DAVID ONEK: Welcome to the Criminal Justice Conversations Podcast, a coproduction of Berkeley Law School and the Berkeley School of Journalism. I’m your host, David Onek. Criminal Justice Conversations, recorded in the Berkeley School of Journalism studios, features in depth interviews with a wide range of criminal justice leaders: law enforcement officials, policymakers, advocates, service providers, academics and others. The program gets behind the sound bites that far too often dominate the public dialog about criminal justice to have detailed, nuanced conversations about criminal justice policy.

Today’s guest is Joyce Hicks, executive director of San Francisco’s Office of Citizen Complaints. The mission of the Office of Citizen Complaints, known as the OCC, is to promptly, fairly and impartially investigate complaints against San Francisco police officers and to make policy recommendations regarding police practices. Hicks took over the OCC in 2007 after a scathing comptroller’s audit of the agency. She
previously served as executive director of the citizens police review board in Oakland and as an Oakland City Attorney. Hicks is a graduate of Pomona College, received her law degree right here at Berkeley. She and I worked together during my time on the San Francisco police commission and she joins us in the studio this morning. Joyce Hicks, welcome back to Berkeley and welcome to the program.

JOYCE HICKS: Thank you very much, David. It’s my pleasure to be here this morning.

ONEK: So can you start by describing what the Office of Citizen Complaints does.

HICKS: Well, David, with your lead-in you talked about our mission, which is in the San Francisco city charter and that is to promptly, fairly investigate civilian complaints of police misconduct. But we do much more than that. We are also by charter mandated to make policy analyses of police policies and practices to insure that there are better policy-community relations. Another thing that we do, although not mandated by charter, is to mediate eligible complaints between officers and complainants.
ONEK: Can you talk about some of the common complaints that your office receives?

HICKS: Well, our office receives a broad range of complaints. We receive unnecessary force complaints, and that’s only about 10% of our complaints. The largest percentage of complaints that we receive are for unwarranted action, when an individual feels that he or she has been unlawfully detained, arrested or cited. We also receive complaints of discourtesy or an officer failing to perform a duty such as completing an incident report.

ONEK: So walk us through a typical complaint. How does it first come to your attention and where does it go from there?

HICKS: Complaints come to our attention in a variety of ways. A complainant can phone us. We have a 24-hour answering service. We receive phone-in complaints between 8:00 and 5:00, 8:00 in the morning and 5:00 in the afternoon. Complainants can walk into the office during regular business hours. Complaints can come in by mail. They can come in by email, although we do not have online complaint filing yet but it is something that we plan to do in the very, very near future. Another way that
individuals file complaints is through the San Francisco police department. They can walk into any district station and file a complaint and then that complaint is forwarded by the police department to us.

ONEK: What happens once it reaches your desk, that initial complaint? What are the first steps that are taken?

HICKS: The first steps that are taken when a complaint is received is that an investigator will interview the complainant. So if the complainant walks in then the complainant gets an interview at that time. If we receive the complaint in another way the investigator contacts the complainant and arranges either for the complainant to come in for an interview or for the complainant to be interviewed over the phone. Then once we determine what the complainant’s allegations are, that is, what the complainant is complaining about, then we begin a process of obtaining records from the police department. We have a high level of cooperation from the San Francisco police department in obtaining records. The police commission is a seven-member body that oversees both the Office of Citizen Complaints and the San Francisco police department. The police commission has adopted something called document protocol, which is a requirement of
the San Francisco police department to provide the OCC with documentation. Quarterly we report to the police commission on whether or not we’ve received documents in a timely manner. That has really improved what I understand was a difficult process prior to the time that I got there.

ONEK: Now speaking of prior to the time that you got there, I want to ask you about this audit that happened in 2007 before you came on board. The comptroller found that “OCC management does not meet standard expectations for performance and management accountability”. What were the problems that the comptroller found and how have you worked to rectify them?

HICKS: Well, David, there were a number of problems that the auditor found. The auditor found over 40 problems with the way business was conducted by the OCC. They also found some problems with the police department and the police commission oversight of the office of citizen complaints. But I will just focus on OCC’s issues. There were personnel issues and issues of personnel management, doing regular performance plans and appraisals. There were procedures issues, not having a procedures manual that was up to date. Last year we completed our confidential procedures manual, which outlined
how investigations are to be conducted, different protocols for
types of investigations. The audit also found that there was
not a training program in place, that there was not outreach in
a regular manner. So it just ran the gamut and in the past four
years, I got to the OCC in November of 2007, I’ve been working
diligently with all the staff to implement the recommendations.
We recently had a second post-audit audit of the OCC and I
believe when those results are released that the comptroller
will have found that the OCC has substantially complied with all
of the recommendations.

