

# **NYCLU**

**POLICE ABUSE:  
THE NEED FOR  
CIVILIAN INVESTIGATION  
AND OVERSIGHT**

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AND OVERSIGHT**

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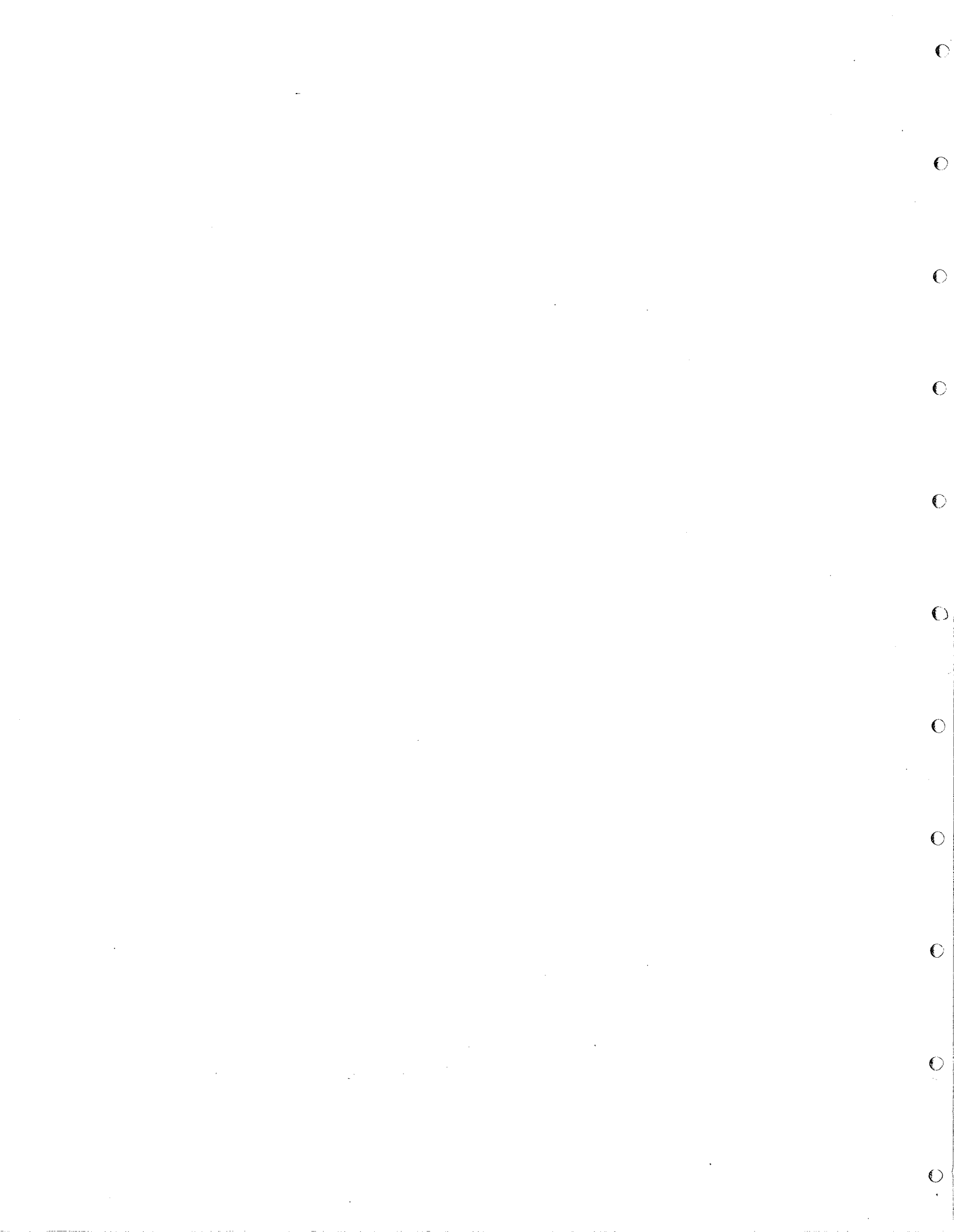


