

Testimony of Locke E. Bowman
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At Northwestern University School of Law
Regarding the Proposed Ordinance Establishing
A New Chicago Police Office of Professional Standards
Chicago City Council Police and Fire Committee
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My name is Locke Bowman. I am the Legal Director of the MacArthur Justice Center at Northwestern University's School of Law. The MacArthur Center is a public interest law firm located at Northwestern's School of Law. The Center specializes in litigation regarding matters of significance to the criminal justice system. We have long believed that it is imperative to reshape the way in which the Chicago Police manage the investigation and discipline of Police officers who are accused of abusing members of the public. I am grateful to have this opportunity to address you with respect to the vitally important matter of restructuring the Chicago Police Office of Professional Standards.

Chicago has long been in need of radical change in the way the Chicago Police Department handles complaints from members of the public regarding Police misconduct – excessive force, psychological coercion and the like.

In its current form, the Office of Professional Standards has been a disaster. OPS is widely perceived as ineffectual. Its procedural rules appear to be biased in favor of the Police and against complaining witnesses. OPS almost never imposes meaningful discipline against Police officers who are accused of physically abusing civilians. In most cases, OPS investigators simply decline to make the necessary credibility findings to determine whether a police officer is guilty of abuse and should be disciplined.

The net result has been a series of scandals – running from the Area 2 police torture under former Violent Crimes Commander Jon Burge in the 1980s all the way to the present day Police beatings caught on video that was then circulated around the world. The impression in too many quarters is that the Chicago Police Department (even though the overwhelming majority of its members are dedicated to the rule of law and to protecting the constitutional rights of all members of the public) is undisciplined and brutal.

Change is therefore essential. We are extremely pleased that the Police and Fire Committee is considering a proposed Ordinance to make OPS more independent of the Police Department and to strengthen the quality of its investigations. The proposed Ordinance is obviously timely. Its provisions represent a positive step in the right direction.

I want to discuss one grave concern that we have regarding the proposed Ordinance. The substitute Ordinance provides (§ 2-57-040(g)) that the restructured Office of Professional Standards is to conduct investigations of Police abuse “in a manner consistent with . . . [the Fraternal Order of Police contract with the City of Chicago].”

That contract is highly problematic in terms of impeding public confidence in the Police disciplinary process and affording accused Police officers special standing before the agency during disciplinary proceedings. For example, the FOP contract:

- Contains a Bill of Rights for accused officers, setting up ground rules for OPS investigators' interactions with accused officers more favorable than those applied to complaining witnesses. Among the benefits afforded to the accused are a preview of the allegations against him, the names of the complainants, and advance copies of all witness statements. *See FOP Contract, § 6.*
- Contains limitations on the investigation of anonymous complaints. With a few exceptions, the contract requires that disciplinary proceedings involving a Police officer's use of excessive force only be initiated by "affidavit."
- Contains provisions requiring the destruction of Police disciplinary records on a schedule that is not tied to the period of an officer's service with the Department.
- Contains a provision stating: "Any information of an adverse employment nature which may be contained in any unfounded, exonerated, or otherwise not sustained file, shall not be used against the officer in any future proceedings." *See FOP Contract, § 8.4.*

OPS investigations should not be conducted "in a manner consistent with" the foregoing restrictions. These restrictions undermine public confidence in OPS and have helped to render OPS ineffectual over the past several decades.

This body should enact an Ordinance that requires:

- That, in all proceedings before OPS, complaining witnesses shall be accorded the same courtesy and the same procedural rights that apply to accused officers.
- That complaints submitted anonymously shall be fully investigated, to the extent possible.
- That all disciplinary records generated by OPS with respect to any officer shall be retained for at least five to ten years following the termination of that officer's employment with the Police.
- That past allegations of misconduct against an officer shall be useable to the extent permitted by the rules of evidence, whether or not those allegations were sustained.

The Ordinance should make explicit that the above procedures are required *notwithstanding any provision of any collective bargaining agreement that may be taken to the contrary.*

Public policy requires an effective OPS that is prepared and able to hold offending officers to account. It must be an agency that is perceived to be fair and that does in fact place complaining witnesses on equal footing with accused Police officers.

We understand that the FOP Contract is up for renewal at the present time. This body should instruct the City's attorneys that, in negotiations with the FOP, the City is firmly and irrevocably committed to an effective and fair Police Office of Professional Standards and that no proposed FOP Contract term will be accepted if it would tend to undermine those principles.

Any Ordinance that would restructure OPS must include provisions making clear that investigations are to be conducted in a fair, effective and unbiased manner. The four provisions listed above are essential to that end.

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