack of uniformity in civilian oversight systems and discussing how the composition varies based on certain factors).

7. *See* FINN, *supra* note 1, at vii (describing the four types of civilian oversight methods); *see also* WALKER, *supra* note 1, at 62 (providing a general overview of the mechanics of the four main classes of oversight systems).

8. *See* Kami Chavis Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489, 504 (2008) (reporting greater transparency will deter police misconduct because it will increase political accountability); *see also* WALKER, *supra* note 1, at 5–6 (stating the purpose of citizen oversight is to allow citizens to vocalize their concerns and perspectives through complaints).

9. *See* Kristen Chambers, Note, *Citizen-Directed Police Reform: How Independent Investigations and Compelled Officer Testimony Can Increase Accountability*, 16 LEWIS & CLARK L. REV. 783, 797 (2012) (defining true independence and discussing its significance to the effectiveness of an oversight agency).

10. WALKER, *supra* note 1, at 61–67 (describing the concept of independence and its three dimensions: structural, process, and perceived); *see* Kim, *supra* note 5, at 478 (arguing that by improving police accountability, external review enhances police legitimacy); *see also* Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 OHIO ST. J. CRIM. L. 653, 657 (2004) (describing the benefit of visibility and how it encourages citizens' participation in the review process).

11. WALKER, *supra* note 1, at 75.

pacity to reprimand officers that is shared by all CRBs.[12] Without direct authority over the police, it is difficult to determine if CRBs have any substantive impact on the practices and decisions of police departments and their officers.

A. *The Current Model of Civilian Oversight*

The idea of developing the CRB emerged as a result of criticisms that police are an insular group, incapable of self-regulation.[13] The debate over whether citizen oversight is effective is basically determinative on whether IA is able to investigate and successfully deter police misconduct.[14] While the effects and benefits of citizen oversight are largely unproven,[15] the lasting presence of independent review boards in almost every major city indicates that the general public favors participation in the oversight and accountability of local law enforcement.[16] Though CRBs have critics, it is clear that they promote police department trans-

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12. *Id.* (explaining a sustained complaint is only a recommendation and not a disciplinary action, defining the proper role of citizen oversight, and providing justifications for why disciplinary power is best left to law enforcement administration); FINN, *supra* note 1, at iii (describing the range of CRB powers). The exceptions Walker discusses pertain to civil service agencies overturning a police chief's disciplinary action and mandated policy changes. WALKER, *supra* note 1, at 75–77, 103.

13. Merrick Bobb, *Civilian Oversight of the Police in the United States*, 22 ST. LOUIS U. PUB. L. REV. 151, 152 (2003) (stating civilians are concerned that law enforcement is incapable of self-regulation); *see* Ryan P. Hatch, Note, *Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution*, 21 OHIO ST. J. ON DISP. RESOL. 447, 454 (2006) (explaining the skepticism most citizens have when filing a complaint with internal affairs); *see also* David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1735 (2005) (stating police are a unified, alienated group that require outside regulation because they are segregated from mainstream society).

14. *See* WALKER, *supra* note 1, at 154–55 (explaining the difficulty of accurately measuring the effectiveness of determent programs, and providing examples of other factors that assist with reducing misconduct).

15. *Id.* at 45 (stating it is impossible to evaluate the effectiveness of the oversight movement); Julian Darwall & Martin Guggenheim, *Funding the People's Right*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 619, 642 (2012) (reiterating there is no persuasive evidence of the effectiveness of civilian oversight review boards in preventing police misconduct); Simmons, *supra* note 8, at 504 (arguing civilian oversight has proven to be ineffective and has not had a noticeable influence on police misbehavior thus far).

16. *See* FINN, *supra* note 1, at 4 (reporting by 2000, about 80% of the most populated cities in America had some form of citizen review); *see also* Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How It Fails*, 43 COLUM. J.L. & SOC. PROBS. 1, 2 (2009) (identifying civilian oversight as commonplace in most American jurisdictions); *see also* Samuel Walker & Carol Archbold, *Mediating Citizen Complaints Against the Police: An Exploratory Study*, 2000 J. DISP. RESOL. 231, 232 (2000) (reporting citizen oversight agencies have increased from approximately 20 in 1985 to around 100 in 1999).

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parency by allowing the public to participate in the evaluation of individual officers.[17]

The key element of any citizen oversight process is an independent body of elected or appointed volunteers that represent the interests of the community as a whole.[18] Under the current approach, the CRB is charged with the investigatory duty to review police complaints using public hearings,[19] prehearing conferences,[20] witness interviews by professional investigators,[21] or a private review of the IA file[22] to determine if any misconduct occurred.[23] These complaints are either sustained, not sustained, unfounded, or exonerated; this disposition is then forwarded to the police chief, who makes the final determination if disciplinary action is warranted.[24] This current structure addresses the public's demand for influence over police practices through the investigation of officer misconduct.

To carry out this function, a typical review board uses a criminal trial process[25] in which a citizen brings forward a complaint, the officer under investigation enjoys a presumption of innocence, and the board makes a finding based on the strength of the evidence proffered.[26] A general con-

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17. *See* Chambers, *supra* note 9, at 783 (stressing independent investigations of police are essential to an objective evaluation of law enforcement because independent investigations are not subjected to the same bias as internal investigations).

18. *See* FINN, *supra* note 1, at xi (reporting the talent and competence of key participants is more important to the procedure's success than the system's structure).

19. *Id.* at 17, 22–23 (describing the hearing's procedural sequence, and providing an example of using a hearing to create and implement new policies for police officers to utilize during campus demonstrations to prevent future discord).

20. *See generally id.* at 32–36 (discussing the Minneapolis Civilian Police Review complaint process, which allows for prehearing conferences).

21. *See generally id.* at 63–64 (discussing the citizens' oversight process in Tucson, allowing for a professional auditor to work side by side with a CRB).

22. *See generally id.* 47–48 (discussing the procedure employed by Rochester's Civilian Review Board, which allows for a panel of citizens to review IA files regarding allegations of mistreatment by police against members of the community).

23. *See* Walker, *supra* note 1, at 62–63 (providing an overview of different forms of CRBs); *see also* Finn, *supra* note 1, at vii (summarizing types of citizen oversight). *See generally* Kevin King, Note, *Effectively Implementing Civilian Oversight Boards to Ensure Police Accountability and Strengthen Police-Community Relations,* 12 HASTINGS RACE & POVERTY L. J. 91, 100–04 (2015) (identifying types of civilian oversight boards).

24. *See* FINN, *supra* note 1, at 5 (defining terms used by review boards and police officers to identify their findings).

25. *See* Walker & Archbold, *supra* note 16, at 233 (characterizing complaint procedures as criminal proceedings).

26. *See id.* at 232 (addressing the elements of citizen complaint procedures which resemble that of criminal proceedings).

cern with this process is that it is adversarial in nature,[27] it mirrors the investigations previously conducted by IA, and it directs the CRB to primarily focus on punishing guilty officers.[28] Mediation on the other hand focuses on facilitating dialogue between complaints and the police[29] that is non-public and confidential.[30] While some oversight bodies offer mediation, experts contend that this type of conflict resolution it is vastly underused.[31]

Besides addressing instances of misconduct, these citizen oversight bodies also monitor patterns of police activity,[32] engage in community outreach activities,[33] and act as the community's voice in suggesting policy changes to police departments.[34] Unfortunately, when performing these non-punitive functions, citizen oversight bodies often focus on the

27. *See* Hatch, *supra* note 13, at 456 ("Internal Affairs Divisions and Citizen Review Boards are adversarial in nature.").

28. *See* Walker & Archbold, *supra* note 16, at 233 ("From the perspective of the sociology of law, complaint procedures represent a 'penal' style of social control, with the ultimate solution being punishment."); *see also* Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 536 (2004) (arguing internal affair review and civilian review take on a primarily individual and punitive approach, with insufficient focus on systemic reform).

29. *See generally* WALKER, *supra* note 1, at 80–81 (discussing the benefits of mediation, which allows for face to face interactions to resolve issues).

30. *See* Finn, *supra* note 1, at 7 ("Mediation, usually held in private and kept confidential, may have less 'teeth' than a public hearing.").

31. *See generally* Walker & Archbold, *supra* note 16, at 231 (suggesting mediation of citizen complaints against the police is not used enough within the alternative dispute resolution movement).

Mediation occupies a very small place in the handling of citizen complaints against the police in the United States. The national survey identified a total of sixteen mediation programs. Two of these programs were only recently authorized, however, and are not yet operational. Additionally, a mediation program operated by the Flint, Michigan, Ombudsman is currently non-functional. All but one of the current mediation programs are operated by or in conjunction with citizen oversight agencies. These programs represent a tiny percentage of the estimated 17,120 state and local law enforcement agencies in the United States. The fifteen programs associated with citizen oversight agencies, meanwhile, represent only about 15% of the estimated 100 oversight agencies.

Id. at 235–36.

32. *See generally* Walker, *supra* note 1, at 86–113 (explaining the methods used to monitor police behavior to ensure a better relationship between officers and the community).

33. *See* Clarke, *supra* note 16, at 32 ("Community outreach is the one aspect of a civilian-oversight agency's operations that is most likely to have a positive impact on relations between the police and the community, and between the community and the oversight process."); *see also* WALKER, *supra* note 1, at 87–91 (discussing the goals, benefits, and impacts of community outreach services on citizen oversight agencies).

34. *See generally* Clarke, *supra* note 16, at 32 (suggesting that through community outreach, civilians can influence policy changes between officers and the community).

negative aspects of the police force—identifying problem officers rather than exemplary ones,[35] making policy suggestions that only address misconduct,[36] and conducting community outreach that focuses entirely on publicizing citizen complaint procedures.[37] Citizen oversight agencies therefore have the potential to liaise between the police and the community, but "little thought has been given to those cases in which someone contacts an oversight agency but does not file a formal complaint."[38]

B.   *Problems with the Criminal Process Model of Civilian Oversight*

1.   The Lack of Investigative Resources

While punishing police officers could effectively deter misconduct, the current adversarial, criminal court model is not effective when used by CRBs.[39] Because civilian oversight is independent of law enforcement, it does not have the expertise or powers to carry out an adversarial review of police misconduct.[40] Furthermore, the CRBs subsequent reviews heavily depend on information given to them, such as IA investigations, often resulting in the same findings, which has garnered criticism from citizens who believe that the review board has been co-opted by the police department.[41]

Specifically, in many jurisdictions, excluding certain unprivileged information such as witness testimony, police departments have complete con-

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35. *See generally* WALKER, *supra* note 1, at 110 (suggesting while implementation of an early warning system is helpful at indicating "problem officers," it does not do enough to honor officers who have a positive influence on the community).

36. *See id.* at 93 ("Policy review is a process through which an oversight agency examines a police department's policies and procedures (or the lack thereof) and recommends new or revised policies. The basic goal is preventative: to identify problems or potential problems and to correct them . . . .").

37. *See* Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department 'Pattern or Practice' Suits in Context*, 22 ST. LOUIS U. PUB. L. REV. 3, 27–28 (2003) [hereinafter Walker, *New Paradigm*] (stating the role of community outreach in citizen oversight agencies); *see also* FINN, *supra* note 1, at 103 (describing how neighborhood groups distribute information to the community). *See generally* WALKER, *supra* note 1, at 88–90, 147 (discussing, in depth, the role of outreach activities, including providing informational materials, targeting special populations, facilitating complaint intakes, and holding community meetings).

38. WALKER, *supra* note 1, at 91.

39. *See* Walker, *New Paradigm, supra* note 37, at 19–20 (commenting on the effectiveness of criminal prosecution of officers guilty of criminal activity).

40. *See* Bobb, *supra* note 13, at 156 (pointing out issues with investigations by lay persons).

41. *See id.* at 163 (commenting on the problems with CRBs).

trol over their sources of information.[42] This limits the investigatory power of CRBs to establish findings based on the same materials or a redacted version of what the IA division has already examined.[43] Under these constraints, the board often makes decisions based solely on the testimony of witnesses that it can gather on its own.[44] As a result, the review board process often comes down to the civilian's word against the officer's, which does not carry the required burden of proof to establish a viable case against the officer.[45] This type of procedural shortcoming is partly responsible for complainants' dissatisfaction with the review process[46] and the inability of these organizations to affect police behavior.[47] Furthermore, this structural deficiency is a potential reason why CRBs often fail as independent investigators and why their findings rarely contradict IA investigations.[48]

2. The Unqualified Citizen

CRBs are faced with a number of problems when conducting investigations and hearings on instances of police misconduct, beyond the inherent shortcomings of taking a retrospective and punitive approach to changing police behavior.[49] When unqualified civilians attempt to evaluate police departments, they often encounter institutions that are inherently insular and resistant to dissidence.[50] As a result, police have vehemently fought

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42. *See* Walker, *New Paradigm, supra* note 37, at 19–20 (stating how difficult it is to obtain convictions of police officers because of the deference given to police officers' reasons for their actions).

43. *See* Bobb, *supra* note 13, at 163 (referring to the power of CRBs).

44. *See* Hatch, *supra* note 13, at 456 (explaining there is usually little to no evidence available other than the word of the complainant and the officer).

45. *See* Livingston, *supra* note 10, at 656 (noting most confrontations involving a police officer are isolated situations involving only the officer and a citizen); Richard S. Jones, *Processing Civilian Complaints: A Study of the Milwaukee Fire and Police Commission*, 77 MARQ. L. REV. 505, 515 (1994) (explaining the citizen has the burden of proving the officers misconduct beyond a reasonable doubt when complainants often have no real evidence). *See generally* Finn, *supra* note 1, at 101 (stating one of the structural issues involved in deciding whether to create a CRB is in deciding what standard of proof will be required).

46. *See* Clarke, *supra* note 16, at 31–32 (stating there is a consensus among complainants that the process is "lengthy, time consuming, impersonal, and unlikely to result in a finding that misconduct occurred").

47. *See* Simmons, *supra* note 8, at 504 (showing even those in support of citizen oversight agencies have found the agencies to be ineffective in impacting police misconduct).

48. *See* Bobb, *supra* note 13, at 163 (explaining CRBs can be seen as ineffective because, in most instances, they agree with the conclusion reached by the police department).

49. *See* Simmons, *supra* note 8, at 504 (critiquing citizen oversight agencies).

