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The Impact of Law-Makers on Effective Oversight

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Civilian Oversight Not a Sexy Proposition for Law-Makers

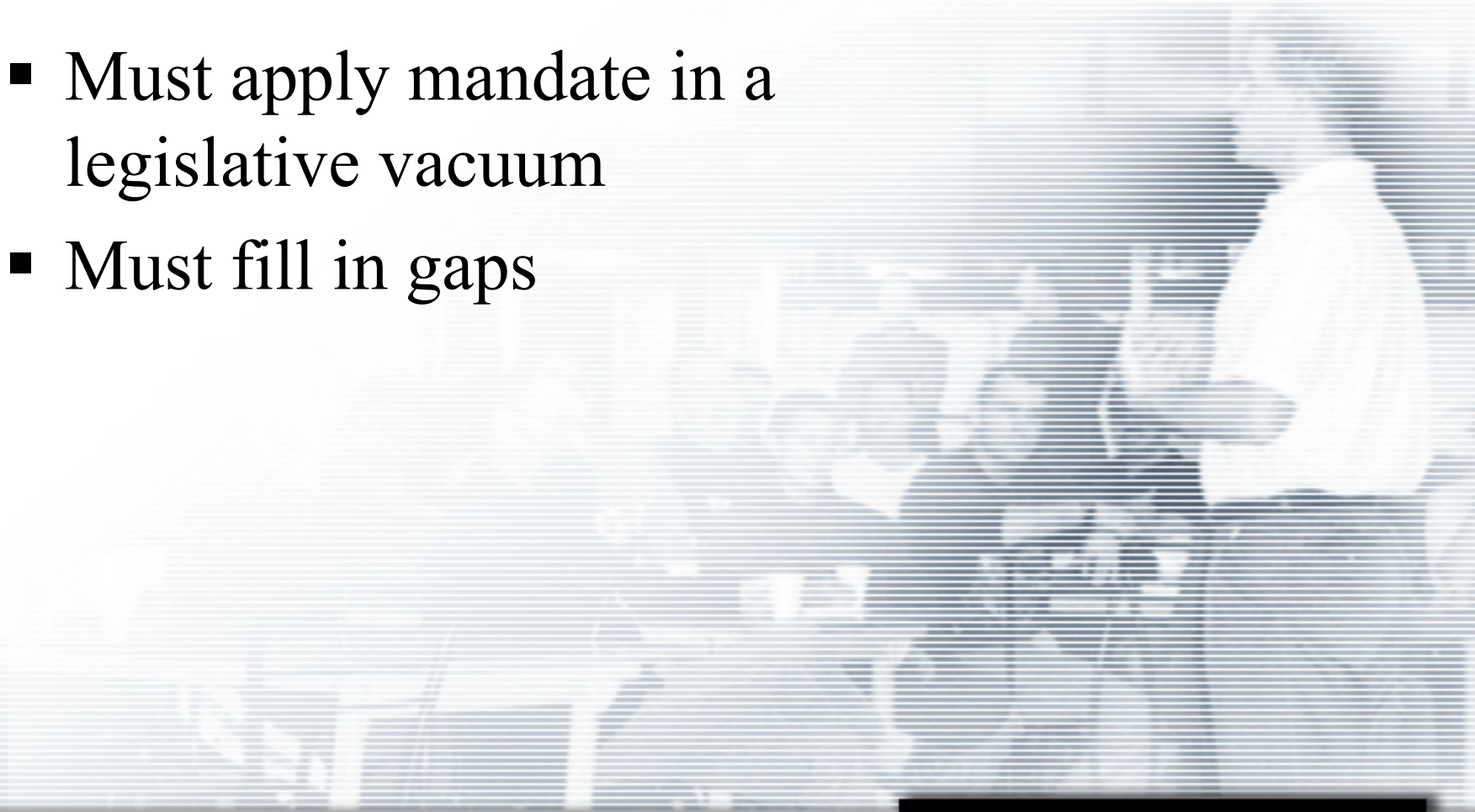
- Often charged with emotions
- Competing special interest groups jockeying for position to advance agendas
- Risk of complainants and complainees becoming pawns used by special interest groups to further their agendas
- Conflict of interest makes it difficult for the executive branch to embrace civilian oversight

Result: Legislative Indolence

- Law-Makers become “law-shy” and avoid clear, principled and decisive legislation
- They legislative in fear of offending someone, somewhere, somehow
- Resulting legislation adopts vague language, leaves gaping voids
- More promises of “further studies”

Consequences for Overseer

- Must apply mandate in a legislative vacuum
- Must fill in gaps



Examples of Legislative Gaps

- Special Investigations Unit (SIU):
Lack of definition of scope of “duty to cooperate” and its interpretation vis-à-vis the police
- Ombudsman:
Failure to circumscribe the solicitor-client privilege



The civilian overseer
is duty-bound to protect the
public's interest in the proper
functioning of the democratic
institutions

Key Principles in Bridging the Gap

- The rule of law should be respected
- The mandate should be applied in a manner consistent with the purpose for which the organization was created
- There should be a recognition that the oversight office is generally an avenue of last resort

Key Principles in Bridging the Gap

- Mandate interpretation should be consistent with the oversight office's function as a recommendatory creature, as opposed to an executive body
- Interpretation “fixes” should be limited to gaps which are essential to the operations of the oversight office

Key Principles in Bridging the Gap

- Mandate interpretation should reflect the evolution of society and the public's expectations of governmental institutions
- “Bridging the gap” should result in the adoption of the industry's “best practices”

Conclusion

- Lack of legislative clarity and thoroughness is more the norm than the exception for enabling legislation or mandates of oversight bodies
- Civilian overseers cannot only “bridge the gap” but should accept the challenge left to them to increase the effectiveness of their offices