TABLE OF CONTENTS

Chapter 1: Introduction . . . . . 1

Chapter 2: From Lindsay to Now . . . . . 11

Chapter 3: Measuring Failure . . . . . 20

Chapter 4: Tompkins Square Park Experience . . . . . 39

    The Night . . . . . 43

    Non-Complainants . . . . . 51

    The Investigations . . . . . 56

    The Hearing . . . . . 66

    Conclusions . . . . . 68

Chapter 5: The Example of Other Cities . . . . . 70

    Reforms Elsewhere . . . . . 72

    Brutality vs. Corruption . . . . . 80

Chapter 6: Recommendations . . . . . 83

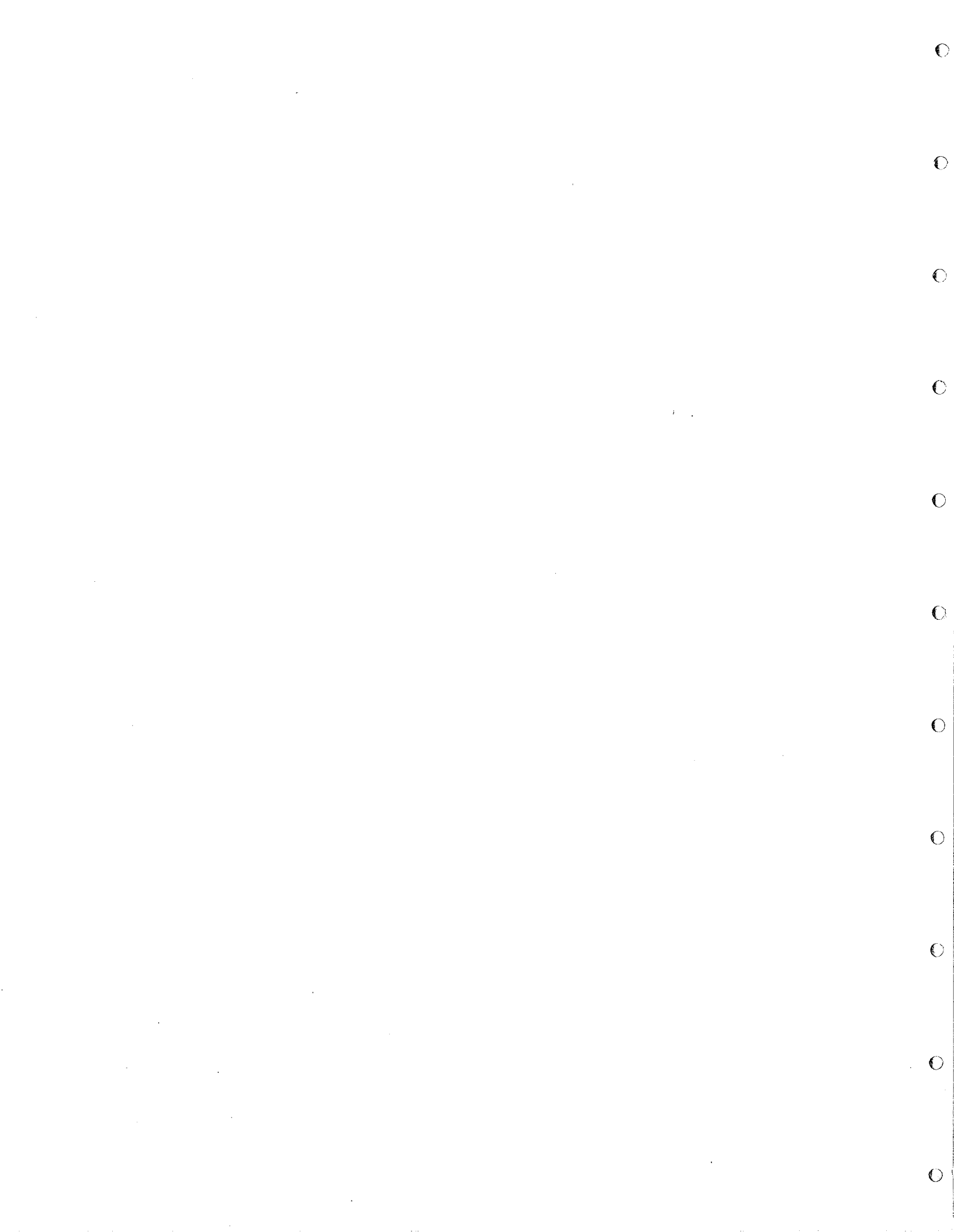
Appendices

Notes . . . . . A-1

New York City Charter, §440 -- Civilian complaints  
    against members of the police department . . . . . B-1

Letter, dated February 8, 1990, from Martin Gottlieb  
    to Deputy Commissioner Sandra Marsh . . . . . C-1

Letter, dated February 26, 1990, from Deputy Commissioner  
    Sandra M. Marsh to Martin Gottlieb . . . . . D-1



## CHAPTER 1 -- INTRODUCTION

In August, 1988, the Lower East Side of Manhattan was rocked by one of the most serious and shocking outbursts of police violence in New York City's history. Fifty-two civilians, the great majority of them innocent bystanders, required medical attention as a result of scores of assaults, often by groups of police officers, that took place over a period of six hours.

Community leaders and the New York Civil Liberties Union immediately condemned the police attack and demanded a full-scale investigation. Initially, Mayor Edward I. Koch and Police Commissioner Benjamin Ward defended the men in blue.<sup>1</sup> But confronted with videotapes of the events, they too decried the police violence and promised an investigation.

And, in the wake of the police riot, the victims sought redress for their injuries. The NYCLU advised victims to file grievances with the Police Department's Civilian Complaint Review Board (CCRB), the body established to investigate such complaints and to win redress for civilians when the complaints are substantiated. In the months that followed, the NYCLU maintained contact with and provided guidance to many of the individuals whose rights were violated and who sustained often severe injuries during the riot.

What came out of this experience was a renewal of concern on the part of the NYCLU about police brutality beyond the Tompkins Square incident. That led to the publication of this report,

which underscores the need for a powerful, civilian-controlled review process.

Among the victims of the Tompkins Square attacks were many whose experiences will be reflected later in this report and which helped shape our conclusions. They include Bob Arihood, a Lower East Side resident who was en route to a local deli to buy milk, cat food, and The New York Times, when, as he recalls, people ran by him with officers in pursuit. The officers turned on him with their nightsticks in the first of three attacks he sustained that night. After the last, he was reduced to tears when it seemed officers charging in his direction would attack once more, and he realized he was so badly hurt, he couldn't run away.

They also include Ken Fish, a tour business operator who had dinner in the neighborhood and suddenly saw the police charging in his direction after he left the restaurant. As he began to flee, he was hit over the head with a nightstick and sustained an injury that left him dazed, closed both his eyes with swelling, and required 44 stitches. His memory and sense of smell are impaired to this day. And they include Paul Garrin, who was taking video pictures from atop a van and who was clubbed by two police officers (with other officers looking on) as he pleaded that he was climbing off the vehicle at their instruction and urged not to be hit.

The attacks against Arihood, Fish, and Garrin were captured on videotape. Yet to this point no police officer has been

punished for their beatings. In Fish's case, the CCRB determined that it could not establish the identity of the officer involved. In the other cases, officers who were indicted defeated the charges in court. Nearly two years later, Garrin and Arihood are still awaiting departmental determinations for the officers involved.

This outcome is fairly representative of the Tompkins Square investigation as a whole. In all, 143 separate acts of abuse and brutality were alleged in 121 complaints to the CCRB.<sup>2</sup> It appears that fewer than a dozen officers have been found guilty of various offenses in departmental trials, with roughly a half-dozen cases still awaiting trial or decision. In only one of the cases that involved internal discipline by the Police Department was the penalty more severe than 30 days suspension. In that case, Commissioner Ward suspended a female officer for a year after rejecting the CCRB's recommendation of dismissal.<sup>3</sup>

Of the six officers who were indicted and prosecuted by the Manhattan district attorney's office, none was convicted -- either the charges were dismissed or the trials ended in acquittals.

