

**CIVILIAN REVIEW OF POLICING:  
A CASE STUDY REPORT**

**New York Civil Liberties Union Foundation  
January 1993**

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LECTURE 1: INTRODUCTION

1.1. THE SCHRÖDINGER EQUATION

1.2. THE HEISENBERG UNCERTAINTY PRINCIPLE

## CONTENTS

Introduction . . . . .	1
Findings: A Summary . . . . .	7
Chapter 1: Civilian Complaint Review Board Washington, D.C. . . . .	25
Chapter 2: Office of Professional Standards Chicago, Illinois . . . . .	39
Chapter 3: Office of Citizen Complaints San Francisco, California . . . . .	53
Chapter 4: Independent Review Panel Dade County, Florida . . . . .	71
Chapter 5: Office of Municipal Investigation Cincinnati, Ohio . . . . .	85
Chapter 6: Civilian Police Review Authority Minneapolis, Minnesota . . . . .	101

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12 ..... 0111110

13 ..... 0111110

14 ..... 0111110

Chapter 7: Police Review Commission Berkeley, California . . . . .	113
Policies and Practices: Recommendations . . . . .	126
Appendix: Overview of Structure and Operations in Each Agency . . . . .	131
Notes . . . . .	145

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## INTRODUCTION

The defining moment in the movement to create civilian oversight of the police department is often a violent confrontation: A police officer attacks or shoots. Justification appears absent. A civilian dies. There is widespread public outcry: Who is policing the police? After the violence quiets in the streets, a political "street fight" begins as politicians and community members attempt to negotiate the terms of greater oversight of the police.

This report investigates the creation and administration of civilian review agencies in seven civilian review agencies throughout the United States. It describes the history, politics, structure, and operations of several different civilian review models. Research for this report coincided with the movement to create an independent, all-civilian review agency in New York City. A defining moment in that campaign occurred on September 16, 1992, the day before the city council was to begin hearings on the issue. On that morning, thousands of off-duty police officers rallied at City Hall to protest the legislative proposal to establish an all-civilian complaint review board. The protest quickly degenerated into what the New York Times called "the most

unruly and angry police demonstration in recent memory."<sup>1</sup> Agitated police officers stormed City Hall. They stopped traffic in the streets, taunting drivers and passengers. In a number of instances the police officers' invective was racially charged. A black city council member alleged she was the target of police officers' racial epithets. Senior uniformed officers could not control the demonstrators. The New York Times reported that a contingent of protesters blocked traffic access to the Brooklyn Bridge, assaulting several news reporters. The Times account described the commanding officer urging the reporters to leave, warning them, "I can't protect you...."<sup>2</sup>

On the day of the police protest, the civilian review charter amendment was thought to be at least six votes short of the twenty-six needed to pass. Three months later, after four days of heated testimony before the council's public safety committee, the city council passed a charter amendment that conformed closely to the original proposal in most major respects. The vote was forty-one to nine. As the incident of police violence precipitating the creation of a review agency, the police demonstration in New York differed from the norm in that no one was killed or badly injured. However, in years preceding the campaign several shocking deaths had occurred following conflicts between civilians and police. The recitation of a few names and places evokes the intensity of police-community conflict for many New Yorkers: Eleanor Bumpurs, Michael Stewart, Juan Rodriguez, Tompkins Square Park. The same grim legacy is related in each of the cities visited for this report. Bruce Wazon Griffith in the District of Columbia; the Johnson brothers in Chicago; Dolores Huerta in San Francisco; Arthur McDuffie and Nathaniel LaFleur in Miami; Ervin Fanning in Cincinnati; Lloyd Smalley and Lillian Weiss in Minneapolis; People's Park in Berkeley.



Though the impetus to introduce civilian review of police misconduct has occurred as a corrective measure, following an incident of violence, there is a growing movement to prevent such incidents by bringing greater accountability to policing of our communities. In recent decades cities have begun to take back responsibility for determining the appropriateness of the exercise of police power. A 1992 study reports civilian review procedures have been instituted in thirty-three of the fifty largest cities in the United States.<sup>3</sup> The trend is accelerating. Eighteen of the thirty-three (54.5 percent) have been established in the last two and a half years. The study, prepared by Professor Samuel Walker, reports that interest in civilian review is increasing in medium-sized cities as well, and that these trends constitute a "legislative finding" that civilian oversight is the "appropriate response to police misconduct."<sup>4</sup>

What explains this development? According to Walker, "because more and more people believe that an investigation done by an independent [non-sworn] person is more likely to be fair and objective."<sup>5</sup> Walker adds that over the last twenty-five years police unions have been highly effective in securing the rights of police officers, ensuring a presumption of innocence protected by thorough due process procedures. The problem is citizens' rights are not nearly as well protected from abrogation by police. At least some police professionals appear ready to address this issue. A 1991 issue of Police Union News includes a feature article by Walker, which concludes:

"[P]olice officers have to face the fact that what is good for one side is good for the other. If the accused officer has a right to a full and fair hearing, so does the aggrieved citizen."<sup>6</sup>

The research for this report, conducted between August and December 1992, was undertaken with several objectives: (1) to analyze the structures and operating procedures of various civilian oversight agencies; (2) to identify the historical, political, and legal factors that have influenced the function of civilian review agencies in the cities visited; and (3) to assess the effectiveness of these various models.

There is no generic civilian review agency. The new model for New York City, a variation on a proposal put forward by the NYCLU, creates an independent city agency, staffed by civilian administrators and investigators. This model provides for a thirteen-member board of civilians to make findings and issue disciplinary and policy recommendations based on investigations conducted by civilian investigators. The thirteen members of the board are appointed by the mayor -- with five members designated by the city council and three designated by the police commissioner. This new civilian review agency created by the charter amendment replaces the city's Civilian Complaint Review Board (CCRB). The term "civilian" in the name of the agency is misleading. The CCRB was headed by a deputy police commissioner and staffed by police department employees. More than half of the CCRB's investigators were sworn officers; the rest were civilian employees of the department. The board, which reviewed the investigatory records, and in rare instances conducted hearings, was comprised of five unsworn police department executives and one former sworn member of the department, who were selected by the commissioner from his senior staff. Six civilians also served on the board; they were selected by the mayor from outside the police department.

The threshold test of civilian review for the purposes of this report is that civilians perform the investigations and/or conduct hearings into police misconduct allegations. In Dade County the Independent Review Panel's civilian staff conducts "quasi-investigations," which involve reinvestigation of the police department's findings. Five of the seven agencies (in the District of Columbia, San Francisco, Berkeley, Minneapolis, and Dade County, Florida) perform public hearings, administered primarily by civilians, to review the investigatory record. In Chicago and San Francisco a police commission, comprised of civilians appointed by the mayor or city manager, conducts hearings into complaints, which if sustained would warrant more serious disciplinary action. Each of the agencies, except Berkeley's Police Review Commission, has authority to make disciplinary recommendations. However, in all cases discipline is imposed by the police chief. In some cases (Washington, D.C., Cincinnati, and Berkeley) the mayor or city manager resolves conflicting disciplinary recommendations made by the civilian review agency and the police department. (See Appendix for an overview of the structure and operations of each agency.)

It is the complex and often contentious interplay of the civilian review agency and the police department that is central to the analysis of civilian review of policing. The degree of civilian control is the critical variable.<sup>7</sup> The point at which civilian input occurs determines the effectiveness of civilian oversight. This dynamic -- shifting to civilians the authority to uphold accountability for the use of police power -- defines the short history of civilian review of policing in the United States.

...the victim of a crime turns toward the police. Where can the target of police abuse turn?

Consider the plight of the victim of police brutality. The ranks of the police bureaucracy close against him. He finds himself combating a formidable array of officials and agencies who have to maintain a continuous and cooperative working relationship with each other, a relationship threatened by the intrusion of such a complaint. How can the system be made accountable to his grievance and retain its viability?

The victim of a crime turns toward the police. Where can the target of police abuse turn?

Anthony V. Bouza  
Former deputy chief,  
New York City Transit Police

From Police Administration:  
Organization and Performance,  
by Anthony V. Bouza (Elmsford,  
New York, Pergamon Press,  
1978)

## **FINDINGS:      A SUMMARY**

The following case study analysis of seven civilian review agencies provides persuasive evidence that (1) civilians with complaints of police misconduct want those charges investigated by civilians, and complainants respond in greater numbers to the civilian unit than to the police department's internal investigators; (2) civilian review agencies have not been allowed to operate without significant impediments -- budgetary, legal, political; (3) despite the serious obstacles to effective operation, civilian review agencies demonstrate qualitative improvements over internal police department units; and (4) effective civilian review of policing requires that community members monitor the implementation of policies and procedures to ensure the oversight agency has the authority and resources required to perform its mission. Each of these conclusions is addressed individually.

1. The seven civilian review agencies analyzed in this report were created in response to citizens' anger over the use of violent force by police, and mistrust of police department investigations of alleged misconduct.

In absolute terms the number of complaints filed with the civilian review agency is greater, often dramatically so, than the number of complaints filed with the police.

In the District of Columbia, Chicago, Dade County (Florida), Cincinnati, Minneapolis, and Berkeley, citizen commissions, official or ad hoc, held open hearings at which community members protested violent, wrongful behavior by police. Legislation creating a civilian review agency was introduced in each city in response to the public outcry. Berkeley citizens created the Police Review Commission (PRC) by ballot, voting by 57 percent to pass the enabling legislation. When the San Francisco City Council twice failed to pass a charter amendment creating the Office of Citizen Complaints (OCC), voters created the agency by referendum, with over 60 percent of the electorate voting in favor.

Where police department data is available on the number of citizen complaints filed against police officers, there is a consistent pattern: Following the introduction of a civilian agency, citizens come forward with complaints of police misconduct in greater numbers than they had when the only recourse was to ask the police to investigate police. In Chicago, serious misconduct complaints increased 61 percent in the first year the Office of Professional Standards (OPS) came into existence. (p.41)<sup>2/</sup> Despite serious understaffing, which has created long delays in responding to complaints, the District of Columbia Civilian Complaint Review Board (CCRB) reports over the last two years a 22 percent increase in complaints received as compared with complaints reported to the police department prior to the creation of the CCRB.<sup>1</sup> (The implication of this

<sup>2/</sup> References in parentheses refer to page numbers in this report.

differential is larger than it appears. Many allegations included in the police department data describe misconduct that did not directly involve a civilian. The overwhelming majority of complaints reported to the CCRB involved use of excessive force by police (p. 35).) In the fifteen years prior to the creation of the Minneapolis Civilian Police Review Authority (CPRA), the city's police department received 1,183 complaints, approximately 79 complaints per year. In the first twenty-one months the CPRA has been in existence, 289 complaints have been reported by civilians. (p. 107)

2. The effectiveness of civilian oversight agencies has been severely hampered by administrative, legal, and political impediments.

Understaffing: Severe understaffing is common practice in introducing a new civilian oversight agency. In 1982 the District of Columbia's CCRB was given a staff of four, including two investigators, to monitor a police force of more than 3,800. The agency was widely discredited almost from its inception as a result of a backlog of complaints, which by 1990 numbered nearly 1,000. In its first six years of operation, San Francisco's OCC was widely and publicly criticized for incompetence and a growing case backlog. It was only after a mayor supportive of civilian review came to office in 1988 and after highly critical reports by the Bar Association and Human Rights Commission of San Francisco in 1989 that the OCC was granted a budget that approximated what was required to investigate the complaints received. In Dade County, the Independent Review Panel (IRP) has only two community liaison specialists to review internal misconduct investigations conducted by all public agencies in the county, including the police department. Cincinnati's Office of Municipal Investigation (OMI) is annually budgeted for one

investigator to investigate all serious misconduct complaints filed against a 1,000-member police department. Chicago's OPS, which appears on the police department's budget line, is the exception to this pattern. The OPS has a staff of 68 investigators to investigate complaints against 12,500 police officers.

Legal obstacles: The enabling legislation creating the civilian review agency is often flawed. Police representatives, most often the police unions, challenge -- quickly and often -- the legality of civilian procedures. The lawsuits are disruptive, costly, and time-consuming. After a series of legal challenges and procedural obstructions by the adversaries of civilian review, legislators have responded by amending the enabling legislation -- but belatedly, after the credibility of the civilian review agency has been damaged. Ten years after the District of Columbia's CCRB was created, the city council finally addressed the agency's case backlog by passing a charter amendment enabling investigators to compel pre-hearing statements from police officers, and granting the board discretion to forgo a full evidentiary hearing in some cases. San Francisco's OCC required administrative reforms to obtain legal counsel for the agency; to compel the police chief to take timely action on OCC complaint recommendations; and to prevent the chief from blocking a hearing before the police commission when he disagreed with OCC findings. In Cincinnati, after several years of legal challenges to OMI's statutory authority, the city council amended the ordinance, granting the civilian review agency immediate access to city records and documents. The police had been withholding documents from OMI until criminal investigations were complete.

In some cases statutory powers are so circumscribed that the minimal authority needed to exercise civilian review is compromised. The Berkeley PRC, which was created by citizen



initiative and instituted under the authority of the city manager, was sued repeatedly in the early years of its existence. The agency was forced to go to court to defend its legality under the city ordinance, and its authority to execute virtually every aspect of complaint investigation, from issuing subpoenas to compelling witness officer testimony. Dade County's IRP, after twelve years in existence, proposed in 1992 a legislative amendment that would grant the agency subpoena power and the authority to initiate independent investigations, not merely reviews of police department investigations. The Minneapolis CPRA is planning a legal strategy to win subpoena power, and to obtain a waiver from provisions of the state's Data Practices Act, which requires closed hearings and prevents complainants from being present while the accused officer testifies.

Police resistance: Simultaneous with the formal legal challenges to the authority of the civilian review agency, police officers often utilize the equivalent of "blue flu" tactics to obstruct investigations. This behavior may be especially egregious in the early years after the agency's creation, but often persists, in more subtle ways, even after the civilian agency has established its authority in court. Anecdotal evidence is consistent. Police officers fail to report incidents of observed police misconduct (p. 49); refuse to provide statements to civilian investigators (p. 32); and delay, intentionally, production of documents and responses to subpoenas (p. 32). In some cases the resistance becomes active subversion of the civilian investigation. A San Francisco police chief who was hostile to civilian review lost complaint investigation records prepared for his review by the OCC. (p. 56, 61)

Political obstacles: The creation and administration of civilian review agencies is often highly politicized. A mayor, city manager, or city council can determine, through the power of

appointment, the caliber of personnel who will head the agency and serve on its board; and through budget appropriations determine the skill and professionalism of the investigative staff. In San Francisco the first two directors of the OCC, selected by the mayor-appointed police commission, were widely viewed as poorly qualified for the job, and were selected for that very reason, according to civilian review advocates. The District of Columbia City Council failed to exercise the political will to address crippling budgetary and procedural shortcomings for nearly a decade as the CCRB case backlog became a regular feature of the op-ed pages in the city's newspapers. In Dade County the director of the IRP acknowledges that due to political resistance to independent review of policing, the agency has never had the authority to perform its intended job. In Cincinnati a politically powerful police chief made his acceptance of civilian oversight of police contingent upon oversight of all city employees, a deal that has severely limited the resources committed to investigating police misconduct. And in Chicago nepotistic hiring practices, which reportedly led to large numbers of civilian investigators with police department affiliations, have created widespread skepticism as to the objectivity of the agency's investigations. Finally, police officers' collective bargaining representatives often exercise a political-legal veto over the civilian review agency. In many cities police unions have won the right to an informal appeal process -- available before an administrative appeal in a court of law -- for police officers who have been disciplined. Data on the resolution of such appeals is generally not publicly available; however, according to administrators, investigators, and investigative reporters in several cities, the union appeal process overturns significant numbers of disciplinary actions. In the District of Columbia disciplined police officers can appeal to the Office of Employee Appeals or

to the police department's trial board. In many instances these proceedings result in a reduced penalty or full exoneration.<sup>2</sup> In Chicago an arbitration proceeding follows the Police Board's vote to discipline. There is documented evidence that the board has often reversed suspension orders or reduced the length of suspensions. (p. 45) In Cincinnati the Civil Service Commission performs a post-discipline review, which has led to exoneration in enough cases to concern the city manager and police chief. (p. 96)

It is not clear what impact added post-disciplinary appeal procedures have on the civilian review process itself. It seems likely that a protracted and possibly biased appeal process will diminish the deterrent effect of civilian review; shield police officers from deserved censure; and prevent those officers from receiving needed counseling and training.

3. An independent system in which civilians conduct investigations and public hearings into alleged police misconduct demonstrates qualitative advantages over a review system operated within the police department.

Prevention of police misconduct through policy and practice recommendations: Civilian review agencies play an affirmative role in preventing abuse of police power by identifying inadequate or improper police practices. An independent investigative unit can reveal a pattern of complaints in which the underlying problem is not the individual police officer's conduct, but police department directives. There is evidence the civilian agency -- whose goal is to promote safe and effective policing; not to protect police officer discretion at all costs -- can promote safer and more effective policing by proposing improvements in police practices.

The civilian agencies in each of the cities visited for this report have authority to recommend policing policies; and there are numerous examples where the recommendations have been followed. Berkeley's PRC, one of the first independent civilian review agencies created in the United States, recommended the creation of a rape victim unit within the police department, which became the model adopted throughout the country. The PRC has also recommended, and the police department has adopted, policies regarding crowd control and integration of police department personnel. Chicago's OPS was responsible for the creation of a special domestic violence unit within the Chicago Police Department. When Cincinnati's investigator of police misconduct complaints discovered police officer error in shooting incidents and an excessive number of disorderly conduct arrests, the police department acted on the OMI's recommendations to introduce additional training in the use of firearms and in responding to verbal challenges by civilians. In response to excessive force complaints arising from car-chase incidents -- one such incident involved thirty-eight officers and eighteen patrol cars -- the San Francisco Police Department implemented a PRC policy for responding to high-speed pursuits. More recently the PRC was behind a directive of the police chief suspending enforcement of traffic code provisions that beat officers were using to target and harass panhandlers. Civilian review advocates warn that in the role of policy adviser, the oversight agency is only as effective as its investigations are thorough. The experience in Dade County, Florida, suggests that where there are limits on the ability to conduct aggressive investigations, policy and practice recommendations may be ineffectual.

Resolution of complaints: Independent civilian review agencies -- as opposed to agencies located within police departments -- appear to conduct more aggressive investigations

and to resolve a greater percentage of cases on the merits. One measure of the aggressiveness with which an agency conducts investigations is the number of complaints left unresolved due to insufficient evidence. In such cases a "not sustained" disposition is applied.<sup>3</sup>

The Washington, D.C., CCRB does not utilize an "insufficient evidence" disposition. The public hearing serves as the forum in which credibility of parties and witnesses is assessed. Where there is no preponderance of evidence, the case is closed with no finding of fault. In San Francisco the OCC utilizes the "not sustained" finding to mean insufficient evidence to make a determination. It has made that disposition in 39 percent of the 4,077 allegations of police misconduct received and fully investigated in 1990 and 1991.<sup>4</sup> (A complaint may include more than one allegation.) In Cincinnati the OMI found a complaint "not sustained" due to insufficient evidence in 29, or 42 percent, of 69 police misconduct allegations fully investigated in 1990.<sup>5</sup>

The incidence of "not sustained" dispositions reported by the Chicago Police Department's civilian investigation unit (OPS) appears to be significantly higher than the rates reported in San Francisco and Cincinnati. Chicago's OPS has applied the "not sustained" disposition (insufficient evidence to prove or disprove a complaint) in 73 percent of the 5,445 cases fully investigated in 1990 and 1991.<sup>6</sup> New York's Civilian Complaint Review Board (CCRB), also a police department agency, has treated as unsubstantiated those allegations in which there is insufficient evidence to substantiate (or sustain) an allegation, to exonerate the accused police officer, or to determine the complaint was unfounded -- that is, the alleged act did not occur. The CCRB's investigation unit has found "unsubstantiated" 1,968, or 80 percent, of the 2,452 cases fully investigated in

1990 and 1991.<sup>7</sup> In Chicago and New York investigators make the "not sustained" determination. Very few of those complaints are ever given a hearing before a review board.

Taken together with anecdotal evidence provided by civilian review professionals (see above, "Police resistance"), the data on cases not sustained due to insufficient evidence suggests the police department exercises an "institutional" inhibition upon aggressive investigation of police misconduct by its employees.