50. *See* Chambers, *supra* note 9, at 790–92 (describing the "code of silence" pressures that officers place on each other and the resistance to outside criticism created by this extreme camaraderie).

to prevent CRBs from acquiring any real power over their actions.[51] The argument centers on the notion that ordinary civilians do not possess the same knowledge, experience, and responsibilities of police officers.[52] The law enforcement community's overarching perception of CRBs is that they are comprised of untrained individuals who are incapable of evaluating, assessing and questioning officer decisions, especially in situations where the necessity of force is determined in moments of urgency and potential danger.[53] Police also fear that CRBs will be dominated by disgruntled citizens with ulterior motives rather than responsible citizens who aim to improve police-community relations.[54] In addition to believing civilians are not properly motivated and trained to put officers on trial, police feel that citizens' interests are already protected by officers who have entered law enforcement with a desire to serve the public.[55] This point of view has led police organizations to resist the active empowerment of civilian oversight mechanisms through collective bargaining,[56] boycott,[57] legal action,[58] and political pressure.[59]

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51. Walker, *New Paradigm*, *supra* note 37, at 39; *see* King, *supra* note 23, at 110 (claiming police protest granting power to oversight boards); *see also* WALKER, *supra* note 1, at 182 (showing some agencies have little power and depend on police departments); Robert H. Doherty, *The Politics of Public Sector Unionism*, 81 YALE L.J. 758, 764 (1972) (discussing police unions oppose CRBs). *See generally* Stephen A. Rosenbaum, *Keeping an Eye on the I.N.S.: A Case for Civilian Review of Uncivil Conduct*, 7 LA RAZA L.J. 1, 27 (1994) (explaining when boards are more likely to face resistance by police departments).

52. *See* Mark Iris, *Police Discipline in Chicago: Arbitration or Arbitrary?*, 89 J. CRIM. L. & CRIMINOLOGY 215, 219 (1998) (expressing police feel like civilians do not understand police pressures).

53. *See* Hatch, *supra* note 13, at 456 (restating police criticisms of review boards). "Another frequent criticism leveled against Civilian Review Boards, mostly by the police themselves, is that 'lay-persons lack a sufficient understanding of police practices and operating conditions to knowledgeably perform a meaningful evaluation' of police work." *Id.*

54. *See* Rosenbaum, *supra* note 51, at 30 (discussing the fears of law enforcement in regards to CRBs' power and influence).

55. *See* Louis D. Bilionis, *Conservative Reformation, Popularization, and the Lessons of Reading Criminal Justice as Constitutional Law*, 52 UCLA L. REV. 979, 1014 (2005) (indicating police officers' intentions should be trusted). *See generally* Willaim J. Bratton et al., *Law and Disorder: Is Effective Law Enforcement Inconsistent with Good Police-Community Relations?*, 28 FORDHAM URB. L.J. 363 (2000) (asserting the reason people go into law enforcement is to do the right thing).

56. *See* Chambers, *supra* note 9, at 803 (establishing the success of police unions in blocking oversight agencies from gaining power).

57. *See generally* Iris, *supra* note 52, at 221 (describing the refusal of police unions to honor subpoenas issued by review boards).

58. *See, e.g.*, Citizen Police Review Bd. v. Murphy, 819 A.2d 1216, 1221–22 (Pa. Commw. Ct. 2003) (providing examples of cases supporting the dismissal of the Citizen Police Review Board's claim again the Pittsburg Police Department). *See generally* Justina R. Cintrón Perino, *Developments in Citizen Oversight of Law Enforcement*, 36 URB. LAW.

3. The Limited Powers of the Citizen Review Board

For CRBs to be effective, they should have independent investigatory power, subpoena power, and the power to punish accused officers.[60] Under the current model many CRBs do not have the subpoena power to compel testimony and, without this power, uncooperative officers can undermine the accuracy, thoroughness, and effectiveness of the entire process.[61] Furthermore, even if the review board gathers sufficient evidence condemning an officer, the board can only make recommendations for disciplinary action.[62] Though CRB procedures imitate criminal trials, these oversight bodies do not wield the court's authority to compel evidence (subpoena power) and punish wrongdoers. Without the ability to independently investigate or punish misconduct, the CRB may not fully replicate the function and effect of a criminal court or the IA discipline system within the police department.[63]

In addition, the CRB undermines its function by attempting to replicate the police department's public complaint procedures used by IA.[64] As explained, the findings are redundant because the board reviews the same information, and questions the same witnesses as IA—leading the oversight body to almost always agree with IA's findings.[65] A survey of nine citizen oversight bodies found that these CRBs agreed with IA 80%

387, 394 (2004) (reporting on actions taken by unions representing police officers, sergeants, lieutenants, captains, and detectives).

59. *See* Peter L. Davis, *Rodney King and the Decriminalization of Police Brutality in America: Direct and Judicial Access to the Grand Jury as Remedies for Victims of Police Brutality When the Prosecutor Declines to Prosecute*, 53 Md. L. Rev. 271, 281–82 (1994) (reporting on the political influence of police unions).

60. *See* King, *supra* note 23, at 108–09 (highlighting the importance of subpoena power and investigations); *see also* Chambers, *supra* note 9, at 800 (emphasizing the significance of officer testimony for investigations). *See generally* Erik Luna, *Race, Crime, and Institutional Design*, 66 Law & Contemp. Probs. 183, 217 (2003) (detailing the ideal process CRBs would undertake after receiving a grievance).

61. *See generally* King, *supra* note 23, at 109 (reiterating the fact that police resistance to civilian oversight boards creates a tense loyalty environment in the police department, thus taking away the review board's ability to maintain independence).

62. *See* Walker, *supra* note 1, at 76 (discussing how even when a CRB sustains a complaint, all they can do is send a recommendation to the police chief).

63. *See generally* Clarke, *supra* note 16, at 11 (stating the common weaknesses of citizen-oversight bodies is that they "lack the authority to directly discipline officers and modify police department policies").

64. *Id.* at 11–12 (explaining if an oversight body cannot ensure its recommendations are being followed, it will likely concede to the police department; this results in "deference to the police department regarding matters of department policy").

65. *See id.* at 11–12 (noting the CRB is likely to appease the police department in an effort to ensure the board's recommendations are followed). *See generally* David Alan Sklansky, *Is the Exclusionary Rule Obsolete?*, 5 Ohio St. J. Crim. L. 567, 572 (2008) [hereinafter Sklansky, *Exclusionary Rule*] (discussing the irony that although CRBs come in a

to 95% of the time, with one body reporting that it "disagreed with IA's finding in about a half dozen cases in its history."[66] As a result, Samuel Walker, a major authority on citizen oversight, notes that "only a few [external complaint agencies] have clearly demonstrated that they in fact do a better job of handling complaints than police departments."[67] In fact, by mirroring IA and thereby agreeing with its findings in the vast majority of cases, the CRB is often perceived by the public as being co-opted by the police department and becoming part of the "system" rather than an advocate for the community.[68]

Independent citizen oversight bodies should be restructured to confront their shortcomings so that CRB procedures address their inability to carry out officer discipline and avoid redundancy of the police department's investigation.

C.   Alternative Sources of Power

While the adversarial trial function is no more effective in deterring police misconduct than the department's own citizen complaint procedures, the review board is not limited to these punitive powers and processes.[69] Because of its democratic, communicative nature, the CRB possess an alternative source of power—independence and openness to public participation.[70] Shifting focus on these inherent powers would enable CRBs to have a more substantive impact on police practices.[71]

1.   Identifying Good Cops

The first of these democratic, communicative powers is the ability of CRBs to provide public opinion information regarding the conduct of in-

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variety of shapes and functions they are often more lenient toward officers than expected by both supporters and opponents of the boards).

66. FINN, *supra* note 1, at 39, 48, 54, 58.

67. SAMUEL WALKER, THE NEW WORLD OF POLICE ACCOUNTABILITY 73 (2005).

68. *See* WALKER, *supra* note 1, at 67 (stating many advocates of citizen oversight agencies now perceive them as part of the "system" which they were created to review); Bobb, *supra* note 13, at 163 (conveying the ineffectiveness of CRBs due to their conformity with the police departments which they are supposed to review).

69. *See generally* JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 225 (1993) (discussing the inadequacy of police investigations and how CBRs function differently because of the process used in selecting members).

70. *See id.* (noting the foundation of civilian oversight agencies is the "theory of representation and participation").

71. *See generally id.* (discussing that although there are flaws, citizen representation within CRBs gives members of society the opportunity to shape police practices and policies that they would not have otherwise).

dividual officers.[72] While police departments assess officers using objective criteria such as numbers of arrests and citations issued,[73] there is currently no tool to measure the subjective, interpersonal manner of an individual officer's problem-solving skills.[74] Early warning systems are the only means to track officer behavior and order specific training or counseling, when necessary.[75] These early warning systems have been implemented by IA departments[76] when targeting a small number of officers who cause a disproportionate number of citizen complaints,[77] and have been demanded in litigation against problematic police departments.[78] Although these early warning systems track the interactions between specific officers and the broader community, they only focus on negative behavior, leaving the minority of officers who are particularly skilled at interacting with the public[79] invisible to their supervisors.[80]

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72. *See, e.g., id.* (illustrating how, despite their effectiveness, the public may deem the use of police dogs to be an offensive crowd control method).

73. *See* L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 OHIO ST. J. CRIM. L. 115, 144–45 (2014) (stating the practice of evaluating officers based on "the number of arrests made" continues today).

74. *See* GEOFFREY P. ALPERT & MARK H. MOORE, COMMUNITY POLICING: CONTEMPORARY READINGS 222 (Geoffrey P. Alpert & Alex R. Piquero eds., 2d. ed. 2000) (explaining there is no way to evaluate the quality of an officer's response to non-criminal complaints in which an arrest cannot be made).

75. *See* Armacost, *supra* note 28, at 529 (stressing a combination of four features which allow timely tracking of repeating disciplinary issues with police officers); Luna, *supra* note 60, at 216 (arguing if the goal is to limit officer misconduct, police departments must improve oversight and discipline of officers though civilian oversight boards and independent investigative agencies); *see also* Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. 815, 819 (1999) [hereinafter Livingston, *Police Reform*] (stating early warning systems are a key solution to abate police misconduct).

76. *See* John Middleton-Hope, *Misconduct Among Previously Experienced Officers: Issues in the Recruitment and Hiring of "Gypsy Cops,"* 22 ST. LOUIS U. PUB. L. REV. 173, 178–79 (2003) (discussing a case study of an early warning system successfully implemented by the internal affairs department).

77. *See* Simmons, *supra* note 8, at 513 (highlighting in a large police department such as the LAPD, there were few complaints filed when looking at the total size of the police force).

78. *See id.* at 512–13 (identifying early warning systems as a common reform provision negotiated in consent decrees and settlement agreements between the DOJ and local city police departments for discovering a "pattern or practice of unconstitutional behavior"); *see also* Livingston, *Police Reform*, *supra* note 75, at 818–19 (emphasizing the importance of the early warning system in identifying officers with problematic behavior and putting a stop to their practices before any abuse occurs).

79. *See generally* Richardson & Goff, *supra* note 73, at 145 (attempting to show that if police departments implement community policing, they could foster cooperative relationships without dehumanizing individuals within the community and boost their own legitimacy through improving perceptions).

Similar to early warning systems, CRBs provide negative feedback about problematic officers to their supervisors[81] and recommend individual sanctions[82] or policy changes.[83]

It appears that CRBs could use their more developed democratic powers to influence police behavior by identifying community-friendly officers.[84] Specifically, if CRBs were to serve as the overall voice of the community by commending officers who emulate problem-solving policing, and if department officials relied on this feedback by promoting and rewarding officers, then the practical implication would be that CRBs indirectly deter police misconduct.[85] Research demonstrates that positive reinforcement improves job performance[86] and scholars recommend police departments focus on community policing skills in making promotions.[87]

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80. *See* Mary Newman, *Barnes v. City of Cincinnati: Command Presence, Gender Bias, and Problems of Police Aggression*, 29 HARV. J.L. & GENDER 485, 488 (2006) (implying police departments' promotional and hiring criteria tend to be discriminatory, thus officers that could implement greater police-community cooperation never receive the opportunity to go in the field).

81. *See* Eileen M. Luna, *Seeking Justice: Critical Perspectives of Native People: Law Enforcement Oversight in the American Indian Community*, 4 GEO. PUB. POL'Y REV. 149, 155 (1999) (discussing any kind of oversight is effective and essential in preserving police accountability and gathering information about misconduct).

82. *See* Sean Hecker, *Race and Pretextual Traffic Stops: An Expanded Role for Civilian Review Boards*, 28 COLUM. HUM. RTS. L. REV. 551, 596 (1997) (addressing the fact that CRBs are not all powerful—they can only recommend disciplinary action they cannot actually take action themselves—therefore, it is the police department's responsibility to actively pursue disciplinary hearings against officers).

83. *See* WALKER, *supra* note 1, at 93 (encouraging policy review of police departments by oversight agencies, because while the process might be seen as unfavorable by officers, the review is valuable and brings long-term, effective improvements).

84. *See* Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 665 (1997) [hereinafter Livingston, *Police Discretion*] (suggesting CRBs have several functions: they serve as mechanisms for monitoring the police and increase law enforcement-community communication).

85. *See generally* Bratton et al., *supra* note 55, at 402 (suggesting that changing the culture of police departments is needed so bad officers fear good officers and not vice versa).

86. *See* James K. Harter et al., *Well-Being in the Workplace and its Relationship to Business Outcomes: A Review of the Gallup Studies*, *in* FLOURISHING: POSITIVE PSYCHOLOGY AND THE LIFE WELL-LIVED 205, 205 (Corey L.M. Keyes & Jonathan Haidt eds., 2003) (examining studies on well-being factors of employees that generate higher job satisfaction, commitment, creativity, and over time, better business outcomes).

87. *See* William D. McColl II, Book Review, 9 B. U. PUB. INT. L. J. 161 (1999) (reviewing JOHN L. BURRIS WITH CATHERINE WHITNEY, BLUE VS. BLACK: LET'S END THE CONFLICT BETWEEN COPS AND MINORITIES (1999)) (noting many police theorists recommend that police departments "[m]ake community policing skills essential for promotion").