This dismal record had its effect on the complainants more than anyone else. "In analyzing the situation," says Fish, "I was brutally assaulted by the New York City Police Department, with eyewitnesses and videotape, and my case was closed. They didn't fulfil the function the agency was supposed to have."



The experience was a sobering one for this organization as well. The NYCLU encouraged people to use the civilian complaint system. But for the overwhelming number of complainants, the system didn't work. What's more, in the words of the CCRB itself, from a report released in February 1990, "If the willingness to resort to unwarranted violence demonstrated at Tompkins Square, in the presence of over 400 police officers, including a deputy chief, several inspectors, captains, and sergeants, representatives of the news media, and hundreds of citizens, is a reflection of the attitudes of the members of the police service, there is reason for concern about what is occurring when police supervisors, journalists, and other citizens are not present."

Most of the abuse and brutality that occurs when no "outsiders" are watching -- including the great majority of recorded complaints and in all probability the great majority of unreported incidents -- takes place in African-American and Latino neighborhoods, particularly poor ones. It is here that the issue of police brutality attains its greatest significance.

Considering the Tompkins Square evidence in light of this, one has to wonder how widespread and systemic a problem police abuse and brutality is. Is it something akin to the police corruption of the early '70s, before the Knapp Commission -- at once endemic and avoided by departmental officials and political leaders? The Civilian Complaint Review Board, sadly, is not engaged in providing an answer.

Presently, the CCRB functions as a unit of the Police Department. Half its members are civilians named by the mayor, and half are high-ranking civilian employees of the Police Department named by the police commissioner. Investigations are carried out by a police bureau, the Civilian Complaint Investigation Bureau ("CCIB"), which reports its findings to the board. The overwhelming majority of its investigators -- approximately 78% -- are sworn officers of the Police Department.<sup>5</sup>

It is not surprising that when the CCRB and the CCIB receive a steadily diminishing number of complaints -- the number of complaints in 1989 was approximately 50% of the complaint caseload of 1985<sup>6</sup> -- they celebrate this without question as evidence of reduced abuse and brutality. The possibility that the falloff was a product of citizen frustration and disillusionment is not meaningfully considered. The outbursts of anger in many neighborhoods following the killing of a civilian by police -- there were 14 such deaths in the first two months of this year -- are not the objects of public reflection and analysis by the CCRB.

There are many points, bolstered by statistical analysis, in favor of a truly civilian agency, separate from the Police Department and invested with real power. We will delineate these later. But the three most fundamental are philosophical, personal, and what might be called attitudinal. Rather than being based on analyses of performance, these stem from

sentiments about how citizens and governmental agencies should relate in a responsive society.

The philosophical reason -- that citizens ought to have oversight and control over those they empower to employ deadly force -- is inherent in the idea of democracy.

The personal point emerged in detailed interviews with 22 complainants and others involved in the Tompkins Square Park situation: it can be a needlessly frightening, suspicion-provoking experience merely to be interviewed by police investigators shortly after having sustained a beating by members of the force. Complainants told us that they were so scared that they had to leave promptly when they went to the CCRB offices because of the large police presence. The complainants also said that they felt as if they were the suspects in some of the questioning, and of receiving routine pieces of mail from the CCRB and feeling as if the language was intimidating. In some cases, victims decided not to cooperate with the agency because of their dubiousness about it. Appearing there, for many, was in the words of Bob Arihood, like going into "foreign territory."

The attitudinal reason concerns the way the agency is looked at by the police and the way it relates to the public as a part of the Police Department. Revealing of this is a correspondence between the NYCLU and Sandra M. Marsh, the CCRB's deputy commissioner and executive director and highest-ranking full-time employee. In refusing a request for an interview for this report and declining to answer more than 35 written questions submitted

to her by the NYCLU in the hopes of clarifying certain issues, Commissioner Marsh maintained that "all of the [Civilian Complaint Review] Board's recommendations regarding the Tompkins Square Park incident have been implemented."<sup>7</sup>

But in fact, major recommendations made by the board in a report on Tompkins Square have not been implemented. These include an updated and upgraded photo file of police officers and better pay and a career track for civilian investigators within the CCIB. Why weren't they implemented? There may be some mundane, bureaucratic reasons, but looming larger is the lack of respect the CCRB appears to inspire in the Police Department and its officers.

Since it was reconstituted by the City Council in 1987, the board has had to stave off attacks on its power from Commissioner Ward while maintaining the appearance of public support for him. Requests the CCRB makes to the Patrolmen's Benevolent Association (PBA) for discussions go unanswered. And, it appears, when CCRB proposals for change are not implemented by the department, the agency allows this to happen without public analysis or comment. Such comment could help the public evaluate the reasons for the inactivity and determine whether the CCRB feels they are valid. But active and engaged communication with the public -- of which the perfunctory and inaccurate response to the NYCLU query is but a minor example -- appears to be slight. CCRB meetings are not publicized. Members of the public rarely if ever attend them. The agency's reports often are not released to attract maximum

press coverage. In other words, it has not catered to what should be its true constituency, the public.

Another yardstick of CCRB performance -- its handling of individual cases -- is harder to gauge. The board, as indicated in Marsh's letter, has chosen to keep all information about individual cases private.<sup>8</sup> Thus, the only information available in this regard are the impressions of complainants and the percentage -- small -- of complaints that are substantiated and that lead to penalties for guilty police officers. Most disturbing are those cases in which the board determines that an incident of abuse did in fact occur, but is unable to identify the police officer responsible. In the Tompkins Square action, for example, the CCRB substantiated claims of abuse or brutality in 29 cases but there was insufficient evidence to identify the officer or officers responsible. There is a higher number of such cases than of cases where officers were identified.<sup>9</sup>

We are convinced that, if rebuilt from its roots, the review system could be improved greatly. The reputation of the Police Department likely would improve, and citizens would feel that they had far greater recourse in situations where they feel they have been abused. Detailed recommendations are delineated in Chapter 6. The broad outlines are:

- \* that a new civilian review mechanism be established outside the police department;
- \* that it be headed by a 12-person board composed of appointees of the mayor, the president of the City

Council, the comptroller, the City Council majority and minority leaders, and as well the city's human rights commissioner and criminal justice coordinator;

- \* that CCRB decisions be advisory to the police commissioner, who would retain disciplinary power;
- \* that an appeals process be established so that the full board could review cases in which the police commissioner takes action on a serious matter that is significantly different from the board's recommendation;
- \* that the investigators of the new review unit be civilians rather than sworn police officers, and that their pay scale and chances for career advancement be upgraded;
- \* that the new unit have subpoena power to help insure candid cooperation from police officers and that other avenues be explored to encourage greater cooperation; and
- \* that the personnel folders maintained at the Police Department of police officers be purged of all information about civilian complaints absent substantiation of charges against them.