Sustaining misconduct complaints: A simple before-and-after test demonstrates that in at least five of the cities studied in this report, the civilian review unit found a greater incidence of police misconduct than had been reported by the preexisting police department unit that investigated police misconduct complaints. As a comparative measure of the effectiveness of a civilian review agency, the rate at which a review agency sustains, or substantiates, a charge of police misconduct is an important statistic, but one that may be misleading. There are many variables that influence the number of sustained complaints reported by any agency.<sup>8</sup>

Nevertheless, a dramatic increase in the complaints sustained in a city following the transfer of the review function from the police department to a civilian agency indicates the civilians hold police to a higher standard of conduct. In 1976, the first full year the Berkeley PRC conducted hearings on a regular basis, the agency sustained 70 percent of the complaints reviewed. (p. 117) Of those same cases, the police department sustained 4 percent, a rate consistent with the police department's data in previous years. The San Francisco Police Department sustained not one of 301 excessive force complaints received in 1980. (p. 53) Between 1987 and 1991 the OCC, San Francisco's all-civilian complaint review agency, sustained on average 6 percent of

excessive force allegations that were fully reviewed, an average of 23 sustained allegations per year. In its first twenty-one months of operation, the Minneapolis CPRA has sustained 8 of 26 complaints (31 percent) that received a full hearing before the agency's board. The Minneapolis Police Department sustained only 17 complaints of police misconduct in the fifteen years prior to 1991. (p. 108) Prior to the creation of Chicago's OPS, the police department's internal affairs division sustained 1.4 percent of reported complaints alleging excessive force and/or civil rights violations (p. 41) The OPS reports it sustained 10.1 percent of excessive force complaints received in its first year of operation, and has sustained between 5 percent and 12.2 percent of reported complaints annually between 1974 and 1991.<sup>9</sup>

The data reported from the District of Columbia demonstrates how the analysis of sustain rates can lead to incorrect conclusions. Police department data seems to suggest the internal affairs unit was more aggressive in responding to civilian complaints of police misconduct. An opposite conclusion appears to be more accurate when the police department report is analyzed together with statistics reported by the CCRB. During a fifty-eight-month period prior to the creation of the CCRB, the police department sustained 8 percent of 1,732 misconduct complaints filed by civilians.<sup>10</sup> The complaints were reported in twenty-four different classifications, ranging from drinking on duty to misuse of an official position for personal gain. In the 138 cases in which complaints were sustained, the recommended discipline ranged from counseling to a letter of reprimand.<sup>11</sup> During 1990-1991 the CCRB sustained only 4.6 percent of the 940 cases it received (the vast majority were dropped by complainants due to a large backlog of cases). However, the CCRB sustained 36 percent of the 120 cases that received a full hearing during that two-year period. (p. 35) Most significant, 82.5 percent of those sustained complaints involved use of excessive force; and the

CCRB recommended disciplinary action ranging from suspension to separation in a majority of those cases.<sup>12</sup> Even given the limitations of a baseline comparison of sustain rates, the discrepancy between the rates reported by the seven civilian review agencies studied in this report and the rates reported by the internal police department units in New York and Los Angeles further supports the premise that greater independence of the review function correlates with greater accountability for police misconduct. The sustain rates (complaints sustained/complaints filed) for the most recent two-year period reported by the review agencies analyzed herein range between 4.5 percent and 15.5 percent.<sup>13</sup> During that same period, New York's CCRB reported a 3 percent rate,<sup>14</sup> the same rate reported by the Los Angeles Police Department's Internal Affairs Division for the period 1986-1990.<sup>15</sup> The Christopher Commission's 1991 report on the LAPD, following the police beating of Rodney King, found significant problems with the way the department received, classified, and investigated complaints.<sup>16</sup> Citing the 3 percent sustain rate, 2 percent for allegations of excessive force, the commission found citizens were justified in believing the department was incapable of disciplining its own citizens.<sup>17</sup> The NYCLU has documented the CCRB's inability to conduct competent complaint investigations and has found the reported number of sustained complaints has no correlation with the incidence of police misconduct.<sup>18</sup>

4. To create an effective system of civilian oversight, proponents must become advocates for full accountability in police-community relations. The signing of legislation is the first step. The introduction of an independent civilian oversight agency



represents significant institutional change. Wherever such change has been attempted it has been resisted. The lesson from the cities represented in this report suggests that in implementing a civilian review agency, many important operational issues will be addressed in the formulation of rules and regulations. Administrators and community advocates interviewed for this report point out that community representatives must have a role in monitoring the activities of the civilian agency and holding the agency to its mandate.

In San Francisco it took a decade-long effort, led by a coalition of community activists, to make the OCC a viable institution. Berkeley's PRC was the product of a citizens' movement. Its legitimacy is still contested today, but it derives its authority from the involvement of Berkeley's citizens. Citizen coalitions have been formed in San Francisco with the purpose of recommending and drafting new police policies. In Cincinnati the civilian review process has led to the creation of a citizen oversight committee, which has a role in monitoring police department training. Grass-roots community groups in Dade County, Florida, have led a campaign to win statutory authority that will enable the IRP to conduct more aggressive investigations of police misconduct. In Minneapolis volunteer citizen-monitors sit in on complaint hearings and provide feedback to the community groups they represent and to the CPRA's administrators. Board members of Washington, D.C.'s CCRB report that community outreach has been essential to winning recognition and support for civilian review. They describe many citizens as having been conditioned to respond with wariness to interaction with the police. Trust in the process of civilian review of policing must be earned. The chair of the CCRB in Washington advises that where the role of community members in the operation of a civilian oversight agency is weak, the legitimacy of the process is also weakened.

Almost twenty-five years ago President Johnson's National Advisory Commission on Civil Disorders (the Kerner Commission) released its landmark report.<sup>19</sup> Citing studies that indicated police officers appeared to have immunity from punishment for use of excessive force, the commission advised that "police departments should be subject to external review."<sup>20</sup> The commission set out the basic principles and procedures of such a review function, with the following recommendations:

"Making a complaint should be easy. It should be possible to file a grievance without excessive formality. . . .

"A specialized agency, with adequate funds and staff, should be created separate from other municipal agencies, to handle, investigate and to make recommendations on citizen complaints. . . .

"The procedure should have a built-in conciliation process. . . .

"The complaining party should be able to participate and in the investigation and in any hearings, with right of representation by counsel. . . .

"[The complainant] should be promptly and fully informed of the outcome . . . [and the] results of the investigation should be made public. . . .

"Complaints concerning departmental policies should be forwarded to the unit that reviews and formulates such policies ... [and] to appropriate training units so that any deficiencies correctable by training can be eliminated."<sup>21</sup>

In 1992 citizens in many American cities still need and seek such a system of police accountability. Following the horrific beating of Rodney King by members of the Los Angeles Police Department -- a videotaped spectacle of police brutality that has become part of our national consciousness -- the Christopher Commission recommended in its report on the Los Angeles Police Department that a "new standard of accountability" was needed.<sup>22</sup> The standard, the commission suggested, needs to be applied nationally, because the problem is "national in character."<sup>23</sup> That view was shared by police chiefs from ten major American cities, who met following the Rodney King incident and offered their assessment that "the problem of excessive force in American policing is real."<sup>24</sup> Calling for action, the commission concluded that Los Angeles should have a police department "whose chief is accountable to civilian officials" for the department's performance and whose "ranking officers are responsible for the conduct of those they lead."<sup>25</sup>

In attempting to convey the significance of the Rodney King beating, the Christopher Commission characterized the incident as a "landmark," equivalent in impact to the Scottsboro case in 1931 and the Serpico case in 1967.<sup>26</sup> Each of the cities visited in the course of this report has its own Rodney King incidents. In each of these cities citizens have attempted to implement the procedures of civilian review proposed by the Kerner Commission. They have had varying degrees of success, but in each case they have been met with staunch police opposition. The formidable resistance to the effort to increase police accountability

through civilian review should not be interpreted as a valid indictment of the principles of civilian review. Those principles have proven sound and the positive impact of citizen oversight has proven significant.

The Kerner Commission convened in 1967 with the task of investigating the causes of urban disorder-- and proposing solutions. Today many American cities still resist the implementation of the commission's recommendation to increase the accountability for abuse of police power by providing civilian oversight of policing. Twenty-five years after its publication, the Kerner Commission report gives us pause to wonder: Had we not been so slow to implement the commission's proposals, would the conflict between civilians, especially people of color, and police still persist to the degree it does throughout the country.



"Initially civilian review was touted on grounds the police weren't to be trusted.... Now people are beginning to understand those who advocate for creating a civilian review board don't necessarily render an indictment of the police. Advocates don't have to make the argument for civilian review because the police can't do it -- that is, investigate themselves.... The argument is civilian review is good public policy."

Gabriel Chikes  
Special assistant to the executive director  
District of Columbia Civilian Complaint Review  
Board

## CHAPTER 1: CIVILIAN COMPLAINT REVIEW BOARD WASHINGTON, D.C.

On a Monday night in February 1980, more than 4,000 people lined up at the Jarvis Funeral Home to pay their last respects to Bruce Wazon Griffith. This demonstration of affection was extraordinary for several reasons. Few of those at the funeral home had ever known Griffith. Even more unusual, Bruce Wazon Griffith was a small-time drug dealer, the accused murderer of Arthur P. Snyder, a Washington, D.C., police officer. Griffith had been killed in a shoot-out with the police after one of the city's largest manhunts.<sup>1</sup>

The murder of the police officer and what many believed was the retaliatory execution of Griffith gave proof to two very different versions of reality in the District of Columbia. The police perceived themselves as walking targets in a war zone -- and in fact the mayor had declared a war on heroin, targeted on 14th Street, where Officer Snyder was shot. However, many law-abiding members of the community believed the war was directed at them. According to a Washington Post article, the street crowd that had coldly cheered the death of Officer Snyder -- described by a fellow officer as an aggressive street cop who "knew how to kick ass within the boundaries of the law" -- was convinced

Snyder's alleged killer would not live to attend trial.<sup>2</sup> A follow-up article went on to explain

"[I]t is more than joblessness and hopelessness felt in some parts of the community ... The feeling may vary from neighborhood to neighborhood, but what's being communicated here is that many solid citizens in this town no longer believe due process exists. ... The plain harsh fact is that the police of the District are distrusted by many citizens of the city. This may be warranted, or unwarranted, but it is a fact of life."<sup>3</sup>

The story of Bruce Wazon Griffith describes the end stage in the breakdown of police-community relations -- the point at which police and justice come to have different, even opposite, meanings to members of a community. The facts of the Griffith case were not entirely clear. But mistrust of the Metropolitan Police Department (MPD) had become so great that the facts surrounding Griffith's death were appropriated to serve a larger "truth": The D.C. police were administering violent summary justice. It did not matter whether Griffith fired first before he was gunned down by police. What mattered was the word on the street that the police had a vendetta to "get" Griffith. When he was later shot by police officers, the street rumor became fact. The result, as described by the Washington Post, is fear. "Fear is the common thread that links everyone -- street people, businessmen, and police -- connected with 14th and U Streets NW.... Here tension hangs heavy in the air."<sup>4</sup>

It was at this point -- when wide-scale open conflict appeared imminent -- that the city's leaders felt compelled to give community members a public hearing. Prompted by the shootings of Bruce Griffith and Detective Snyder, the District of Columbia



Advisory Committee to the U.S. Commission on Civil Rights held a citizens' forum on police-community relations in May 1980. The purpose of the hearing was to vent tensions; to hear community members' views; to seek solutions. What the commission sought, essentially, was civilian review of police-community relations.

Much of the testimony before the committee focused on the lack of police accountability.<sup>5</sup> District of Columbia council member Wilhelmina Rolark suggested

"...[A] lot of the tensions...between the police and the community exist because community persons have no vehicle whereby they can lodge their complaints against the police and hope to get a decent reaction to the same."

Deputy Chief Houston Bigelow asserted the existing complaint procedures worked:

"We have clear-cut [guidelines] on investigating our complaints. Our system...is open to the public. You can walk [into] any of our facilities and...write down in your own words what happened and...we'll investigate it and keep you informed of the disposition of it."

Rolark disagreed:

"The idea of police judging police is just horrendous.... It turns people off. It makes people believe there is no equity in the situation. ... [N]ot only have you been beaten up or harassed or kicked around or treated unfairly but then you've got to come back to that same source to lodge a complaint."

Police officer Ronald Hampton acknowledged the police department's complaint review system often failed.

"I've seen too many times when [the police] don't even get [the complaint form] at the station ... and if they do get it, some official comes from the back room ...

and in the process of taking the complaint, they tell them -- they give excuses like, Well, the police officer had a bad day, so would you please excuse him because he has a lot of things to do?"

Professor Irving Ferman testified that a civilian review system that had been tried in the District of Columbia in the early 70's failed because police involvement compromised the process. The five members of the civilian review board resigned when their suggestions for reform were ignored. The board had based its recommendations on findings that a citizen could file a complaint at only one location; that it took at least a year for the police department to turn over to the board the results of its internal investigations; and that the practice of police investigating complaints against police was suspect.

Adjoa Burrow, a member of the D.C. Alliance Against Racism and Political Repression, expressed a more sweeping criticism of policing practices, arguing that

"What happens in most of our communities in the United States if not all our communities is that the police are defining the role of the police... We feel that the citizen should be the one to define what it is that the police should do and what are the things the police should be responsive to."

Howard University Law School professor Howard Glickstein urged community leaders to come up with a system to prevent abuse of police power, not merely to review incidents once damage had been done. The goal, he exhorted,

"...is to come up with remedies and solutions to ensure our public servants are sufficiently sensitive to civil rights and that it's as much a part of their job to protect civil rights as to carry out other of their functions."

The recommendation of the professor, endorsed by many who appeared before the committee, carried the day. The covering letter that accompanied the committee's report to the Commission on Civil Rights concluded,

"...[A]pprehension about worsening relations between police and the community...gave impetus to those favoring a civilian review board to review complaints against the police; such a law was enacted November 10, 1980."

#### **On paper, an excellent model**

The Washington Post described the civilian model for investigating citizens' complaints against D.C. police officers as "one of the most influential of its kind" -- at least on paper.<sup>6</sup> The Civilian Complaint Review Board (CCRB) is broadly representative of the community: By statute, the seven board members must reflect the diversity of the District of Columbia.<sup>7</sup> The mayor appoints the chairperson, who must be a member in good standing of the D.C. Bar. Of the remaining board members, four

are civilian (nonpolice) citizens, two of whom are appointed by the mayor, and two by the council. The mayor also appoints to the board one member representing the MPD; the council appoints a member representing the MPD's recognized bargaining agent. Board members are appointed for staggered three-year terms. They serve on a part-time basis and receive a stipend allocated by the board. The board also has the authority to employ an executive director, who is appointed by the mayor. The council allocates the budget for the CCRB's professional staff, investigators, and administrative personnel.

The CCRB's investigators and board members have an independent role in determining the scope and appropriateness of police conduct regarding allegations of (1) police harassment; (2) excessive force; or (3) use of demeaning language. Civilians can make a complaint in person at the CCRB, by letter, or by telephone. Unless the board dismisses a complaint as frivolous on its face, it must set a time and date for a hearing within thirty days of when a complaint is filed. The CCRB has broad authority, backed by power of subpoena, to obtain relevant records and documents, and to compel the appearance of witnesses and parties at public investigatory hearings conducted by the full board.

The board's disposition of a complaint passes judgment on the subject officer's conduct and ensures that any disciplinary action by the police chief or mayor takes account of the findings and recommendations of the CCRB. Based on its review, the board may (1) find a complaint not sustained, that is, not proven by the evidence; (2) dismiss the complaint, without a hearing, as frivolous on its face; or (3) sustain the complaint and recommend that the chief take disciplinary action against the accused police officer. The chief must provide a written rationale for rejecting the board's recommendation; where the recommendation of

the board and the chief disagree, disciplinary authority passes to the mayor, who has thirty days to (1) uphold the chief's decision; (2) impose the board's recommended action; or (3) order a compromise ruling. Police officers subject to disciplinary action retain the right to appeal before the Office of Employee Appeals, or before a trial board when dismissal has been ordered.

### **In practice, a paper tiger**

The social and political dynamics surrounding the abuse of police power -- citizen outrage, vested police power, political pressure, fear, bigotry, racism -- become the jurisdictional predicates of the civilian review agency. The effectiveness of civilian oversight is a function of the political will behind the agency's mandate. In the District of Columbia the political will was tentative.

In its first annual budget appropriation the CCRB was allocated funding for four employees: an executive director, two investigators, and a clerk. This appropriation was based on a projection of 300 complaints against a police force of more than 3,800 members. According to Gabriel Chikes, special assistant to the executive director, "If you measure failure in terms of case backlog, the agency was doomed to fail with passage of the original legislation." In its first three years of existence, the CCRB was able to dispose of less than 50 percent of its caseload, which averaged approximately 330 complaints annually (beginning in 1983, the CCRB's first full year of operation).<sup>8</sup>

To manage its 1992 case load the CCRB has seventeen budgeted positions, ten of which are filled. This number includes four investigators, who must investigate all complaints brought

against a 4,600-member police department. This would allocate 120 cases per investigator -- assuming such a work load were feasible, which it is not -- merely to keep pace with new complaints filed in 1992. The MPD maintains a caseload of no more than 40 cases per police officer. Citing the example of an excessive force complaint that took five years to come up for hearing, the Washington Post dubbed the CCRB "The District's Paper Tiger," charging in the paper's editorial pages, "The city's elected officials went to great lengths to produce a strong civilian review process, but the board's perennial backlog is a sign that they did not go far enough."

The impact of the fiscal restraints on the CCRB was exacerbated by police department resistance. According to Chikes, who joined the CCRB in 1984 as an investigator, the agency's lack of authority to compel the cooperation of police officers "created a terrible situation...." Police exploited the CCRB's problems, fueling the negative publicity, by refusing to provide statements to CCRB investigators. It was not uncommon for police, in response to routine document requests, to tell the CCRB that such records didn't exist. When records were produced it was often after protracted delays. These tactics, which further taxed and badly overextended staff, had a profound negative impact on the agency's operations. As Curtis Pearson, coordinator of investigations, describes it, "Once we start calling complainants, interviewing witnesses, they start calling us, and asking when a hearing will be scheduled, and asking what's going on when no date is set.... I believe because I am often unable to commit to a hearing date people begin losing faith in the system."

**Ten years later: corrections to the "excellent model"**

To both the critics and supporters of civilian review, Washington's CCRB has become a highly visible problem case. Critics place the blame, implicitly and explicitly, on "civilianization" -- the nonpolice presence within the agency. The record suggests an alternative explanation, beyond an inadequate budget.

A 1992 report by the chairperson of the D.C. council's Committee on the Judiciary, accompanying a proposed CCRB Amendment Act, addressed the scope of the problem:

"Since the Board's inception in June 1982, over 3,000 citizens' complaints have been filed. ...[T]he number has steadily increased over the last three years. As of March 31, 1992, there were 982 complaints in the Board's pending caseload [of which] 72% contain allegations of excessive force.

...

Moreover...the CCRB has only two adjudicative remedies: dismissal or a full evidentiary hearing. The sheer volume of cases...presents an impossible task...since the majority of the caseload would require a full evidentiary hearing."<sup>10</sup>

In July 1992 the District of Columbia Council enacted the proposed amendment, whose provisions will enable the CCRB to operate for the first time as intended. The amended law provides for --

Temporary expansion of the board from seven members to twenty-one

This provision allows the board to convene in three panels, each comprised of seven members (with two places on each panel reserved for police representatives, as provided for by the charter).

Conciliation proceedings and summary adjudication to resolve complaints

Under this subsection, (1) complainants may choose to pursue their complaint through a conciliation process, and (2) the board may elect to make findings and recommendations based solely on the investigatory record, forgoing a full evidentiary hearing.

Authorization of the board to compel pre-hearing statements from parties

With this power the board can require police officers to submit to an interview at the outset of an investigation."

For the 1992-1993 fiscal year the council increased the CCRB's budget to \$1,430,000, which provides for a staff of twenty-four. According to Chikes, this allocation represents the "first reasonable baseline budget for handling incoming cases." He argues the appropriation is fiscally sound. "If people have confidence there is an effective and expeditious civilian review process, they may not feel a great need to file a suit.... Where the amount a city budgets for civil suits [in police misconduct cases] exceeds the CCRB budget, civilian review becomes a strong dollars-and-cents argument."



## **Beyond the headlines: measuring the success of civilian review**

The negative press directed at the CCRB, fomented largely by the backlog of cases, has obscured other measures of performance. Of the 120 complaints that went to a full hearing in 1990-1991, the board has sustained 43 complaints, or 36 percent. Eighty-two percent of these complaints included allegations of excessive force.<sup>12</sup> Though representing a small percentage of the total caseload, the sustain rate sends a signal to the community that in those cases the CCRB does review, it is aggressively adjudicating abusive police behavior. Just as important, the chief of police has followed the CCRB's disciplinary recommendations in the vast majority of cases, even as the number of misconduct complaints, and sustained allegations, has risen.<sup>13</sup>

By their sheer numbers, citizens demonstrate renewed faith that the CCRB can do justice. Despite the case backlog, and the long wait for a hearing, the number of complainants coming forward with charges of police misconduct has increased significantly in recent years -- 439 complaints were filed in 1990; 501 in 1991. The police union itself has acknowledged the professionalism of the CCRB. About to enter a board hearing as the representative of an accused police officer, Andre Lewis, head of the MPD's union, was asked his assessment of the CCRB. He characterized the process as fair and objective, concluding nevertheless that there is no need for civilians to review police work.

According to board member Phinis Jones, the CCRB has high acceptance among those in D.C. who have been most victimized by the police. Jones once served on the staff of the city council member representing the southeast section of the city, the locus of what he describes as "overwhelming police abuse." The CCRB has been well received in that community, observes Jones, in part because of the board's community outreach. With more extensive

community education -- about how and where to file a complaint -- the number of police misconduct complaints, he contends, would be far greater. What would make the board more efficient in responding to complainants? In a word, answers Jones, "money" -- to hire and train investigators. "There's no question civilians are capable of conducting top-notch investigations." To attract the talent, he asserts, compensation must be in parity with the compensation paid to police department investigators. "Good investigators are the driving force of effective civilian oversight.... They can cut the [board's] work load in half."

The CCRB has a function beyond the adjudication of complaints; it can play a proactive role in identifying and remedying systemic problems. This role has evolved for the CCRB, according to Donald Temple, the board's current chairperson. The board has a cooperative working relationship with the D.C. police command; the mutual respect has been hard earned. "The integrity of the [civilian review] process," Temple claims, "has served both sides. ... They know exactly what our authority is, and they respect what we do." Over time the review of policing matters by the CCRB and police department has become more collaborative. As Temple describes it, "We meet at roundtables, share information. ... Most important, we alert the [police department] to pattern and practice issues that turn up before the board."

As it becomes institutionalized, the civilian review agency is well positioned to become a mediating force in addressing police-community relations. A mayor, who often has the authority to appoint the chief of police, may perceive the empowerment of a civilian review agency as the diminishment of mayoral power; the chief may perceive his or her disciplinary authority as weakened. And, yet, a civilian review agency -- as an independent voice speaking for the community -- can neutralize conflicts between the executive and the police command, and between police command

the executive and the police command, and between police command and the rank and file. The appointment of civilians to review police practices confers accountability on the community. With this new responsibility, civilians charged with oversight of policing can help to depoliticize crises in police-community relations. The police chief may stand to gain the most from the mediating influence of an effective civilian review system. "What is often missed by the politicians," according to Gabriel Chikes, "is the role the civilian agency can play as a 'buffer' or 'foil' that will ultimately strengthen the role of the chief...who is able to bring to bear the full weight of the community on issues regarding integrity, responsibility, and accountability."



## **CHAPTER 2:   OFFICE OF PROFESSIONAL STANDARDS CHICAGO, ILLINOIS**

The Office of Professional Standards (OPS) occupies the ground floor of an undistinguished office building on South Wabash Avenue, about a mile north of downtown Chicago. The plate-glass facade of 1024 Wabash is nondescript except that the inside of the large glass windows fronting the ground floor are lined with heavy vinyl sheets with a reflective surface. From inside OPS offices one can look outside, but it is difficult to see inside from the street.

Neither its name nor its offices suggest the Office of Professional Standards serves the general public. The insignia that appears in the center of each of the plate-glass windows makes clear this is an office of the Chicago Police Department, known as the CPD. In the lobby across from a receptionist -- who will take a complaint and forward it to an intake investigator -- is a room divided by a partition. A sign directs anyone entering the room to the appropriate side of the partition: police department employees to the left, others to the right.