THE POLICE-COMMUNITY PARTNERSHIP

2. Fostering Community Relations

CRBs may have the ability to impact the behavior and practices of individual officers by bringing them into contact with civilians that feel wronged by the officers' actions.[88] Studies show that most citizens who are offended by police conduct do not want to punish the officer,[89] but would rather publicly express their views and receive acknowledgement from the individual officer.[90] Since most police officers enter the force with the intent to serve the public,[91] they may be more receptive to engaging in personal discussions of community perspectives than to an adversarial review of their past actions.[92] In order to maximize participation from both parties,[93] the CRB would have to facilitate this effort using a mediation or conciliation-based approach instead of the current adversarial, criminal trial process model.[94]

3. Serving as a Voice for the Community

The CRB is a means to bring the police department's internal investigations into the public eye.[95] As a provider of credible, independent

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88. *See generally* Rosenbaum, *supra* note 51, at 18–22 (stressing the importance of community outreach for review boards to be successful).

89. *See* Hatch, *supra* note 13, at 460 (suggesting methods for resolving citizen complaints against officers, such as mediation and counseling).

90. *See id.* (arguing filing a lawsuit against a police officer is costly and slow, and juries are reluctant to punish an officer; therefore, other forms of dispute resolution will be more effective for such claims); *see also* FINN, *supra* note 1, at 77 (citing a study that found CRB complainants wanted to interact with the officer and were more satisfied when they did).

91. *See* Bilionis, *supra* note 55, at 1014 (contending the good intentions of the police is a necessary presumption); Bratton et al., *supra* note 55, at 390 (commenting the majority of individuals entering the law enforcement profession want to do the right thing).

92. *See* SAMUEL WALKER ET AL., MEDIATING CITIZEN COMPLAINTS AGAINST POLICE OFFICERS: A GUIDE FOR POLICE AND COMMUNITY LEADERS 7 (Washington, DC: Government Printing Office, 2002), http://www.cops.usdoj.gov/pdf/e04021486web.pdf (examining police officers may benefit from mediation as a way of self-reflection without feeling the need to be defensive).

93. *See id.* (citing research conducted outside the United States that shows informal dispute resolution results in more approval from officers than accusatorial approaches); Hatch, *supra* note 13, at 460–61 (asserting mediation has several advantages, such as finding inventive solutions, reducing the cost of potential litigation, and increasing satisfaction for both police officers and individual citizens).

94. *See* Walker et al., *supra* note 92, at 7 (emphasizing how mediation can produce change by offering police officers a chance to explain their conduct openly to the complainant); Wayne D. Brazil, *Hosting Mediations as a Representative of the System of Civil Justice*, 22 OHIO ST. J. ON DISP. RESOL. 227, 264 (2007) (discussing the mediation theory allows parties to freely formulate their own views, uninfluenced by others' opinions).

95. *See* Jesus A. Trevino, *Border Violence Against Illegal Immigrants and the Need to Change the Border Patrol's Current Complaint Review Process*, 21 HOUS. J. INT'L L. 85, 114 (1998) (arguing the creation of CRBs halts police departments from internally concealing

oversight on police practices, the review board has the ability to educate the public, either by revealing cover-ups or by enhancing the credibility of the department's internal investigations.[96] However, by focusing on whether officers followed police procedures that the general public is not entirely trained to understand,[97] civilian oversight bodies often operate beyond their legitimate authority.[98] Instead of monitoring internal investigations and duplicating its function, civilian oversight bodies should review police action under the standards of the community rather than the department.[99] By reviewing and publicizing questionable police practices while seeking feedback from the community, the CRB would serve as the voice, as well as the eyes and ears, of the community.[100]

Though the CRB is not designed to be a coercive, punitive authority, its democratic and communicative powers create opportunities for positive, personal solutions to problems facing police-community interactions.[101] However, these two organizations continue to fight each other

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themselves away from public scrutiny); Kim, *supra* note 5, at 497 n.168 (identifying civilian review agencies as a mechanism for balancing police and civilian complaint oversight).

96. *See generally* Randall Peerenboom, *Out of the Pan and into the Fire: Well-Intentioned but Misguided Recommendations to Eliminate All Forms of Administrative Detention in China*, 98 Nw. U. L. Rev. 991, 1043 (2004) (recommending the use of CRBs in the case of China in order to decrease abuses by police).

97. *See* Christopher A. Love, *The Myth of Message-Sending: The Continuing Search for a True Deterrent to Police Misconduct*, 12 J. Suffolk Acad. L. 45, 46 (1998) (explaining how an evaluator's experience and guidelines for judgment can result in differences in police misconduct evaluations).

98. Finn, *supra* note 1, at xii (arguing a lack of police experience will always be inherent in citizen reviews, and preparations can take place to inform citizens on police work to facilitate their evaluation).

99. *See* Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make us More Comfortable with the Others?*, 34 Ga. L. Rev. 1253, 1258, 1268 (2000) (claiming police departments are already being "policed by the will of the community," and in creating this alliance, community policing is able to transform "the internal dynamics and values of a police department itself"). *See generally* Finn, *supra* note 1, at vii (describing formal investigation practices of review boards, which are typically similar to internal investigation with the only difference being these are focused on the legitimacy of the internal investigation rather than a true community review of the event or complaint).

100. *See* Finn, *supra* note 1, at 66 (identifying CRBs as the police department's connection to the community, which provides the board with an opportunity to represent community interests).

101. *See* Armacost, *supra* note 28, at 538–41 (recognizing the CRB's tendency to move towards combative methods to determine internal review legitimacy, which means officers are reluctant to change based upon either method of oversight, internal or external). *See generally* Rosenbaum, *supra* note 51, at 20–24 (exploring examples of police review boards to include citizen review as an alternative to intimidating agency review, as seen in the area of immigration, and by interaction with the community and media, as seen in Canada).

in adversarial forums, despite the fact that the review board's facilitative powers offer greater influence over and better relations with the police department.[102] If the police department were to become receptive to these non-combative efforts, a review board may be more effective by shaping its strategy around democratic rather than punitive powers.[103]

When analyzing the form and function of the CRB, a comparison of the deficiencies of the criminal trial model with the promises of the communicative, democratic powers indicates that CRBs could enhance their effectiveness by shifting from punishing to problem-solving. CRBs should operate as facilitators between officers and the citizens they serve. Also, if citizen oversight groups identify officers who have a positive impact within the community—instead of focusing entirely on misconduct and negative police action—then the police department will be better able to act on its strengths in building a positive relationship with the community.[104]

The next question is whether the police will both use and work with positive input from citizen oversight bodies. As the following section explains, the prevalence of the community policing model indicates that the modern police department needs input from a coherent voice that represents the volatile segments of the community.

IV. COMMUNITY POLICING IN SEARCH OF A COMMUNITY PARTNER

CRBs hold potential power through giving a voice to the community by proffering public concerns, suggestions, and opinions to police departments.[105] However, the law enforcement community must be responsive to this information for it to have any substantial impact.[106] The same pressures that motivate citizens to demand the ability to review allegations of police misconduct, motivate the police to seek a positive relationship with the community[107] and, furthermore, to wield this cooperation as

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102. *See* Armacost, *supra* note 28, at 536 (noting, like IA, in their current form, CRBs are punitive rather than forward-thinking).

103. *See* James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 45 (2004) (stating the Chicago and Boston's community policing models contain an aspect of "direct democracy" with members of society).

104. *See* FINN, *supra* note 1, at 10–11 (including publicity of exemplary officer performance under "benefits to elected officials" to show positive routes to be taken in implementing CRBs).

105. *Id.* at 12–14.

106. *See id.* (expressing limitations to CRBs, including that its effectiveness depends on the actions taken by the principal individuals involved).

107. *See* Kim, *supra* note 5, at 475–76 (opining police accountability and legitimacy hinges on collaborative efforts from both civilian oversight and community policing representatives to have an instrumental voice in matters of police practices); Shawn Monterastelli, Note, *Using Law and Law Enforcement to Prevent Violence and Promote Community*

the preferred tool for promoting a safe society.[108] Because listening to the community has become the dominant strategy for protecting citizens,[109] this "community policing," or COP approach to peacekeeping and crime-fighting may present an opportunity for CRBs to use democratic, communicative powers to impact police policies more effectively.[110]

A.   *The Promise of Community Policing*

Though varying in scope and detail,[111] the general idea of COP, is that police officers should abandon the warrior model of aggressive law enforcement, and replace it with a problem-solving, social work approach.[112] The idea is based on the principal that public input is valuable, prevents crime, maintains order, and increases the legitimacy of the law by fostering a workable relationship between citizens and law enforce-

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Vibrancy Near Bars, Clubs, and Taverns, 16 Notre Dame J.L. Ethics & Pub. Pol'y 239, 256 (2002) (describing both the police and community's vested interests in addressing concerns of police legitimacy). *See generally* Forman, Jr., *supra* note 103, at 4–6 (illustrating how community policing grew out of the public's disapprobation towards the "warrior model" the police followed).

108. *See* Steven G. Brandl, *Back to the Future: The Implications of September 11, 2001 on Law Enforcement Practice and Policy*, 1 Ohio St. J. Crim. L. 133, 140 (2003) (depicting our current time period as the "community problem-solving era" where the combined efforts of police and citizens are necessary for the prevention of crimes). *See generally* Mathieu Deflem, Book Note, 41 Law & Soc'y Rev. 255, 256 (2007) (reviewing Steve Herbert, Citizens, Cops, and Power: Recognizing the Limits of Community (2006)) (commenting on how community policing improves relationships between police and citizens).

109. David Cole, No Equal Justice (The New Press, 1999) (approving community policing as an effective means of communication between society and police, and ameliorating broken relationships between both).

110. *See* Kim, *supra* note 5, at 481–82 (discussing police officers work more effectively when community policing is allowed to participate in "management and power sharing," and simultaneously providing a newfound legitimacy in police departments).

111. *See* Linda S. Miller, Karen Matison Hess & Christine Hess Orthmann, Community Policing: Partnerships for Problem Solving 4–5 (6th ed. 2011) (noting there is not a definitive, widely-accepted definition of community policing beyond a problem-solving approach and philosophy of working with rather than against the community); Matthew J. Parlow, *The Great Recession and its Implications for Community Policing*, 28 Ga. St. U. L. Rev. 1193, 1197 (2012) (commenting while there is no settled definition for community policing, it endorses an alliance between the public and the police department).

112. *See* Forman, Jr., *supra* note 103, at 4–6 (explaining the new methodology of co-producing public safety, known as community policing, arose in response to problems with the "warrior model" that pitted officers against the public); Richardson & Goff, *supra* note 73, at 143–44 (describing fundamental tenets of community policing, such as social work and effective communication, "to address underlying causes of crime and disorder").

ment officials.[113] Community policing recognizes the best way to achieve a safe environment,[114] is through the reciprocity of citizens communicating with the police[115] and the police seeking input from the community.[116] Though it appears to be compatible with a communicative approach to civilian review, COP remains undefined and incomplete.[117]

While the reform-era professional policing model organized the police with coherent, top-down strategies, COP decentralizes authority, allowing officers more discretion to assess and respond to individual circumstances and changing trends within the community.[118] This modernized policing strategy is structured as a bottom-up approach that places more decision-making in the hands of the individual officer in hopes of achieving a more unified voice in the community.[119] The development of the COP model coincided with a similar movement toward decentralized decision making that has been empirically tested[120] and applied with success in governance,[121] business,[122] and other fields.[123]

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113. *See* Waldeck, *supra* note 99, at 1254–55 (pointing out prevention factors external to police action such as improvements in transportation and city services, which need to be integrated in the community approach to support the community image of the police).

114. *See* David Thacher, *Conflicting Values in Community Policing*, 35 Law & Soc'y Rev. 765, 776 (2001) (recognizing that holding police officers accountable involves support and cooperation from the community as a whole).

115. *See* Forman, Jr., *supra* note 103, at 7–8 (describing community policing as an organizational strategy with two main elements: regular neighborhood meetings and local involvement, including ownership of the process for addressing problems in the community).

116. *See* Brandl, *supra* note 108, at 140 (implicating the importance of communication between police and the community). "According to the ideals of community policing, it is only when police and citizens work together that crime can be prevented." *Id.*

117. *See generally* Tracey L. Meares, *Praying for Community Policing*, 90 Cal. L. Rev. 1593, 1599 (2002) ("[T]here is no consensus around what community policing is. . . .").

118. *See* Livingston, *Police Discretion*, *supra* note 84, at 576 (describing the necessity of decentralized decision making within a large, urban police department). *See generally* Wesley G. Skogan & Susan M. Hartnett, Community Policing: Chicago Style 5–9 (Oxford Univ. Press 1997) (identifying organizational decentralization as one of four basic principles of community policing).

119. Livingston, *Police Discretion*, *supra* note 84, at 658–60.

120. *See* Philip M. Nichols, *Regulating Transnational Bribery in Times of Globalization and Fragmentation*, 24 Yale J. Int'l L. 257, 265 n.42 (1999) (explaining advantages to decentralization are environment specific; the effectiveness of a citizen's participation in a political system's decision-making process is dependent on the size of the system).

121. *See* James Anderson et al., *The Effects of Government Decentralization During Transition: Evidence from Enterprise-State Relations in Mongolia, in* 38 Post-Soviet Geography and Economics 230, 245 (1997) (suggesting devolution in government systems provides some benefits similar to those of privatization, at least enough to show devolution does not hinder reform by allowing decisions to be made at the local level).

THE SCHOLAR

Community policing is a vague, broadly idealistic concept because the idea developed as a response to problems with the prior organizational philosophy.[124] Instead of arising through the successful application of its tenets, COP emerged as an alternative to the "rapid response" procedures used by the traditional, professional policing model.[125] Developed in the 1920's, the traditional, professional policing strategy was structured as a centralized, quasi-military organization characterized by its strict, by-the-book approach to efficient crime-fighting[126] and reduction in the corruption previously associated with officers being immersed in the community in regularly walked beats.[127] Professional policing emphasized crime control using the rapid response tactic, as it was believed the community would be best served by investigating and punishing crime soon after it happens—the growing availability of police cars and dispatch radio net-

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122. *See* Peter H. Schuck, *Citizenship in Federal Systems*, 48 Am. J. Comp. L. 195, 205 n.42 (2000) (claiming that in the business environment, the need for flexibility in competitive markets, emphasized by evolved theories of management, influenced the new conventional wisdom of U.S. corporations' adoption of decentralized decision-making).

123. *See* Benjamin F. Wyman, Note, *Decentralization Continued: A Survey of Emergency Issues in Site-Based Decision Making*, 29 J.L. & Educ. 255, 255 (2000) (describing public education's emerging trend of decentralization, more commonly known as site-based decision making, which engages teachers, parents, and administrators in policymaking related to the daily management of their schools).