ONEK: Now you mentioned earlier the mediation program that is
part of the OCC. It’s really viewed as a national model at
this point. One of the big themes of this program has been
restorative justice and the mediation program fits right in with
that theme. Can you describe the program to our listeners and
describe what a typical case might look like?

HICKS: Well, the OCC is very proud of its mediation program.
About the time that the comptroller’s audit was released
the prior director hired an attorney who had a background in
mediation. That attorney has turned OCC’s mediation program
around so that it went from 46 mediations a year to a high
of 71 mediations a year. Our mediation program is voluntary. That means that both the police officer complained of and the complainant have to agree to mediate. In San Francisco over 90% of the eligible officers who are contacted about mediation agree to participate in mediation, and 55% of complainants who are contacted about mediation agree to participate in the mediation. We have the highest per capita officer participation rate in our mediation program in the nation. And a typical mediation might be, as an example, a business owner contacted the police department because there was a difficult customer that the business owner wanted removed. The police officer came, removed the difficult customer, but also told the business owner that the business owner needed to have permits posted in the business and that was in violation of the law. Well, the business owner felt that he was being penalized because of his race and that he had called for help from the police and instead the police officer was telling him that he had done something wrong. So we asked that complainant, that business owner, would you like to mediate? The complainant said yes, the officer said yes and the two of them sat down with two independent mediators, who are volunteers themselves and uncompensated, and talked about how they felt about the interaction. The mediators reported that both parties left the mediation satisfied and the officer
explained that he was only trying to help the business owner to be in compliance with the law.

ONEK: And can you, one of the amazing things about it is that you talked about the stats of how many people agreed. But then when the folks do agree, I remember during my time on the police commission of it being upwards of 90% of both officers and complainants saying that they were satisfied with the outcome of this process, which is pretty remarkable. Have those numbers stayed that high and, a 90% success rate is pretty remarkable.

HICKS: David, yes, those numbers have remained that high. Your recollection is correct. We have skilled mediators who conduct these mediations. They are not members of the OCC staff. They are not members of the San Francisco police department. They’re volunteer professional mediators who help the parties to have a conversation. The conversation isn’t always about an apology but it is about each, both the officer and the complainant, having an opportunity to explain his or her position.

ONEK: I think one of the reasons that’s so powerful, and I had the opportunity to sit in on one of these that ended very amicably when it definitely was not amicable at the beginning of
the conversation, I think it just shows how rare it is that both officers and the public have a chance to sit down face to face and discuss what happened and in a way that feels safe, with these trained mediators. When you think about it, a member of the public who makes a complaint, that takes some effort. Your office makes it as easy as possible but there are lots of people who feel that the police have done them wrong who don’t make a complaint. Someone who makes a complaint has probably like told their whole circle of friends about it and the officer who has a complaint against them, who feels that it wasn’t a fair complaint is probably telling all his or her colleagues in the locker room about this thing that has happened. So when they go into the room and then come out feeling good about it, then the complainant goes back and all the people in their community are saying hey, what happened to that complaint? You were going in. Did you give it to them? And if the complainant’s like well, you know, I still think I was right but now I have a much better sense of what was going through the officer’s mind when he came across me, what the circumstances were. And likewise an officer might say when asked by his colleagues, you know, I still think I was right but I understand that if I did things a little differently or used a different tone that it would have had a completely different effect on the person I was interacting
with. That’s pretty powerful stuff.

HICKS: I think it’s powerful stuff. The other thing that’s powerful is that a mediated case takes about three months, whereas an investigated case from start to finish may take upwards of six months on average. And also, if we can talk a little bit about the standard of proof, for proving that there has either been misconduct or that there’s been proper conduct it’s the preponderance of the evidence. So many of these complained of interactions are one on one and it is difficult for an investigator to determine who was right and who was wrong. So approximately 61% of the allegations are not sustained. Meaning that we could neither prove nor disprove that there was wrongdoing or proper conduct. So both the parties walk away, both the officer and the complainant, with not a great taste in their mouths because each felt that he or she was right and we were not able to prove it.