While waiting to meet with an investigator, civilian complainants and accused police officers face each other from opposite sides

of a wall. As a practical matter such an arrangement may be entirely necessary. As a metaphor, this arrangement of complainant and accused aptly describes the point of entry into a complex, somewhat mysterious system whose stated purpose is to investigate citizen complaints of use of excessive force by police and to recommend discipline where such complaints are found valid. OPS investigates all shooting incidents involving police officers; its jurisdiction has recently been broadened to include complaints arising from domestic violence incidents. A complaint brought to OPS is turned over to a civilian staff of sixty-eight full-time investigators, who operate in units led by eight supervisory investigators -- the largest civilian unit charged with investigating allegations of police misconduct in the United States. The department is headed by the chief administrator and the coordinator of investigations. Between ten and fifteen administrative personnel provide support services to OPS.

Upon receipt of an excessive force complaint, OPS assigns the case to a field investigator, who obtains relevant police department documents and interviews the complainant, the accused officers, and other witnesses. OPS has no subpoena power; however, according to a directive of the superintendent of police, an officer who fails to cooperate with OPS is subject to disciplinary action. Likewise, document requests are treated "as if requested by the superintendent," according to Gayle Shines, who, as chief administrator of OPS, is a member of the superintendent's senior staff. When an allegation is sustained, OPS makes a disciplinary recommendation -- ranging from a reprimand to separation from the department -- and forwards that recommendation to the superintendent. To understand what happens subsequently requires considerable expertise. To a complainant the sustained charge may appear to drop into a bureaucratic hall

of mirrors. The history of OPS offers some insight into the operation of Chicago's civilian review system.

OPS has its origin in a CPD raid on the Black Panther Organization in 1969. Following accusations of abuse of authority in its execution of the raid, the CPD's Internal Affairs Division (IAD) conducted an investigation. A federal grand jury subsequently described the IAD investigation as a "complete whitewash."<sup>1</sup> It was not until 1972, however, that sufficient political will was generated to force an overhaul of IAD. In March of that year Chicago police officers stopped Dr. Herbert Odom, a black dentist, for failing to have a light over the license plate on the rear of his car. Odom was searched in the street by police. After he protested this action, Odom claimed, the police threw him against the car, handcuffing him so tightly that his wrists were injured.<sup>2</sup>

Odom happened to be a friend of the Honorable Ralph H. Metcalfe, a United States representative from Chicago's First Congressional District. Following public hearings on police misconduct, chaired by Metcalfe, a panel of prominent community representatives concluded the IAD's complaint review system was secretive, and biased in favor of police officers.<sup>3</sup> The panel found that of 1,156 complaints of police misconduct reported in 1971, IAD substantiated only 1.4 percent.<sup>4</sup> The panel recommended transforming IAD into an "entirely new independent investigative agency" that would report its findings and disciplinary recommendations to the Police Board -- and to the public.<sup>5</sup>

The civilian oversight unit, OPS, was established in 1974 as an independent department operated from within the superintendent's office. The public lined up to file complaints. In 1975, the unit's first full year of operation, the number of serious police misconduct complaints filed with OPS represented a 61 percent

increase over the total number of complaints filed with IAD in 1971, as reported by the Metcalfe Commission.<sup>8</sup> Since 1976 OPS has received, on average, approximately 6,500 complaints per year, approximately one-third of which involve allegations of excessive force and are retained for investigation by OPS.

However, the initiative to create the civilian oversight unit had been deferred to the police department -- OPS came into existence by executive order of the police superintendent -- and the objectivity and integrity of the OPS staff were suspect from the agency's inception. Critics objected to relatives of police officers serving on the OPS staff -- including the wife of a former police superintendent. The minority community charged that OPS investigators were slow to pursue and reluctant to substantiate complaints.<sup>8</sup> In a 1983 report submitted to Mayor Harold Washington's transition team, the Chicago Crime Commission described OPS as

"...nothing more than an extension of the police department....[Its] main function is to cover up for the police....[OPS] totally lacks credibility in both the black and white communities.... It needs to be restructured, restaffed, and relocated...so that charges of...improprieties against police officers can be investigated in an impartial manner."<sup>9</sup>

The report charged that the Police Board "has never exercised its full authority...has neither been proactive nor reactive.... It has been inactive."

One need only walk a complaint through the review process to understand why citizens quickly lost faith in the system. A



complaint sustained by the agency must pass through at least five interim procedures before the disciplinary charge is final:

Step 1: The accused's commanding officers must concur with the OPS recommendation (called a Command Channel Review), finding the investigation was sufficient.

Step 2: If the accused rejects the recommended disciplinary action, he or she may request that a Complaint Review Panel reconsider the case. Based on this hearing -- before a panel of rank-and-file officers, selected at random -- the department advocate makes a recommendation, which, along with the OPS recommendation, is forwarded to the superintendent.

Step 3: Where the recommended discipline is a reprimand and/or a suspension of five days or less, the superintendent's decision is the final departmental disposition (see Step 5).

Step 4: More serious penalties -- separations, or suspensions of six to thirty days -- are reviewed by the Police Review Board. The board is comprised of nine mayoral appointees -- currently all civilians, although this is not required by statute.

Cases in which OPS has recommended separation from the department are forwarded directly to the superintendent and, upon his or her concurrence, to the corporation counsel for "preparation of charges." Formal charges are filed with the Police Board, which then conducts a hearing.

Step 5: If the final decision of the superintendent or the Police Board is to impose discipline, the accused police officer can seek a further appeal through arbitration.

Step 6: If arbitration fails to reduce the discipline imposed, the police officer can challenge the penalty before the State Labor Board or in circuit court.

**What is not reported in the sustain rate**

From 1982 to 1991 OPS has sustained, on average, between 5 and 12.2 percent of complaints received alleging use of excessive force by police officers.<sup>10</sup> However, during that period an average of 70 percent of investigated complaints were "not sustained" -- that is, there was insufficient evidence to prove or disprove the allegation.<sup>11</sup> And a finding of "sustained" means merely that: the civilian fact finders conclude excessive force was used by a police officer. There is no sure way of determining just how often -- or in which cases -- OPS disciplinary recommendations are enforced. OPS findings and recommendations in individual cases are confidential CPD documents (final dispositions are reported only in aggregate numbers). The superintendent's recommendation is also an internal document. The Police Board releases only monthly summaries of disciplinary actions taken by the board. And through the appeal process reported disciplinary actions may be reduced or reversed.

Moreover, the data OPS publishes may inflate the number of complaints sustained. According to a study of selected samples of OPS complaints conducted by the Chicago-based Civil Rights

Study Group, the sustain rate for excessive force complaints may be as low as 1 to 2 percent.<sup>12</sup> According to the study, OPS takes jurisdiction over an excessive force complaint even when lesser charges are included. OPS characterizes as "sustained" complaints in which multiple allegations were made, even when the only allegation sustained was a "non-force" charge.

In a highly publicized critique of OPS based on internal police department audits conducted in 1987 and 1989, the CPD's Internal Affairs Division charged that "OPS bungled 40 percent of its investigations."<sup>13</sup> Based on a sample of 120 police brutality cases, the audits indicated that OPS was able to sustain the complainant in less than 1 percent of cases. The auditors also claimed to find material in OPS files that would have raised the sustain rate to 2.2 percent. Several auditors claimed that, even assuming the OPS sustain rate was accurate, leads in the agency's files indicated OPS should be sustaining at least 10 to 12 percent of complaints. Not surprisingly, IAD recommended moving OPS into the Internal Affairs Division, which would employ police officers to conduct complaint investigations. However, IAD added another quite startling recommendation, given its source. The audit proposed the creation of "a new five-member all-civilian board to monitor handling of excessive force investigations."<sup>14</sup>

Former OPS administrator David Fogel, a penal systems expert and sociologist, suggests CPD's commitment to discipline appears even weaker if a sustain recommendation is tracked through the review system. In a 1987 memorandum to Mayor Harold Washington, Fogel reported the Police Board failed to sustain 70 percent of all OPS separation cases and 15 to 20 percent of all suspension cases.<sup>15</sup> Of those disciplinary recommendations remaining, he added, the arbitrators did not sustain penalties or reduced them in more than half of the cases he submitted for arbitration.<sup>16</sup> His bottom-line assessment described OPS as virtually dysfunctional:

"The appearance of doing a thorough investigation with all of full due process (and endless unnecessary reviews) for all, actually operates to immunize police from internal discipline, increases their overtime, leads to an enormous 'paper storm' and has institutionalized lying."<sup>17</sup>

Fogel rejected the IAD audits as a political ploy by police officials to get rid of civilian review of police brutality complaints. However, in this memorandum to Mayor Washington, proposing a reorganization of OPS, the chief administrator argued that even operating at its best, OPS was merely measuring up to the meager standard of the 1974 directive that created the agency: political accountability. The underachievement of OPS, he suggested, was the result of an "imperial perspective" toward the civilian unit. He described OPS investigators as "irremediably incompetent," a judgment corroborated by the Civil Rights Study Group findings that a large percentage of OPS investigators had previously worked for the CPD; were on the waiting list to become police officers; or had been recommended for employment by a politician or high-ranking officer.<sup>18</sup>

Fogel advocated replacing the imperial perspective with a "consumer perspective," and put his thesis to a test in an in-house experiment. He corrected for the effects of nepotism and cronyism in hiring by creating an elite unit comprised of three of the agency's most skilled investigators, who were led by their most experienced supervisor at OPS. In 1988 the unit sustained 40 percent of 101 complaints, compared with a 3.6 percent sustain rate reported by the rest of the entire OPS staff -- a result that, though not conclusive, endorses a civilian perspective and a strong sense of mission in the investigation of police misconduct.<sup>19</sup>

**When the police department "owns" civilian review:  
Three ways the police beat the system**

The police department's "imperial perspective" toward civilian review not only takes the teeth out of the investigative function, but the civilian unit may become an unwitting accomplice in what can only be described as street scams designed to elude the scope of the investigation.

1. The Trilogy

The interaction with the police that leads to a civilian complaint often leads to the arrest of the complainant. Defense attorneys have long recognized that many of these arrests are preemptive -- an attempt by the police officer to immunize him- or herself from an excessive-force complaint. So frequently are these preemptive arrests made -- disorderly conduct, resisting arrest, and battery -- that defense attorneys have coined a term to describe the charges: the trilogy. The arrest becomes exhibit A in the police officer's defense against an excessive-force charge.

Flint Taylor is a Chicago civil rights lawyer who has litigated scores of police brutality cases against the CPD. Based on his analysis of OPS and IAD files obtained through discovery,

"...[N]either OPS nor IAD tracks the incidence of trilogy arrests involving individuals who bring excessive force complaints. Unless a citizen is knowledgeable enough to bring a false-arrest charge against an abusive police officer, the [OPS/IAD] investigator is none the wiser. OPS could easily

review the complainant's statements, included in every complaint file, to determine whether the complainant has been arrested. And, if so, open an investigation to determine whether the arrest is a cover-up for police brutality. This is not done."<sup>20</sup>

## 2. "Repeater Beaters"

By directive of the police superintendent, OPS investigators are not allowed to check an accused police officer's prior complaint record when initiating an investigation. According to Taylor, this directive says, in effect, "don't be too aggressive in addressing the problem of chronic abusers of police power. Based on the data I've seen, the old saw that cops who make the most arrests receive the most complaints is not true... Internal CPD documents -- from which I can only divulge statistics -- show that between 1988 and 1991, fewer than 200 officers, less than 2 percent of the force, were responsible for 25 percent of the complaints, nearly 3,000. Where there's a pattern of abuse, or multiple complaints, investigators should be alert -- and [at OPS] they're not."<sup>21</sup>

### 3. One-on-Ones: No Credibility

The true test of the independence and objectivity of a civilian review process is the one-on-one situation -- where the truth of an excessive force charge rests on the complainant's word against the police officer's word. In one-on-one cases filed with OPS there appears to be a presumption against the complainant. Speaking under oath in a deposition, an OPS supervisor acknowledged that in a one-on-one situation the credibility of the parties is a wash.<sup>22</sup> Absent corroborating witnesses, the

complainant has no standing to bring an excessive force complaint. Prior to 1990 the one-on-one rule applied where witnesses had any relationship with the complainant. Such a witness -- even a neighbor -- was in effect invisible when it came to weighing the credibility of the complainant and the accused police officer.

The current OPS chief administrator states it is agency policy that investigators weigh carefully the credibility of the complainant and accused police officer -- even when no witnesses are present.<sup>23</sup> However, a pattern of complaints filed with OPS between 1973 and 1986 alleging systematic torture of arrestees suggests the complainant is not believed when it his or her word against the word of the police. During that period 25 complaints of police torture filed against officers in CPD's Area 2 were not sustained -- 17 complaints were investigated by OPS; 9 by Internal Affairs (1 case remained open).<sup>24</sup> The allegations included beatings, hangings, application of electroshock, and the covering of victims' heads with plastic bags. When public pressure forced a reinvestigation in March 1990, OPS investigators concluded the preponderance of evidence indicated systematic abuse had been inflicted on as many as fifty victims. In a memorandum to the police superintendent, written in November 1990, the chief administrator recommended separation from the department for the commander of Area 2, as well as two of the unit's detectives.<sup>25</sup>

### **The wall of silence**

Police co-option of the civilian review function reinforces the blue wall of silence -- the unspoken rule that an officer will not bear witness against another officer charged with misconduct.

Its "silence" makes the code no less real. Civil rights lawyers in Chicago have won recognition of the code of silence as a sanctioned police department "policy and practice" that was systematically enforced to violate citizens' civil rights.<sup>26</sup> Judicial recognition of this sanctioned policy and practice can, and has, led to significant civil damage awards. For those who are inclined to rationalize police abuse of power as an aberration, or who remain skeptical that an unspoken pact can be enforced department-wide to stonewall investigation of police misconduct, consider the Chicago "street files" case.<sup>27</sup>

In May of 1981 Sheila Pointer, a 12-year-old girl, was raped and bludgeoned to death, and her 10-year-old brother, Purvey, was beaten unconscious. The police, anxious to make an arrest, relied on contradictory statements from Purvey -- who had suffered a coma that caused memory lapses -- as grounds for arresting George Jones, a neighbor of the crime victims. The arrest was made notwithstanding the fact that Purvey's description of Jones differed in several significant respects from the description of the perpetrator given by Purvey.

The police officers' report on the interview with Purvey, including the contradictions, went into a "street file." As a matter of procedure, street files were maintained as internal police department documents, but not turned over to the state's attorney in response to a discovery request. The state was given official files gleaned from the street files. When new evidence was revealed about the perpetrator of the Pointer crimes, including a suspect who fit Purvey's description, a Detective Laverty entered a report on the exculpatory information in the street files. When the report was discovered by the officers who had arrested Jones, Laverty was told he would have his career destroyed if he interfered. Unknown to Laverty, George Jones was arrested for the crime and was about to go to trial when Laverty,



reading of the case in the newspapers, notified Jones's counsel of the street files and the information they contained. The presiding judge declared a mistrial; the state's attorney dropped all charges.

For having offered the department's street files to the courts without authorization -- even though the files revealed information that proved the innocence of a man likely to be wrongly accused of murder -- Laverty was "charged with a disciplinary infraction ... transferred out of the detective division, ostracized by his fellow officers, and assigned to ... the monitoring of police recruits giving urine samples."<sup>28</sup> In a separate federal action to enjoin the practice of maintaining street files (the policy was terminated), Judge John Coffey, writing for the Court of Appeals in the Seventh Circuit, observed that Detective Laverty, far from deserving censure, should be considered for a "commendation for his adherence to the principles of honesty, decency, and justice."<sup>29</sup>

The wall of silence is no mere metaphor. As employed by the police, it is a code of active resistance that, by definition, compromises an investigation of police misconduct that is subject to police control. Harvey Grossman, legal director of the Chicago ACLU, warns that the lesson of the street files case not be lost on the proponents of civilian review:

"Cook County has the largest integrated court system in the world.... More than 25,000 lawyers practice here. And yet until the Jones case not one of them knew of -- or revealed -- the CPD's internal policy of keeping secret files that were impervious to discovery by defense attorneys."



### CHAPTER 3: OFFICE OF CITIZEN COMPLAINTS SAN FRANCISCO, CALIFORNIA

"At one time ... the San Francisco Police Department's self-investigations unit, known as the Internal Affairs Bureau, had pieces of one-inch-square paper displayed at the front counter where complaints of misconduct were received. A sign over the scraps said: 'Write your complaint here.'"<sup>1</sup>

The message in the SFPD's joke was quite clear: Civilian complaints would not be taken too seriously. The department attitude toward complaint intake seemed to hold for the investigation process as well. In 1980, "a year before a campaign for civilian review of the police began to heat up," the SFPD did not sustain a single complaint of excessive force, out of 301 received.<sup>2</sup> Throughout the prior decade the SFPD had been accused of discriminatory hiring practices, mistreatment of rape victims, mishandling of domestic violence incidents, and abusive conduct in minority neighborhoods and at political demonstrations.<sup>3</sup>

Working collaboratively, the city's Bar Association and ACLU affiliate proposed a legislative response: the Office of Citizen Complaints (OCC). Though approved by the Board of Supervisors' Finance Committee, the charter amendment was rejected by the full board in 1977 and again in 1978. Each time the opponents dragged out the usual misconceptions as a rationale for voting no: civilians could not do the job; police morale would suffer; crime would soar; it would cost too much.

The Board of Supervisors was not ready for civilian review, but by 1982 most voters were. A city-wide coalition put the OCC on the ballot and more than 60 percent of the electorate voted yes.<sup>4</sup> The advocates got essentially what they wanted: an independent agency, outside the SFPD chain of command, staffed fully by civilians, and with authority to investigate complaints and make disciplinary recommendations. Ultimate disciplinary authority was retained by the Police Commission, a five-member body of civilians appointed by the mayor with authority under the city charter to manage both the SFPD and OCC.

#### **The Office of Citizen Complaints: How it was designed to work**

A 1990 San Francisco Chronicle article described the OCC as having "in theory, one of the best systems for resolving complaints of police misconduct in the nation."<sup>5</sup> OCC has broad jurisdiction to investigate police conduct in violation of federal, state, or local laws, as well as violations of police department policies or procedures, including failure to perform a required duty. A complaint brought to the OCC is assigned to one of the agency's eleven investigators. The results of the investigation -- which include interviews with the complainant, the accused officer, and witnesses -- are passed on to the

civilian supervisors and, ultimately, to OCC's director. The director, who is appointed by the Police Commission, makes a preliminary finding to (1) dismiss the complaint outright as unsupported by the evidence; (2) rule the officer's conduct was proper; (3) rule that misconduct occurred and pass a final report to the police chief with a disciplinary recommendation; (4) find there was insufficient evidence to resolve the complaint; or (5) schedule a hearing to investigate police department policies and practices, which may result in an OCC recommendation to amend or revoke existing policies and practices, or create new ones.

Complainant or accused can request an "appeal" of the OCC recommendation -- forestalling the chief's review -- by requesting a hearing before one of the OCC's eighteen independent hearing officers. Hearing officers, who serve pro bono, are recruited from the San Francisco legal community. The hearing officer's finding of fact is binding on OCC's director. If the director sustains a complaint, that disposition along with a disciplinary recommendation is forwarded to the chief. The chief can (1) "remand" a case to OCC, challenging the investigatory findings or the disciplinary recommendation; (2) conduct a disciplinary hearing and impose discipline of a ten-day suspension or less; or (3) forward a case in which a more severe penalty is warranted to the Police Commission. Commission members meet weekly to review complaints, conduct hearings, and perform other responsibilities related to overseeing the police department and OCC.

The merits of the model notwithstanding, the same San Francisco Chronicle article describing the OCC system as the best in the country described the OCC's performance as the worst in the country. The paper cited the OCC's record of 129 complaints sustained out of approximately 10,000 received between October 1983 and December 1989, an average of 1.2 percent.<sup>6</sup> Of those 129

OCC disciplinary recommendations; no discipline was imposed in 64 cases; in 35 of the remaining cases, the chief of police issued reprimands, or suspensions of ten days or less.<sup>7</sup>

**What went wrong? The "non-implementation era," 1982-1987<sup>8</sup>**

OCC had been created with significant citizen support and implemented by a die-hard opponent. According to Mary Vail, a San Francisco attorney and an early advocate of civilian review, "what Ronald Reagan was to the Legal Services Corporation, Mayor Dianne Feinstein was to civilian oversight agencies in police departments."<sup>9</sup> The Feinstein administration's first OCC director was a "hands-off" manager whose laid-back style sent a signal that the police had nothing to fear. His replacement, Frank Schober, a former director of the California National Guard, appeared bent on actively subverting the agency's mission.