124. *See generally* Livingston, *Police Discretion, supra* note 84, at 565 (discussing the idea of community policing originated through the concern of corruption within police departments); Alpert & Moore, *supra* note 74, at 215 (explaining the concepts and goals of community policing are strong; however, the formula to reach those goals and assess their success has not yet been found).

125. *See* Livingston, *Police Discretion, supra* note 84, at 565–67 (implying the role of the police no longer simply involves control through rapid response, and community policing was influenced by these previous policing strategies which have failed in the past); Meares, *supra* note 117, at 1599 (discussing how community policing rejects policing strategies that became popular in the 1960s and 1970s, including rapid response); Steven A. Lautt, Note, *Sunlight is Still the Best Disinfectant: The Case for a First Amendment Right to Record the Police*, 51 Washburn L.J. 349, 353 (2012) (showing the once predominant model of policing in the 1950s and 1960s, police professionalism, has since been supplanted by the more democratic community policing model).

126. *See* Sklansky, *supra* note 13, at 1730 ("Police professionalism meant politically insulated police departments organized along hierarchical, quasi-military lines, with strong commitments to efficient operations, centralized command, technological sophistication, well-trained personnel, and high standards of integrity.").

127. *See* David Cole, *Discretion and Discrimination Reconsidered: A Response to the New Criminal Justice Scholarship*, 87 Geo. L.J. 1059, 1063 (1999) (discussing how in order to avoid corruption, police departments distanced themselves from the community by engaging in more patrol-car riding and less beat-walking); Livingston, *Police Discretion, supra* note 84, at 565–66 (implying police chiefs implemented police professionalism (centralizing command) to insulate the police from corruption).

works allowed officers to quickly intervene in emergency situations.[128] However, empirical comparison of the mechanisms of the rapid response approach (response times, arrest rates, clearance rates, etc.) to crime rates have shown these mechanisms may not have an impact on the incidence of crime.[129] Perhaps, beyond maintaining rule of law perceived to be legitimate by those who are socialized to accept it,[130] the law enforcement function of the police is no more able to affect crime rates than they are able to change the sociological conditions that may be at the root of criminal activity.[131] While the effectiveness of rapid response is debatable, the purposeful distance from citizenry adopted as the goal of professionalism and aided by rapid response technologies[132] has undoubtedly resulted in a schism between the police and the community.[133] Thus, the problems stemming from the "us versus them" mentality that comes with policing the community at an arm's length, has led police departments to

128. *See* Alafair S. Burke, *Unpacking New Policing: Confessions of a Former Neighborhood District Attorney*, 78 WASH. L. REV. 985, 994 (2003) ("The rapid-response model's immediate objective is to arrest and punish an individual offender. Through specific and general deterrence, the punishment of that individual offender and others like him might lead to an overall decrease in crime . . . .").

129. *See* Montré D. Carodine, *"Street Cred,"* 46 U.C.D. L. REV. 1583, 1605 (2013) (stating that, according to research, the traditional methods of policing promoted during the reform era were not as effective as they were believed to be at reducing crime); Paul G. Cassell & Richard Fowles, *Handcuffing the Cops? A Thirty-Year Perspective on Miranda's Harmful Effects on Law Enforcement*, 50 STAN. L. REV. 1055, 1102–03 n.210 (1998) (citing a variety of studies with conflicting conclusions about whether arrest rates and clearance rates have a deterrent impact on crime rates); Forman, Jr., *supra* note 103, at 5 (stating community policing gained support when research from the 1970s demonstrated the inadequacy, value, and efficacy of traditional police tactics); Livingston, *Police Discretion, supra* note 84, at 569 (providing a study conducted in 1972 and 1973 concluded that variation in the level of random, motorized police patrol in Kansas City had no significant effect on crime statistics, citizen fears, or response time of police to calls of service).

130. *See* Samuel Walker, *Too Many Sticks, Not Enough Carrots: Limits and New Opportunities in American Crime Policy*, 3 U. ST. THOMAS L.J. 430, 435 (2006) (explaining citizens have been socialized into law-abiding behavior and that the possibility of punishment most likely only deters individuals who exhibit this behavior).

131. *See* Marian J. Borg & Karen F. Parker, *Mobilizing Law in Urban Areas: The Social Structure of Homicide Clearance Rates*, 35 LAW & SOC'Y REV. 435, 436 (2001) (explaining disadvantaged areas lacking economic, social, and institutional resources to fight crime suffer high crime rates).

132. *See* Richardson & Goff, *supra* note 73, at 144 (explaining the distance between police officers and communities resulted from the adoption of patrolling neighborhoods in cars rather than on foot).

133. *See* Forman, Jr., *supra* note 103, at 4–5 (discussing how, in the 1970s and 1980s, the relationship between citizens and police weakened—over 70% of policemen believed the public hated the police, and a study found that big city policemen believed the public saw them as inconsiderate).

strive towards fostering a more cooperative relationship with local citizens.[134]

This is not to say that COP does not have sound theoretical underpinnings. A wide body of research illustrates that law-abiding tendencies are shaped by an individual's perception of fair treatment by the police.[135] As a result, negative experiences with the police—representatives of state authority—will bring people struggling to follow the norms embodied in state law to develop alternative, "street" norms of justice.[136] And because people break or follow the law based on the social norms of their communities, a valid strategy for preventing crime may be to shape the community's perception of the police.[137] In fact, since arrests and incarceration have the inherent effect of disrupting the social networks on which the community depends,[138] the tools of the rapid response model would seem to naturally erode the legitimacy of the laws being enforced.[139]

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134. *See* Waldeck, *supra* note 99, at 1265–67 (explaining under the "us versus them" mentality police viewed themselves as distinct from the community, which makes partnerships with the community difficult; thus, in order for community policing to work there had to be a subculture change). *See generally* Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 797–98 (2000) (exemplifying issues of racism brought about by the "us versus them" mentality).

135. *See* Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513, 519 (2003) (citing research concluding that a citizen's view of whether procedures adopted by police are fair influence the way they react during encounters with police officers); Irina Elliott et al., *Procedural Justice in Contacts with the Police: Testing a Relational Model of Authority in a Mixed Methods Study*, 17 PSYCHOL. PUB. POL"Y & L. 592, 604–05 (2011) (discussing the results of a study supporting the hypothesis that "higher perceived antecedents of procedural justice would be associated with higher perceived legitimacy (obligation to obey the law), outcome fairness, and satisfaction with the contact"); Forman, Jr., *supra* note 103, at 3 (explaining empirical research shows that people's satisfaction with the police is determined by whether they believe the process coming to a decision in the legal system was fair). "[P]eople's assessment of whether authorities behaved fairly influences the likelihood that they will comply with future legal directives." *Id.* at 35.

136. Forman, Jr., *supra* note 103, at 4.

137. *See* Waldeck, *supra* note 99, at 1255 (expressing those who wish to control crime should focus on regulating the social dynamics that create community norms of law breaking within communities).

138. *See* Jeffrey Fagan et al., *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 FORDHAM URB. L.J. 1551 (2003) (stating high rates of incarceration aggravate social and economic disadvantages in areas concentrated with former inmates because of their hindered ability to return to the labor market). *See generally* Parlow, *supra* note 111, at 1205–06 (discussing the repercussions from low-level, quality-of-life crime arrests, including loss of time, money, and possibly even employment).

139. *See* Monterastelli, *supra* note 107, at 256 ("Even if they arrest a person for such a petty crime, '[t]he effects of an arrest experience over a minor offense may permanently

Police departments are improving their image within communities by eliminating the warrior strategy and shifting more focus on treating citizens as equals.[140] This collaborative approach follows evidence-based models from other fields by including stakeholders (the community, the police, and other social services apparatuses) in the decision-making process.[141] By partnering with citizens to strengthen the community against the causes of social disorder, the community policing strategy promotes the rule of law.[142]

B.   *The Problems with Community Policing*

Despite its promising theoretical foundation and improvement upon previously used policing strategies, community policing remains an unattained goal at best[143] and a deceptive façade at worst.[144] The most significant issues involving the COP strategy appear to be (1) difficulties in fostering a cultural shift by redefining the identity of the traditional rank-and-file officers from crime-fighting warriors to problem-solving social

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lower police legitimacy, both for the arrested person and their social network of family and friends.' In this way, arrestees and their social networks may become more defiant.").

140. *See* Carodine, *supra* note 129, at 1605 (reiterating the concept of increased communication and treatment of people as an officer's equal as ways of improving police and community relations).

141. *See* Parlow, *supra* note 111, at 1227 (explaining a collaborative approach leads to a better decision-making by implementing sounder policies and practices).

142. Waldeck, *supra* note 99, at 1254–55; *see* Meares, *supra* note 117, at 601 (suggesting instead of analyzing offenders on an individual basis, it may be more helpful to involve the community to encourage third party efforts in securing neighborhoods). *See generally* David Alan Sklansky, Book Note, 42 LAW & Soc'Y REV. 233 (2008) [hereinafter Sklansky, Book Note] (reviewing WESLEY G. SKOGAN, POLICE AND COMMUNITY IN CHICAGO: A TALE OF THREE CITIES (2006)) (opining Wesley Skogan's book on community policing is an intensive evaluation of the notion that collaboration between the community and the police officers is paramount to building public support, especially among minority groups).

143. *See* Richardson & Goff, *supra* note 73, at 144–45 (describing reasons why police officers have created more distance between themselves and the community they once collaborated with may be attributed to a "professionalism era"). *See generally* Forman, Jr., *supra* note 103 (arguing the reason community policing does not work is because young people are excluded).

144. *See* Michael E. Buerger, *The Challenge of Reinventing Police and Community, in* POLICE INNOVATION AND CONTROL OF THE POLICE: PROBLEMS OF LAW, ORDER, AND COMMUNITY 103, 105 (David Weisburd & Craig Uchida eds., 1993) (declaring community policing is merely symbolic and has no real value in the manner the police conduct themselves); Jack R. Green, *Community Policing and Police Organizations, in* COMMUNITY POLICING: CAN IT WORK? 30, 50 (Wesley Skogan ed., 2004) (warning police may not have changed their practices, but have instead used the label of community policing as a pretext).

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workers,[145] and (2) organizing citizens from a diverse population—especially those who struggle to adhere with laws and values—to serve as effective partners with law enforcement.[146] More succinctly, the apparent disconnect seems to stem from a combination of the community's inability to effectively communicate its concerns to the police, and the failure of law enforcement officials to respond to community feedback.[147] Rooted in the misapplication of mindsets and tools from the professionalism model, these issues could be resolved by building a better system of exchanging information between the police and the communities they serve.

1. New Role, Old Mentality

In order to apply the COP strategy, officers must change their thinking from fighting crime against the community to problem-solving with the community.[148] Though the ranking officers in most departments express commitment to the COP strategy, the officers who regularly interact with the public continue to apply the traditional, crime-focused mentality.[149] One aspect of the traditional, professional policing model was the purposeful barriers it created between officers and the community.[150] While COP aims to reduce these barriers by allowing individual officers greater autonomy,[151] the problem is that these officers continue to possess a warrior type mentality.[152] Instead of fostering trust through increased con-

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145. *See* Forman, Jr., *supra* note 103, at 16 ("Community policing also requires a reorientation in thinking, so that officers begin to see community members as allies, rather than enemies.").

146. *See* Burke, *supra* note 128, at 1006–07 (noting community policing is not effective because people are not informed of existing programs, and the few that are informed do not necessarily reflect the voice and will of the whole community).

147. Deflem, *supra* note 108, at 255–56 (considering the reason why police do not effectively communicate is because they base their profession on "autonomy and expertise," which the community does not possess).

148. *See* Forman, Jr., *supra* note 103, at 16 (stating officers must adopt a reorientation in thinking to apply the community policing strategy, seeing community members as a whole as assets and not as an encumbrance).

149. *See* Richardson & Goff, *supra* note 73, at 144 (noting because of police corruption before the "professionalism era" there is still residue of the crime-fighting mentality).

150. *See id.* at 144–45 (listing ways for the police force to prevent individual officers from forming personal bonds with certain communities).

151. *See* Deflem, *supra* note 108, at 256 ("[C]ommunity policing has become the definitive strategy to reduce distance between the police and the citizenry by devolving authority from central power to localized self-determination.").

152. *See* Waldeck, *supra* note 99, at 1279 ("By targeting disorder with arrest—a traditional law enforcement tool—police were able to convert misdemeanor arrests into felony arrests, and thereby further validate their crime-fighting image."); *see also* Richardson & Goff, *supra* note 73, at 144–45 (emphasizing officers measure success in the number of

tact, this reform-era approach to community policing exposes the community more directly to crime-focused officers,[153] allowing these officers to abuse their expanded discretion by confronting "undesirable" members of the community.[154] In other words, police attempt to improve the community by cracking down on low-level offenses, arresting only the people who are disfavored by the upstanding citizens, thus creating a de facto division in the legal system between how wealthy and poor people are treated.[155]

Though this "order maintenance" approach (increasing arrests for low-level offenses) has been correlated to a reduction in serious crimes[156] and was touted as the cause of the decline in crime in New York City in the 1990s,[157] crime rates simultaneously declined in cities using other crime-control strategies.[158] Regardless of whether it is effective, aggressive quality-of-life policing[159] is a major source of inner-city tension,[160] affect-

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arrests and response times to the scene in question, which tends to lead to more truculent enforcement practices).

153. *See* Suzanne Meiners, *A Tale of Political Alienation of Our Youth: An Examination of the Potential Threats on Democracy Posed by Incomplete "Community Policing" Programs*, 7 U.C. DAVIS J. JUV. L. & POL'Y 161, 171–73 (2003) (noting the increased COP foot patrols occur in high-crime areas, leading to more arrests).

154. Mary I. Coombs, *The Constricted Meaning of "Community" in Community Policing*, 72 ST. JOHN'S L. REV. 1367, 1371 (1998).

155. *See* MATT TAIBBI, THE DIVIDE: AMERICAN INJUSTICE IN THE AGE OF THE WEALTH GAP 57 (Spiegel & Grau eds., 2014) (providing an alarming statistic, in NYC, that in 2011 alone, 88% of stop and searches involved minority groups; meanwhile, nobody on Wall Street was arrested in connection with the 2008 financial crisis); Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457 (2000) (discussing order-maintenance policing uses more aggressive tactics to enforce the law for any low-level offenses).

156. *See* Coombs, *supra* note 154, at 1370 n.18 (indicating studies conducted through Chicago's community policing program demonstrated a correlation between policing against low-level offenses and a decrease in serious crime).