These features would create a strong review process that is truly under civilian control.

But this by itself will not necessarily lead to a sharp diminution of brutality or abuse. Other factors, such as

training,<sup>10</sup> exhaustive psychological screening, and close supervision, play significant roles toward this end.

The most important role is one that was lacking in Tompkins Square and its aftermath -- the leadership of a strong police commissioner who finds abusive behavior abhorrent and has a high-priority commitment to routing it out. It was only after the existence of the videotapes became known that Commissioner Ward spoke out critically on the police performance in Tompkins Square. He did not challenge the blue wall of silence around the Tompkins Square riot, as each of the 152 officers and supervisors questioned by the CCIB denied seeing a single act in which another officer could be implicated.<sup>11</sup> The tactics he used to try to gain police cooperation were doomed from the start. And the Tompkins Square experience was reflective of a larger problem. According to a CCRB report released in February 1990, in none of the approximately 8,000 complaints investigated by the CCRB in 1987 and 1988, did any police officer come forward with information that could be used against another officer.<sup>12</sup>

A commissioner's decision to face this situation, through policy and personal commitment, would not only provide a new CCRB with its greatest support, it would be the most effective stand that could be taken against police brutality on behalf of the citizens of New York.

## CHAPTER 2 -- FROM LINDSAY TO NOW

Staunch opposition from police unions is the single greatest reason why civilian-controlled review systems are not commonplace around the country. Nowhere was this opposition more intense than in New York City nearly a quarter century ago, when Mayor John V. Lindsay established a board with a civilian majority and watched it meet defeat in a public referendum six months later. So divisive, racially charged, and manipulated was the issue, that even today the smallest suggestion of a civilian-controlled board generates anxious demurrals. Despite encountering advocates of a civilian-controlled board among people of color and in poor neighborhoods where it held hearings, the Charter Reform Commission last year voted against including such a board in its charter plan. Mayoral candidates argued that opening up the issue was not worth the divisions it would generate. Mayor Dinkins, a longtime supporter of civilian review, has said the issue will have to stay on the back burner until fiscal and other issues are settled.

This reticence has its price, as we will see later in this chapter. But given the events that culminated here 24 years ago, it is, in a sense, understandable. When a civilian-controlled review system was first proposed 24 years ago, the Patrolmen's Benevolent Association exercised its considerable clout in opposing the proposal and in organizing a vigorous campaign that



deeply divided the City and that ultimately led to the proposal's defeat.

The impetus for civilian review in New York grew out of two incidents, early in 1964, in each of which a Latino was fatally shot by a police officer who claimed the victim was resisting arrest. The three-person complaint review board at the time, which, dated to the early 1950s, was made up of ranking police officials. It exonerated the officers in both incidents. After several other altercations within the next year, leaders of the Puerto Rican community told Mayor Robert F. Wagner at a City Hall meeting that relations between their constituents and the police were at the lowest level ever. In the summer of 1964, riots in Harlem and subsequent uprisings in several Brooklyn neighborhoods erupted after Jimmy Powell, a black 15-year-old from the Bronx who was attending summer school on Manhattan's East Side, was fatally shot in the back by a police lieutenant. The lieutenant was exonerated by the board and a grand jury, decisions that were met with outrage. Establishment of a civilian board became a major issue within the City Council, where several proposals were introduced, and in the 1965 mayoral campaign, in which John Lindsay supported a civilian-controlled board.

In the spring of 1966, after his election, Lindsay established a review board made up of four civilians he appointed and three ranking civilians from within the Police Department, appointed by the police commissioner. Howard Leary, Lindsay's police commissioner, supported the board. Leary had had

experience with a model civilian board while commissioner in Philadelphia.

The response from the PBA was immediate. Five thousand off-duty officers marched on City Hall to try to influence a City Council hearing on the issue. When they found 50 black supporters of the measure on the steps of City Hall, they taunted them with slurs, such as, "Wave a bar of soap at them and they'll all run."<sup>13</sup> Much of the rest of the day, cops and civil rights activists glowered at each other in the Council gallery. Of the police, only the black fraternal organization, The Guardians Society, supported civilian control. John Cassese, the leader of the PBA, commented, "It's unfortunate they put color before their oath of office."<sup>14</sup>

Cassese and Norman Frank, a publicity agent, engineered the successful referendum campaign to abolish the board and, more quietly, to prohibit any city agency other than the Police Department from investigating police abuse.<sup>15</sup> The effort cost millions, and the strategy was ingenious. Since the referendum called for the abolition of the board, a "yes" vote meant the voter was against the board and a "no" vote meant she or he was in favor of it. To further muddy the waters, Frank took to the high road while Cassese traveled the low. On television news and before civic panels, Frank argued that "the police are being used as a scapegoat" for the lack of educational opportunity, decent housing and jobs in poor neighborhoods.<sup>16</sup> Cassese sent out a different message over the airways and in appearances before

fraternal and veterans groups, one that at its broadest seems comedic today: Establishment of a civilian-controlled board in the city would "spread like wildfire" throughout the country, he said. "And if that should happen, then Russia should send a medal to the City of New York and say, 'Thank you for accomplishing what I haven't been able to do these many years.' Russia, if they want to take over any country, they have to immobilize the Police Department and knock out the religion of the country. You put in a police review board throughout the country, you immobilize the police force."<sup>17</sup>

Cassese's more direct argument had a sharper edge to it, though, one that tore at the city's fabric. "I am sick and tired of giving in to minority groups with their whims and their gripes and shouting," he snapped at one press conference.<sup>18</sup>