ONEK: And the only way that this program can be successful, can have over 90% of officers agreeing to do it, is if you have the union supporting it. So how did you? You know, programs in other cities I would imagine unions have been resistant to it. How did you show the union that this was in their best interests
to get on board with?

HICKS: The negotiations for this took place before I arrived as the director. San Francisco was just very fortunate that the San Francisco police officers association felt that mediations were a valuable tool for them. They even marketed the mediation program in their monthly newsletter. If one has read the monthly newsletter of the POA it is not always favorable to the OCC, but in this instance it was extremely favorable. I’ve been on panels discussing our mediation program at the National Association for Civilian Oversight of Law Enforcement conferences and I’ve been asked by other jurisdictions, how did you get the union to agree to your mediation program, our police unions are very much opposed to it? I think one thing that’s extremely helpful for us is to have a skilled mediation coordinator, Donna Salazar, who maintains a very open line of communication with the union officers. They in turn, the union officers, talk to their members to encourage them to participate.

ONEK: I think another key point is that officers who feel that they have been unfairly accused of something, and it just drags on so long with the investigation and the whole process,
that that’s hanging over their heads, that’s kind of holding up their career and this is a way to expedite the entire process so that they can move on. I imagine for the complainant it’s the same thing. There’s something about. And of course from the city’s perspective it saves enormous resources to not have to go through a formal process and get these solved early. So it seems like if that message could get out to other unions that they would probably take a second look at something like this.

HICKS: I would agree with you. One thing I can say about the number of mediations that we do, the number of mediations that we do each year equal the work of one investigator. And it is much less stressful work than the work of one investigator who is interviewing complainants and officers and both of them are very upset about the situation.

ONEK: So when you say one investigator you kind of mean one entire case load is taken off your books because you’re able to move that case load over to mediation.

HICKS: That is correct. Investigators have a performance goal of closing 60 cases a year and last year we mediated 61 cases.
ONEK:  Perfect. Now let’s talk about your time in Oakland. You previously led the citizens police review board in Oakland. How is Oakland’s model of police oversight different from San Francisco’s?

HICKS:  Well, Oakland’s model of police oversight is different than San Francisco’s in many different ways. First of all, the San Francisco office of citizen complaints is part of the San Francisco city charter, which means that it cannot be disbanded by legislative act, it can only be disbanded by an act of the voters. And the San Francisco city charter provides for minimum staffing at the OCC, one investigator for every 150 police officers. With current police staffing levels that would leave me with a staff of about 15. In fact, I have a staff of 35. San Francisco, in spite of its budget issues, has treated the Office of Citizen Complaints fairly in terms of keeping existing staff levels. I would like to see more. I would like a million dollars more in personnel enhancements but we know in this budget climate that may not be possible. In Oakland there is a staff of seven. Oakland’s citizens police review board is established by ordinance. So at any time by an act of the Oakland City Council it could be disbanded. And in Oakland there’s dual responsibility for investigating civilian
complaints of police misconduct. So there’s a duplication. Not only does the CPRB, Citizens Police Review Board, handle complaints, so does the internal affairs division. In San Francisco the police commission oversees the police department and the OCC, so there is in fact a neutral arbitrator to help them deal with issues that might arise between the department and the OCC. There is no such oversight agency in Oakland. Oakland does have a citizen’s police review board, that is an appointed commission. They don’t oversee the police department. I would say the biggest challenge in Oakland is lack of resources.