157. *See* Lawrence Rosenthal, *Pragmatism, Originalism, Race, and the Case Against Terry v. Ohio*, 43 TEX. TECH L. REV. 299, 322–23 (2010) (discussing the changes in policing tactics that contributed to New York's crime drop throughout the 1990s).

158. *See* Cole, *supra* note 127, at 1065 (stating the drop in crime occurred nationwide, even in areas that did not adopt quality-of-life policing like New York City).

159. Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271, 272 n.1 (2006) (including crimes such as "loitering, public drunkenness, and vandalism").

160. *See* Cole, *supra* note 127, at 1092–93 (stating an aggressive quality-of-life policing does not improve conditions that cultivate inner-city crime and in fact, maintains its impoverishment and segregation); *see also* Fagan & Davies, *supra* note 155, at 462 (stating order-maintenance policing transformed into an aggressive form of racial profiling and policing which intensified hostility in minority neighborhoods).

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ing race relations,[161] community stability,[162] and the legitimacy of police and the law in the eyes of the targeted community-members.[163] A policing strategy that forces contact between aggressive police officers and less stable elements of the community may therefore be the root of violence between police and minorities that is garnering national attention.[164] Aggressive order-maintenance policing, however, may not be a deliberate style of community policing or the remnants of waning habits, but rather the unavoidable consequence of placing officers in new roles while evaluating their performance using outdated standards.[165]

2. Unclear Evaluation Standards

The professional policing model used simple, quantifiable indicators such as arrest and citation rates to measure the effectiveness of department policies and to evaluate officer performance.[166] The COP strategy, however, reinvents the role of the police officer from simple enforcer of the law, to multifaceted agents of social stability.[167] As such, analyzing an individual officer's effectiveness within the community is more compli-

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161. *See* Paul Hoffman, *The Feds, Lies, and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, 66 S. CAL. L. REV. 1453, 1515 (1993) (stating one of the major origins of racial separation and tension in today's society is police abuse against inner-city minority communities); Mia Carpiniello, Note, *Striking A Sincere Balance: A Reasonable Black Person Standard for "Location Plus Evasion" Terry Stops*, 6 MICH. J. RACE & L. 355, 369 (2001) (discussing stop and frisk methods are a major source of racial tension).

162. *See* Fagan et al., *supra* note 138, at 1552–53 (suggesting incarceration for crimes committed in New York City neighborhoods can disrupt family ties and social networks within those neighborhoods); Parlow, *supra* note 111, at 1205–06 (discussing individuals arrested for low-level, quality-of-life crimes waste time and money paying processing fees for their arrest, losing employment opportunities, and missing school).

163. *See* Monterastelli, *supra* note 107, at 256 (stating when an individual is arrested for a petty crime, defiance against police is provoked and police legitimacy is permanently lowered from the perspective of the arrested individual and his or her social network of family and friends).

164. *See* David Von Drehle, *The Roots of Baltimore's Riots*, TIME (Apr. 30, 2015), http://time.com/3841451/the-roots-of-baltimores-riot/ (discussing how violence between police and minorities has become a common crisis in Baltimore, and police brutality has induced riots that have garnered national attention following years of systematic failure); David Von Drehle, *In the Line of Fire*, TIME (Apr. 9, 2015), http://time.com/3814970/in-the-line-of-fire-2/ (observing the troubled relationship, lacking trust, between black citizens and police officers in minority neighborhoods is found on a national level).

165. Livingston, *Police Discretion*, *supra* note 84, at 652.

166. *See* ALPERT & MOORE, *supra* note 74, at 215 (stating reported crime rates, overall arrests, clearance rates, and response times are the four practices police agencies have generally used to evaluate police performance).

167. *See* Forman, Jr., *supra* note 103, at 16 (discussing community policing depends on community involvement and on the police officer's view of these community members as allies rather than enemies).

cated than just evaluating arrest rates.[168] Police departments have had difficulty with implementing objective methods to measure the actions and skills of individual officers[169] and overall effectiveness of broad community initiatives.[170] Without any universally accepted criteria to manage performance, departments revert back to traditional performance measures,[171] making decisions about pay raises, promotions, and demerits based on arrest rates and response times.[172] This results in many talented, ambitious officers focusing more attention on solving crimes, while ignoring neighborhood/domestic disputes and the conflict resolution skills they require.[173] As a result of the misplaced fixation on numbers in the

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168. *See* Livingston, *Police Discretion, supra* note 84, at 652 (suggesting new policing reforms require addressing the difficult task of revising police performance measures to include internal discipline and mechanisms to measure and reward less dramatic police interventions, not just recognition for felony arrests).

169. *See* Elliott et al., *supra* note 135, at 607 (2011) (suggesting additional qualitative approaches should be utilized to measure police performance, because a major problem with today's measures is that they do not adequately quantify what police officers do to serve their communities).

170. *See* Robert Weisberg, *Restorative Justice and the Danger of "Community,"* 2003 UTAH L. REV. 343, 363 (2003) (stating there is a broad range of community policing initiatives that are being applied without measuring benchmark criteria, so consistency cannot be assessed).

171. *See* Fagan & Davies *supra* note 155, at 468 ("By emphasizing the aggressive pursuit of social disorder, or disorderly persons, police returned to the more comfortable performance indicators of stops and arrests, while restoring to the workplace their traditional cultural dichotomy of 'disorderly people and law abiders.'").

172. *See* Livingston, *Police Discretion, supra* note 84, at 567 ("Although peacekeeping and order maintenance were still a large part of the police officer's day-to-day activities, police departments, founding their legitimacy in the criminal law and in professional law enforcement, began to measure their performance by reference to crime statistics . . . ."); Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda,* 65 U. CHI. L. REV. 35, 79 (1998) ("[P]ersonal rewards often accrue to those police officers who most zealously enforce the drug laws. Because drug detail generally reaps large numbers of . . . arrests and . . . court appearances for the arresting officer, it is an avenue to both overtime pay . . . and better evaluations (which are often linked to arrest rates)."); *see also* Seth W. Stoughton, *Policing Facts,* 88 TUL. L. REV. 847, 877 (2014) ("Officer evaluation forms used by both large and small police departments do not mention, let alone put weight on, convictions, though most include some evaluation of arrests."); Richardson & Goff, *supra* note 73, at 144–45 (noting response times and number of arrests have been primary methods for measuring officer success).

173. *See* ALPERT & MOORE, *supra* note 74, at 222 (observing operational indicators showed there was no legitimate way to assess the quality of the responses officers made to citizen calls, except for criminal offenses for which an arrest was made, and officers tended to ignore non-crime complaints); Livingston, *Police Discretion, supra* note 84, at 652 (stating it is crucial to develop mechanisms to review and reward police officers' order maintenance activities, such as successful dispute resolutions, rather than only rewarding officers for meeting a designated number of felony arrests, despite the fact that it is a burdensome task to develop these mechanisms).

community policing context, officers are motivated to solve community problems by enforcing social norms through arrests.[174] Despite departments' declarations about partnering with the community, the retention of an arrest-based model for measuring officer performance motivates aggressive policing which, in turn, alienates the community from authorities.[175]

To combat this problem, experts agree that officer performance should be evaluated by identifying and rewarding individuals who possess the skills and behavior that exemplify the mission of COP.[176] Bad cops should fear the good cops instead of vice versa.[177] Positive reinforcement helps to cultivate this type of attitudinal and behavior shift away from the professional policing model—a shift that is necessary to gain support from the community.

3. The Lack of Public Participation

Another aspect of the current police-community disconnect is the police have not developed a forum for channeling feedback from critical elements of the community. COP is a policing strategy that recognizes law enforcement agencies rely on the assistance of citizens in establishing a safe community.[178] A key element to this model requires police to communicate effectively with every segment within a community, especially in poor, crime-prone areas.[179] This approach to policing therefore demands that citizens from crime-prone areas gather together and work

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174. *See* Waldeck, *supra* note 99, at 1259 ("[W]hen an order-maintenance agenda is introduced into a department that retains the traditional reform-era subculture, the agenda can devolve from an effort to enforce norms and creatively solve community problems to an effort to increase felony arrests and unearth the 'big collar.' Such a devolution entails a number of risks, particularly the antagonization of young male minorities.").

175. Richardson & Goff, *supra* note 73, at 144–45.

176. *See* Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal,* 34 Loy. L.A. L. Rev. 545, 580 (2001) (stating officers ought to be recognized for their community and crime prevention activities in their assessment and promotion standards as opposed to being rewarded solely for the number of citations issued and arrests made).

177. *See* Bratton et al., *supra* note 55, at 402 (suggesting that improving the culture of police departments is necessary to influence officer conduct and behavior for the better).

178. *See* Charles L. Stearns, *Reviews of Professional Periodicals,* 58 Fed. Prob. 70, 70 (1994) (reviewing Randolph M. Grinc, *"Angels in Marble": Problems in Stimulating Community Involvement in Crime and Delinquency,* 40 Crime & Delinq. 437 (1994)) (stating one of the main reasons community policing emerged was because police are highly dependent on cooperation from citizens who share a desire to reduce crime).

179. *See id.* at 71 (explaining a crucial part of community policing consists of involvement between the police and the community).

with the police.[180] The fact that crime-prone communities have not re-sponded to this invitation marks a critical flaw in community policing that appears to be outside of the control of the police.[181]

Studies examining various community policing strategies revealed con-sistent difficulties in stimulating community participation.[182] Further-more, the small faction that does volunteer to meet with the police[183] tend to be the wealthy and politically powerful[184] rather than the young minorities who are most in need of outside intervention.[185]

This is not to say that crime-prone citizens are not willing or able to work with authorities to take control of their neighborhoods.[186] Despite a lack of public participation, COP has enjoyed widespread popularity as a tool for bridging the divisive gap between the police and the commu-nity.[187] Clinical research on the benefits of empowerment to vulnerable people predicts attraction to the idea of community policing by crime-prone communities.[188] "Legal empowerment" initiatives have used this

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180. *See id.* (explaining how a crucial part of community policing consists of involve-ment between the police and the community).

181. *See id.* ("[W]hat is clear is that the apparent popularity of community policing among residents is not sufficient to promise their active involvement in the process.").

182. Burke, *supra* note 128, at 1006.

183. Kim, *supra* note 5, at 482.

184. *See* Meiners, *supra* note 153, at 162 (explaining how those who reap the benefits of community policing are the small group of people who are vocal, and therefore, influen-tial); *see also* Burke, *supra* note 128, at 1006 (showing community policing programs are dominated by white residents and homeowners, reflecting only a small proportion of the residents in racially-mixed neighborhoods).

185. *See* Nicole Stelle Garnett, *Private Norms and Public Spaces*, 18 WM. & MARY BILL RTS. J. 183, 196–97 (2009) (quoting a student's observation that people who attend community meetings are "[o]ld people with nothing better to do" to illustrate the real problem with community policing: It paints an incomplete picture of events in the commu-nity); *see also* Forman, Jr., *supra* note 103, at 2, 16 (stating the composition of the attendees at community meetings hardly reflects the entire community as youth have been left out of the community policing model, meaning only a small fraction of the community participates).

186. *See* Curtis Blakely, *American Criminal Justice Philosophy Revisited*, 72 FED. PROB. 43, 44 (2008) (stating although there is a lack of citizen participation, the public has shown it is willing to work with authorities, as evidenced by its demands for police to take "a more proactive and personal approach").

187. *See* WESLEY G. SKOGAN, COMMUNITY POLICING: CAN IT WORK?, at xii (2004) (recognizing the popularity of community policing with the public and city councils leads police chiefs to claim to be on board with the model by the adoption of "this or that community-friendly program"); Blakely, *supra* note 186, at 44 (explaining how community dissatisfaction ultimately stimulated participation in community policing).

188. Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 541–42 (2013).

theory to improve many aspects of impoverished communities.[189] This indicates the type of problem-solving approach established by COP resonates with citizens. Therefore, the lack of participation issue could be mitigated through a different approach by police departments to reach out to the more vulnerable demographic of the community.

Research shows the most common explanation for lack of involvement in community outreach programs was fear of targeted retaliation by police against a population that has felt mistreated by them in the past.[190] Inviting these mistrustful citizens to submit their feedback to the police leads to the "free-rider" problem-critical voices will not reach out to the police if others can[191] unless they feel personally affected.[192] The outcome of this dynamic is that vulnerable communities will prefer a police department that is responsive to their input while their members will not enter the lion's den or voice criticism as individuals.[193]

The police can invite local leaders to speak for the community as an alternative to involving individual citizens.[194] However, problems with this approach arise in the designation of select figures to serve as unofficial proxies for the entire community. Feedback from community leaders can be seriously misleading and not representative of popular will, largely due to the fact that these individuals are not held accountable if the com-

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189. *See* Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* 3–4 (Carnegie Endowment for Int'l Peace, Working Paper No. 41, 2003), http://www.carnegieendowment.org/files/wp41.pdf ("[L]egal empowerment has helped advance poverty alleviation, good governance, and other development goals.").

190. Stearns, *supra* note 178, at 71.

191. *See* Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U. L. REV. 77, 112 (2005) (discussing the "bystander effect" phenomenon in which persons are less likely to help others if they are "among a group of people present at the scene" due to "fear of being reproved by others or of impeding a better rescuer"); John M. Darley & Bibb Latane, *Bystander Intervention in Emergencies: Diffusion of Responsibility*, 8 J. PERSONALITY & SOC. PSYCHOL. 377, 378 (1968) ("When there are several observers present, however, the pressures to intervene do not focus on any one of the observers; instead the responsibility for intervention is shared among all the onlookers and is not unique to anyone. As a result, no one helps.").

192. *See* Monica K. Miller & Samantha S. Clinkinbeard, *Improving the AMBER Alert System: Psychology Research and Policy Recommendations*, 30 LAW & PSYCHOL. REV. 1, 13–14 (2006) (discussing a study that explored conditions in which people would intervene to disrupt behaviors that negatively affected their communities, e.g., a "small neighborhood park as opposed to a large shopping mall," and noted that "when people felt personally implicated, intervention was not inhibited by the presence of bystanders").

193. Stearns, *supra* note 178, at 71 (describing the reasons ordinary community residents hesitate to become involved in community policing programs despite the popularity of such programs).