According to the ACLU's John Crew, under Schober the "OCC's) and entire community outreach budget was used to create a public relations campaign for the police department -- including billboards that read, 'If you think we're doing a good job, let us know.' The investigative function was de-emphasized. Low sustain rates were the result." A report prepared by the San Francisco Bar Association found that Schober had ordered OCC staff to conduct investigations from their desks; that confidential information in complainants' files was shared freely with accused officers and with the district attorney's office; and that rather than forward sustained cases to the police chief, the director had arrogated to himself the position of disciplinarian, a role in which he was quite gentle. He referred officers for counseling or had a talk with the officer's supervisor, claiming this non-acrimonious approach was improving

police conduct, but offering no evidence to support his contention.<sup>10</sup>

Meanwhile the Police Officers Association (POA) persisted in what the San Francisco Chronicle described as "fierce opposition" to civilian oversight of police, which included bringing two suits challenging OCC rules and procedures.<sup>11</sup> The POA continued to argue the police could police themselves. A POA vice president has set out this position for the record: The police department's Internal Affairs Bureau (IAB) personnel are more familiar with policing operations, are better able to evaluate allegations of misconduct, and in fact are "a lot tougher on police officers than OCC."<sup>12</sup> The Chronicle published data showing the IAB had sustained 9 percent of police misconduct complaints, pre-OCC -- compared with the OCC's almost negligible 1.2 percent rate between 1983 and 1989.<sup>13</sup>

As the POA allies decried the ineffectiveness of the OCC, the POA membership acted out its defiance of civilian oversight and civil order. In 1984 police engaged in

"...detention en masse of the patrons of a Van Ness street bar, crowd control and intelligence abuses before and during the 1984 Democratic Convention, and a police academy class post-graduation party involving acts of sexual harassment and public drunkenness."<sup>14</sup>

OCC had a record on which every critic could stand. Coming from OCC's adversaries such criticism was a consummate act of political double dealing. The criticism often ignored the fact that OCC had been instituted as a virtual nonentity as a result of its ineffectual directors; and the empirical data failed to account for the fact that historically complaints sustained by Internal Affairs included far more technical violations of

internal police department guidelines than, for example, use of excessive force.<sup>15</sup> OCC was not working -- but by design. According to Peter Keane, a past president of the San Francisco Bar Association,

"You've got to remember that the system was set up by people who didn't want it in the first place. They did everything they could to sabotage it.<sup>16</sup>

"Historically, San Francisco has never punished errant officers. ... It's a problem of historical attitude on the part of the department, and it's a problem of attitude on the part of the city. Even with OCC operating...at its full strength and doing whatever it can, the system is designed to fail."<sup>17</sup>

Frank Schöber, criticized harshly by the Bar Association report and under scrutiny by a mayoral task force, resigned in mid-1987. Civilian review advocates hailed his departure. The celebration proved to be premature. The failures of OCC went beyond the shortcomings of the agency's directors. The model had flaws. Mary Vail has warned that a preoccupation with who runs the agency may conceal structural weaknesses in the system: A victory at the ballot box or in the legislature "is the beginning, not the end; getting rid of problem people should never be confused with lasting systemic reform."<sup>18</sup>



## Fighting the institutional battles

In September of 1988 members of the United Farm Workers Union (UFW) staged a demonstration in front of the St. Francis Hotel.<sup>19</sup> The Tac Squad, the SFPD's tactical emergency response unit, rushed to the site. In dispersing the demonstrators UFW leader Dolores Huerta was critically injured, suffering broken ribs and a ruptured spleen, which necessitated twelve blood transfusions. News media accounts reported that Huerta and others had been injured by Francis Achim, a Tac Squad member, wielding a police baton.<sup>20</sup> Huerta filed a complaint with OCC. No longer certain of a sympathetic mayor or an impotent OCC, the SFPD began its own parallel investigation. The OCC's recommendation to sustain Huerta's excessive force charge was forwarded to the Police Commission along with a conflicting recommendation from the chief and Management Control (the SFPD's internal investigations unit that replaced IAB).

Using his statutory authority as a charging agent -- which the OCC drafters saw as an administrative pass-through -- the chief reversed the OCC finding and refused to send the case on to the Police Commission. The SFPD's parallel investigation stymied the civilian unit, literally cutting it off at the pass -- the chief. As the chief challenged the Police Commission to defy his authority, a grievance claim lodged by Achim revealed darker motives driving the institutional crisis. In processing Achim's claim it was discovered police management might have altered or removed items from Achim's personnel file. Huerta filed a second complaint, alleging personnel file tampering (Huerta II). Among the accused was Deputy Chief Jack Jordan, brother of Police Chief Frank Jordan. Questions were raised about a cover-up of culpability in Huerta I. Indeed, a document lifted from Achim's file included a recommendation, made just prior to the Huerta beating, that Achim was in need of psychological counseling.<sup>21</sup>

The chief threatened to resign if ordered to file a verified complaint in Huerta I, and the Police Commission caved, electing not to hear the case. In effect the Police Commission upheld the chief's power grab. Now he could trump OCC's statutory authority at will. Flush with victory, the chief claimed he would decide whether charges in Huerta II would be presented to the Police Commission based on his review. Not surprisingly, Management Control exonerated the chief's brother, while OCC found all four accused officers culpable and recommended more serious charges than did the police department. Public outcry over the blatant conflict of interest raised by the case forced the chief to delegate review of Huerta II to Deputy Chief Willis Casey. All four officers, including Jack Jordan, were charged, and many observers believed the system had triumphed.

Mary Vail's caveat applies. Denying the chief authority to review Huerta II was a Pyrrhic victory. The system was compromised. SFPD's Management Control had wrested charging authority from OCC. Vail warns of hollow victories that cede institutional power. Such "victories" become precedents for further compromises of the institution's power. The "losers" in such a contest -- adversaries of civilian review -- are quietly pleased. Faint-hearted politicians profess strong support for a weakened agency. The advocates must again fight battles already won. Serious abuse of police power goes unchallenged. Here's how police really beat the system: the OCC sustained charges of tampering with a personnel file. Management Control charged the officers had merely maintained the files negligently. "At best the Police Commission [was] denied authority to hear all the allegations.... At worst Management Control perpetrated a cover-up by conducting a 'show trial' on the most trivial issues."<sup>22</sup>

## Reform on the installment plan<sup>23</sup>

By 1990, eight years from the OCC's inception, hard-won innovations enabled it to begin to operate as it was intended. Former mayor Art Agnos, who took office in 1988, replaced the Police Commission with new members. Under Agnos, the OCC's budget increased by more than 57 percent, from \$693,198 in fiscal year 1988-1989 to \$1.09 million in 1989-1990. Following the recommendations of the San Francisco Human Rights Commission -- that OCC "must be strengthened...through adequate funding, training and support"<sup>24</sup> -- the Police Commission allocated \$1.4 million to the agency for 1990-1991, including funding to add three additional investigators. In late 1989 the San Francisco Bar Association issued an eight-point plan recommending procedural changes that would give OCC the authority and political clout needed to do its job. The San Francisco Human Rights Commission concurred, almost point for point, in its own report issued simultaneously. A number of these recommendations have been implemented, including:

1. Allowing OCC to hire its own staff attorney. Previously Management Control attorneys had been prosecuting OCC cases -- often with little conviction or preparation.
2. Requiring the chief of police to keep accurate records of the outcome of cases sustained by OCC. In the mid-'80s cases were "lost" while awaiting the chief's disposition.<sup>25</sup>
3. Granting OCC the authority to ensure a complaint can be brought to the Police Commission for a hearing. It took nearly two years from the police chief's stonewalling of the Huerta complaints, but civilian review advocates

finally prevailed. In 1991, as a result of an administrative reform approved by the Police Commission, the OCC was given authority to bring a verified complaint before the commission notwithstanding the chief's disagreement. In 1990-1991, ten years after the SFPD failed to sustain a single complaint of excessive force, the OCC sustained 40 allegations of unnecessary force, 5 percent of the 807 allegations fully reviewed in that category. In this two-year period the OCC has sustained, on average, 7.7 percent of all complaints received, or more than six times the 1.2 percent sustain rate for the 1983-1989 period, as reported by the Chronicle. The era of OCC's "non-implementation" appears to be over. As procedural reforms and budget increases are implemented, a true test of the OCC's potential may be possible. However, depending upon who is mayor and whom the mayor appoints to the Police Commission, the Office of Citizen Complaints could be subjected to an ongoing political contest over its role. The acting police chief is supportive of OCC. However, the new mayor is none other than former police chief Frank Jordan, who staked his job on denying Dolores Huerta the opportunity to bring her complaint of excessive force before the civilians on the Police Commission.

### **Three advocates assess OCC and civilian review**

In October 1992 two civilian review advocates, active in the effort to strengthen OCC, and the agency's current director took part in interviews in which they addressed issues central to the process of introducing civilian oversight of policing. The advocates are Mary Vail, a staff attorney with the National Labor

Relations Board in San Francisco, and chairperson of the Police Review/Office of Citizen Complaints Committee of the Bar Association of San Francisco<sup>26</sup>; and John Crew, director of the Police Practices Project of the ACLU/Northern California. Alfreda Davis Porter is the executive director of the San Francisco Office of Citizen Complaints; she is a former executive director of the Civilian Complaint Review Board in Washington, D.C.

On political obstacles to civilian review

PORTER: The history of OCC is not so different from the history of the CCRB in Washington, D.C. In both [cities] it has taken ten years to get to the point of having basic operating requirements.

CREW: Voters created OCC over strong objections of the mayor [Feinstein]...which led to lack of funding, staffing -- and lack of Police Commission support. The chief was on the commission's agenda every week. OCC was squeezed in for a few minutes every few months.

VAIL: But we've had as many cases killed by having the wrong people in charge [at OCC] as by the police chief or the commission. The wrong people were picked to lead the office. And the wrong director sends the wrong signals regarding the priorities of case management. Cases that went to a hearing were having problems being sustained because of poor investigations by OCC.

On winning turf battles

PORTER: It's essential to ensure procedural safeguards are in place. Turf responsibilities must be clearly delineated. ... The [1992] amendment to D.C.'s charter, which gives the agency the resources and authority to do what it was intended to do, was first proposed in 1987. It took six years, even when everyone understood how unworkable the situation was, to get a bill passed.

CREW: It's important to act quickly [after enactment of enabling legislation] to make sure the agency's authority works and is not watered down in implementation. Advocates are in a better position now to know what to do... [but] civilian review "professionals" are sometimes reluctant to become advocates for the process. ... I believe you can separate political advocacy from the professionalism required to perform the agency's function...

On community outreach

PORTER: One of the failures of civilian review boards is we have not used public outreach effectively. We are set up to serve the community; not to involve the community makes no sense. Of course part of the problem is funding. ... But we've lacked sophistication in recognizing the importance of building constituencies -- working with legislators, community groups. We need to be reaching out and aggressively lobbying for support.

CREW: There was a dramatic moment at a Board of Supervisors hearing.... One of the persons at the hearing was OCC's chief investigator, who had come from the Latino community -

- an important force in winning approval for the OCC. He pointed his finger at us, at me, and said, "You created us, then abandoned us -- and now you come here to complain the agency has developed antisocial behavior.... Well, where have you been?" And he was right. Who should be involved? Community advocates, also political leaders, and institutions charged with implementing the agency.

### On police resistance to civilian oversight

CREW: The greatest obstacle to civilian review: police resistance. Police will oppose civilian review on all fronts: subpoena power, budget, hearings, disciplinary authority.

VAIL: Police unions make the Teamsters look like wimps in terms of political clout. The police claim civilian review will hurt morale, and politicians scramble to shore up morale. If a machinist claimed morale was down, what do you think management would do?...

CREW: The big picture is often obscured: Who are police there to serve -- the values and interests of the police department or of the community members? The fact is the rank and file are often out of step with the values and goals of the community they are charged with serving. ... An open civilian review process allows the police department to explain why it may be necessary to do such and such. ... But if the police are using a policy the public doesn't understand and accept, then it probably ought not be used.

On procedural obstacles in the review process

PORTER: The [OCC] process gives cops many bites at the apple.

VAIL: Police get to do a dress rehearsal before OCC... examine the evidence. They know that "if we lose here, we'll take a different tack next time." The OCC record is confidential ... so it's not available for impeachment. The cops shouldn't be able to give three different versions because they're in three different forums....

I believe we should provide pro bono lawyers for complainants at OCC hearings. Complainants may not be well educated; they may not speak English... [police officers] put on their case with skilled union

VAIL: The process is not open enough. OCC's preliminary disposition is given to the complainant and the officer to read...but they are bound not to talk about it in public.

The complainant does not even attend the chief's department hearing.... And the chief can make the [Police Commission] hearing go away if he gives a "mini-discipline"...a ten-day suspension or less.

PORTER: The commission reviews the record. Hearings are open, but there is no requirement to take personal testimony. And an individual member may take testimony, so the full commission may see only a transcript.... There may be no opportunity to assess credibility.

CREW: The OCC hearing component is real important.... And should be utilized more. [The hearing] was not intended as



an "appellate" review but as a complementary tool in the fact-finding process. Hearings were seen as important in one-on-one cases.... Both sides would appear before the hearing officer for purposes of assessing credibility.

On the role of the civilian review agency in making policy recommendations

PORTER: A civilian review function focusing exclusively on individual police officer conduct is doomed to fail. The role [of the agency] is to examine systemic problems. ... This is something every review board ought to do. ... Much of the source of misconduct in individual complaints lies in policies, rules, and practices.

VAIL: Pattern-and-practice investigations can be very important in identifying areas of friction. This can make the top officer more proactive in making changes in the traditional culture, which can be counterproductive. [But] if you're not doing aggressive investigation, enlightened policies will have little effect. ... Rules have got to be enforced.

CREW: It's important that the policy role is joined with the role of investigating complaints. ... Civilian review can and should provide a community perspective in all aspects of policing. Police department training can lead to tactics that result in misconduct and alienation of community members. This training is too often left to police department insiders.

On the effectiveness of civilian review

CREW: The ACLU is OCC's number one supporter and its number one critic. We think it's not up to potential -- but light years ahead of where it was ten years ago. Disciplinary action is more likely.... There is greater willingness on the part of citizens to come forward.

PORTER: This is a no-win situation. A percentage of rank-and-file officers and of the public will be dissatisfied. The goal is to make the process as professional as possible. .... Now we don't have too many sustained cases being returned -- 95 to 98 percent concurrence [by the chief].

I'm not sure the sustain rate is the only valid indicator of a review agency's effectiveness. .... Many are functioning at 40 percent of capability when a judgment is made on the basis of sustain rates. .... We don't, but should, consider deterrence or reductions in civil damage awards, which may require more sophisticated analysis. These measures are as important as sustain rates.

CREW: I have no doubt, having sat through many hearings -- even when we lost -- that those officers think again about having to come before a hearing officer or the Police Commission and testify under oath in defense of their actions.

There's no magic number in sustain rates. Although I did criticize OCC for a 1.5 percent rate several years ago,

which I felt was not up to par. Nine percent [in 1989] shows an improvement -- but that is still too low in my estimate, due to understaffing. OCC [at one time] had a caseload almost six times as large as its predecessor agency [IAB] for each investigator. ... Today OCC still has four times as large a caseload as Management Control. That's why investigations are measured in months.

PORTER: Timeliness is critical. The agency must process in a timely fashion. ... There is no value in disciplining two years after the event. The community needs to see the system respond.

CREW: The battles are never over. But getting rid of civilian review is no longer an issue. Even conservative editorial boards have recognized the need.... I make the analogy to the Miranda decision in the late '60s. Every police officer objected. And yet today virtually all policing experts agree Miranda has professionalized policing. A similar process is happening with civilian review.

Ms. Thomas: One last question on this issue. My last visit to the Academy was about two years ago, and I noted that at that time, 90 percent of the policeman's training...hours were spent in...crime prevention and crime-oriented activity, when in fact over 60 percent of his time is spent in human relations and the 40 percent is spent in crime activity. Have we done anything to balance those teachings, or are those things beyond our control...?

Captain Witt: You know, much of those things are beyond our control.... The requirement under the State of Florida...is 380 hours of training. The state requires 24 of that 380 to...deal with social problems, social sensitivity. The only impact we've been able to make, and it's sufficiently great, is to cause that to be almost tripled, but we have not been able to create a greater shift in overall curriculum as you have suggested. No, we haven't.

Excerpt from hearings into police policies and procedures conducted by the Overtown Blue Ribbon Committee, February 17, 1983.

The committee was created following a riot that broke out after a police shooting of an Overtown resident.

## **CHAPTER 4: INDEPENDENT REVIEW PANEL DADE COUNTY, FLORIDA**

On May 6, 1980, the Dade County Community Relations Board released its regular midyear report, which included the following assessment:

"From every angle, every perspective, the Community Relations Board perceives that Dade County is in a state of crisis. ... In our law enforcement agencies, there is police brutality, including murder; there are allegations of police corruption involving alliances with drug dealers and theft of confiscated money. ... Fear and anger are prominent among our citizens. ... The potential for open conflict in Dade County is a clear and present danger."<sup>1</sup>

The board's trepidation was in part a response to five highly publicized incidents of alleged police misconduct that had occurred over the previous seventeen months -- including the battery of Nathaniel LaFleur, a schoolteacher whose home was

broken into by narcotics officers who had the wrong address on their search warrant; and the arrest and alleged murder of Arthur McDuffie, who was apprehended with use of force after a high-speed chase.<sup>2</sup> McDuffie had run a red light while riding a motorcycle and was arrested after crashing to a stop. He died from massive head injuries, which the county medical examiner concluded were not solely the result of the motorcycle accident.<sup>3</sup>

Four officers were indicted for manslaughter and tampering with or fabricating evidence. At trial a fifth officer came forward and acknowledged his participation in the violence against McDuffie; nevertheless, on May 17, 1980, all four officers were acquitted by an all-white jury.<sup>4</sup> McDuffie and the four other alleged victims of police abuse were African-Americans. The board's assessment proved correct. Widespread rioting began throughout Dade County the evening of the 17th. Violence and destruction persisted for the next nine days, resulting in eighteen deaths, more than a thousand arrests, and between \$100 and \$125 million in property damage.<sup>5</sup>

In response to the LaFleur and McDuffie incidents, the county commissioners approved -- following negotiations that required "delicate balance and compromise" -- the creation of the Dade County Independent Review Panel (IRP), which would perform civilian review and ombudsman functions within an autonomous civilian agency.<sup>6</sup> Delicacy was required by the plans' proponents in the face of blunt opposition by the police. During the police department's investigation of the LaFleur incident, media organizations and citizens' groups had proposed an open review of the investigation files and the creation of a civilian review board. Dade County's public safety director adopted a policy statement explicitly refusing to consider either recommendation.<sup>7</sup> The director's response was true to a tradition of "get tough" policing, embodied by Walter Headly, long-time chief of the Miami

Police Department until the late sixties. The "Headly policy" -- described in a report by the National Commission on Causes and Prevention of Violence -- involved "keeping an underprivileged and restless minority orderly and cowed by a constant visual display of force in its more ominous and symbolic forms, e.g., shot guns and police dogs, coupled with harshly executed acts of stopping and frisking...and occasional acts of brutality."<sup>8</sup>

### **Passing police muster: introducing civilian review to Dade County**

It appears that IRP's statutory existence was predicated upon protecting the authority of the Metro Dade Police Department (MDPD) to police itself. Indeed, one of IRP's major goals was "to reestablish [if warranted] the confidence of the community in the ability of the police to police themselves."<sup>9</sup> IRP set out to prove it was no enemy of the police, and succeeded. An assessment of the agency's first year of operation by the Criminal Justice Council concluded that even though operating in a "highly charged emotional and politically sensitive arena," the panel had remained "rational and stable.... [T]he concern the IRP was engaged in an anti-police 'witch-hunt'[was] misguided."<sup>10</sup>

It should have been no surprise IRP passed muster. IRP was granted sweeping jurisdiction, which by definition limited its capability to investigate allegations of police misconduct. IRP was charged with receiving and reviewing serious complaints or grievances and providing a public forum for "airing serious [complaints or grievances] made by the public against any employee, agency or instrumentality of Metropolitan Dade County."<sup>11</sup> In its first three years IRP reviewed complaints and grievances involving forty county departments and agencies. To perform this mission, the county commissioner in 1980 allocated a

budget for one part-time executive director. Today the IRP staff includes a full-time executive director, who is appointed by the chief judge of the Eleventh Judicial Circuit; two community relations specialists, who review and conduct limited investigations of the internal record produced by an accused county agency; and a small clerical staff.

Though its jurisdiction is broad, IRP's investigatory power is deferential. When a complaint is filed with IRP, the director of the accused agency is "requested to initiate an investigation"<sup>12</sup> and report to IRP, which reviews the record and issues its own assessment of the results of the internal investigation. Once satisfied an investigation is complete, IRP sends the complainant a full investigation report, including any supplemental investigations IRP has conducted. If dissatisfied, the complainant can request a meeting with a representative of the accused department and a committee of the IRP, which includes one or more staff members and at least one representative of the six-member civilian panel. The Board of County Commissioners appoints five panel members from a list of nominees submitted by the following Dade County organizations: the Community Relations Board, the Community Action Agency, the Dade County League of Women Voters, and the Dade County Bar Association. The county manager appoints one member of the panel.

A complaint may be resolved at the preliminary stages through mediation, and many are. If the complaint remains unresolved, the IRP staff may conduct further investigations, after which a final report and recommendation is considered by the full panel. Based on its review, which may involve interviewing parties to the complaint as well as witnesses, the panel can recommend (1) corrective action by the accused department; (2) imposition of discipline on the accused department member; (3) criminal action against the accused department member; (4) conclusion of the



complaint on grounds the accused's actions were proper; (5) conclusion of the complaint because the complainant is satisfied or no longer wishes to pursue the matter, or because the complaint cannot be resolved due to lack of independent eye-witnesses or substantiating evidence; or (6) revisions in the county policies or practices.<sup>13</sup> IRP's disposition of a complaint, including any disciplinary recommendations, is not binding upon the accused individual or department.

### **Ombudsman or aggressive fact-finder? Placing limits on accountability**

Wes Pomeroy, IRP's executive director, believes that in its role as ombudsman -- with authority to issue policy and practice recommendations after reviewing police officers' conduct -- IRP can make its most meaningful contribution to improved policing. The police command maintains responsibility, and accountability, for self-investigation. IRP monitors the process. However, to be effective the ombudsman must be -- and must appear to be -- a constructive critic. Pomeroy suggests that "to develop support for independent review you have to develop a relationship with the [police department's] command staff.... By keeping open lines of communication we can go in and tell the senior command, 'The investigations you're getting out of the field are no good....' What we're really trying to do is address systemic issues." This is sound management policy; it is also a policy that reflects the real limits upon Pomeroy's influence. IRP has no subpoena power. The agency's ability to reinvestigate a faulty police investigation depends upon the cooperation of police witnesses and Internal Affairs personnel.