Another typical Cassese comment, made on a television news show, was: "All this tends to do is placate and play up to a little minority group within the minority groups who are doing all the clamoring. And these people will never be satisfied should you put in a civilian review board unless there were nine Negroes and Puerto Ricans browbeating and finding every policeman who goes before them guilty."<sup>19</sup>

The advertising campaign against the board was, if anything, even more direct than this. Its most prominent newspaper ad showed a young white woman in a white coat exiting a subway onto a dark street in the dead of night. In thick white letters across the black lower third of the picture, the message was

this: "The Civilian Review Board must be stopped! Her life ... your life ... may depend on it. Send your contribution today!"<sup>20</sup>

There was also evidence that outspoken opposition to the PBA position could mean trouble of the most direct sort. Two nights before the referendum vote, police raided a party in a West Side apartment for the City College chapter of the W.E.B. Du Bois Club, a Marxist group that had actively campaigned for the board. The police claimed to have acted on a complaint from the parents of a girl who appeared to be under the influence of a narcotic after attending the party. No narcotics were found, but 86 youths were arrested. Parents of the college students claimed that their children hadn't been fed for 15 hours after the arrest and had not been given proper sleeping or toilet facilities. The following day all charges were dropped by Criminal Court Judge Joseph A. Martinis on the recommendation of the district attorney's office.<sup>21</sup>

As this campaign to foment hysteria and to prey on racial insecurities gathered a life of its own, appeals for reasoned calm had only limited success. In response to the PBA advertisement featuring the young white woman on the darkened street, Commissioner Leary pointed out that there was persuasive evidence that existence of a civilian-controlled board would not lead to a slackening on the part of officers. "The review board has been in operation now for some three months," he said. "During that time there has been absolutely no discernable rise

in crime, nor has there been any discernible reduction in arrests."<sup>22</sup>

The attempt to portray the issue as one embraced solely by blacks and Latinos was also belied by simple fact. Among the campaigners for a civilian-controlled board were senators Jacob Javits and Robert F. Kennedy, Gubernatorial candidates Frank O'Connor -- a former Queens District Attorney -- and Franklin D. Roosevelt Jr., and former U.S. Attorney General Herbert Brownell, among many others.<sup>23</sup>

In the end, the civilian-controlled board was defeated by a vote of 1,307,738 to 768,492. Lindsay accepted resignations from the board members immediately. They were replaced by a board made up of police employees. In subsequent years, the racial tensions joined -- and exploited -- over the issue of police review moved on to different arenas: the city's schools and neighborhoods. And with minimal changes, the CCRB continued to function, for the most part quietly, with controversy that could only be termed muted when compared to the battle of the '60s.

But police brutality and abuse never disappeared as issues, particularly in the city's poorest neighborhoods. In the early to mid-'80s, a series of incidents in which people of color were killed by police officers under questionable circumstances led to renewed interest in the issue. Among the most prominent were the deaths of Michael Stewart, a young black man who was killed in an altercation with Transit Police, and Eleanor Bumpurs, a black grandmother who was fatally shot by police officers in the Bronx.

Rep. John Conyers (D-Mich.) held dramatic hearings in the city in 1984, and his congressional subcommittee later issued a report that labeled the CCRB "a police department front"<sup>24</sup> and called for its replacement with a civilian-controlled board.<sup>25</sup>

That criticism preceded the only major changes in the board since Lindsay's administration. Replacing the board's Police Department members were six civilians appointed by Mayor Koch, to be balanced by six civilians employed by the Police Department and named by the police commissioner. Legislation passed by the City Council also seemed to provide the board with an enlarged jurisdiction, one that permitted it to recommend specific penalties for officers deemed to have acted improperly and that allowed it to monitor cases through the Police Department's entire internal trial process. However, in 1989, Commissioner Ward tried to curtail these powers.<sup>26</sup> How much the CCRB actually uses them remains to be seen.

Two other changes were made after the Conyers hearings. The investigative arm of the agency was separated from the board bureaucratically and named the Civilian Complaint Investigation Bureau, although the same civilian deputy police commissioner was to administer both agencies. And first six and then 12 civilians were hired as investigators to work with the sworn police officers.<sup>27</sup>

These moves were clearly gestures toward greater use of civilians. But how significant they were beyond establishing an impression of more civilian control can best be summed up by the