194. Catherine Therese Clarke, Comment, *From CrimlNet to Cyber-Perp: Toward an Inclusive Approach to Policing the Evolving Criminal Mens Rea on the Internet*, 75 OR. L. REV. 191, 227 n.166 (1996).

munity is not present at meetings with the police.[195] This has led many to view the meetings between community leaders and the police "largely pointless" when compared to the impact of open meetings with the citizens themselves.[196] Furthermore, it takes considerable effort by the police to identify people who have influence in the community and are able to maintain that influence while working with the police.[197] Thus, the top-down approach of inviting the input of community leaders may solicit feedback that is too abstract, potentially unrepresentative, or simply not useful.[198]

Even if selected members of a community were consolidated into one advisory board, critics argue that modern communities are too complex and diverse to express their issues, concerns, and problems with one voice.[199] Under this reality, partnering with only one interested group could be perceived as unequal treatment, possibly leading to turmoil, especially when the conflicting interests of a volatile community are at

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195. *See* Josephine Unger, Note, *Frisky Business: Adapting New York City Policing Practices to Ameliorate Crime in Modern Day Chicago*, 47 SUFFOLK U. L. REV. 659, 680 n.160 (2014) (providing an example of when the priorities of both the NYPD and community leaders diverged from those of the community—the police department and community leaders focused on preventing major crimes, whereas community wanted to curb petty crimes); *cf.* Najeeba Syeed-Miller, *Developing Appropriate Dispute Resolution Systems for Law Enforcement and Community Relations: The Pasadena Case Study*, 22 OHIO ST. J. ON DISP. RESOL. 83 (2006) (discussing the use of dialogue sessions between community leaders and their constituents to ensure representations made are legitimate and can be substantiated).

196. *See* Sklansky, Book Note, *supra* note 142, at 234 (comparing beat meetings, which are well attended and productive, with committees of appointed community leaders which only meet periodically with police middle-managers). "Beat meetings—monthly open forums for residents of particular neighborhoods and officers assigned to patrol it . . . District Advisory Committees—appointed panels of community leaders who meet periodically with police middle managers . . . ." *Id.*

197. *See* Anna Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 833, 857–58 (2015) (recognizing the importance of cultivating contacts, and describing the efforts made by government agencies to engage in this type of community outreach); *cf.* Sahar F. Aziz, *Policing Terrorists in the Community*, 5 HARV. NAT'L SEC. 147, 147–48 (2014) (providing an example of how a community leader's collaboration with law enforcement may conflict with the collective interests of the community).

198. *See* Syeed-Miller, *supra* note 195, at 91 (describing methods employed to ensure reports by community leaders are in fact representative of concerns that legitimately exist within the community).

199. *See* Cole, *supra* note 127, at 1062 (echoing the concern that in a diverse community reliance on a political process may result in minority interests being ignored); *see also* Kim, *supra* note 5, at 487 (discussing the impossibility of achieving a unified position on policing issues within a community); Stearns, *supra* note 178, at 71 (identifying intragroup conflict among community leaders and community residents as one of several problems with the nature of community policing programs).

stake.[200] Even if it were possible, narrowing the community's diverse array of perspectives into a single "partner" may not be an appropriate approach to COP.

Community policing appears to be a good idea that is severely limited by (1) a lack of tools for motivating and evaluating effective application of the COP's philosophy by individual officers, and (2) difficulties in convincing the typical victims and offenders of crime to provide substantive feedback to police officers and administrators. An analysis of these criticisms draws important parallels between community policing and civilian oversight. CRBs attempt to influence the police using an adversarial approach that the police do not perceive to be legitimate. Police departments attempt to use a community-oriented approach to improve their perception within a community, but then apply these strategies under a rewards system that promotes combative rather than problem-solving behaviors. Though community policing and civilian oversight are contemporaneous innovations, each setting out to transform police-community relations,[201] these mechanisms have not been fully integrated with each other.[202] However, the weaknesses of community policing seem to match up with the strengths of civilian oversight in a way that hints at promising synergies.

C. *The Potential Role of Civilian Oversight in Community Policing*

A strength of the civilian oversight processes is that they have the potential to assess the public relation skills of individual officers, evaluating instances of problem-solving that would not be visible to police supervisors. As indicated, the COP model has many perceived flaws.[203] CRBs,

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200. *See* Livingston, *Police Discretion, supra* note 84, at 656 (describing the tensions that police face by enforcing subjective norms (e.g., loitering) in a community where norms differ).

201. *See* David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. Crim. L. & Criminology 1209, 1210 (2006) [hereinafter Sklansky, *Making Sense*] (discussing and attributing the transformation of American policing to the mantra of community policing, civilian oversight, and the diversity of police workforces). *See generally* Michael A. Schuett et al., *Making it Work: Keys to Successful Collaboration in Natural Resource Management*, 27 Envtl. Mgmt. 587 (2001) (discussing the keys to successful collaboration in Natural Resource Management, which may be a model for blending community policing and civilian oversight).

202. *See* Kim, *supra* note 5, at 461 (contending, under current practice, community policing and review boards operate as mutually exclusive projects); *cf.* Eileen M. Luna, *Law Enforcement Oversight in the American Indian Community*, 4 Geo. Pub. Pol'y Rev. 149, 159 (1999) (describing the relationship and particular success of civilian oversight in the Native American community with the concurrent formation of the tribal police department and how that may work to create an effective working relationship between the two).

203. *See* Forman, Jr., *supra* note 103, at 16 (explaining how the "us versus them" mentality is a problem because police have a difficult time relating to people other than

when used as a mechanism for facilitating and testing feedback from the community regarding certain police action, have the potential to improve upon these shortcomings.[204] Because civilian oversight groups and police departments share the common goal of enhancing the legitimacy and public perception of community order, both entities would benefit from a process that combines their strengths to combat their separate weaknesses.[205]

1. Increasing Community Involvement

As previously mentioned, one major weakness of the COP strategy is the lack of cooperation from citizens within the community.[206] Police departments can remedy this problem by utilizing the insight and information provided by CRBs, which would, in turn, lead to a stronger relationship with the citizenry.[207]

While many citizens have been apprehensive about attending meetings organized by the police, the CRB is more likely to be perceived as safe because the community organizes it.[208] In fact, police departments that operate in conjunction with CRBs appear to be much more likely to attract feedback from citizens.[209] Furthermore, an independent CRB will carry greater legitimacy in these highly police-targeted areas because those affected by police action perceive boards as a type of oversight,

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police); Burke, *supra* note 128, at 1006–07 (noting participation within the community is low because people do not trust the police and people are not informed of existing programs to facilitate a working relationship).

204. *See* Luna, *supra* note 202, at 159 (noting tribal oversight bodies in Native American communities have enjoyed particular success because they were developed concurrently with and integrated into the tribal police departments).

205. *See* Kim, *supra* note 5, at 495 (claiming public accountability through civilian oversight and community policing creates a basis for police legitimacy in the community); Sklansky, *Making Sense*, *supra* note 201, at 1210; *see also* Simmons, *supra* note 8, at 504 ("Underlying the trend to develop citizen review boards is the argument that greater transparency increases the political accountability of police, thereby deterring police misconduct.").

206. *See* Stearns, *supra* note 178, at 71 ("[W]hat is clear is that the apparent popularity of community policing among residents is not sufficient to promise their active involvement in the process.").

207. *See* Livingston, *supra* note 10, at 665 (stating CRBs could play a role in evaluating the police department's COP strategy).

208. *See* Charles L. Stearns, *Crime and Delinquency*, FED. PROBATION, December 1994, at 70, 71; Livingston, *supra* note 10, at 657 (pointing out that a clear benefit of civilian oversight is it is more accessible to the community).

209. *See* Sklansky, *Exclusionary Rule*, *supra* note 65, at 572–73 (citing a study that found twice as many citizen complaints per officer in police departments with CRBs than in departments without such civilian oversight).

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"watch-dog" group that function independently from the police.[210] Also, civilian oversight meetings offer those directly affected by police action redress and the opportunity to be heard, using the self-interest of citizens affected by police action to attract their participation.[211] Therefore, an optimal way to motivate people who clash with the police to provide the feedback that is crucial to the community policing strategy is through civilian oversight processes.[212]

Police listen to community concerns as a primary form of direction, but the problem in practice is that citizens who provide this feedback are not from crime-prone communities that are the focus of COP initiatives.[213] Police departments rely on volunteers, identified leaders, or polls taken from the general public to attract feedback from the community.[214] This feedback, however, is not indicative of the society as a whole, as volunteers are usually not members of the vulnerable segments within the community,[215] leaders do not represent the viewpoints of the entire community,[216] and the individuals polled may not be interested in police policies. Many do not trust that self-proclaimed community leaders or volunteers who attend beat meetings are providing departments with valid feedback based on personal experience, especially when abstract

210. *See id.* at 573 (reinforcing the idea that CRBs create legitimacy for the police due to their involvement in investigation of police complaints); Hazel Glenn Beh, *Municipal Liability for Failure to Investigate Citizen Complaints Against the Police,* 25 FORDHAM URB. L. J. 193, 220 (1997) (indicating transparency in the police force builds confidence in the community to file complaints, and sustains a general satisfaction with police actions); *see also* Livingston, *supra* note 10, at 657 (concluding investigation of police misconduct may be more visible and legitimate with the transparency of citizen review).

211. *See* Steven D. Seybold, Note, *Somebody's Watching Me: Civilian Oversight of Data-Collection Technologies,* 93 TEX. L. REV. 1030, 1048 (2015) (stating civilian oversight includes multiple mechanisms that enable the system to properly operate and protect the citizens).

212. *See id.* (asserting civilian oversight can strongly influence local police departments in ways that are more in tune with local concerns of the people).

213. Forman, Jr., *supra* note 103, at 16–17.

214. Unger, *supra* note 195, at 680.

215. *See* Forman, Jr., *supra* note 103, at 16–17 (pointing out the highest participation rates regarding community policing come from people with higher socio-economic status, homeowners, and married couples with children); *see also* Burke, *supra* note 128, at 985 (indicating homeowners and white residents predominantly make up the groups relied on for community policing efforts).

216. *See* Unger, *supra* note 195, at 680 (discussing the problem with choosing a community leader to accurately represent the needs of the community); *see also* Sklansky, Book Note, *supra* note 142, at 233 (arguing appointed panels of community leaders who meet with police managers are ineffective).

police policies are being discussed.[217] A more accurate portrayal of important police-community interactions could be produced by a continual stream of input from actual interactions between law enforcement and crime-prone citizens through CRBs.[218] Focusing on specific instances of police-community interaction will better organize discussions around concrete behaviors and create the salience needed to bring both sides to more fully understand each other.[219] Through subpoena power, the CRB process may be able to avoid apathy and resistance to ensure that both viewpoints are fully expressed.[220] Many factors indicate that community feedback on police action created through consistent civilian oversight will be more accurate than alternative sources.[221]

2. Influencing Police Behavior

Perhaps the greatest deficiency in the COP strategy, however, is a lack of tools to evaluate community-friendly, problem-solving behavior in individual officers. When police departments rely on arrest statistics—a performance evaluation tool that ultimately drives job incentives rather than community outreach—to measure the effectiveness of their officers, the departments promote aggressive behavior and ignore community policing skills.[222] To incentivize community-friendly policing, these departments could utilize input from CRBs in promoting and disciplining officers.[223] Not only would this partnership cause officers to be more conscientious of their treatment of citizens, but also, CRBs that identify exemplary police behavior could reward officers who believe in the principles of the COP strategy.[224] As a result, civilian oversight processes

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217. *See* Burke, *supra* note 128, at 1006 (suggesting a small percentage of citizens are involved in community policing programs, and of those that come to meeting only a few treat the meeting as anything but a social function).

218. *See* Forman, Jr., *supra* note 103, at 16–17 (recognizing the disparities between race and socio-economic status in who participates with the community policing programs).

219. *See* Burke, *supra* note 128, at 1009–10 (exploring the idea that an inner-city community might choose a new policing policy because the community does not have the ability to actually influence city governance as they see fit).

220. *See* King, *supra* note 23, at 108–09 (pointing out for community oversight to work, the oversight organizations must attain power (such as the ability to subpoena) to remedy civilian complaints).

221. *See* Chambers, *supra* note 9, at 794 (reiterating that short-term reforms through oversight commissions have been unsuccessful at providing long-term result's to decrease citizen complaints against police officers).

222. *See* Richardson & Goff, *supra* note 73, at 145 (focusing on the problems with law enforcement practices used today as methods of measuring success).

223. *See* Iris, *supra* note 52, at 218 (discussing the advantages of civil service regulations and their impact on correcting and deterring an officer's misconduct).

224. ALPERT & MOORE, *supra* note 74, at 227. "Activities that should receive more attention include exemplary service to the community and the reduction or diffusion of

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may provide the missing, and much needed, evaluation tool for community-friendly behavior by individual officers.[225]

Furthermore, the CRB process may also impact officer behavior through direct, appropriately facilitated interactions with affected citizens.[226] Currently, officers learn to interact with the community only through abstract teaching and emotionally heated, on-the-ground experiences.[227] A forum that provides feedback from citizens directly affected by police actions may offer powerfully salient lessons for officers interested in honing their community policing skills.[228] In order for this to occur, however, the feedback should be facilitated in a non-adversarial manner so that citizens and police will be able to fully express their perspectives in a manner that is best heard and understood by the other side.[229] CRBs may therefore impact police behavior by evaluating good and bad officer performance and by facilitating communication between participants in police-community interactions.[230]

The CRB has many redeeming qualities that seem to counter the deficiencies of community policing.[231] While community policing lacks the participation of citizens most affected by crime and lacks an evaluation tool for measuring good community policing skills in its officers, civilian

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violence. Those who provide meritorious service may be recognized but often their actions are lost behind the brave shooting incident or heroic rescue." *Id.*

225. *See* Walker & Archbold, *supra* note 16, at 232 (suggesting citizen review panels can lead to more community-friendly behavior since its procedures are different than internal police procedures in that they are not directed by sworn in officials, which could potentially lead to biased decisions).

226. *See* Hatch, *supra* note 13, at 447–48 (providing an example of an event where mediation between a police officer and two victims led the officer to apologize as well as agree to attend a stress management course to address his behavior).

227. *See generally id.* at 461 (suggesting conflicts between individuals is what ultimately shapes every individual's social interaction skills).

228. *See id.* at 462 ("At a deeper level, mediation can provide the parties with a sense of empowerment and recognition, which will allow the respective parties to better '*understand themselves and relate to one another through and within conflict.*'").