IRP appears to have a mission at odds with itself: to investigate complaints, but limit the police department's exposure to public criticism. In recommending the ombudsman model, the Dade-Miami Criminal Justice Council observed that the ombudsman's job was to improve administration, not punish administrators.<sup>14</sup> The decision not to grant IRP investigatory authority was based on the good-faith presumption that there was no reason to believe police department investigations were "biased, inaccurate, or otherwise unduly unreliable."<sup>15</sup> The real danger, according to the council, was that IRP would become "too solicitous" of citizen interest. In a first-year review of IRP the Criminal Justice Council applauded the agency for having not engaged in "the questionable practice [of] generating and/or soliciting citizen complaints."<sup>16</sup>

Even before its inception, critics assailed the ombudsman model as a paper tiger, lacking the resources and subpoena power needed to conduct aggressive investigations.<sup>17</sup> After nearly twelve years of operation IRP's "institutional" conflicts are all the more apparent. IRP has exposed systemic irregularities in Internal Affairs investigation procedures -- if not outright subversion of the process. The very scope of the problem argues against a good-faith presumption of unbiased Internal Affairs investigations, and suggests a critical perspective needs to be brought to the investigation of citizen complaints sooner rather than later. Consider the nature of the flaws discovered in the MDPD's efforts to self-police. Between 1980 and 1990 IRP submitted findings that recommended the police department

Prohibit accused officers from participating in the investigations of complaints made against them (1980)  
Tape-record complainants' statements during "pre-interview" and interview sessions (1983) (IRP discovered investigators would question complainants

about prior arrests before beginning to tape the interview)

Exclude information from a summary of a complainant's statement to police unless the source of that information is identified (1984)

Revise procedures for conducting polygraph tests and provide counseling regarding deviation from procedures (Investigators were found to be asking questions about charges against the complainant, and encouraging complainants to drop complaints) (1984)

Exclude from summaries of witnesses' statements words that were not used by the witnesses (1984)

Obtain accused police officers' statements and determine their veracity when complainants allege police officers have lied (1985)

Make employees aware that illegal searches will not be tolerated (1985)

Institute a policy requiring supervisors who prepare use-of-force reports to interview involved parties and witnesses (1986)

Recommend that Internal Affairs complaint investigators not use leading questions when interviewing complainants (1988)

Require reporting of visible injuries and/or complaints of injury in use-of-force and discharge-of-firearm reports (1990)<sup>18</sup>

Pomeroy remains philosophically committed to an oversight role for IRP, providing a review of the police department's investigation after that investigation is complete. And yet he seems to envision the IRP as performing something more than an "appellate investigation." However, he explains, state law prohibits IRP from investigating allegations of police misconduct until after the police department has completed its internal investigation. Simply put, Pomeroy concludes, "The political climate is not ready for outside investigation." What would he require to make IRP fully effective? "A larger staff, subpoena power, independent counsel, and the authority to operate as a 'quasi-investigation unit'..."

#### **What the Independent Review Panel doesn't see**

The thoroughness of IRP's investigation of a complaint depends to a great extent on the thoroughness of the investigation conducted by Internal Affairs. Wes Pomeroy is mindful, and critical, of that limitation. "Even well-intentioned police officers who think they're doing a good, objective job [are] bringing their biases into the process. And in one-on-one cases -- where it's the police officer's word against the complainant's -- IRP must pass.... There's no way of judging the credibility of police officers because they never appear before us." As for IRP's role in deterring violations of its policy and practice recommendations, Pomeroy acknowledges that "we're almost entirely out of the loop as to police discipline." The only way IRP will know if a policy is being followed is if a citizen is willing to file a complaint when it's not being followed. And those who come forward are very few. From 1980 through 1990, IRP investigated a total of 362 serious misconduct complaints against the police, an average of nearly 40 complaints per year.<sup>18</sup> (IRP

does not report the total number of police misconduct cases received.) In its first three years IRP sustained only 1 complaint. Between 1983 and 1990, 32 complaints have been sustained on at least one allegation (a complaint may contain more than one allegation), representing a sustain rate of 12 percent for that period.<sup>20</sup>

In fact it appears from IRP records that a significant number of citizens with serious complaints of police misconduct withdraw from the civilian review system. More than 40 percent of the serious misconduct allegations filed between 1980 and 1990 were given a "no finding" disposition by IRP, which in most cases meant the complainant did not wish to proceed, could not be located, or had begun civil proceedings.<sup>21</sup> Numerous victims of serious police abuse have often sought out Neil Chonin, a Dade County attorney who has litigated many police misconduct claims under federal civil rights laws.<sup>22</sup> "I have a sense there is terrible abuse out there," Chonin reports, adding, "I receive about ten calls a week regarding police misconduct." He readily acknowledges his cynicism toward the police department's investigations and his doubts as to IRP's effectiveness. "It's an invisible agency," he says, asserting that this can be demonstrated by a simple survey of Dade County citizens. Asked for the basis of his criticism of the Internal Affairs unit, he responds,

"The victim of [police misconduct] is often charged with a crime, which becomes a justification for the abuse, after the fact. So through the internal investigation you can't find out a thing. The officer on the scene or the Internal Affairs investigator gets to the witnesses -- they're taken to the police station. The cops get the answers

they want to get. They lead the witnesses and either belittle them or try to break down their credibility -- questioning them about the arrest that arose from the incident with the cop or about prior arrests or about the complainants' parole status -- so that the witness adopts a pro-police position."

According to Chonin, an agency with review authority may provide sufficient oversight over county agencies with administrative responsibilities, but it's not sufficient authority to oversee a police officer, whom Chonin describes as "a human being with a gun, a badge, arrest powers, trained to use violent force...riding around with virtually no oversight whatsoever." To have any credibility, in Chonin's estimation, an independent review office needs subpoena power, an adequate budget, and authority to conduct aggressive investigations.

Civilian oversight of Dade County police is not without a presence in the streets. It may well be that IRP's success in instigating reforms of objectionable police practices is due in part to the civilian oversight of IRP provided by PULSE -- People United to Lead the Struggle for Equality. PULSE is a grass-roots community organization created after the 1980 Miami riot to meet the needs of the African-American community. It is an umbrella group representing fifty-three churches and civic groups, with more than 20,000 members throughout Dade County. According to Executive Director Nathaniel Wilcox, PULSE has long advocated greater civilian oversight of the Dade County police.

Dissatisfied with IRP's lack of investigatory authority, PULSE conducts its own field investigations of police misconduct and takes its findings and recommendations directly to police management and county commissioners. PULSE headquarters receives about six police misconduct calls a month. The number is down,

according to Wilcox, because of the organization's presence in the streets. He adds, "The key to civilian review is citizens' confidence in it.... and [in Dade County] people don't want to get involved with the system." The police department command meets with PULSE representatives because, Wilcox asserts, "otherwise, if problems aren't addressed, they know we will have hundreds in the streets demanding action."

A series of "choke-hold" complaints against police offers a case example of PULSE, as community watchdog, serving as IRP's street enforcement unit. In May 1990 a Metro-Dade police officer applied a choke-hold to a woman, causing her to pass out.<sup>23</sup> An internal police department investigation cleared the officer. A follow-up Internal Affairs investigation, in which the police spent ninety hours reexamining evidence and interviewing witnesses, failed to substantiate the complaint. In January 1992, the IRP found the investigation biased and recommended disciplinary action against the accused officer.<sup>24</sup>

That same month a Miami police officer subjected a young African American to a choke-hold while handcuffed, after which he fell into a coma.<sup>25</sup> The leadership of PULSE met with the FBI investigators and subsequently scheduled a meeting with the city commissioners to propose a ban on the technique known as "lateral neck restraint" in the Miami police procedures manual. At the meeting, which occurred shortly after the verdict in the Los Angeles Rodney King case, the city manager announced a moratorium on neck-holds pending an evaluation of the procedures.<sup>26</sup> According to Nathaniel Wilcox, "We want to make civilian review a 'direct action' operation. To have one shoe [IRP] is better than none, but we want two, and we want them laced...."

## **"Sunset Review": A proposal to give IRP more clout**

In 1992 IRP underwent its second six-year "Sunset Review," which is required under the county ordinance before the county commissioners can extend IRP's authority. Wes Pomeroy contends that "the community ought to design its civilian review model." He argues the only way to determine the effectiveness of civilian review is to sample members of the community -- he recommends that police departments do the same. True to this philosophy, IRP's staff and panel members collaborated with scores of community groups in preparing a proposal to reform the agency's operations. Input was sought from advocates and adversaries. A proposal submitted by PULSE, and endorsed by fifteen other community groups, was included in IRP's 1992 Status Report. The result was consensus on several recommendations, and these were passed unanimously by a vote of the panel. The recommendations include granting IRP authority to:

1. Investigate allegations of misconduct as well as review internal investigations of county departments
2. Initiate investigations and reviews of internal investigations without requiring a citizen complaint to trigger the process
3. Issue subpoenas to require any person to give testimony, and/or to produce documentary or other tangible evidence
4. Authorize the hiring of independent counsel, an investigator, and a research analyst



The plan also proposes that to ensure IRP's political independence, the agency submit its budget directly to the Board of County Commissioners, rather than to the county manager for preliminary approval, a process that involves county departments over which IRP has oversight responsibility.

The proposal to reform IRP acknowledges the constraints -- both political and statutory -- that limit IRP's effectiveness. The IRP experience also warns of the danger in focusing too much on people rather than systems. The fact that Wes Pomeroy can win the attention and respect of the police command may be due to Wes Pomeroy's unique credentials. He is a former police officer, and a former police chief of Berkeley, California. He is a lawyer; and a former presidential appointee (by President Johnson) to the Law Enforcement Administration, and (by President Carter) to the Office of Drug Abuse Policy. Less well-credentialed civilians may find it harder to receive a hearing from police management.

Moreover, the admittedly limited success Pomeroy has had in enforcing reforms of policing practices may be due to the presence in Dade County of a police chief who is receptive to civilian review. And with a new chief, Pomeroy suggests, "that may change." Without the legislative commitment to empower the civilian agency, the effectiveness of oversight may well be determined by the political clout of the agency's adversaries.

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**I. Individual Emotions**

**A. Fear.**

**There is currently an atmosphere of fear within segments of the community:**

1. Several speakers explicitly mentioned fear.
2. Examples of fear are:

- a. "We are being shot like animals."
- b. "We need protection from our protectors."
- c. "I pray that my children will live to finish high school."

**Excerpt from the Report  
of the Mayor's Community  
Relations Panel on  
police/community tensions  
in Cincinnati**

## **CHAPTER 5: OFFICE OF MUNICIPAL INVESTIGATION CINCINNATI, OHIO**

On an afternoon in late spring 1979, a long line of police cars snaked its way through downtown Cincinnati and encircled the city hall. The chain of cars blocked street access to city government and much of the business district. The police officers emerged from their cars and locked the doors. They entered the city hall, en masse, and proceeded unannounced into the city council chambers, where the six-member council was in session. There the police presented to the council a set of demands: upgrade police-issue weapons, from .38-caliber handguns to .357 Magnums; issue shotguns to be mounted in the cab of each patrol car; provide bullet-proof vests for all patrol officers.<sup>1</sup>

The people from whom the police sought protection also sought protection from the police. On May 18, the Mayor's Community Relations Panel, known as the Hawkins Commission, was created to provide a forum on "police/community tensions."<sup>2</sup> During three days of hearings the commission heard testimony from eighteen organizations and fourteen individuals. Twelve additional organizations submitted their testimony in letter form. One couple, reluctant to give oral testimony, also wrote a letter to

the commission. In summarizing the testimony the commission found that

"...for certain segments of the community...an atmosphere of fear and distrust exists. There is fear of being harassed, abused or killed. The recent killing of citizens and the requests for stronger firepower in light of the killings have generated this fear. Citizens feel the majority of officers are innocent of abusive behavior but...gave enough examples...to indicate there is a problem beyond 'simply a few bad apples.'"<sup>3</sup>

The mayor's commission concluded that more important than the reports of police harassment and misuse of force were citizens' "strong feelings" that the city council, the city manager, and the police administration had no interest in reports of police misconduct, or were unable to do anything about the problem.<sup>4</sup> Many citizens recommended a complaint review board -- a multiracial body of civilians, empowered to issue subpoenas, investigate claims of police misconduct, and examine police policies and procedures. Under the report section entitled "Accountability for Processing Citizens' Complaints," the commission recommended more timely and public explanation of investigation results. The commission also proposed the formation of a "Citizen Complaint Committee" to which citizens could appeal the results of police department investigations.

Police Chief Myron Leistler filed a "minority report" on the subject of accountability in which he argued that the proposal to create a citizen review panel -- "reflecting a 1960s mentality" -- would "generate distrust of the complaint review system within the police division."<sup>5</sup> Speaking for the rest of the citizenry, he assured the mayor -- without any reference to the thousands

represented at the hearings -- that the larger community, too, would not trust civilian review of the police. The chief suggested, as an alternative, an informal appeal process. A complainant dissatisfied with the police department's investigation would pass a complaint to the city manager through a city council member. The chief would then present his case to a panel of three top city officials, including the safety director (the equivalent of a police commissioner). The chief did not get his panel; nor did the civilians get theirs.

**The deal: more weapons to the police; limited oversight for the civilians**

The terms of the political compromise were these: The police received new weaponry; the civilians an independent agency -- the Office of Municipal Investigation (OMI) -- to which they could bring complaints of police misconduct for investigation. OMI was given the responsibility of investigating (1) "serious misconduct of any city employee," such conduct to include "excessive use of physical force...performance of a lawful, official act in an illegal or improper manner, and serious violation of a law, rule or regulation...."; and (2) "deliberate and intentional discharge of a firearm by a police officer at or toward another individual or individuals."<sup>6</sup> (Emphasis added.)

OMI was implemented in a manner consistent with the political deal required to create the agency. Though OMI was established by ordinance in 1979, it was not until 1981 that a sufficient budget was allocated to open an office in a converted storage closet in City Hall.<sup>7</sup> As required by the new law, the city manager appointed a chief investigator to administer the agency. Under his discretionary authority, the city manager gave OMI a

budget for a single investigator, assigned to investigate complaints against all city agencies, including the police department. The ordinance directed that alleged misconduct not considered serious by OMI would be investigated at the department level. Therefore, from the day it opened its doors, OMI faced a dilemma: surrender most of the police misconduct complaints to the Internal Affairs Division of the police department, or build a backlog of cases that would undermine the agency's effectiveness and credibility. As applied to the police, the loaded statutory term "serious misconduct" was defined, by budget constraints, to mean police misconduct that occurs infrequently.

### **1,000 to 1: Limiting civilian oversight to one pair of eyes**

OMI's first director made a strategic decision to accept all complaints that merited investigation, and use the caseload as leverage in winning the budget needed to do the job. With a two-person investigation staff -- one assigned to police misconduct investigations -- complaints against police quickly backlogged. No budget increase was forthcoming. As a result, since 1987 OMI has opened only between 30 and 40 new police misconduct cases a year, although it has received between 250 and 400 complaints a year during that period. With one investigator responsible for all police misconduct investigations, the ratio of sworn police officers to investigators is today 1,000 to 1. According to Mark Gissiner, OMI's sole investigator of police misconduct complaints, OMI is limited to investigating those excessive force complaints in which the evidence is most compelling. Visible injury to the complainant is often the most important criterion in selecting a complaint for investigation.

Notwithstanding its understaffing, OMI today has considerable legislative authority to compel cooperation of city employees and agencies. This authority was hard won. The police department forced OMI to defend the legality of its every exercise of authority. Subpoenas were resisted; questions to accused police officers regarding their actions went unanswered on grounds that such information was self-incriminating and in violation of the Supreme Court's Garrity decision, which restricted the scope of questions in an administrative inquiry.<sup>8</sup> After three years of such challenges, OMI's advocates within the community and on the city council were able to amend the city ordinance, granting OMI the power to defeat many of the obstructionist maneuvers attempted by the police department. The 1984 amendment to the ordinance granted OMI express authority to (1) obtain immediate access to all city records, documents, and employees, except those containing criminal information, which can be made available to OMI only by order of the city manager; and (2) immediately commence investigation of shots fired without interfering with a criminal investigation.<sup>9</sup>

Politics, however, govern to a significant degree the impact of civilian oversight. Even if OMI is fully staffed to do its job under the ordinance, its oversight function is largely circumscribed. There are both vertical checks (the city manager) and lateral checks (the police department) on OMI's scope of operations. The city manager controls OMI's budget and adjudicates conflicting investigatory findings that come out of OMI and the police department. When OMI opens an investigation into a serious misconduct complaint, the police department conducts a parallel investigation. The findings and recommendations from the "competing" investigations -- which are in conflict more than 75 percent of the time, according to Mark Gissiner -- are passed to the city manager, who has final authority to impose discipline.

OMI refers "non-serious" complaints to Internal Affairs. Mark Gissiner is concerned that "sometimes important cases are referred to Internal. . . . If we had more staff we would probably prefer to investigate 100 to 150 cases [per year] that are referred to Internal." Given this distribution of power, accountability for police conduct is a function of the pressure that can be brought to bear on government and police officials by OMI and interested citizens. A fifth force, the police union, often prevails. As Gissiner describes the situation: "The community only becomes interested in the high-profile cases. The police union says, 'We're interested in high-profile cases and the day-to-day issues, and we want you to do things our way. If you can get a political force in here stronger than us to advocate another position, go ahead.' Right now, there's no one here to do that."

**Civilian review from the investigator's point of view.** The investigator of citizens' complaints against police officers may have the best-informed "civilian" perspective on the oversight process. Mark Gissiner, an investigator of police misconduct complaints with OMI for six and a half years, offers his perceptions and analysis of his job and OMI in the interview that follows. Gissiner holds a master's degree in urban studies. Prior to joining OMI, he was the director of a probation department for six years, a job that required him to conduct investigations; before that, he was the assistant director of a pretrial release program. His formal training in investigation techniques includes a one-week program at ANACAPA, in Santa Barbara, California; a four-day program offered by Americans for



Effective Law Enforcement (AELE); and a one-week program in audit writing presented by the federal government.

In your assessment, what makes an investigator of police misconduct effective?

GISSINER: ...Credibility is the result of good, qualified, nonpolitical investigators. ... [In Cincinnati] the investigator of police officers is, de facto, not a former police officer. That's not in the ordinance, though it might be wise to do so.... Otherwise you create mistrust in the community as to the objectivity of the process. ...

When the police say you haven't got the expertise to investigate police officers, what they're really saying is you don't have sympathy or empathy for the situation police officers have to face in the streets.... They use this as a smoke screen. We're not talking about brain surgery. You evaluate injuries, the circumstances, and determine if the actions taken were reasonable or not. Civilian investigators, like police officers, can and have been trained.

Has OMI deterred police misconduct?

GISSINER: I am convinced -- but have no measure -- we have been a deterrent. We cause concern in officers who contemplate an act of misconduct. Police officers don't want to deal with us.... They know we do very thorough investigations. And it's the police union attorney who will compliment the process. Because we don't come in and yell and scream and badger officers. [The union attorney] will

never say he agreed with any of our findings. But he will compliment our methods when we interview officers.

Citizens react more favorably to police officers than six or seven years ago because they know there is a process. ... We also deter frivolous lawsuits. In a number of cases our investigations have led a [complainant's] attorney not to proceed with a case....

What has been the experience in Cincinnati with repeat complaints against individual officers?

GISSINER: I used to say if I could get twenty police officers out of a one thousand-member force off the street, put them behind a desk, complaints would go down significantly. Now, we have very few "regulars." Why? The deterrent effect -- both in terms of officer misconduct and improvement in the watchdog attitude of Internal Affairs. They're red-flagging repeat use of force...because someone's watching them. Internal Affairs doesn't want to be shown up -- and we were showing them up. Showing how their investigations needed to be improved. ... But you need an external process in place. The effectiveness of Internal depends largely on the philosophy of the police chief and the assignment of competent investigators.

Complaints against certain police officers who are repeaters will indicate a need to take a look, even if the complaint is not especially serious. Or we will call the lieutenant

colonel. Now, these might be unfounded complaints.... A very active police officer in a drug unit making a lot of busts. The vast majority of Cincinnati cops will never be cited. ... A particularly noticeable complaint pattern is a "repeat officer" who shows up with a lot of disorderly conduct arrests. You have to wonder if he's able to cope with a little verbal abuse.

What is OMI's role in making policy and practice recommendations?

GISSINER: We do issue policy and practice recommendations and that role has evolved -- the city manager looks for OMI recommendations, and has advocated this. [OMI's chief investigator] is on the mayor's [Municipal Integrity Maintenance] task force... and the police academy Citizens Advisory Committee. We're not headhunters. We're looking for positive change. We provide four hours of training to each recruit class at the police academy.

...

For example, our city has paid out large amounts in settlements of police [misconduct] cases. The vast majority of suits filed against the city start as civil disobedience incidents. Our safety director is trying to stop that.... Even [he] has admitted most of those cases start out as disorderly conduct incidents...or cases that are perceived as disorderly conduct by the police officer....

This is what we're trying to indoctrinate in our police officers' training. ... Someone can walk up to a police

officer and say, "F--- y---," and the police officer can't arrest him. But most police will still make the arrest. The Supreme Court has said you can't. That's what police supervisors are always telling officers -- it's one of the toughest things for them to understand. You have to get through to them.

...

We've recommended training regarding verbal challenges and disorderly conduct arrests...to limit the number of illegal arrests. ... In a shooting case involving a violent psychiatric patient we recommended new procedures and training, which led to the Citizens Advisory Committee... Training has improved greatly in this area. We've also encouraged firearm training, more training in shootings, racial sensitivity training. ... We meet monthly with the safety director and top-level police administrators regarding training issues.

...

I recommend the civilian review unit investigate police shootings. There are a lot of administrative matters involved in police shootings that should be considered by a review board. ... A lot of shooting cases have resulted in policy recommendations you're not going to get from a prosecutor.

How does the police department handle its investigations of citizen complaints?

GISSINER: ...The chief is very influential on cases that go to the city manager. ... He is very influential on Internal Affairs cases, and that has been said by many people within Internal. Nothing gets out of that division without his knowledge. He's the final commander of the Internal Investigations unit. Though not many would admit that inside. ...

Rarely has our police department -- or other police departments -- made findings of excessive force. And rarely have they supported our findings in that category. A lot of statistics are from Internal. They'll make this big headline -- "Look, we've sustained sixteen percent of complaints" -- but many of them are procedural or discourtesy. ... If you categorize [these complaints], I'll bet less than one percent are excessive force. However, in Cincinnati I believe the percentage is increasing.

...

Most police officers believe what another officer says ...and then work backwards from there to prove the initial story -- that the police officer was telling the truth. In a cover-up case [in which police officers were indicted for obstructing justice], Internal's response was not to address the cover-up, but to attack the accuracy of the [OMI] report.<sup>10</sup> The internal investigation was basically to interview police officers. They were all asked, was there a cover-up? They all said no. ... Intelligent, knowledgeable police officers will tell you when [Internal Affairs]

investigates these complaints they investigate them from the police officer's perspective.

Is there an appeal process after the city manager imposes discipline?

As a matter of policy the police union appeals to Civil Service anything above a written reprimand. ... [The] union has the resources and the mind-set to appeal as far as they need to go. And they do. The fact the union has made it clear it will appeal everything affects the disciplinary process. In the last three years the police department has fired thirty officers. ... Many of those have been given their jobs back by the Civil Service Commission or by the courts. A concern has been raised in the city manager's meetings by police command that Civil Service overturns a lot of suspensions and firings. ... The real power brokers are those who control the jobs.

What lessons does your experience hold for other cities introducing civilian review agencies?

You've got to have your dominoes lined up. ... In D.C., police officers thought, "We finally beat them down." They hindered the process by not giving statements. They figure, "We beat the last system, we'll beat the [amended] system, too. We'll sue them." ... And there's a judge somewhere who will keep smacking around the legal issues. ... You need to be set up for this. Have your legal counsel and court rulings ready -- they're out there -- because your [city's] legal department is not going to be ready to deal with it.