ONEK: And my understanding is that that is typical of a lot of other police oversight agencies around the country. In fact, San Francisco is often seen as a model, and it being in the charter and the charter mandating that a certain number of investigators be on staff. On paper some other cities have police oversight but they have one investigator or something and so it is impossible to do the job. Turning nationally, can you talk a little bit about nationally what are the main models of police oversight and what you think the positives and negatives of the different approaches are?
HICKS: Well, the main models of civilian oversight nationally are the investigative model, and that’s the model that San Francisco has, the office of citizen complaint. That’s the model that Oakland has as well. New York, the Citizen Complaint Review Board, CCRB of New York, has an investigative model as does Chicago. But Dr. Sam Walker, professor emeritus from the University of Nebraska, who is a national expert on civilian oversight of the police, in his 2005 book The New Police Accountability, talks about the other model that is growing and that is the auditor model. San Jose has an auditor model as do some other jurisdictions. The auditor model doesn’t investigate complaints of police misconduct. Instead it investigates whether the police department properly investigated those complaints. So they audit internal affairs division complaints and they look at patterns of complaints and they make recommendations. They have a staff of statisticians who punch numbers and the like. What I would say about that model, and speaking with the auditors, the limitation of course is that they’re not conducting the investigations. So if an internal affairs division has failed to ask a key question, then it is more difficult to dial back the investigation. And as we know in California, investigations must be completed within one year of a complaint being filed, so there’s a real short time frame.
One of the things that Dr. Walker talks about when extolling the virtues of the auditor model is that the auditor model deals with the entire organization as opposed to one officer. But in San Francisco, because we have not only investigations but we also have policy analysis, we deal with the one officer but we also deal with the organization. And we have a robust policy analysis program in San Francisco and the products that we have produced in conjunction with the police department and the police commission again are nationally known, such as our San Francisco police department’s department general order on language access, the department general order on juvenile protocols, that is, how the police will interact with juveniles when they take them into custody. Most recently the police department’s beefed-up its crisis intervention team program for police interactions with the mentally ill. All of these things arose from recognitions from the Office of Citizen Complaints.

ONEK: Now San Francisco, as you’ve kind of talked about, has a more robust oversight operation than really almost anywhere, including Oakland. What did you learn in Oakland that you were able to take to your job in San Francisco that’s really helped you there?
HICKS: What I learned in Oakland was that inclusion is extremely important for a civilian oversight agency. That to operate on an island and not have regular interaction with police administration really degrades the work that is done by a civilian oversight agency. In San Francisco, by department general order and the department general orders are adopted by the police commission, the director of the OCC sits on the firearms discharge review board and along with members of the police department command staff reviews every officer-involved shooting. And although the director of the OCC and the police commissioner who sit on that board don’t have a vote we have our mouths and we have the ability to influence policy. I also sit on the early intervention system board and have regular meetings with the police. Whereas in Oakland the Citizens Police Review Board was thought of as an extraneous agency and was not really included. So I would say what I’ve learned is that to be a valuable entity you need to have regular contact with the department because you’re there to support the department. You’re there to provide investigations on misconduct. You’re there to provide policy recommendations to the department to enhance the department.
ONEK: Going forward, what do you think the biggest challenges are for the OCC in San Francisco and for police oversight generally around the country?

HICKS: Going forward the biggest challenge would be the budget. Municipalities nationwide are going through a period of contraction with personnel. In San Francisco we have over 60 city departments and with a staff of 35 I’m one of the smaller departments. But when it comes time to prepare the budget in conjunction with the mayor’s budget instructions every department has to make the same percentage budget cuts. So the challenge for me as the director since I’ve been with the OCC has been to advocate for keeping existing staff size and adding to the staff so that we can do the work that we’re mandated by charter to do, and that’s to fairly, impartially and promptly investigate civilian complaints of police misconduct. I think we’ve done real well on fairly and impartially, but the promptly part has been a challenge because in the comptroller’s audit the comptroller indicated that the best practices caseload for a complaint investigator was 16 cases. When I got to the OCC the average caseload was 31 cases per investigator. We’re now down to 23 cases per investigator but that’s not because our staff has increased. It’s because the number of complaints filed with
the OCC has decreased by 16%. And that’s a nationwide trend of falling civilian complaints.

ONEK: Great. Well, Joyce, thanks so much for joining us. We really appreciate it.

HICKS: You’re welcome.

ONEK: Please tune in next time when we’ll be joined by Orange County Superior Court judge, Wendy Lindley. Also, please tune into Crosscurrents on San Francisco’s KLV on Monday, April 30th to hear an excerpt from the Criminal Justice Conversations interview with Joan Petersilia.

Thank you for listening to the Criminal Justice Conversations podcast. You can find this episode of the program and all prior episodes on our website at www.law.berkeley.edu/cjconversations and NPR affiliate KALW’s website and on iTunes. You can also become a fan of the Criminal Justice Conversations on Facebook and you can follow us on Twitter at cjconversations. Our production assistant is Nicole Jones. I’m David Onek. Thanks for listening.