229. *See id.* at 460 (discussing the objectives and benefits of resorting to mediation as a non-adversarial alternative when there is a civil lawsuit against an officer). "Instead of dismissing an aggrieved citizen"'s complaint outright, mediation seeks to provide a constructive environment for citizens and the police to express their feelings, understand and appreciate the other side's perspective, seek an explanation, or any number of other possible solutions." *Id.*

230. *See generally id.* (discussing the need for CRBs and the benefits of non-adversarial alternatives to resolve conflicts, such as mediation, in order to facilitate communication).

231. *See* FINN, *supra* note 1, at 8 (listing the many key benefits of citizen oversight for police evaluation). *Contra* Hatch, *supra* note 13, at 455–56 (discussing the flaws and weaknesses that CRBs face and their inability to create reform).

oversight processes appear to offer a solution to both.[232] However, such an impact by the CRB will require substantive modifications to the existing approach used to address police misconduct.

V. A NEW VISION FOR THE CITIZEN REVIEW BOARD

By acting as an external review of police internal affairs without the expertise or the power to put officers on trial, CRBs often undermine their effectiveness in changing police behavior.[233] Meanwhile, as indicated above, the modern police department relies on skewed information to evaluate the effectiveness of community policing and whether or not individual officers exhibit the problem-solving skills necessary to ensure the strategy's success.[234] However, review boards possess two important tools, independence and their ability to gather people directly affected by problematic police-civilian interactions, which make them the ideal channel of community feedback regarding COP officer behaviors.[235]

If the CRB served as an evaluation tool to assess police-community interactions, the board could more effectively motivate community-friendly behavior by influencing officers' pay and promotional opportunities.[236] Evaluating the soft, problem-solving skills of individual officers, not only contributes to the community policy strategy, but would aid the CRB in deterring police misconduct because community-friendly behavior would be promoted while unnecessarily aggressive tactics would be chastised.[237]

Despite the inherent shortcomings of a punitive, retrospective approach, and the particular weaknesses of civilian oversight investigations, there has been little discussion of collaborative processes for CRBs.[238] The above-drawn functional comparison of civilian oversight and commu-

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232. *See generally* Bobb, *supra* note 13 (highlighting the benefits of a civilian oversight approach compared to community policing).

233. *See id.* at 163 (arguing CRBs have been unsuccessful in creating reform because they lack expertise and are restricted to reviewing already completed internal police investigations).

234. *See* Simmons, *supra* note 8, at 489 (stating current reforms exclude community members and police officers, which is inconsistent with police-community partnerships).

235. *See generally id.* (discussing the importance of allowing those who are directly impacted to participate in developing policies for police conduct); Chambers, *supra* note 9, at 797 (emphasizing the importance of independent oversight of the police by community policing organizations in order to quell citizen complaints).

236. *See* Simmons, *supra* note 8, at 500 (suggesting civil remedies would be more effective if they could hold police officers financially responsible for their actions).

237. *See generally* Alpert & Moore, *supra* note 74, at 227 (suggesting an institutional reward system for police officers who do not engage in unnecessary aggressive behavior can deter other officers from doing so).

238. Simmons, *supra* note 8, at 495.

nity policing identifies potential synergies between the two groups that are supported by the general wisdom that lasting change requires collaboration between community and police.[239] Therefore, an approach to civilian review that is compatible with community policing would present untapped potential in promoting better police-community relations.

The new approach to civilian oversight produced by the above analysis has two elements: (1) CRBs should abandon the criminal trial model that focuses only on instances of misconduct; and (2) CRBs should evaluate both good and bad instances of police-community interactions so police supervisors can identify both exemplary and problematic officers.[240] This approach will encourage individual officers and community members to learn from each other, will serve as a necessary evaluation tool for low-visibility problem-solving actions by police officers, and will allow the larger police organization to better understand and react to community input.[241]

A. *From Criminal Trial to Structured Discussion*

1. Abandoning the Current Criminal Trial Model

Citizen oversight groups should abandon the adversarial, criminal trial model and replace it with a structured discussion forum using mediation-based strategies to facilitate communication.[242] The overall focus would shift from citizens leveling accusatory complaints at officers to citizens and officers discussing their perceptions, concerns, and ideas that promote police-community contact.[243] To weigh the value of this shift, the below analysis contrasts CRBs and the current punitive, adversarial forums that they emulate. Upon analysis, an approach that better fits civilian review's strengths and limitations would involve different deliberative procedures and potential outcomes than what are used in the current model.

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239. *See id.* at 546 (arguing collaboration between community members and police officials is essential in developing lasting institutional reforms of law enforcement).

240. *See* ALPERT & MOORE, *supra* note 74, at 227 (stating an institutional reward system can help deter police officers from engaging in unnecessary violent behavior by creating incentives for exemplary behavior).

241. *See* Hatch, *supra* note 13, at 462 ("At a deeper level, mediation can help provide the parties with a sense of empowerment and recognition, which will allow the respective parties to better 'understand themselves and relate to one another through and within conflict.'").

242. *See generally id.* at 447 (comparing the differences between criminal trial models and non-adversarial alternatives to resolve conflicts between community members and police officials).

243. *See id.* (discussing the deficiencies in filing civil complaints against officers and the benefits of engaging in meaningful conversations where both parties can communicate with one another).

Currently, the majority of CRBs examine and deliberate on instances of police community interactions by allowing affected citizens to call witnesses and cross-examine opponents in an attempt to overcome the officer's presumption of innocence.[244] Even if the complaining citizen had the advocacy skills to effectively put an officer on trial (an officer who likely has much more courtroom experience), review boards do not possess the same punitive powers as criminal courts.[245] Criminal trials are accusatory by their very nature, so attempting to resolve any type of issue in this adversarial setting is difficult, as it often leads to CRBs stifling communication while operating beyond their powers and expertise.[246] Instead, these local community meetings involving a shared, complex concern should be conducted in a civil, democratic way that promotes consensus-building amongst the citizenry.[247] A courtroom type forum that requires ordinary citizens to abide by procedural rules designed for judges and lawyers is not the most effective way to facilitate communication between the community and the police.[248] Though Robert's Rules of Order have been considered to be the gold standard for conducting deliberations in open meetings, alternative dispute resolution scholars have identified techniques for facilitating communication so that every voice in a multiparty negotiation is fully expressed and heard.[249] An approach

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244. Walker & Archbold, *supra* note 16, at 232. The adversarial nature of citizen complaint procedures, both internal and external, involves the following elements:

[A] citizen complaint is investigated to determine whether there is sufficient evidence to sustain it; the accused officer enjoys a presumption of innocence; disposition of the complaint is based on the strength of the evidence; and if the complaint is sustained, the finding is referred to the police chief executive for disciplinary action.

Id.

245. *See* Bobb, *supra* note 13, at 163 (stating CRBs generally do not have a final say in criminal procedures against police officers).

246. *See* Albert W. Dzur, *Why American Democracy Needs the Jury Trial,* 5 CRIM. L. PHIL. 87, 90 (2011) (stating court formalities impede communication between CRBs due to their menacing and structured nature).

247. *See generally* Matthew J. McKinney, *Negotiated Rulemaking: Involving Citizens in Public Decisions,* 60 MONT. L. REV. 499, 528–32 (1999) (discussing when the consensus-building process of negotiation rulemaking is appropriate).

248. *See* Ryan E. Meltzer, Note, *Qualified Immunity and Constitutional-Norm Generation in the Post-Saucier Era: "Clearly Establishing" the Law Through Civilian Oversight of Police,* 92 TEX. L. REV. 1277, 1294 (2014) (stating investigations embody a criminal trial model, which is governed by rules of procedure that protect officers).

249. *See* Lawrence Susskind et al., *Collaborative Planning and Adaptive Management in Glen Canyon: A Cautionary Tale,* 35 COLUM. J. ENVTL. L. 1, 42–43 (2010) (arguing that following Robert's Rules of Order prevents creativity and flexibility, which is required to reach a consensus); Lawrence Susskind, *An Alternative to Robert's Rules of Order for Groups, Organizations, and Ad Hoc Assemblies that Want to Operate by Consensus, in* THE CONSENSUS BUILDING HANDBOOK: A COMPREHENSIVE GUIDE TO REACHING AGREEMENT 3, 27–33 (Lawrence Susskind et al. eds., 1999) (providing guidelines on how to create

that emulates facilitated negotiation over legal procedure is better suited to the review board's role as intermediary between the police and the community.[250] The CRB process works better in community type forums where differing, non-expert perspectives can be fully expressed, rather than in legal courtrooms, where the process is burdened by requiring strict adherence to laws and procedures.[251]

Next, the current civilian review process does not offer viable solutions to long-term communal problems. Courts determine liability, damages, and punishment, by interpreting the black letter of the law.[252] Similarly, the current deliberations by review boards parallel these standards by rendering verdicts such as "exonerated" and "substantiated," mirroring the procedures of IA and most courts.[253] Given the structure and powers of civilian oversight bodies, limiting outcomes to one-word verdicts without any substantive long-term solution to the problem, is unnecessary and ineffective. The review process could become more effective by increasing board autonomy and flexibility in shaping their recommendations.[254] This would enable the board to have access to a wider range of outcomes (as opposed to standard verdicts only) so that it can serve as more of a mediator than an arbitrator.[255] For example, the board would be able to issue findings or statements agreeable to both sides and descriptive consequences that include policy recommendations, personal advice, and requests for promotion or demerit. Such a complex outcome would seem more congruous with the review board's role as a gatherer of numerous voices from a diverse community.

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a consensus building approach throughout the deliberation and decision steps); KERRY PATTERSON ET AL., CRUCIAL CONVERSATIONS: TOOLS FOR TALKING WHEN STAKES ARE HIGH (2d ed. 2012) (discussing the importance of meaningful conversations as well as providing guidelines for communication among groups when stakes are high).

250. *See* King, *supra* note 23, at 99 (discussing the goals CRBs should focus on in serving as an objective liaison); *see also* Rosenbaum, *supra* note 51, at 28 (stating members of a CRB are liaisons between the police and the community).

251. *See generally* FINN, *supra* note 1, at 83 (showing CRBs are not staffed with policing professionals but are made up of and require a diverse membership).

252. Robert Rubinson, *Client Counseling, Mediation, and Alternative Narratives of Dispute Resolution*, 10 CLINICAL L. REV. 833, 851 (2004).

253. *See* FINN, *supra* note 1, at 5 (addressing a common set of terms used by CRBs and police departments).

254. Marc Galanter & Mia Cahill, *"Most Cases Settle": Judicial Promotion and Regulation of Settlements*, 46 STAN. L. REV. 1339, 1351 (1994).

255. *See* Rubinson, *supra* note 252, at 851 (stating mediation allows the consideration of multiple perspectives viewing one event). "In contrast, mediation rejects the idea that 'what happened' is a unitary or stable 'truth' to be found 'out there.' Instead, a primary—if not the primary—thrust of mediation is that conflict resolution entails some recognition on the part of disputants that 'what happened' is informed by perspective." *Id.*

Thus, abandoning the criminal trial model of deliberation appears to be crucial to the CRB's ability to enhance understanding and to apply relationship-building solutions between the community and the police.[256] While the above critique is intended to suggest improved procedures for civilian oversight, defining this proposal in the negative would be insufficient. The below vision for a structured discussion approach to civilian oversight should serve as a guidepost for implementing a procedure that is both flexible and tailored to individual needs of various review boards.

2. Promoting Structured Discussion

Shaping a CRB around a structured discussion would require exploring past conduct by comparing perspectives rather than weighing evidence, and facilitating discussion of multifaceted outcomes rather than rendering limited verdicts. Specifically, the structured discussion would require mutual interaction and cooperation from both parties. Residents would recount their negative experiences, while police officers would explain the legitimacy behind why certain actions were taken. The review board would then facilitate a discussion between both parties about what could have been done differently, seeking a mutually agreed identification of the problem and recommendations for future action. After this more collaborative process, the review board would report any agreements, conclusions, or observations to the police chief and interested media.

While many CRBs offer mediation upon request,[257] the proposed change is entirely different from the current approaches taken to collaboration between citizens and police.[258] Under the current model, mediation is offered to disputants as a secondary, optional alternative[259] alongside a default adversarial process.[260] This option is always private, confidential, and does not lead to published findings.[261] In contrast, the proposed mediation process, as its primary methodology for fostering a harmonious relationship, facilitates discussion among stakeholders.[262] This shift would change the CRB from a body of untrained civilians con-

256. *See generally* Samuel Walker & Betsy Wright Kreisel, *Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police*, 15 AM. J. POLICE 65, 79–80 (1996) (questioning the feasibility of the criminal trial model when reviewing complaints).

257. *See generally* FINN, *supra* note 1, at viii (charting multiple systems with an available mediation option).

258. *See id.* at 72 (discussing the mediation option currently offered to complainants).

259. *See id.* at 27, 72 (stating mediation is offered to complainants after informal approaches have been conducted).

260. *See* Hatch, *supra* note 13, at 456 (describing the adversarial system).

261. *See* FINN, *supra* note 1, at 7, 80 (detailing the mediation process).

262. *See id.* at 72 (discussing the mediation option currently offered to complainants).

tinually second-guessing the decisions of police officers,[263] to a forum that synthesizes diverse perspectives to provide a better understanding to citizens and enable them to produce more sophisticated solutions for the complex problems between police and community.

Similar to every change, adopting this new approach to civilian oversight requires effort by all parties involved, and potential transitional costs are minimal when compared to the benefits. For example, the review board does not give up punitive powers or the ability to take a punitive stance in appropriate cases.[264] In mediating a discussion over police-community interaction, the review board can facilitate difficult questions concerning officer behavior.[265] In fact, in comparison to the detached, impartiality model of a trial judge,[266] the review board may become, under a facilitated approach, more involved in assisting the citizen to raise legitimate concerns.[267] Furthermore, operating under a collaborative approach does not diminish the power of the CRB to reach one-sided conclusions or recommend punitive sanctions for police misconduct. If anything, a more robust discussion of the incident will create a more legitimate result than the outcome of untrained citizens attempting to imitate IA. The only plausible criticism of a facilitated approach appears to be the loss of the truth-seeking function found in adversarial trial procedures.[268] However, a comparison of various trial procedures indicates that adversarial trial is less aimed at uncovering the truth[269] and more

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263. *See generally* Armacost, *supra* note 28, at 539–40 (explaining why civilian review has been ineffective).

264. *Contra id.* at 541–44 (recommending a non-punitive review process).

265. *See* Judith P. Meyer, *The Pros and Cons of Mediation*, 52 Disp. Resol. J. 8, 13–14 (1997) (explaining what a good mediator does).