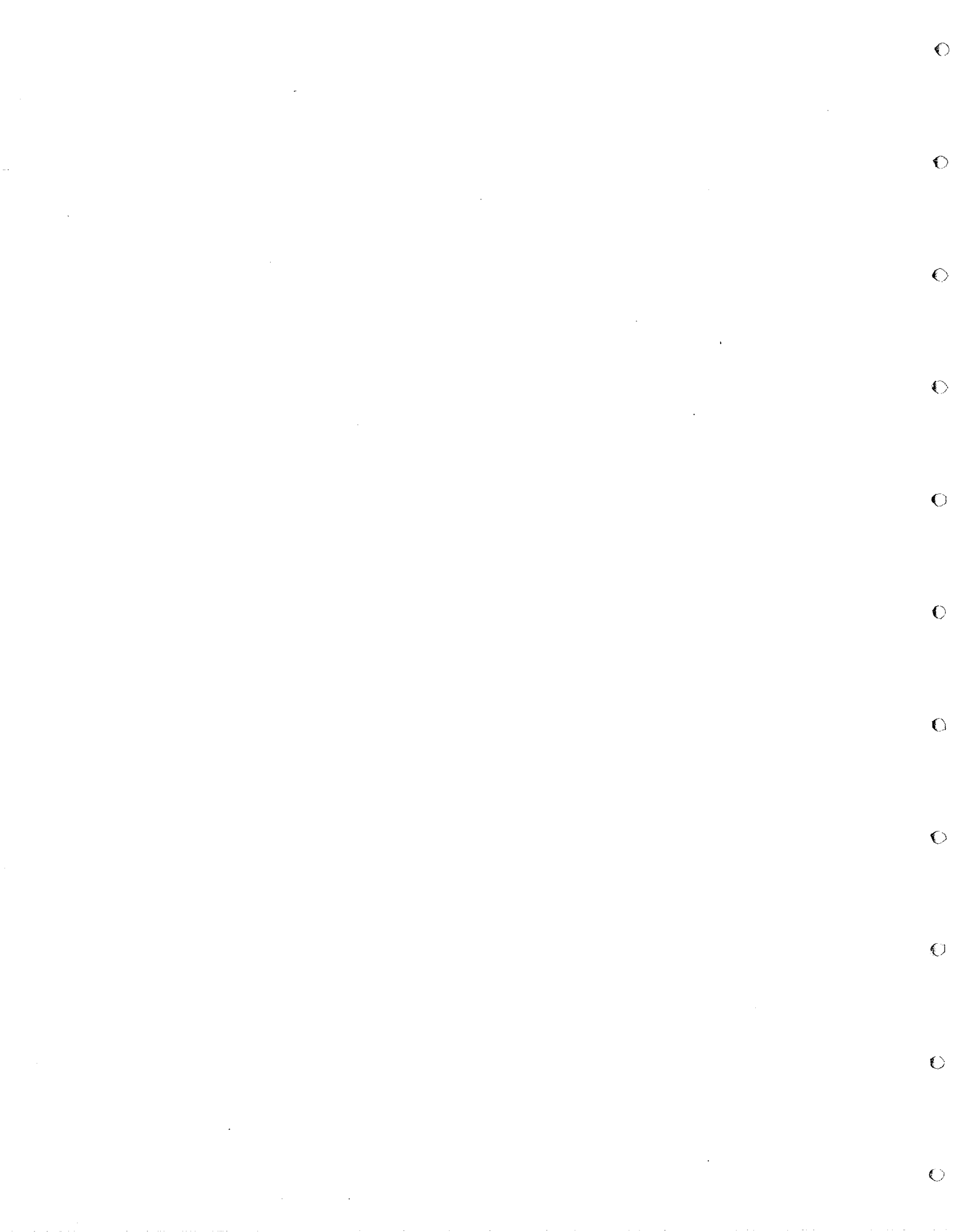
board itself, which, in a two-year summary of its activities issued in February 1990, wrote: "The addition of Mayoral appointees and the use of the term 'civilian' in the name of the Board may create the false impression that the process for handling complaints of civilians against members of the New York City Police Department is external to the department and free from influence of police officers and police executives. It is obvious from the operations of the CCIB, the CCRB, and the roles of the Police Commissioner, the departmental advocate's office, and the hearing officers, that the police officers and the Police Department executives are the major influences over the processing of complaints. The influence upon individual case outcomes of the Mayoral appointees who are not otherwise connected to the Police Department is minimal."<sup>28</sup> There have been benefits to including civilians on the board who are not employed by the Police Department. Often in the board's reports, there is a more candid assessment of how limited the board's powers really are -- assessments that if anything only bolster the case for a truly civilian operation.

Meanwhile, the potential for the issue of brutality and abuse to flare anew is everpresent -- witness the 14 civilians killed by police bullets in January and February of this year. After one rash of shootings, the leadership of the Hispanic police officers association voiced concern. A few weeks later a Brooklyn jury awarded two men \$76 million for their harrowing beating by police, an award the trial judge later reduced to a

still substantial \$6.6 million. Other cases, involving past police shootings, torture with "stun guns," and Tompkins Square, continue to make their way through the courts. The settlement bill for Tompkins Square alone is already a half-million dollars, and there are more cases yet to be resolved.

The question is whether New York City will attack this issue more sweepingly or let its response to brutality rest in its current ambivalent state, at least until a confluence of unfortunate circumstances forces its hand. To await the latter is to accept the abuse and disillusionment of scores of New Yorkers as a reasonable trade-off for relative tranquility among the bulk of police officers and their dominant union.





### CHAPTER 3 -- MEASURING FAILURE

"F-A-D-E is an acronym for the jurisdiction of the CCRB...." 1988 Annual Report, Civilian Complaint Investigative Bureau, August 1989, footnote, p. 32, referring to the words "force," "abuse of authority," "discourtesy," and "ethnic slur."<sup>29</sup>

It is difficult to measure the performance of a public agency that operates almost entirely out of public view, its casework confidential and the size of its jurisdiction -- police abuse and brutality -- uncharted and in all probability far larger than the number of complaints that are filed.<sup>30</sup>

In the case of the Civilian Complaint Review Board, the measuring is made more difficult still by the apparent reluctance of public officials to discuss the board in any significant way, perhaps because of its historically controversial nature. There are measures, however, that indicate just how wanting the board's performance has been. Taken in toto, they point to nothing less than the fact that the CCRB and its investigative apparatus, CCIB, are on the wrong side of the line that separates a meaningful response to police brutality from public relations. This is true notwithstanding good intentions on the part of many of the civilian review system's staff members. The board's main function appears to be allowing the Police Department to point to a watchdog bureaucratic mechanism already in place when queried about police abuse.

Seven points emerge from an analysis of CCRB activity that mark the agency's performance as inadequate. They raise serious

doubts about whether the CCRB and CCIB have investigated and disposed of cases effectively, and whether, in part because of the close relationship with the Police Department, the CCRB has forfeited the legitimate and important role of critic and prod.

These points raise an even larger question: whether the civilian review apparatus has lost the confidence of the citizenry of New York. We believe the dwindling number of complaints to the CCRB and the experiences and reflections of Tompkins Square complainants indicate that it has. Indeed, it could be said that the board's investigatory acronym, "FADE," has taken on an unintentional new meaning, one that is well-understood by citizens. More often than not, complaints fade away. They are seldom substantiated. Every year complainants by the hundreds every year drop out of the process before their grievances are resolved. Justice is served only in the smallest number of cases.