**The bottom line: How much oversight is enough?**

Though badly outnumbered and outbudgeted by Internal Affairs -- which has a staff of eight to investigate misconduct complaints -- OMI has high visibility in the community. OMI sustained 18 of the 69 serious misconduct allegations fully reviewed in 1990 (26 percent); of the 87 serious misconduct complaints fully reviewed in 1989, OMI sustained 27.<sup>11</sup> (OMI changed its method of documenting complaints in 1990. It is not clear from reported data whether a single complaint reported in 1989 might include more than one sustained allegation.) Over the past several years the Cincinnati news media has given extensive coverage to a number of OMI investigations, galvanizing the attention of the community, particularly when OMI's findings contradicted the results of Internal Affairs investigations.

However, the attention focused on the most violent confrontations with the police -- though offering an important opportunity for public comment -- diverts scrutiny from the hundreds of police misconduct investigations OMI hands over to Internal Affairs. Mark Gissiner considers a large number of these cases -- more than a hundred a year -- serious enough to warrant an OMI investigation. The disposition of these police department Internal Affairs investigations remains unknown. What little data is available suggests the police department is less than aggressive in pursuing its investigations. Of the 145 complaints referred to Internal Affairs in 1989, only 3.3 percent resulted in findings of misconduct.<sup>12</sup> More important, in 85 percent of those cases officers were cleared because there was no independent corroborating testimony -- that is, it was the complainant's word against the police officer's word -- or because the officer acted in conformance with police department procedures.<sup>13</sup>

Given OMI's current operating budget, its procedures for tracking complaints create systemic problems in the oversight process: (1) persuasive evidence may be ignored by Internal Affairs, which is reluctant to find against the officer in a "one-on-one"; and (2) bad police department procedures will most likely go uncriticized by police department investigators seeking to resolve a complaint on a skeptical assessment of evidence that may inculcate the police. For example, an Internal Affairs investigation is unlikely to attribute fault to the police in the disorderly conduct scenario described above by Mark Gissiner: A conflict escalates into an arrest, in some cases due to overzealous or abusive police officers. The arrest tends to exonerate the police officer. By relegating certain misconduct to "not so serious" status, the department may sanction inappropriate police behavior -- the very behavior that leads to serious misconduct allegations against police officers.

Finally, the OMI system demonstrates that accountability in a civilian review system is a function of openness. As the system is presently structured, the city manager is the final arbiter of conflicting findings reported out of OMI and the police department. And the disciplinary actions of the city manager are not made public -- though, with diligence, a citizen can obtain access to the records. According to Mark Gissiner, "The city manager plays his cards close to his vest, so as not to publicly overrule either side. ... A review board, representing the diversity of the community, might reduce the political problems...[by] resolving some of the conflicts between our reports and Internal Affairs'." Citizens testifying before the Hawkins Commission more than thirteen years ago knew what was in their best interest. They made the same recommendation -- without the benefit of hindsight.





What must be understood is it takes a lot of effort and commitment to make a civilian review system work. It involves creating a quasi-judicial process -- administered by civilians -- that must not become overly legalistic, but still meet the basic requirements of due process.

Creating the agency is a great achievement -- but only the beginning of a very difficult process of developing a board that will fulfill its mandate.

Ann Viitala, attorney and member  
of the Minneapolis Civilian Police  
Review Authority

## CHAPTER 6: CIVILIAN POLICE REVIEW AUTHORITY MINNEAPOLIS, MINNESOTA<sup>27</sup>

On the morning of January 26, 1989, the people of Minneapolis read with horror of the death of two innocent people in a bizarre police adventure. Minneapolis would never be quite the same. At 9:55 the night before, the Minneapolis Police Department's Emergency Response Unit shattered a window and lobbed a "thunderflash" stun grenade into the apartment shared by Lloyd Smalley, 71, retired from a farm implement company, and Lillian Weiss, 65, a retired nurse's aide. Flames quickly consumed the apartment. Smalley and Weiss, both African-Americans, died in the fire.

Neighbors charged that police had ignored their anguished warnings of the couple's presence inside. The police found no drugs, no gangs, and no explosives booby-trapping the door, as an unnamed informant allegedly predicted. Later, the police would claim Smalley's body contained traces of cocaine. A grand jury

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\* This chapter was researched and written by Lois Muss. Ms. Muss is an employment discrimination lawyer and writer in New York City.

declined to indict anyone. Criticism exploded, particularly in the African-American community.

The demand for independent civilian review of alleged police misconduct had long smoldered in Minneapolis. For years the Minneapolis Police Department had itself reviewed complaints against police officers. The department initiated investigations, interrogated witnesses, adjudicated the allegations, and determined discipline, which was ordered rarely. Between 1975 and 1989 1,183 people had filed complaints against the police, but in that fifteen-year period the department had upheld only 17 complaints.<sup>1</sup> The net effect, according to Lou Reiter, a former deputy chief of police, was to condone and ratify improper police behavior.

Following the deaths of Smalley and Weiss, police conducted a roundup and arrest of African-American college students partying at a downtown hotel. In outrage demonstrators marched in freezing weather to the capitol in St. Paul, protesting the vigilante police action. Other marchers converged on City Hall. The Ad Hoc Committee Against Police Brutality, formed in response to the arrest of the student protesters, called meeting after meeting, march after march. They finally took over a city council meeting, and presented a list of demands for civilian oversight. A small group of attorneys and legal workers involved in police misconduct cases began meeting monthly to share skills, build data banks, and encourage the bar to litigate these cases.

The demands led directly to the city council's appointment of a working group to explore options and recommend a model for civilian police review. This group was broadly representative of Minneapolis residents, including members from the African-American, Native American, Asian, Latino, and lesbian and gay communities. The group included lawyers, community activists,

members of civil rights groups and commissions, pastors, and a single representative of the Police Federation, the union representing Minneapolis police. Except for the latter, the roster read, in the words of Minneapolis attorney, historian, and review board member William Green, "like a who's who of political activism."

After examining civilian review plans of various cities, the working group recommended the following: The board should be comprised of six members elected from city districts, and seven appointed at large by the mayor with city council approval. The agency should be staffed by trained investigators who would investigate all complaints brought against the police department. The board should have subpoena power, and the standard of proof, supported overwhelmingly, should be "a preponderance of the evidence." Many wanted to limit the police chief's total discretionary power of discipline by permitting review of the civilian review agency's recommendations, with the final determination left to the chief and the mayor. The working group got much of what it wanted, but not everything.

With civilian review no longer a rumor, segments of the police community launched a propaganda campaign in the press. The supervisor of the early response unit that stun-bombed the Smalley-Weiss apartment resigned in protest, predicting a witch-hunt. Unit members, in support, announced they would suspend all operations. But when Police Chief John Laux shot back, "It's important right at the outset to be clear who is running the Minneapolis Police Department, and as chief, I am doing that," unit members retreated from a confrontation.<sup>2</sup> The Minneapolis Star-Tribune commented,

"Those officers who threatened to withdraw their services merely reinforced the need for civilian review

and the dialogue it can encourage between residents... and their police protectors... The department has a reputation for roughing people up."<sup>3</sup> The police then turned their attention to bargaining for no less than four seats on the board.

On January 26, 1990, the day set for ratification of the ordinance creating the Minneapolis Police Civilian Review Authority (CPRA), the city council chamber was packed with proponents of the ordinance -- many of them complainants in police misconduct cases -- who came to present their testimony in support of civilian review. The vote was decisive in favor of passage. Under the ordinance,

The CPRA has provisional power of subpoena but the power "shall become effective after charter or legislative authorization...."

The Minneapolis police and all other city personnel "shall, except as expressly prohibited by law, respond promptly" to all reasonable requests for information necessary to the CPRA's hearings.

Within thirty days after a hearing, the board shall issue a written report of its findings and determination. If the complaint is sustained, the findings and determination go to the chief for a decision regarding discipline.

And, of significant importance, the CPRA must comply with the Minnesota Government Data Practices Act.<sup>4</sup>

Under the act, personnel records of city and state...

employees are confidential; therefore, the board's hearings must be closed.<sup>5</sup>

In the spring of 1990, 120 people applied to serve as board members, including lawyers, teachers, clerks, social workers, a minister, a psychologist, and police officers. Council members were reportedly divided over police representation on the board. In June 1990 the appointees to the board were announced: David Ward, white, chair of the Sociology Department at the University of Minnesota, an early advocate of civilian review; Shirley Cain, Native American, an attorney; Ann Viitala, white, a gay rights and community activist and attorney; Gail Baez, Latina, a Hennepin County prosecutor; Robert Boughton, African-American, a Minneapolis public school teacher who also works with the park police; Robert Madryga, white, a retired Minnesota homicide detective; and Joe Senser, white, a sports-bar owner and former football player for the Minnesota Vikings, who had initially planned a career in the FBI. The members received a cautious endorsement from all the interested groups. Because of the considerable "police presence" on the board, some feared that the process of co-option had already begun.

Many in the community were sure Madryga was chosen because he was an ex-cop. He had no other experience that might be considered a qualification to serve on the board, and none with diverse communities. He resigned after less than a year, claiming there was too much work and the per diem wasn't sufficient (\$50 per hearing and meeting). As for Senser, it was common knowledge his bar was a hangout for police. It was also discovered that Senser had participated as a "ride-along" in the stun-grenade raid that killed the two African-Americans -- and as a ride-along had been a frequent traveler with members of the police department. Volunteers monitoring board meetings found him antagonistic to the board's purposes and began calling for his resignation. He

resigned. County prosecutor Gail Baez remains a member of the board, though her close work with police officers, often her primary witnesses, has raised concerns among some board members that the apparent conflict of interest in fact compromises her objectivity.

On January 25, 1991, the city council met to adopt the rules of the board. Coincidentally the 25th was also the day when the city paid out more than one-third of a million dollars to settle a police brutality case, the highest settlement of its kind in the state's history. The critical issues regarding rules were whether the board would have subpoena power; what standard of proof would apply in the disposition of complaints; and the scope of the Data Practices Act in relation to the review board. Experts have described the difference between subpoena power and lack of it as the difference between the legal means to do substantive investigation and merely marginal power. The council left resolution of the debate over subpoena for another day. Six months after passage of the ordinance creating the CPRA, the city council decided not to seek subpoena power from the legislature. The rationale for this decision appeared to be reluctance to go head-to-head with the police lobby, which was dead set against granting the power of subpoena to the civilian agency.

As the rule-making proceeded, the CPRA's authority was further circumscribed. Rick MacPherson, the attorney who had represented the plaintiff who had won the record settlement in the police brutality case, argued against the proposal to adopt the clear-and-convincing standard, which would make it more difficult than in the past (under police department standards) to sustain complaints. It is a far more common practice to apply a preponderance of the evidence standard in civil proceedings. The stricter evidentiary standard would also make it more difficult, MacPherson said, for the chief to manage the department when he



had reason to believe an officer should be disciplined, even though the evidence had not been sufficient to satisfy the higher standard. MacPherson also asserted that the Data Practices Act did not, in fact, make all personnel information confidential, since the statute clearly distinguished between public and private data. The board nonetheless adopted a clear-and-convincing standard of evidence. Together, the evidentiary standard and the Data Practices Act are a weighty albatross upon the civilian oversight system.

The evolving profile of the board's membership has been a more promising development. In the fifteen months following the formation of the board, replacements for three of its members who resigned were chosen from the original pool. In addition to Madryga and Senser, Shirley Cain also resigned -- her departure was regretted by those who advocated for a board free of police department affiliations. The new members are William Green, an attorney and college history teacher; Rick Stafford, a Democrat-Farmer-Labor Party worker; and Helen Marie Lewis, a county family assistance supervisor. Green and Lewis are African-Americans; Stafford is white. All are fervent supporters of civilian review. In the summer of 1992 the board replaced its original executive director with an interim director and began the search for a permanent replacement. Reporter Jennifer Vogel (of the alternative Minneapolis daily City Pages), who has alternately stomped and cheered the Board, reacted with an article on its plans captioned, "IT'S ALIVE!"

Perhaps the most encouraging news is that the board, during its first twenty-one months, has received 289 complaints. Over the previous fifteen years the police department received, on average, 79 complaints annually. Of the complaints received by the CPRA, the board found 40 were based on probable cause and has conducted hearings in 26 of those cases. Fourteen are awaiting

hearings. Eight of the complaints (or 31 percent) have been sustained following a full investigatory hearing, a not insignificant number considering the police department had sustained only 17 civilian complaints in the previous fifteen years. Board members have just embarked on an educational venture, setting up tables and banners at picnics and other community functions to hand out literature and acquaint the black people of Minneapolis with their review agency. Says Viitala, "The energy the new members have brought to the board is fantastic."

Fifteen minutes from downtown's century-old commercial buildings and towers of gleaming turquoise glass is the warehouse district of Minneapolis. Gathered in the law office of Rick MacPherson are Karen Northcott, a paralegal with long experience in plaintiffs' police misconduct suits and a volunteer monitor of the board; and board members Ann Viitala, William Green, and Helen Marie Lewis.

**NORTHCOTT:** We did a national search to recruit our investigators in all kinds of papers. We asked for experience with police procedures and in criminal investigations. I once thought they didn't need police backgrounds, but I've begun to think it's crucial. They need to understand police culture and police records, including personal logs. We have one who's a retired officer from Bloomington, Minnesota; another, a woman who was an officer in Cincinnati and was active in the black officers' union.

GREEN: The board's adopting "clear and convincing evidence" as the standard of proof in our hearings was a mistake. It's too high.... It will make it much more difficult for complaints to be sustained. "Preponderance of the evidence" is used everywhere by the civil courts. It should have been adopted.

VIITALA: We're going to go to the legislature and try to get subpoena power. Where it really counts is ... some people who would be willing to be witnesses against a police officer but are afraid of harassment or retaliation would come forward if they were subpoenaed. They could say, "I had to." They have to live with the cops they see in their precinct every day. Our other serious problem is the Data Practices Act. One of our greatest shortcomings is that hearings are closed under the DPA. An officer can hear the complainant's testimony but the complainant can't hear the officer's. The officer is in the hearing room all the time but complainants are there only during their own testimony. How can the complainant rebut the officer? Also, complainants may have been arrested in the course of things. They don't know what's being said about them. ... They just get the result, sustained or not sustained. To hold hearings that are public, we'll be taking on all the big unions on the DPA. They're the ones who convinced the state legislature to protect personnel records of public employees. The Police Federation will be fighting us tooth and nail....

GREEN: The type of findings the rules committee wanted to adopt would permit a discussion of how the panel that heard the evidence reached its conclusion. That might of necessity include stuff that Data Practices would bar from public dissemination. So basically, the officer learns how

the panel reached its conclusion, but the complainant can't. So how does the complainant then appeal?... They don't even know whether all their evidence was heard. There are good arguments for a waiver.

LEWIS: We must change that. One of my other main interests is ... we'll soon be equipped to keep all kinds of statistical records. We've bought an elaborate computer system, and we have a staff person in training. I want to know whether there's a particular problem repeated in a particular precinct. We don't know the number of complaints of excessive force, for instance, by precinct. Maybe we could recommend the chief take a look at that. Maybe some officers should be rotated.... Also, we're developing a survey questionnaire to elicit information at every step of the process from complainants to see how they regard our service. ... But, you know, what bothers me terribly is police officers' training. Training includes the practice of learning to throw a person up against a car, then into the backseat. It's such inhumane training. And then they pursue the investigation. ... Often they don't know anything about the person. But it's part of their training!

NORTHCOTT: Where do community groups stand now? Some are skeptical...some outwardly critical...some wait and see.

GREEN: I think we've gained enough credibility for people to give us another chance.... That's my perception.

VIITALA: Hard to say. What I get from the guy and gal in the street is, thanks for hanging in there.

GREEN: You know, there were two criminal cases decided in the courts here not too long ago. Both juries acquitted and

sent notes to the presiding judges saying they were disillusioned with the police and they believed the officers were guilty of misconduct and should be arrested. That's without precedent.

NORTHCOTT: Also, the defections of organizations that had supported us occurred before the board was reconstituted. And now you have our chair, Bob Boughton, and Steve Ellison of Police Accountability on a panel at IACOLE [International Association of Civilian Oversight of Law Enforcement] in San Diego this fall [1992]! The coalition here is now inviting the new director to speak. They've invited Ann, Bill, and others to a meeting. There's now a healthy skepticism in the coalition.... Some of the other organizations feel a little more hopeful about where the board wants to go now. And they're now willing to tell their folks to file their complaints.

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We have had the mind set that we could not trust certain members of the [Police Review Commission] to give us a fair hearing. That at least is the position that several accused officers have taken through their attorneys. ... During the last six months I have had the opportunity to listen to and get to know several members of the commission. It is my personal belief that all members of the commission can make fair and impartial decisions on matters before them. ...

Therefore I shall support the suspension of our current lawsuits. ... I shall work to insure that we do not "nit pick" regarding the rules and regulations.... We are not the enemies of the people. We are their protectors and the commission shares in the role of protecting the people of this city. We can and must work together.

Excerpt from a letter, dated July 17, 1984, to Berkeley city manager Daniel Boggan, Jr., from David Elliot, president of the Berkeley Police Association

## **CHAPTER 7: POLICE REVIEW COMMISSION BERKELEY, CALIFORNIA**

In the late 1960s Berkeley citizens gave answer to the question "Who should guard the guardians?" in People's Park. Loudly and in large numbers the citizens gathered in the park to protest the increasingly violent force used by Berkeley police to quell political demonstrators. The police command, as well as then governor Ronald Reagan, answered the question differently, authorizing massive police sweeps to clear demonstrators from the park. Those police actions became the catalyst in the creation of what is today the country's oldest continuously operating civilian agency "guarding" the actions of police: the Police Review Commission (PRC).

In response to the sweep of People's Park, the Police Initiatives Committee was formed. The committee included leaders of the Black Panther Party and the American Civil Liberties Union, as well as other representatives of the community, including a few ex-police officers. The committee drafted a voter initiative calling for residency requirements for police officers; regulations on the use of firearms by police; city council approval before the police chief could call in police agents from

outside Berkeley; and civilian oversight of the police. Citizens voted overwhelmingly to restrict the chief's discretion in authorizing external police support; and to create an independent all-civilian agency to investigate citizen complaints of police misconduct.<sup>1</sup>

That the debate over the exercise of police power was joined in such a public way -- at the birthplace of Berkeley's Free Speech Movement -- may explain the democratic nature of the civilian review process in Berkeley. Each member of the city council appoints one member to the PRC. The nine commission members elect a chairperson. All complaints are adjudicated in informal hearings -- open to anyone -- before three-member boards of inquiry, selected at random from among the commissioners. The commission's jurisdiction to investigate complaints is virtually unlimited -- the PRC will review any valid complaint of police misconduct. The complainant and subject officer may be represented by counsel or by some other representative. At the conclusion of the hearing, the board issues its decision, finding the complaint sustained, not sustained, unfounded, or the officer's actions justified. An appeal -- based on new evidence or a substantial mistake -- will be considered, in open hearing, by the full commission.

To many of the advocates of the PRC, it is the openness of the process that embodies the essential principle and the most important function of a civilian review agency. Eileen Luna, who between 1981 and 1990 was an investigator with the PRC and subsequently the agency's director, describes the hearing process as

"the only place in any kind of [police] oversight process where the officer has the opportunity to face his or her accusers. . . . It's one thing to make a charge in an office; it's quite another thing to give



the complainant a day in court ... the opportunity to say to someone in authority, 'This shouldn't happen to me.'"

A public review process has several important purposes, according to Luna. The hearing is cathartic. The presentation of evidence and questioning of witnesses exposes the strengths and weaknesses of a charge. Credibility is tested. Arline Irlando, a current and long-standing member of the PRC, adds that the hearing is a forum where public standards of policing are agreed upon. The formal inquiry in a hearing room translates into behavioral norms in the street -- for police officers and civilians. According to Irlando,

"Police officers don't want to appear in a public process where their actions will be examined. Conscientious, well-trained police officers -- which most are -- enter community standards into the equation of every action in the street. That officer will not appear before us very often."

When the PRC was introduced, it was considered above the law by most in the police community -- the product of a counterculture mentality taken to an extreme. The police union promptly sued; first, to challenge the abolishment of the police department's Internal Affairs Bureau (IAB). The union lawyers claimed the city manager had no authority under an ordinance promulgated by ballot to dismantle a police department agency. The courts agreed. Without the authority of a charter amendment, the PRC exists largely as an advisory body subject to the control of the city manager. The court's ruling meant the authority to recommend discipline would remain a police matter.

## Cops versus civilians

The survival of the Internal Affairs Bureau seemed to sanction a form of institutional competition -- between the PRC and the IAB -- over the investigation of civilian complaints. The investigatory function is bifurcated -- parallel investigations are conducted by the PRC and the IAB. One process is open; the other closed. Upon receipt of a complaint, PRC investigators notify the police department, which will pursue a parallel investigation if the complainant wishes to do so. The PRC is not notified of complaints filed with the police department. The PRC reviews the investigatory findings before a public board of inquiry at which parties and witnesses may be called to testify. The IAB conducts closed hearings, at which the complainant is not present. The PRC's full nine-member commission may rehear, in public, a case on appeal from the board of inquiry. The chief of police reviews the recommendation of the departmental review. The city manager receives the chief's decision and the PRC's findings and issues a written decision.

The vindication of the IAB's statutory existence marked the beginning of protracted procedural contests over the PRC's authority.<sup>2</sup> Upon learning the date on which the PRC was to issue a complaint report to the city manager, the IAB would rush its findings and recommendations a day or two earlier; then claim the PRC findings were improper, subjecting the accused police officer to a form of double jeopardy. Eventually the city manager issued a rule that his disposition of a complaint must be based on a review of both IAB and PRC findings. In the early 1970s the PRC was subject to scores of lawsuits, bankrolled by the police union's seemingly limitless budget. The suits claimed that the PRC's boards of inquiry violated personnel privacy laws; that complaint procedures usurped the IAB's statutory authority; that the PRC's power of subpoena did not apply to police department

reports; that the PRC had no statutory authority to compel witness police officers to testify regarding civilian complaints. The PRC prevailed on the substantive issues in most cases.

