

Innovative Approaches – Oversight Agencies in Other Jurisdictions

Remarks By
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I have been asked to give you a brief overview of the structure and duties of the Boise Community Ombudsman. For you to fully understand my role, it may be helpful to examine the Boise ombudsman against two horizons, one philosophical and one historical.

My office is deeply rooted in the ombudsman tradition; a tradition with which Canadians are more familiar than people living in the United States. The ombudsman philosophy holds that government agencies and officials are accountable to use their power and authority within the confines of applicable laws, rules, regulations, policies, and/or procedures. An ombudsman acts as an advocate for fair and equitable use of governmental power and authority. An ombudsman conducts independent investigations of complaints alleging maladministration by government officials and/or agencies. An ombudsman can make recommendations for improvement to policies and procedures that will help an agency improve its use of authority and its service to the public. The results of an ombudsman's investigation, for good or for ill, along with any recommendations for improvement can be shared with the complainant, the affected agency, and the public. Outside of his or her own staff, an ombudsman has no executive authority and cannot require an agency or public official to comply with any recommendations the ombudsman might make. It is only through the power of the facts, uncovered in the course of an independent and objective investigation and openly shared with all parties, that the ombudsman becomes a force for continuous improvement in the use of power and delivery of services by government authorities.

There are two dimensions of the historical horizon that may help you understand the role I play with respect to law enforcement in Boise, Idaho.

The first historical dimension is national (USA) in scope.

In the 1990's several highly publicized incidents in the United States gave law enforcement a black eye. In 1991 a Los Angeles area resident used a home video camera to capture images of several white police officers beating and kicking Rodney King following a high speed pursuit. In 1994 and 1995 the Los

Angeles Police Department was again painted in a racist light as O.J. Simpson's lead defense attorney, Johnny Cochran, presented evidence designed to paint the lead police detective, Mark Furman, as a racist white cop out to frame O.J. The New York City Police Department also received unfavorable national attention when, in 1997, a 30 year-old black immigrant from Haiti named Abner Louima was beaten by NYPD officers and sodomized with the handle of a plunger in a precinct station house. This was followed, in 1999, with the shooting death of Amadou Diallo, a 22 year-old African immigrant to the United States. Diallo was struck 19 times after NYPD officers fired 41 shots at him. The officers, who were investigating a rape, knocked on Diallo's door to question him, then shot him when he reached inside his jacket for his wallet. Finally, in the latter part of 1998 and early 1999, news broke of a major corruption scandal in the Rampart Division of the Los Angeles Police Department. Allegations of rogue cops shooting unarmed suspects and planting drugs were widely reported. While all of these instances of alleged police brutality and corruption took place far away, geographically, from Boise, Idaho, they came alive in Boise living rooms night after night on the television news.

The other historical dimension is more particular to Boise and the events leading up to the formation of my office.

At the beginning of 1996, Boise, the capitol city of the State of Idaho, had a population of approximately 140,000 people. The police force, the largest in the state, had grown in size over the previous five years as the city's population rapidly expanded. By the mid nineties, the Boise Police Department employed 240 sworn or commissioned officers, many of whom had transferred to Boise from larger, urban departments in California, Oregon, and Washington.

Despite its rapid growth, Boise was a quiet city, certainly by national standards, and no one was prepared for the events of the next 21 months. Between January of 1996 and September of 1997, the Boise Police Department experienced seven officer-involved shootings. Eight deaths resulted, one of them the tragic death of Officer Mark Stahl, the first Boise officer killed in the line of duty. With each new shooting, more and more questions were raised in the media and on the street. At first, the police department released very little information about the incidents and the Boise Police themselves conducted the investigations. After each internal investigation, the chief announced that the use of deadly force by his officers was justified. By the sixth incident, the Idaho State Police were asked to jointly investigate, along with the Boise Police, in an effort to address growing questions about the police department's ability to investigate itself. Two separate citizen groups formed, each one calling for some form of police commission or citizen oversight of the police. Editorials were written demanding answers and, eventually, calling for the police chief's ouster. Scores of people showed up for town hall meetings and battle lines were drawn between those who called for support of the police and those who said they no longer trusted them.

The mayor and the city council, believing that doing nothing was politically impossible, announced the creation of a new position in the mayor's office; an ombudsman who would mediate between the community and the police and have a role in resolving citizen complaints. Their goal was clear. They wanted to restore public trust and confidence in the police department; and they wanted to put to rest what had become a very volatile political situation. Precisely how the ombudsman's office would function and the specific duties assigned to it were not clear. These details were left to the first ombudsman to work out and recommend to the City Council.