The seven points are as follows:

(1) FAILURE TO BREAK THE CODE OF SILENCE. As long as police officers feel they do not have to report or testify about situations in which they have witnessed abuse by fellow officers, improvements in the prosecution rate for brutality or abuse cases will be slow in coming. In Tompkins Square, according to the CCRB report on the incident, CCIB investigators interviewed 152 police officers and supervisors.<sup>31</sup> Not a single one came forward with information about the activities of another officer -- activities that included blatant beatings, concealment of badges

and other identification, and other untoward behavior recorded by neighborhood residents with home video cameras.<sup>32</sup>

"[T]he Board finds it inconceivable that many of the officers present did not witness these acts of misconduct," the CCRB wrote in its report on the police riot.<sup>33</sup> "The witnessing officers' sworn duty to report such misconduct apparently conflicted with the officers' desire to protect and shield fellow officers from disciplinary actions that could end their careers and subject them to both criminal charges and civil actions." Because of a breakdown in command control at the scene, the CCRB concluded, "personal relationships overwhelmed sworn duty" and the result was the violation of a cardinal rule of responsible law enforcement, also emphasized in the report: "[P]olice officers must obey and enforce the law even against their own colleagues if they are to maintain credibility to enforce it against others."<sup>34</sup>

Yet the Tompkins Square record is not exceptional. In its two-year report, the CCRB admitted that in approximately 8,000 complaints investigated in 1987 and 1988, there was not a single instance of an officer coming forward with incriminating information about another officer.<sup>35</sup> The board is regarded with such little respect by the PBA that two requests by the CCRB for a meeting were simply ignored, according to the board's last report.<sup>36</sup> Without respect from officers -- based on fear if necessary -- the board will have only limited success at best.

Compared with the elaborate apparatus established to combat police corruption after the Knapp Commission report in the early '70s -- an effort targeted in large part on breaking the code of silence -- the effort to confront it in instances of police abuse or brutality appears to be slight. When it became clear that no officer was forthcoming with information about Tompkins Square, for example, Ward offered in certain situations to extend immunity from departmental charges to cooperating officers. If any immunity were to be given, it should have confirmed immunity from criminal charges not departmental charges. By conferring immunity from criminal charges (i.e., Fifth Amendment immunity), Commissioner Ward could have insisted that police officers respond truthfully to his questions or be fired and he could have imposed department sanctions on police officers whose statements revealed that they engaged in misconduct. The departmental immunity did nothing to reveal the truth and could not as long as no offer of criminal immunity was offered. (Of course, this would have required Commissioner Ward to work closely with Manhattan District Attorney Robert Morgenthau and U.S. Attorney Rudolph Giuliani on conferring immunity from criminal charges.)<sup>37</sup>

(2) THE LOW RATE OF SUBSTANTIATION. Of the 4,170 complaints disposed of by the CCRB in 1988, only 157 were substantiated, a rate of 3.8%.<sup>38</sup> Of the 3,262 complaints disposed of in 1989 by the CCRB, 93 have been substantiated, a rate of 2.8%.<sup>39</sup> This meant that in more than 95% of the cases in which people filed complaints about New York City police officers that have been

decided by the CCRB there has been some conclusion other than validation of the complaint. There are some plausible reasons for the rate of substantiation to be low -- but one has to question whether it should be as low as this. Particularly in a system operating within the Police Department, these figures probably establish at least as much mistrust of the current complaint process as justice itself.

As the CCRB itself stated in its two-year review, "The inability to resolve civilians' complaints against police officers on their merits is a major problem for the Police Department. Civilians who take the trouble to file complaints may be left with a feeling that the injustice and abuse which form the basis of their complaints are aggravated by a civilian complaint system which allows police misconduct to go unpunished."<sup>40</sup>

The reasons for a low substantiation rate are many. It is fair to assume that a number of cases could be filed in bad faith by arrestees with grudges against their arresting officers. Many cases involve situations with no outside witnesses and boil down to a complainant and a police officer with different versions of an incident that can not be independently validated. In any police-dominated system, however, there is public suspicion, which civilian review analysts of all persuasions agree is present, of another reason -- that police investigators are covering for their fellow officers or not pursuing cases as vigorously as they might.

Determining an appropriate substantiation rate is difficult. Comparative figures from other cities are suspect because of the wide variety of ways in which substantiation rates are determined. Also, a city that zealously encourages civilian complaints in an effort to deal with the reality of abuse is likely to have a lower substantiation rate than a city that discourages complaints and is left with a higher proportion of cut-and-dried cases.

By looking at figures from the CCRB's two-year review published in 1990 however, it appears that whatever efforts have been made here to improve investigations, they have had no effect on the substantiation rate.

In the report, the board measures year by year how many cases it has considered that conclude with recommendations for discipline by the CCRB. These include complaints filed by civilians and instances in which police investigators find unreported misconduct in the course of their investigations. In 1986, the CCRB recommended discipline in 319 of 4,535 cases disposed of (including cases carried over from previous years), or 7%.<sup>41</sup> In 1988, after implementing what it said were improvements in investigative procedures involving upgrading investigator training and sending investigators back for more information on occasion, the rate was virtually identical. Discipline was recommended in 322 of 4,401 cases disposed of (including cases carried over from previous years) in 1988, for a rate of 7.3%.<sup>42</sup> Discipline was recommended in 266 of 3,515 cases

disposed of (including cases carried over from previous years) in 1989, for a rate of 7.6%.<sup>43</sup>

The CCIB/CCRB performance is disturbing for a number of reasons.

In its report on Tompkins Square issued in April 1989, the CCRB aptly stated, "To the extent that the threat of disciplinary action can deter the kind of misconduct which is the basis for the Tompkins Square Park complaints, the Review Board believes that the actions initiated by the New York County District Attorney, the Chief of Department and the Review Board provide that deterrent effect."<sup>44</sup>

It is clear that the CCRB's substantiation rate provides little deterrent effect.

The message to civilians is equally clear. Despite their participation in an arduous process, the chances of gaining redress are small indeed.

(3) THE LOW RATE OF RESOLUTION. To many observers of police review, what is even more significant than the substantiation rate in measuring the effectiveness of a review system is how large a part of its caseload a board can close definitively.

A case can end definitively in one of three ways: (i) substantiation of the charges leveled against the officer, or a finding that misconduct other than alleged in the complaint was committed by the police officer; (ii) exoneration; or (iii) a determination that the complaint was unfounded, meaning that the acts complained of simply did not occur.