Ten years later, according to Eileen Luna, a majority of police officers had come to accept civilian review. Police union warnings that the PRC would eliminate police jobs and obstruct the enforcement of certain laws proved empty. Testifying in 1983 before the Criminal Justice Subcommittee of the House Judiciary Committee, Luna reported that cooperation between police personnel and PRC staffers was the rule, not the exception.<sup>3</sup> Her data indicated the PRC had caused a significant reduction in excessive force complaints -- a 67 percent drop between 1974 and 1977. Discourtesy complaints had fallen at a similar rate.<sup>4</sup>

Moreover, the PRC data presented to the House Subcommittee suggests the PRC caused the police department to clean up its act. In 1976, the first full year the PRC conducted regular hearings, the agency sustained 70 percent of the cases it heard; the police department sustained 4 percent of those same cases.<sup>5</sup> In the following years, Luna reported, the PRC sustained between 30 and 40 percent of the allegations that went to a hearing; the police department's sustain rate for those same allegations increased steadily, to 28 percent in 1979.<sup>6</sup> According to Luna, throughout her tenure at the PRC -- virtually the entire decade of the '80s -- the city manager concurred with the PRC's findings in 90 percent of all cases.<sup>7</sup> The IAB also concurred with the PRC's findings 90 percent of the time. "Why?" asks Luna. "Because Internal Affairs knew the PRC was there, and knew the city manager would see both sets of findings simultaneously."

## Can civilians understand a cop's job?

In Berkeley many of the policies that govern police behavior in the streets have their origin in PRC hearing rooms. The members of the commission are charged with the power and authority to review and make recommendations regarding law enforcement practices and procedures "of whatever kind and without limitation."<sup>8</sup> Are civilians qualified to suggest to police how to do their job? Arline Irlando suggests the civilians serving on the PRC may be in the best position to make such recommendations. She describes the hearing process as "the theater where you see how police actions and policies really get played out in the community. ... It's the adjudication of complaints that gives rise to 80 percent of the PRC's policy and practice recommendations." It is only logical, she claims, that the persons who investigate complaints should investigate the policies that led to the behavior that caused the complaint.

Irlando makes the point with an example: While a rookie officer, his gun drawn, was running toward a suspect, his weapon fired, hitting a civilian bystander. Through the hearing process it was discovered that the standard-issue Glock semiautomatic pistol had a notoriously light "pull weight" -- many Berkeley police officers had adjusted the trigger action of their handguns to avoid unintentional discharge. Without the public hearing into the circumstances of the shooting -- which involved a number of violations of procedure on the part of the officer -- Irlando doubts that "we would have ever found out about that aspect of the shooting." It cost \$200,000 to replace the department's handguns, a fraction of the cost in civil damages and police-community conflict due to an unintentional death caused by faulty police-issue weapons.

The PRC has always taken seriously its policy-review function. The commission's recommendations have been bold and innovative; and, based on the police department's response, the recommendations have been sound. Acting on PRC proposals, the police instituted department-wide training in civil disorder procedures, as a corrective to the riotous police sweeps of People's Park; abolished the SWAT team, following a shoot-out involving the police; and established a program to integrate the police department, increasing the numbers of women and minority members. Following the PRC's characterization of the carotid choke-hold as use of deadly force, the police department limited the use of the technique to life-threatening situations.

The PRC's policy initiatives have had a measurable impact on the number of complaints filed with the PRC. In her testimony before the House Subcommittee, Eileen Luna reported that lawsuits arising from improper use of chokeholds ceased in Berkeley, but persisted in other jurisdictions throughout California.<sup>9</sup> Complaints regarding improper handling of rape cases were virtually eliminated following the introduction of a Rape Victim Unit. Moreover, the PRC's proactive approach to resolving police-community conflicts has an impact beyond a reduction in complaints. At the urging of the PRC, the police department created special task forces to increase enforcement of drug trafficking and prostitution laws, and to respond promptly and professionally to incidents of street violence and domestic conflict in low-income neighborhoods. The benefits of this problem-and-solution approach to citizen complaints sound strikingly similar to the benefits promoted by the advocates of community-based policing. As described by Eileen Luna, the PRC's promotion of good policing

"...served to improve the citizen's view, particularly the low-income citizen's view, of police service; and

to create an atmosphere of police-community cooperation, rather than police-community opposition. This change signified to both police and community that they had less to fear in terms of violence from the other in the day-to-day conduct of police activities. The de-escalation of confrontation and paranoia increased both officer and citizen safety and increased citizen...cooperation in the reduction and solution of crime."<sup>10</sup>

Police officers stand to benefit directly from the civilian review of police practices. The individual officer is spared censure for departmental failures. Without understanding to what extent police department standards and procedures dictate police officers' actions and attitudes, the imposition of discipline may do little or nothing to prevent future complaints. "In many instances," attests Luna, "we found out it [wasn't] a problem with the individual officer but with department policy."

### **People's Park twenty years later: a shift in the politics of civilian review?**

In the 1990s People's Park is populated not by political activists but by the homeless. Their presence in Berkeley -- as well as the return of mass protests over the development of the park -- has led to police actions reminiscent in some respects of the late '60s and early '70s: harsh treatment of loiterers, police sweeps to clear the park. As in the early '70s, police tactics used to maintain order in the streets -- especially among a population whose presence appears to defy order -- has revived the debate over who determines community standards for policing.

Sally Power, the new chairperson of the PRC, suggests a new standard is needed. A self-described "moderate" -- appointed by the "most conservative member" of the city council -- Power contends the PRC has been overly politicized in the past. She maintains that homelessness and mass demonstrations have again politicized the PRC, leading to a rush of police misconduct complaints, most of which are frivolous. The time spent on these cases diverts attention from more serious complaints. The commission's composition, in Sally Power's estimation, makes it difficult to expedite review of complaints that are without merit. It is inappropriate, in her opinion, that an advocate for the homeless serves as a member of the commission, an opinion she claims is shared by the police chief and Berkeley's new city manager.

Commission member Arline Irlando agrees the politics of homelessness divide commission members -- and the larger community. She points out, however, that the commission is often handed a police misconduct problem "when everyone appears to be wrong -- the police, the activists, the city...." In her long experience on the commission she has found the hearing process sensitizes fair-minded people to the sometimes complex context out of which a complaint arises. Within its scope of authority the PRC has addressed the context in which allegations of police abuse of the homeless occur. The commission proposed a crowd-management manual with specific procedures regarding police interaction with the homeless. The manual sets out police department directives and city laws on disorderly conduct, loitering, and harassment, as well as the constitutional rights of the homeless.

However, bringing "moderation" to the PRC, as envisioned by Sally Power, raises questions regarding procedures and principles central to the civilian review process in Berkeley. Is it

necessary that all complaints go to a hearing board? To what extent does, or should, the political orientation of commissioners inform the investigation of police misconduct, of complaints or the review of police policies? Is there an appropriate way to "correct" for the politicization of the civilian review board? Sally Power, a proponent of the PRC civilian review model, points out that individuals' political leanings do not appear to compromise the objectivity of the boards of inquiry. Yet, she contends the failure to screen frivolous complaints can trivialize the process and impede the investigation of serious complaints. A too-liberal commission, she argues, has in the past led to cop-bashing and damage to the credibility of the PRC within the community.

James Chanin, a member of the original PRC and presently a lawyer in private practice, reads the role and history of civilian review in Berkeley differently. To bypass the hearing process is to judge a complaint trivial before the fact. By tacitly approving police discourtesy as a minor complaint undeserving of a hearing, the PRC may inadvertently sanction conduct that eventually comes before the commission in the form of more serious misconduct. The hearing is a form of public therapy, Chanin suggests, with important consequences. Citizen and police officer address their points of view in a hearing room, not in a street altercation. As to the charge of police-bashing, Chanin concedes that at times, during his years on the commission, the hearing process was "stormy"; but he suggests the intensity of emotion reflected the street-level animosity existing between citizens and police. "That's why," he asserts, "25,000 voted to abolish the Internal Affairs unit." Chanin argues the policy of giving a hearing to every complaint is validated in the streets of Berkeley: The city has not had to pay out in "mega-lawsuits" over police brutality incidents; a cop hasn't been killed in Berkeley since the PRC was created; the city has avoided



discrimination lawsuits by integrating the Berkeley Police Department. Integration occurred, says Chanin, only because the PRC was relentless in its review of discourtesy and bias charges; and because the PRC's Committee to Investigate Racism was untiring in its efforts to bring more women and people from the minority communities onto the police force.

The future of the PRC and civilian review is itself a loaded political issue for Berkeley. This, according to James Chanin, is politics of a different order: It speaks not merely to a bias against "trivial" complaints, but to a challenge of the mission of a civilian review agency. That commission members possess political views is a given. Sally Power, employed by the University of California, owner of the People's Park real estate, has political affiliations no less so than the commission member who is an advocate for the homeless. But each commission member has one vote; all votes are equal. The PRC's operating authority derives largely from a single person, the city manager. Although past city managers granted the PRC considerable autonomy, that is the prerogative of the office. Michael Brown, Berkeley's new city manager, is in Sally Power's assessment less likely to give the PRC the autonomy allowed by his predecessors. Power reports that since Brown has taken office, he has overruled the PRC's findings more frequently than past city managers. The new city manager appears to have a vision of the future of the PRC that is different from its past; and under the city charter he has considerable influence over how civilian review works in Berkeley.

This statutory framework, claims James Chanin, exposes a flaw in Berkeley's civilian review system, the result of a strategic error made by civilian review advocates in the early '70s. In anticipation of assuming key roles in city government, the April Coalition, a group of progressive citizen-advocates, urged the

Police Initiatives Committee to defer a charter amendment proposal until the coalition had the power to craft the legislation. The committee waited. The coalition came to power, and despite an eight-to-one advantage on the city council, never acted to bring the PRC into existence under the city charter. Therein lies the tenuousness of the PRC's independence. Since the PRC is a creation of a city ordinance, its authority is subject to the superior authority granted the city manager under the city charter. As a result, Chanin argues, "the PRC is largely an advisory body, subject to the whim and caprice of the city manager; [the agency] is only as forward-looking as the city's executive."

Indeed, the city manager's politics may have a direct, and inappropriate, influence on the adjudication of complaints. The PRC's administrative staff and its investigators are subject to the authority of the city manager: Brown determines who is hired to investigate complaints against the police, and he has the final review of investigators' findings. This is not to suggest the demise of civilian review in Berkeley. Civilian oversight of the police is well established as public policy. However, according to Chanin, the PRC is at a watershed. The community will have to demonstrate its will that civilian review remain vigorous. Thus, the PRC appears still to be in the process of institutionalizing itself nearly twenty years after its creation.

"What one must keep in mind ... is that civilian oversight ... cannot be described as a powerful interest group. In order to attain that status, it must secure for itself independence in form, which is significantly different from independence of function, which it has already achieved in varying degrees.

...

Independence in form means achieving a level of political strength within and across the various groups that make up the total community. To date, this has not been explored, let alone attempted. The principal goal within most civilian oversight movements remains securing the survival of the idea. ... By building a broader constituency civilian oversight could shed its dependency on the goodwill of a small group of political players for its survival. To achieve that goal, the leadership of the oversight system must plan a proactive agenda of educating the [community] to the merits of civilian oversight.

...

Without a concerted effort to ensure civilian oversight a degree of independence in form, it will remain on tenuous ground and subject to the whims of a small group for its survival. That is ... unacceptable."

Richard J. Terrill  
An excerpt from his article "Alternative Perceptions of Independence in Civilian Oversight," Journal of Police Science and Administration, Vol. 17, No. 2, 1990.

## **POLICIES AND PRACTICES: RECOMMENDATIONS**

The introduction of civilian review of policing involves the creation of a new civic institution. Its purpose is to increase accountability -- among all members of a community -- for police conduct. There are five basic principles on which the civilian review model is based: (1) independence -- the civilian review agency is an autonomous entity empowered to administer itself, independent of the police department, with a budget adequate to perform its mandated functions; (2) "civilianization" -- investigative staff and board members are civilian members of the community; (3) investigatory power -- the civilian agency has authority enforced by power of subpoena to conduct independent investigations of police conduct; (4) disciplinary/policy and practice authority -- based on complaint investigations and investigations into police department practices, the civilian agency has authority to recommend disciplinary action and to recommend new or revised policies, practices, rules, and regulations; (5) public education -- the civilian review agency informs and educates the community about the purposes and procedures of civilian oversight.

Many civilian review advocates, including professional administrators, describe a common set of policies and practices to facilitate the implementation of an effective civilian review process. Following is a checklist of practices recommended by civilian review advocates. These recommendations are not exhaustive; nor are they applicable to every setting in which civilian review is introduced.

Involve the community in the design, implementation, and maintenance of the civilian review system. To be effective a civilian review agency must win approval of the citizens who will use it.

Ensure quality appointments to administer the agency and serve on its board. Select individuals -- from a pool of qualified candidates -- who are of proven character and competence, with a commitment to the civilian review system.

Create fair and open procedures for appointing board members and hiring staff. Announce vacancies and application procedures in newspapers serving all communities. Send announcements to community boards, civil rights and civil liberties organizations, and community and civic groups.

Compel cooperation of police officers with civilian investigations as a condition of employment.

Give the civilian review unit jurisdiction to investigate all shooting incidents in which a police officer has fired a weapon. Shooting incidents often raise issues regarding department rules and procedures,

which should be reviewed by an independent investigator.

Allow the complainant to participate in a public hearing on his or her complaint. Veracity is tested; accountability and deterrence are enhanced when complainant and accused face each other and offer their testimony under oath before a civilian panel.

Adopt the preponderance of the evidence standard in adjudicating complaints of police misconduct.

Provide for alternative means of resolving complaints, in certain limited circumstances, where the review process includes a public hearing. Without adequate staff and resources the mandatory hearing process can rapidly lead to a case backlog. Alternative review procedures include mediation, summary dismissal, and final disposition based on a review of the investigatory record.

Provide the review agency with its own legal counsel. Lawyers who prosecute cases for the civilian review agency should also be employed by the agency.

Provide legal representation to complainants who appear at investigatory hearings.

Maximize openness in the civilian review process: Provide public access to complaint hearings and the review agency's findings, including discipline recommended and imposed.

Ensure that the review board publishes a report, at least semi-annually, describing its operations, policies, and practices, including a breakdown of complaints filed and their disposition.

Hold regular public meetings that provide civilians and police officers opportunities to discuss the civilian review agency's operations, policies, and practices, as well as police-community relations.

Ensure that personnel and collective bargaining agreements do not undermine the authority of the civilian agency's disciplinary recommendations. Post-disciplinary review and appeal procedures administered by the police department may invalidate or reduce disciplinary sanctions imposed upon a police officer.

Establish investigators' compensation scale at least at parity with the compensation paid police department investigators. Provide a career track for investigators, and ongoing training in investigation methods and techniques. The professionalism of investigators is critical to the success of civilian review. Compensation and training must reflect the value placed on the investigation function.

Organize a citizens' task force whose members monitor all aspects of the civilian review process, including hearings and public meetings, and provide feedback to the civilian review agency, legislators, and community groups.

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**APPENDIX: OVERVIEW OF STRUCTURE AND OPERATIONS IN EACH AGENCY**

**Civilian Complaint Review Board (CCRB)  
Washington, D.C.**

Established 1981, D.C. Code §4-901, et seq.

Independent: Yes.  
Executive director appointed  
by mayor, with city council  
approval.

Board: Yes.  
Independent: Yes.  
Mayor appoints 3 civilian  
members, including  
chair; council appoints 2  
civilians; chief of police  
and police union each appoint  
1 member.  
Compensation: \$100 per meeting.

How many members: 21  
(Under amendment to law  
effective 7/92;  
appointment power  
exercised  
proportionately)

Investigators: Yes.  
Independent: Yes, all civilians;  
prior police department affilia-  
tion not a bar to employment.  
Compensation: \$17,340-\$43,139 per  
year.

How many: 4, plus  
supervisor and chief  
supervisor.

**Jurisdiction:** Investigation of complaints against uniformed officers regarding harassment, excessive force, demeaning language. Authority to make disciplinary recommendations and policy and practice recommendations.

**Police officers in jurisdiction:** 4,609.

**Subpoena power:** Yes.

**Procedures:** Findings prepared by staff investigators and presented to board, which conducts public hearings. Recommendations to chief of police. All CCRB findings and recommendations are public documents.

**Budget (1992):** \$1,430,000  
(for expansion of current staff of 10 to 24; '91 budget was \$874,000).

**Cases received:**

1991: 501  
1990: 439

**Substantiation rate:**

**For cases received--**

1991: 4.9% (25/501)  
1990: 4.1% (18/439)

**For cases heard--**

1991: 37.3% (25/67)  
1990: 33.9% (18/53)

**Office of Professional Standards (OPS)  
Chicago, Illinois**

Established 1974, by general order  
of the superintendent of police.

Independent: No. Unit of Chicago  
Police Department. OPS chief of  
administration appointed by mayor;  
reports to superintendent of police.

Board: No.

Investigators: Yes.

How many: 68

Independent: Yes (no "known"  
present/former PD employees), but  
former police department affilia-  
tion not a bar to employment.  
Compensation: \$29,448 (level I)-  
\$39,492 (level IV) per year.

Jurisdiction: OPS investigates al-  
legations of use of excessive force  
by police officers. OPS also inves-  
tigates all shootings in which police  
are involved. Jurisdiction has re-  
cently been broadened to include com-  
plaints arising from domestic violence  
incidents.

Police officers in jurisdiction: 12,500 (approximately).

Subpoena power: No.

(OPS as police department unit has  
access to internal records)

Procedures: Following an OPS investiga-  
tion, a sustained complaint is (1) re-  
viewed by accused officer's superiors;  
(2) reviewed, upon request by the accused,  
by a police department complaint review  
panel; (3) passed to the superintendent  
for imposition of discipline involving a  
suspension of 5 days or less; or (4) re-  
viewed by the police board if recommended  
discipline involves 6-30 day suspension.  
Cases involving a recommendation of

separation from the department are referred directly to the police board, a 9-member body appointed by the mayor with city council approval.

Budget (1991): Approximately \$3.5 million.

Cases received:

(OPS investigates excessive force cases only)

1991: 2,727

1990: 2,476

Substantiation rate:

For cases received--

1991: 12.6% (346/2,727)

1990: 7.6% (190/2,476)

For cases reviewed--

1991: 12.2% (346/2,828)

1990: 7.2% (190/2,617)

**Office of Citizen Complaints (OCC)  
San Francisco, California**

Established 1983, Charter of City  
and County of San Francisco, §3.530-2.

Independent: No. OCC is supervised by  
the San Francisco Police Commission, a  
five-member body -- appointed by the  
mayor -- that also supervises  
the San Francisco Police Department.  
OCC's executive director is  
appointed by the Police Commission.

Board: No. Hearings conducted by attor-  
neys who serve as hearing officers.  
Independent: Yes. Not former PD  
employees.  
Compensation: Hearing officers serve  
pro bono.

How many: 18

Investigators: Yes.  
Independent: Yes. Charter bars former  
uniformed members of SFPD from employ-  
ment with the OCC.  
Compensation: \$35,000-\$65,000 per year.

How many: 11

Jurisdiction: Investigation of police con-  
duct that violates federal, state, local  
laws, or police department rules; and  
police conduct required by department regu-  
lation, but not performed (e.g., neglect of  
duty). OCC also has authority to investigate  
and make recommendations regarding police  
department policies and practices.

Police officers in jurisdiction: 1,845.

Subpoena power: Yes.

Procedures: Following OCC investigation of  
complaint, OCC's director issues preliminary  
finding, which can be appealed by either  
party to a hearing officer, who then conducts  
a public hearing. If OCC's director upholds  
a hearing officer's sustain disposition, a  
disciplinary recommendation is forwarded to

the chief of police, who can conduct internal hearings, where the recommended penalty is suspension of 10 days or less, or refer cases involving greater penalties to the Police Commission for a hearing. On its own initiative OCC can refer a verified complaint to the Police Commission for hearing. OCC findings and recommendations are not public documents.

Budget (1991): \$1.3 million.

Cases received:

1991: 1200  
1990: 989

Substantiation rate:

For cases received--

1991: 6.6% (80/1200)  
1990: 8.9% (89/989)

For cases reviewed--

1991: 9.75% (80/820)  
1990: 13.4% (89/664)

**Independent Review Panel (IRP)  
Dade County, Florida**

Established 1980, Metropolitan Dade  
County Ordinance No. 80-8, §§ 1-12.

Independent: Yes.  
Executive director is appointed by  
the chief judge of the 11th Judicial  
Circuit of Florida.

Board: Yes.  
Independent: Yes. 5 board members  
are appointed by the board of  
city commissioners from list of names  
selected by designated community  
groups; 1 board member is appointed  
by the county manager.  
Compensation: None.

How many members: 6

Investigators: IRP employs 2 community  
relations specialists who review and re-  
investigate, when necessary, internal  
police department investigations. IRP also  
contracts independent investigators when  
necessary.

How many: 2  
(community  
relations  
specialists)

Independent: Yes. Nonpolice background,  
though not a bar to employment as community  
relations specialist.

Compensation: \$30,000-\$38,000 per year.

Jurisdiction: Investigation of serious  
complaints or grievances concerning the  
conduct of any employee, agency, or instru-  
mentality of Metropolitan Dade County.  
IRP has authority to make recommenda-  
tions regarding disciplinary action as  
well as policies and practices.

Police officers in jurisdiction: 3,772.

Subpoena power: No.

Procedures: IRP refers complaints for  
investigation to the county agency whose

employee is charged with a complaint. If the complainant is dissatisfied with the agency's investigation, IRP conducts an independent review and investigation. (A subcommittee considers whether to pursue an investigation even if the complainant does not wish to do so.) Following review by an IRP subcommittee, the complaint is reviewed by the full 6-member panel, after which members may vote to conclude the matter, to reinvestigate, or to institute an expanded panel for further review. All review proceedings are public. The IRP reports the panel's final disposition of a complaint, along with disciplinary recommendations, to the complainant and to the accused individual or department.

Budget (1992): \$290,000.

**Cases received:**

Not available: IRP reports only those serious misconduct cases that are investigated.

Substantiation rate:  
For cases received-- n/a  
(IRP reports only complaints reviewed)

For cases reviewed--  
1990: 10% (2/20)  
1989: 21.4% (3/14)



**Office of Municipal Investigation (OMI)  
Cincinnati, Ohio**

Established 1979, City of Cincinnati Ordinance No. 101-1984.

**Independent:** Yes. OMI is headed by chief investigator, who is appointed by the city manager.

**Board:** No.

**Investigators:** Yes.  
**Independent:** Yes. Current investigator of police misconduct does not have police background; statute does not bar current or former police officers from employment as investigators.  
**Compensation:** \$43,000-\$49,000 per year.