After more than a year, one national search, and two false starts with candidates who withdrew their names, I was appointed by the mayor and confirmed by the City Council as Boise's first ombudsman in March of 1999.

I began this new assignment with a vision for the ombudsman position. My vision was that it could play a significant role in restoring and maintaining public trust in the Boise Police Department. The ombudsman's office would accomplish this mission by proving itself to be an objective, independent, and courageous source of information about police activities. It would be neither an advocate for the police nor an advocate for any one complainant or interest group. Instead, the ombudsman would be an advocate for the truth and for accountable, professional policing. It was and still is my belief that the public, possessing a healthy skepticism of government, is particularly suspicious of those elements of the government that possess the power to take away their property, their freedom, and their very lives. Trust and suspicion cannot coexist. The ombudsman's office, because of its independence and access to officers and records, can lift the veil of secrecy and open a window through which the public could see into the department; at the same time, the police could learn more about the concerns of the community.

I was also concerned about the employment rights and privacy of police officers. I knew that the openness and candor necessary for public credibility had to be balanced against the legitimate privacy and employment rights of individual officers. In addition, the ombudsman's office could not be used as a means for disclosing information that would harm the prosecution of criminal cases, reveal otherwise secret law enforcement tactics, or expose the identity of police informants.

All of these competing interests were considered as I drafted an ordinance and prepared operating procedures for consideration by the City Council. In the end, the Council passed the ombudsman ordinance in July of 1999 and approved the policies and procedures two months later.

The ordinance established the Office of the Community Ombudsman as an independent administrative unit of the City. The ombudsman reports to both the

mayor and the City Council and, once appointed by the mayor and confirmed by a majority of the City Council, the ombudsman can be removed from office only for cause following a public hearing and a vote for removal by five out of six Council members or by a vote of four council members plus the mayor. The independence of the ombudsman is assured by a section of the ordinance that makes it unlawful for anyone to undermine or attempt to undermine that independence.

The ombudsman has seven specific duties:

1. Conduct an independent investigation of every so-called “critical incident” involving either the Boise Police or the Boise Airport Police. A critical incident is defined as the use of deadly force, or any police action that results in the death or serious injury of one or more persons.
2. Receive complaints regarding the actions of any Boise law enforcement employee, conduct independent investigations into those complaints, reach findings of fact and policy, and make recommendations to the department head for commendation and/or personnel action.
3. Audit police internal investigations, checking for completeness, objectivity, fairness, and adherence to established procedures.
4. Accept appeals from persons who have previously filed a complaint with either the Boise Police or the Boise Airport Police.
5. Make policy and training recommendations for the improvement of law enforcement activities.
6. Conduct regular community outreach activities to educate the public regarding the duties and activities of the community ombudsman.
7. Publish semi-annual reports to the public containing statistical and other information about the activities, investigations, and findings of the Office of the Community Ombudsman.

To assure the community and the police that the Office of the Community Ombudsman has the tools necessary to get the facts and reach reasonable findings, the ordinance requires all city employees to truthfully answer questions put to them by the ombudsman and to provide him with any documents, information, and evidence he requests in the course of an ombudsman investigation. Failure to do so can result in disciplinary action against the employee, up to and including dismissal from employment. To date, no employee has refused to cooperate. However, two have been sanctioned for providing false information to the ombudsman.

The ordinance also grants to the ombudsman unfettered access to any and all police records and files in the course of an investigation. Following the events of September 11, 2001, and the heightened focus in the United States of preventing terrorism within our borders, the Boise Police Department organized a 'criminal intelligence unit' within its ranks. The police chief at the time declared that the records of this new unit would not be open for inspection by the ombudsman due to federal regulations the chief claimed superseded the local ordinance that granted the ombudsman access to police records. The mayor and city council petitioned the United States Attorney General for a waiver to this regulation. Their petition was denied. Notwithstanding the denial by the attorney general and the opinion of the police chief, the position my office has taken is that the federal regulations cited by the police apply only to intelligence information given to our police by federally funded agencies and intelligence networks. Other than this, the federal government has no authority to regulate how Boise City handles intelligence information it gathers by itself. At present time, I have made no demand to gain access to intelligence information in the custody of the Boise Police and this issue remains unresolved.

The ombudsman's office has become, I hope, a source of reliable and independent findings regarding the performance of Boise City law enforcement personnel. Through our efforts, the police receive valuable feedback from the public they serve and an opportunity to continuously improve the service they provide. The community has an independent means through which they can file grievances against the police and the assurance that an independent, neutral party is providing oversight on their behalf.