266. Mary Kreiner Ramirez, *Into the Twilight Zone: Informing Judicial Discretion in Federal Sentencing*, 57 Drake L. Rev. 591, 594 n.12 (2009); Joshua E. Gardner, Book Note, *A Tale of Two Cities: The Good, The Bad, and the Ugly of Mass Tort Settlements*, 68 Geo. Wash. L. Rev. 547, 558 (2000) (reviewing Henry S. Cohn & David Bollier, The Great Hartford Circus Fire: Creative Settlement of Mass Tort Disasters (1991)).

267. *See* Meyer, *supra* note 265, at 13–14 (describing the role of a good mediator); Scott Sigmund Gartner, *Third-Party Mediation of Interstate Conflicts: Actors, Strategies, Selection, and Bias*, 6 Y.B. on Arb. & Mediation 269, 286 (2014) (stating the best mediation methods). Directive Strategies are effective and yield the most successful results for mediators. Meyer, *supra* note 265, at 13–14.

268. Gary McGowan, *Don't Call It A "Trial": What Litigators Should Know About Arbitration*, The Hous. Lawyer 12, 12 (July/August 2014), http://www.thecca.net/sites/default/files/Don't%20Call%20It%20A%20Trial.pdf.

269. *See* Justin Sevier, *The Truth-Justice Tradeoff: Perceptions of Decisional Accuracy and Procedural Justice in Adversarial and Inquisitorial Legal Systems*, 20 Psychol. Pub. Pol'y & L. 212, 213 (2014) (referring to research that compares the adversarial system with other systems that discover truth more often); *see also* Julia Grace Mirabella, Note, *Scales of Justice: Assessing Italian Criminal Procedure Through the Amanda Knox Trial*, 30

concerned with the aggressive application of legal rights.[270] In addition, legal and psychological research indicate that adversarial trials are no better at uncovering "the truth" than open-ended, facilitated processes.[271] Therefore, the significant advantages proposed are not outweighed by the costs of adopting a new, structured discussion approach to civilian oversight.

The facilitated approach would conform the citizen group's procedures to the powers it actually has—organizing public meetings, channeling concerns of citizens, and publishing its findings—and would bring citizen oversight to operate more effectively. If the CRB were to conduct its review function as a structured discussion of police-community interactions rather than putting the officers on trial, the board would better meet its stated goal of deterring police misconduct with a layer of non-police oversight.[272]

B. *Beyond Misconduct: Evaluating Both Good and Bad Police Action*

Citizen oversight groups should not only review instances of alleged police misconduct, but should also review instances of exemplary police action. As previously discussed, the modern police department is focusing more effort on resolving disputes between citizens and improving quality of life.[273] Despite this shift, the department continues to evaluate officers with crime-fighting criteria, such as arrests and citations, without access to a tool that evaluates the low-visibility, problem-solving skills of individual officers.[274]

Civilian oversight groups are currently only evaluating instances of negative actions by police officers, thus missing out on an opportunity to also evaluate police officer's positive actions. Feedback from the community to police executives regarding officers exhibiting productive problem-solving and community-building actions, furthers the principal efforts of both the police department and the citizen oversight group. The police

B.U. INT'L L.J. 229, 248–49 (2012) (comparing the inquisitorial and adversarial system in uncovering the truth).

270. *See generally* Fred C. Zacharias, *Structuring the Ethics of Prosecutorial Trial Practice: Can Prosecutors Do Justice?*, 44 VAND. L. REV. 45, 55 (1991) (listing justifications for the adversarial system).

271. Lawrence Moloney, *The Elusive Pursuit of Solomon: Faltering Steps Toward the Rights of the Child*, 46 FAM. CT. REV. 39, 50 n.13 (2008).

272. *See generally* FINN, *supra* note 1, at 39, 56–57, 132–34 (describing different CRBs' practices of conducting trials).

273. *See* Livingston, *Police Discretion, supra* note 84, at 554–57 (examining the modern trend of quality-of-life policing).

274. *See* Armacost, *supra* note 28, at 495, 515, 519 (emphasizing the role of citation and arrest statistics when reviewing police conduct, as well as the lack of a system that analyzes individual officers).

department receives the unique, often unheard, perspective from the community on exemplary community policing and is able to use this input to commend and promote officers who embody the community policing approach. In addition, the CRB furthers its mission by promoting the good cops over the bad cops and motivating all officers to direct sufficient effort to community policing functions and problem-solving decisions. As a result, both groups would motivate community-friendly behavior by officers through a combination of punishments and rewards. Reviewing, identifying, and commenting on police action that it considers superlative will therefore allow the CRB to have a broader and deeper impact on officer behavior.

Beyond motivating better treatment of the community by police officers, a civilian oversight process that expands its focus to both good and bad officer conduct would offer a wide range of secondary benefits. By reviewing more than just instances of police misconduct, CRBs would likely develop a more balanced perspective of police work. Such a well-rounded view helps when analyzing instances of police misconduct and may carry more legitimacy with the police department. Meanwhile, using such a review board in measuring officer performance should confer publicity and improved community relations to the police department. These officers will thereby serve as public relations agents for the department by publicizing the good work that typically goes unnoticed. Though this action distracts from traditional policing functions, such as making arrests and solving crimes, it contributes to the overall COP strategy by improving officer morale,[275] enhancing broader police-community relations,[276] and involving the police in public discussions about the common good.[277] A civilian review process centered on exemplary police performance would not only constitute time and effort well spent by the officer, but it would also benefit the affected community.[278] Compelling the participa-

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275. *See* Nicole Stelle Garnett, *The Order-Maintenance Agenda as Land Use Policy*, 24 Notre Dame J.L. Ethics & Pub. Pol'y 131, 156 (2010) (reporting community policing helps cultivate police officers' relationships with citizens, thus improving officers' morale).

276. *See generally* Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. Rev. 361, 405 n.73 (2001) (discussing the ability of community policing to improve relationships between the police and the community). "Efforts to gain public support for the police emphasize the need for respectful treatment of the public, as in the New York city police motto 'Courtesy, Professionalism, Respect.'" *Id.* at 404.

277. *See* Sklansky, *supra* note 13, at 1811 (asserting institutional segregation, while having its benefits, is ultimately incapacitating for law enforcement when trying to maximize justice and liberty).

278. *See generally* Forman, Jr., *supra* note 103, at 39 (discussing how youth members' participation is vital to community policing because they are often victims of police misconduct, and by allowing the youth to attend meetings they are able to voice their concerns or provide information to the police, which tremendously benefits both police performance

tion of these citizens may overcome avoidance mechanisms that alienate victims from assistance.[279] Finally, offering a forum for citizens to identify favorable officer action empowers the community to police itself by rewarding appropriate instances of police intervention.[280] Thus, evaluating instances of both good and bad police behavior will produce many benefits for the review board, the police department, and the community.

In practice, this expanded focus would involve citizens and police officers filing cases for commendation. If the CRB is able to compel officer attendance for hearings on misconduct, then officers should be able to subpoena citizens to recount instances of officers resolving disputes or helping citizens outside of their crime-fighting capacity. The hearing would then be conducted under the structured discussion model discussed in the previous section. After facilitating input from all perspectives, the review board would present an agreed upon summary of the case and make recommendations as to commendations, thereby supplementing the management of a community policing strategy. Expanding its focus from police misconduct to both positive and negative police action would, therefore, enhance the goal of citizen oversight in promoting community-friendly behavior while deterring officer misconduct.

C. The Citizen Review Board as a Partner in Community Policing

The COP strategy[281] and the CRB apparatus[282] both hold potential for improving how police behave toward citizens, but both are currently incomplete. On one side, police departments have difficulty in evaluating

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and the community as a whole). Serving in such a forum arguably furthers an officer's community policing efforts and should therefore be paid time during the officer's workday. Though this could inconvenience the citizen by subpoenaing them away from their job duties, this could be avoided by holding the review board session during the time in the day that the event occurred. Unless the event in question occurred at work or on a day off from work, convening the review board during the time in the officer's shift in which the event occurred should happen during the officer's workday and not during the citizen's.

279. Michael C. Payne, Comment, *The Half-Fought Battle: A Call for Comprehensive State Anti-Human Trafficking Legislation and a Discussion of How States Should Construct Such Legislation*, 16 KAN. J.L. & PUB. POL'Y 48, 54 n.36 (2006). "These episodes are so uncomfortable that victims may rely upon avoidance strategies to reduce their distress. In doing so, victims may avoid anything associated with the trauma and thus unwittingly alienate themselves from assistance." *Id.*

280. *See* Sklansky, *supra* note 13, at 1779 (arguing community policing is appealing because it is a form of democratic policing); *see also* Benjamin R. Jones, Comment, *Virtual Neighborhood Watch: Open Source Software and Community Policing Against Cybercrime*, 97 J. CRIM. L. & CRIMINOLOGY 601, 616–17 (2007) (detailing the community policing model).

281. *See generally* Sklansky, *supra* note 13 (discussing the community policing method).

282. *See generally* FINN, *supra* note 1 (providing information on different CRBs).

the problem-solving abilities of their officers and the effect of their community policing initiatives because these relational elements are not as quantifiable as arrests and citations.[283] On the other side, communities have difficulty in drawing out and channeling voices to serve as a partner for receptive police departments and community-friendly officers.[284] As such, both groups are in need of a process that synthesizes civilian input into a measure of the community-friendly quality of police behavior.[285] Since the community speaks in diverse, ever-changing voices, this process should examine a multitude of individual actions in order to evaluate the overall responsiveness to the community's interests.[286] And instead of focusing on feedback from self-proclaimed community leaders or politically active constituents who may not represent the members of the community most affected by police action,[287] this process targets the self-interests of the citizenry who interact with officers by giving them the ability to provide feedback about their interaction.[288] The community should also manage this process with sufficient independence to garner legitimacy and trust from the most vulnerable of its citizens.[289] The gap between the community and the police would appear to be bridged by the

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283. *See* Simmons, *supra* note 8, at 512 (illustrating the most common and effective methods implemented to develop the citizen complaint process).

284. *See* Stearns, *supra* note 178, at 71 (observing some of the major reasons community residents do not cooperate with community policing are residents' fear of police retaliation, the hostility of police towards community residents, and a historically negative relationship between the two).

285. *See id.* (concluding several studies analyzing community policing suggests police and government administrators must develop more useful methods for an improved relationship between private citizens and police officers).

286. *See* Forman, Jr., *supra* note 103, at 2 (suggesting community policing has not reached its full potential because it excludes the youth and young adult groups); *see also* Garnett, *supra* note 185, at 196–97 (discussing the incomplete picture of those citizens participating in community policing, and how minorities who do not know how to or cannot participate are disadvantaged).

287. *See* Burke, *supra* note 128, at 1006–07 (claiming the few who participate in community policing and partner with the police do not represent the needs of the community as a whole).

288. *See* Carodine, *supra* note 129, at 1607–08 (supporting the theory that better communication between the community and the police leads to greater satisfaction from the community); Parlow, *supra* note 111, at 1193 (emphasizing the need to cultivate effective communication between the police force and those who provide social services to the police force).

289. *See* Briana Jefferson, *Attitudes Toward Police: A Cycle of Distrust*, Mich. Youth Violence Prevention Ctr. (July 2, 2013), http://yvpc.sph.umich.edu/2013/07/02/attitudes-police-cycle-distrust (suggesting communities with high rates of crime have negative attitudes towards police).

CRB.[290] As explained, the current civilian oversight model has missed the opportunity to fill this powerful role.[291]

Insights throughout this proposal indicate that, instead of acting as an untrained duplication of IA or legal proceedings,[292] the CRB would have a far greater impact by influencing the police rather than fighting them. This is not to say that review boards should give up the scant powers that they have, but rather expand these powers to reward as well as punish.

This conclusion motivates both of the structural changes offered in this proposal. Serving as a legitimate community perspective on officer conduct will allow the CRB to supplement community policing efforts, by motivating supportive, problem-solving police interventions, helping to promote community-friendly officers into supervisory roles, and offering ongoing feedback that operates as an early warning system for positive policies and practices. To take on this task, the review board will need procedures that elicit feedback from various stakeholders with the goal of distilling a coherent, yet appropriately multifaceted outcome. These requirements would be better met through a process of facilitated negotiation than in a criminal trial that weighs evidence and arrives at a simple verdict.[293] Though the community members managing the review board would need to be trained in multiparty mediation skills, these should be easier to learn than the complexities of legal procedure applied to police practices.[294] Thus, replacing the criminal trial model with a facilitated discussion over both positive and negative police action would allow CRBs to bridge the current divide between police and community, improving their interaction and reducing police misconduct.

This proposal goes to show that a symbiotic relationship is possible and promising between civilian oversight and community policing. While the above analysis is couched in terms of mutual benefit between the CRB and the police, the end result is producing a more effective review board. Because the police have stated widespread acceptance of a community-

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290. *See* SKOLNICK & FYFE, *supra* note 69, at 225 (discussing the advantages of citizen participation and representation and how it allows citizens to shape police department policies).

291. *See generally* FINN, *supra* note 1 (providing information on different CRBs).

292. *See* Armacost, *supra* note 28, at 453 (stating objections police officers have about inexperienced board members judging them).

293. *See* King, *supra* note 23, at 91 (implying a civilian oversight board's purpose is to serve the community, and could bridge the longstanding gap between the citizens and police). *See generally* FINN, *supra* note 1 (explaining the process through which CRBs conduct trials).

294. *See* Chambers, *supra* note 9, at 798 (illustrating even police organizations such as IA, whose sole job is to investigate officer misconduct, cannot insure that all investigations are impartial).

oriented strategy,[295] it is time for the CRB to modify its procedures to best capitalize on this opportunity.

VI. CONCLUSION

CRBs are misguided in attempting to operate as an adversarial court because they do not have punitive powers. These review boards are better equipped to facilitate open discussions about police conduct and thereby channel community input about the police. By embracing this function, the review board can then play into the community policing strategy as a partner with the police. This partnership would involve the review board recognizing both positive and negative incidents of police-community interaction, and the police department acting on this input in ordering promotions and policy changes. Acting under this symbiotic relationship, the two groups will have greater incentive and opportunity to interact in a cooperative manner. This article therefore offers an improved approach to civilian oversight.

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295. *See* Blakely, *supra* note 186, at 44 (implying that police, through their continuance of such initiatives, have shown their acceptance of a community-oriented strategy).