**How many:** 1, to investigate police officers. (OMI also employs an investigator, a former police officer, to investigate complaints against all non-uniformed city employees.)

**Jurisdiction:** Investigations of serious misconduct of any city employee. As applied to police officers, serious misconduct includes use of excessive force and improper discharge of a firearm. OMI investigates all "shots-fired" incidents involving police; also has authority to make policy and practice recommendations.

**Police officers in jurisdiction:**  
Approximately 1,000.

**Subpoena power:** Yes.

**Procedures:** Findings of complaint investigation, along with disciplinary recommendation if complaint is sustained, are forwarded by OMI to the city manager, who also receives findings from a parallel investigation conducted by the police department. City manager's disciplinary action, if any, is based on review of OMI's and the police department's investigations.

Budget (1992): \$287,000.

Cases received (against police officers):

1990: 400  
1989: 259

Substantiation rate:

For allegations received--  
1990: n/a (published data incomplete)  
For complaints received --  
1989: 10.4% (27/259)

For allegations reviewed<sup>\*/</sup>--

1990: 26% (18/69)  
For complaints reviewed -  
1989: 31% (27/87)

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<sup>\*/</sup> OMI changed its method of reporting complaints in 1990. It is not clear from reported data whether a single complaint reported in 1989 might include more than one allegation.

Note: OMI referred to the police department for investigation 371 complaints in 1990 and 145 complaints in 1989.

**Civilian Police Review Authority (CPRA)  
Minneapolis, Minnesota**

Established 1990, Minneapolis Code  
of Ordinances, Title 9, Chapter 172.

Independent: Yes.

Board: Yes.

Independent: Yes. Board appoints execu-  
tive director of CPRA. No current or  
former police department employees on  
board, but such affiliation not a bar  
to serving as board member.

Compensation: \$50 per diem.

How many  
members: 7

Investigators: Yes.

Independent: Yes. Under statute,  
investigators cannot have ever been  
a sworn member of the Minneapolis  
Police Department.

Compensation: \$32,625-\$43,718 per year.

How many: 3

Jurisdiction: Investigation of police mis-  
conduct complaints regarding use of excessive  
force, inappropriate language or attitude,  
harassment, discrimination in provision of  
police services, theft, failure to provide  
police protection. The CPRA has implicit  
authority to investigate and make recommenda-  
tions regarding policies and practices, but  
has not yet exercised that authority.

Police officers in jurisdiction: Approxi-  
mately 850.

Subpoena power: No; charter makes grant of  
subpoena power contingent upon independent  
legislative authorization by city council.

Procedures: Where appropriate, complaints  
are referred to mediation, with consent of  
complainant. Investigation may occur before  
or after mediation. Following investigation  
complaint may be dismissed on grounds of no

probable cause, or referred to a hearing if a probable cause determination is made. If a complaint is sustained after a hearing before the board, findings and disposition are forwarded to the chief of police. The board makes no disciplinary recommendation. Action taken by the chief must be put in writing and sent to mayor and CPRA.

Budget (1992): \$417,000

Cases received:  
3/91-11/92: 289

Substantiation rate:  
For cases received--  
3/91-11/92: 2.7% (8/289)\*\*

For cases heard--  
3/91-11/92: 30.7% (8/26)

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\*\*/ Of the 289 cases received by CPRA, 61 were dismissed, primarily for want of jurisdiction or because the complainant failed to appear; 7 cases were resolved through mediation; 59 cases are under investigation or awaiting review as of 11/92.

**Police Review Commission (PRC)  
Berkeley, California**

Established 1973, City of Berkeley Ordinance No. 4644-N.S.

Independent: Yes.  
Executive director is appointed  
by the commission, with approval  
of the city manager.

Board: Yes.  
Independent: Yes. All civilians;  
each city council member appoints  
a member to the commission.  
Compensation: \$3 per hour; up to  
\$200 per month.

How many members: 9

Investigators: Yes.  
Independent: Yes. No former  
PD employees (but not disallowed  
by statute).  
Compensation: \$38,748-\$60,066  
per year.

How many: 3

Jurisdiction: The PRC has authority to  
investigate complaints of any nature made  
against Berkeley police officers; and to  
review police department policies and  
practices. The PRC does not make disci-  
plinary recommendations, but does make  
recommendations regarding police depart-  
ment practices and procedures. All PRC  
records are public documents.

Police officers in jurisdiction: 182.

Subpoena power: Yes.

Procedures: Where appropriate, cases are  
referred to mediation. Following the inves-  
tigation of a complaint, a report is pre-  
pared setting out the nature of the complaint  
and including relevant laws and regulations.  
A 3-member board of inquiry, selected at random  
from the 9-member commission, conducts a hearing

and at its conclusion issues a finding, which may be appealed to the full commission for re-hearing. All hearings are public except in special circumstances. The findings of the commission are forwarded to the city manager, who issues a decision after reviewing the findings of the police department's Internal Affairs Bureau, which conducts a parallel investigation of complaints filed with the PRC.

Budget (1992): \$318,000.

Cases received:

1991: 106  
1990: 99

Substantiation rate:

For cases received--

1991: 17.9% (19/106)  
1990: 13.1% (13/99)

For cases heard--

1991: 39.5% (19/48)  
1990: 22.8% (13/57)

## NOTES

### INTRODUCTION

1. "Officers Rally and Dinkins Is Their Target," New York Times, September 17, 1992, p. B1.
2. Ibid.
3. Samuel Walker with Vic W. Bumphus, "The Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding the Civilian Review of Police," p. 3. This paper was presented at the annual meeting of the American Society of Criminology on November 7, 1992 [Hereinafter "Effectiveness of Civilian Review"]. Walker is on the faculty of the University of Nebraska. He is also a member of the board of directors of the American Civil Liberties Union.
4. Ibid, p. 2.
5. Samuel Walker, "Civilian Review: Facing the New Reality," Police Union News, Vol. II, No. 5 (December 1991), p. 8.
6. Ibid, p. 7.
7. "Effectiveness of Civilian Review," p. 4.

### FINDINGS: A SUMMARY

1. A 1979 Statistical Study by the Metropolitan Police Department reported that over a fifty-eight-month period

between 1974 and 1979 the department received approximately 32 complaints a month, or 384 per year, on average. Data provided to the NYCLU by the Washington, D.C., CCRB indicates the CCRB received 940 complaints in 1990-1991, or 470 per year, on average. A summary of the police department data is cited in a report on legislation to create the CCRB. The report, dated September 10, 1980, was submitted by David A. Clarke, chairperson of the District of Columbia City Council's Committee on the Judiciary, to members of the council [Hereinafter "District of Columbia CCRB Legislative Report"].

2. Gabriel Chikes, interview with Robert Perry, November 1992. Chikes is special assistant to the executive director of the Washington, D.C., CCRB.
3. A "sustained complaint" as used in this report refers to a complaint that may include one or more allegations of police misconduct, at least one of which has been found substantiated. Where none of the allegations is substantiated, the complaint is referred to as "not sustained." A "sustain rate" refers to the total number of complaints sustained in a ratio with the total number of complaints received. The methods of reporting data vary greatly. Some agencies report only data on complaints filed. Others report only data on specific allegations filed. Still others provide both types of data.
4. See San Francisco Office of Citizen Complaints, Statistical Report for the Year 1990 and 1991 Year-End Statistical Report.
5. See Cincinnati Office of Municipal Investigation, 1990 Annual Report.
6. Data on cases received and closed is reported in a booklet published by the Chicago Police Department's Office of Professional Standards.
7. See New York City Police Department, Civilian Complaint Investigation Bureau 1991 Annual Report, p. 15 [Hereinafter "CCIB 1991 Annual Report"].
8. The types of complaints over which a civilian or police department complaint review unit has jurisdiction vary significantly. Informal procedures for screening complaints may distort comparisons of the total number of complaints received. Many civilian review agencies have operated with grossly inadequate budgets, and with too few investigators to conduct adequate investigations of complaints received. Complainants who give up on a backlogged system, and



withdraw or never file complaints, also limit the significance of any measure of complaints sustained.

9. A study conducted by a group of Chicago civil rights lawyers charges the sustain rate for excessive force complaints reported by OPS is inflated. See Chapter 2, "What is not reported in the sustain rate."
10. District of Columbia CCRB Legislative Report. See note 1.
11. Ibid.
12. Gabriel Chikes, interview with Robert Perry, November 1992. See note 2.
13. The Dade County Independent Review Panel (IRP) reports only serious police misconduct complaints reviewed. Between 1983 and 1990 the IRP sustained 12 percent of 362 complaints. The Minneapolis Civilian Police Review Authority in its first twenty-one months of operation has sustained 8 of the 289 complaints it has received, or 2.7 percent. However, 61 cases were withdrawn or dismissed for lack of jurisdiction, and only 26 cases have gone to a full hearing, 8 of which have been sustained. Fifty-nine cases are pending. After only twenty-one months it is premature to assess the agency's sustain rate based on the number of cases received.
14. CCIB 1991 Annual Report, p. 15.
15. Report of the Independent Commission on the Los Angeles Police Department, 1991, p. 153 [Hereinafter "Christopher Commission Report"].
16. Christopher Commission Report, p. 153.
17. Ibid.
18. New York Civil Liberties Union, Police Abuse: The Need for Civilian Oversight and Investigation, 1990.
19. Report of the National Advisory Committee on Civil Disorders (New York, Bantam Books, 1968) [Hereinafter "Kerner Commission Report"].
20. Ibid.
21. Ibid., pp. 311-312.
22. Christopher Commission Report, p. iv.
23. Ibid., p. i.

24. Ibid.
25. Ibid., p. iv.
26. Ibid., p. 1.

**CHAPTER 1: CIVILIAN COMPLAINT REVIEW BOARD  
WASHINGTON, D.C.**

1. "Mourners Pay Last Respects to Accused Slayer of Officer," Washington Post, February 20, 1990, p. A1.
2. "Heroin and the War on Fourteenth Street Northwest; 'People Laughed at the Officer Who Was Shot,'" Washington Post, February 21, 1980, p. DC1.
3. "A Message Behind the Outpouring of Sentiment for Accused Slayer," Washington Post, February 25, 1980, p. C1.
4. See note 2.
5. See Police-Community Relations in Washington, D.C., a report prepared by the District of Columbia Advisory Committee to the United States Commission on Civil Rights (June 1981), pp. 4-7.
6. "Policing the Police" (editorial), Washington Post, May 4, 1991.
7. D.C. Code, §4-904(b).
8. See Civilian Complaint Review Board, 1987 Annual Report.
9. "The District's Paper Tiger" (editorial), Washington Post, August 13, 1991.
10. Report by Wilhelmina J. Rolark, chairperson, Committee on the Judiciary, re Bill 9-433, the "D.C. Civilian Complaint Review Board Amendment Act of 1992," p. 2.
11. Ibid.
12. Unpublished data, reported by the CCRB in summary form to the NYCLU.
13. Gabriel Chikes, Special Assistant to the Executive Director of the CCRB, interview with Robert Perry, November 1992.

**CHAPTER 2: OFFICE OF PROFESSIONAL STANDARDS  
CHICAGO, ILLINOIS**

1. Flint Taylor, "Proof in Police Failure to Discipline Cases: A Survey" (Part 2 of 2), Police Misconduct and Civil Rights Law Report, Vol. 3, No. 4, July-August 1990, p. 42.
2. Werner Petterson, "Police Accountability and Civilian Oversight of Policing: An American Perspective," in Complaints Against the Police, The Trend to External Review, Andrew J. Goldsmith, ed. (Oxford, Clarendon Press, 1991), p. 261 [Hereinafter "Petterson"].
3. Petterson, p. 262, citing "Metcalf Report on the Misuse of Police Authority in Chicago" (1973), in Public Defender.
4. Ibid.
5. Ibid.
6. Data on cases received and closed is reported in a booklet published by the Chicago Police Department's Office of Professional Standards [Hereinafter "OPS Report"].
7. Gayle Shines, interview with Robert Perry, August 1992. Gayle Shines is the chief administrator of the Office of Professional Standards [Hereinafter "Gayle Shines interview"].
8. Petterson, p. 263.
9. The Chicago Crime Commission's assessments of OPS and of the Chicago Police Board were included in a position paper signed on August 30, 1983, by Warren L. Swanson, a member of the commission's Police Committee and chairman of the Mayoral Liaison Subcommittee. The position paper was transmitted to Robert W. Hallock, with copies to all members of the Mayoral Liaison Subcommittee.
10. OPS Report.
11. Ibid.
12. Civil Rights Study Group, "Proposal: Curbing Police Violence" (Chicago, 1985). The Civil Rights Study Group is comprised of lawyers involved in litigation concerning police misconduct in Chicago. The above-cited proposal was published c/o Singer & Stein, Chicago, Illinois [Hereinafter "Civil Rights Study Group Proposal"].
13. "Cop Brutality: How probers botch cases," Chicago Sun-Times, January 28, 1990, p. 1.

14. Ibid., p. 8.
15. Memorandum from David Fogel, OPS chief administrator, to Mayor Harold Washington, re "Proposed Revamping of Office of Professional Standards," October 19, 1987, p. 9 [Hereinafter "Fogel memorandum"].
16. Ibid.
17. Ibid., p. 3.
18. Civil Rights Study Group Proposal.
19. Fogel memorandum, Introduction, p. 3.
20. The practice of arresting a victim of police abuse -- so as to "justify" the police officer's conduct and discredit the potential complainant -- is not limited to Chicago. The practice is widely reported by defense attorneys, as well as civilian review investigators and administrators. Paul G. Chevigny, a New York City attorney (formerly on the staff of the NYCLU), describes the process as follows:

"The charges of disorderly conduct, resisting arrest, and assault became a familiar refrain in my office in cases of false arrest and brutality. They are the standard 'cover charges' for such abuses.... In a sophisticated police department like New York City's, police abuses do not usually occur without criminal charges to cover them, and nothing can be done about abuses unless something is done about the cover charges. These charges stand directly in the way of every avenue of redress. If an acquittal cannot be had on a charge of resisting arrest, there is certainly no use complaining of police brutality. Thus nearly every police abuse case is first and foremost a criminal case."

(Paul G. Chevigny, Police Power, Police Abuses in New York City, (New York, Pantheon Books, 1969) p. 25.)

21. The NYCLU recognizes the important role civilian review agencies can play in alerting police departments of officers who have repeatedly abused their authority, but is concerned that an early warning system that includes unsubstantiated complaints could jeopardize police officers' right to due process. Retaining unsubstantiated complaints in an officer's permanent personnel file, or recording in the file that an officer is being monitored on the basis of mere

accusations, and later relying upon the unsubstantiated complaints in making a determination of whether the officer warrants promotion, raises serious due process concerns. For this reason the NYCLU would object to a system that uses unsubstantiated complaints as a basis for punitive action against police officers.

In addressing the problem of "repeaters," the NYCLU takes the position that the focus should be on thorough, aggressive, independent investigations -- which will lead to a sustained disposition where the evidence exists -- rather than on internal police department procedures for tracking allegations of misconduct that are not proven. Contrary to this position, the police department in New York City, as well as police departments in a number of other cities, has elected to create an early warning system with the objective of counseling and/or disciplining police officers who are the subject of multiple complaints, including complaints that are unsubstantiated.

22. Carmen Cristia, deposition transcript, Vasquez v. Reid, No. 90 C 1585 (NDIL), June 19, 1991, p. 41.
23. Gayle Shines interview.
24. Memorandum from Gayle Shines, chief administrator, Office of Professional Standards, to LeRoy Martin, Superintendent of police, re Special Project Conclusion Reports (The Burge Investigation), November 2, 1990, Appendix F, p. 1 [Hereinafter "Shines memorandum"].
25. Shines memorandum, Recommendation for Separation, October 11, 1991.
26. See e.g., U.S. v. Ambrose, 740 F.2d 505, 521 (7th Cir. 1984); Jones v. City of Chicago, 856 F.2d 985 (7th Cir. 1988) [Hereinafter "Jones"].
27. See Jones.
28. Ibid. at 991.
29. Palmer v. City of Chicago, 755 F.2d 564 n.3 (1985).

### **CHAPTER 3: OFFICE OF CITIZEN COMPLAINTS SAN FRANCISCO, CALIFORNIA**

1. Amitai Schwartz, "Reading Systemic Police Abuses -- The Need for Civilian Investigation of Misconduct: A Response to Wayne Kerstetter," in Police Leadership in America, Crisis

- and Opportunity, William A. Geller, ed. (American Bar Association Foundation, 1985), p. 187.
2. Ibid.
  3. Mary Vail, "Police Review in San Francisco and the Office of Citizen Complaints: Reform on the Installment Plan," San Francisco Attorney, June-July, 1990, p. 6 [Hereinafter "Vail"].
  4. Ibid., p. 7.
  5. "San Francisco Police Watchdog Upholds Few Changes," San Francisco Chronicle, May 29, 1990, p. A1.
  6. Ibid.
  7. Ibid.
  8. Vail, p. 7.
  9. Ibid.
  10. Ibid.
  11. "Citizens' Board Leader Says Changes Are Needed," San Francisco Chronicle, May 29, 1990, p. A4.
  12. Ibid.
  13. See note 5, above.
  14. Ibid.
  15. See note 5, above.
  16. See note 11, above.
  17. See note 5, above.
  18. Vail, p. 7.
  19. Vail, p. 7. See also Flint Taylor, "Proof in Police Failure to Discipline Cases: A Survey" (Part 2 of 2) Police Misconduct and Civil Rights Law Report, Vol. 3, No. 4, July-August 1990, p. 41 [Hereinafter "Taylor"].
  20. Ibid., p. 8.
  21. Taylor; see note 19, above.
  22. Vail, pp. 11-12.

23. Vail, p. 6.
24. See note 11, above.
25. Taylor; see note 19, above, citing San Francisco Chronicle study published May 30, 1990.
26. Vail's views do not necessarily reflect those of her employer.

**CHAPTER 4: INDEPENDENT REVIEW PANEL  
DADE COUNTY, FLORIDA**

1. Law Enforcement Assistance Administration, U.S. Department of Justice, Prevention and Control of Urban Disorders: Issues for the 1980s (1980), p. 8 [Hereinafter "Department of Justice"]. This report was prepared for the Law Enforcement Assistance Administration by the Police Technical Assistance Project, University Research Corporation, Washington, D.C.
2. Department of Justice, p. 11.
3. Ibid.
4. Ibid., p. 13.
5. Ibid., pp. 15-16.
6. Metropolitan Dade County Independent Review Panel, The First Three Years, p. 3 [Hereinafter "IRP"]. This report includes an overview and assessment of the Independent Review Panel's operations during the three-year period following its creation in January 1980.
7. Department of Justice, p. 10.
8. Miami Study Team, Miami Report (Washington, Government Printing Office, 1969), p. 26. This report was prepared at the direction of the National Commission on the Causes and Prevention of Violence.
9. IRP, p. 18.
10. Ibid., pp. 5-6.
11. Independent Review Panel, Status Report, April 8, 1992, p. 1 [Hereinafter "Status Report"].

12. Status Report, p. 2.
13. Ibid., p. 3.
14. IRP, p. 24.
15. Ibid., p. 11.
16. Ibid., p. 5.
17. Ibid., p. 30.
18. See Independent Review Panel, Serious Complaints Filed with the Independent Review Panel Against the Metro-Dade Police Department, August 30, 1991, pp. 1-58. [Hereinafter "IRP, Complaints Filed"].
19. IRP, Complaints Filed.
20. Ibid.
21. Ibid.
22. Chonin is a past recipient of the Tobias Simon Award, given annually by the Florida Supreme Court to a Florida lawyer in recognition of pro bono work.
23. "Panel: Police Changed Facts to Protect One of Their Own," Miami Herald, January 29, 1992, p. 1B.
24. Ibid.
25. "Police Neck Restraints Put on Hold," Miami Herald, May 1, 1992, p. 1B.
26. Ibid.

**CHAPTER 5: OFFICE OF MUNICIPAL INVESTIGATION  
CINCINNATI, OHIO**

1. Cheryl Grant, telephone interview with Robert Perry, November 1992. Cheryl Grant was the first chief investigator of OMI [Hereinafter "Cheryl Grant interview"].
2. Report of the Mayor's Community Relations Panel to the Council of the City of Cincinnati (1979), p. I-1 [Hereinafter "Hawkins Report"].
3. Hawkins Report, P. III-1.
4. Ibid., p. III-2.



5. Ibid., Appendix G.
6. Cincinnati Administrative Code, Art. II, §§ 13(a)(2) and 13(c)(1).
7. Cheryl Grant interview.
8. Garrity v. N.J., 385 U.S. 493 (1967).
9. Cincinnati Administrative Code, Art. II, §§ 13(d)(1) and 13(f)(1).
10. "Investigation by Police Challenged," Cincinnati Enquirer, June 26, 1990, pp. A-1, A-6.
11. See City of Cincinnati, Office of Municipal Investigation, 1989 Annual Report, pp. 2, 8 [Hereinafter "1989 Annual Report"]; and 1990 Annual Report, pp. 8, 9.
12. 1989 Annual Report p. 5.
13. Ibid.

**CHAPTER 6: CIVILIAN POLICE REVIEW AUTHORITY  
MINNEAPOLIS, MINNESOTA**

1. Al Austin, WCCO Radio I-Team Report, Minneapolis, August 20, 1989.
2. Minneapolis Star-Tribune, January 23, 1990, p. A1.
3. Minneapolis Star Tribune, January 26, 1990.
4. Minnesota Statutes, Chapter 13.
5. Minneapolis Code of Ordinances, Title 9, Chapter 172.

**CHAPTER 7: POLICE REVIEW COMMISSION  
BERKELEY, CALIFORNIA**

1. James Chanin, telephone interview with Robert Perry, October 1992. Chanin was a member of the Police Initiatives Committee, which drafted the voter initiative creating a civilian review agency in Berkeley.
2. Ibid.
3. Testimony of Eileen Luna-Gordinier of the Berkeley Police Review Commission before the Subcommittee on Criminal

Justice of the House Judiciary Committee (Hearing on Use of  
Deadly Force), June 16, 1983, p. 61 [Hereinafter "Luna"].

4. Ibid.
5. Ibid., p. 62.
6. Ibid., p. 63.
7. Eileen Luna, telephone interview with Robert Perry, October 9, 1992.
8. City of Berkeley Ordinance No. 4644-N.S., § 10(b).
9. Luna, p. 58.
10. Luna, p. 62.