Using this measure, approximately 87% of the cases filed with the board and disposed of in 1989 did not reach a definitive conclusion on their merits.<sup>45</sup> The greatest number of these cases -- 733 -- were labeled "unsubstantiated," meaning the board could not find enough evidence to determine whether the charges were valid or not.<sup>46</sup> Using the same method of computation for 1988, the board, in its two-year analysis, determined that 85% of the cases ended inconclusively.<sup>47</sup> Aside from lack of substantiation, these cases ended when complainants withdrew their grievances, when they or witnesses could not be located or refused to cooperate, or when cases were referred to a conciliation process because a lack of evidence prohibited them from being concluded on their merits in the board's estimation.

Because of many inherent difficulties in police abuse investigations, a large proportion of cases that end without determination can be expected. However, 85% is unacceptably high. Werner E. Petterson, a career Justice Department official who serves as president of the International Association for Civilian Oversight of Law Enforcement, estimates that a rate of between 40% and 50% would be more appropriate.<sup>48</sup>

The low level of resolution is disturbing for several reasons. First, it leaves hundreds of civilians who were undoubtedly victims of abuse without a sense of justice. The Tompkins Square experience is again relevant here. In 29 cases, the board established that an incident of brutality or abuse had taken place, but could not identify the police officer or

officers responsible.<sup>49</sup> As a result, no one was punished. The effect on abused citizens cannot be overstated, nor on police officers who walk away from situations in which they know they flouted departmental regulations as well as simple standards of appropriate behavior.

Second, the resolution rate is in part a function of an alarming number of non-cooperating civilians. According to the 1989 CCIB report released last month, 1,372 of the 3,515 cases filed with the CCRB and disposed of in 1989 could not be pursued because complainants withdrew their cases or because they or the alleged victims of abusive activity were uncooperative or unavailable.<sup>50</sup>

Why have complainants and victims by the hundreds decided to drop out of investigations that more often than not they initiated themselves? There could be reasons for this that don't reflect badly on the current system. For example, a person who files a malicious complaint may think the better of it and withdraw before the process is too far along. However, the other potential reason is more disturbing -- a loss of faith in the system that could be prompted by any number of experiences, from a feeling that investigators are less than committed to finding justice to a sense of intimidation about operating within a system that employs your attackers.

Third, the low rate of resolution is not only unfair to complainants, but to police officers as well. Presently, unsubstantiated and conciliated cases remain in officers'

personnel files even though they have never been charged, much less convicted, of an offense. The department believes this helps it determine patterns that might indicate a propensity for abusive behavior. However, under the current system, it bases its assessments on hearsay and accusation rather than substantiated fact. To have police officers' careers altered or limited on the basis of such information is unfair and an infringement on their right to presumed innocence. Only a better developed system, intent on reaching more final determinations will insure officers of these rights.

(4) THE DRAMATIC DROP IN NUMBERS OF COMPLAINTS. For five years, the number of complaints filed with the CCIB/CCRB has fallen, from a high of 7,073 in 1985<sup>51</sup> to less than half the total, 3,515, in 1989.<sup>52</sup> While some of the initial falloff was due, according to a 1986 report of the mayor's advisory committee, to a change in the way civilian complaints were disposed of and channeled, dramatic decreases continued.<sup>53</sup> There was a drop of 579 cases, or 12.2%, between 1987 and 1988 and a drop of 663 cases, or 15.9%, between 1988 and 1989.<sup>54</sup>

This should be a matter of immediate concern for any investigative unit and independent review board. In the opinion of many observers, the number of cases of police abuse reported is probably a fraction of the number of incidents that actually takes place, in much the same way that sex crimes, instances of child abuse, and crimes against the elderly are underreported. Therefore, it should be the mission of a review board to

publicize its work and to encourage an ever expanding number of complaints to be made, regardless of how successful a Police Department's efforts are in curbing abusive behavior on the part of its officers. Advertisements on buses, subways, television, radio and other forms of mass outreach should be undertaken in addition to increasing connections with civic, ethnic, and civil rights groups, churches, and schools.

However, in its two most recent annual reports, the CCIB has extolled the falloff in complaints as a demonstration of the department's success in curbing abuse. The CCIB called the falloff "a significant achievement" in its 1988 report, attributable to policies implemented by Commissioner Ward.<sup>55</sup> With more circumspection, the CCRB commented in its two-year report, "Even if the decrease in complaints does reflect a decrease in incidents of police misconduct, there is no way to determine whether this results from the existence and actions of the Board and the police disciplinary process, from the increase in training and professionalism which has characterized the leadership of Police Commissioner Ward, or from changes in the willingness of the public to file complaints."<sup>56</sup>

Left unconsidered is a question that an independent review board would have been much more prone to investigate and analyze -- whether Ward's policies themselves led to a sharp decrease in the number of complaints. We believe that there is a clear possibility that citizens may have been dissuaded from filing as a result of Ward's policies.

According to the CCIB's 1988 report, "The cornerstone around which our successful complaint reduction program has been built" was Ward's directives holding precinct commanders responsible for "unprofessional conduct" of individual officers.<sup>57</sup> However, it is telling the CCIB describes this program as a "complaint reduction program"<sup>58</sup> rather than an abuse reduction program.

As described in the 1988 report, "Precinct commanding officers are required to submit monthly variance reports through command channels and must explain, in detail, any upward movement in civilian complaint experience. Commanding officers are required to prepare annual detailed assessments of the civilian complaint experience within their commands. They must also document initiatives employed to correct past incidences of unprofessional behavior and to prevent future complaints of unacceptable conduct."<sup>59</sup>

The CCIB concluded that "[t]his emphasis on command accountability is having the desired effect of helping to reduce the number of complaints generally."<sup>60</sup>

Its 1989 report supports this conclusion with descriptions of the meetings unit commanders must hold with any officer accused of abuse and the monthly, quarterly and annual reports in which various commands have to report complaints and account for variances in the numbers.<sup>61</sup>

While the reporting system may be laudable, it does not account for its most obvious side effect -- that civilians will simply be discouraged from filing complaints by commanders and

stationhouse personnel who look at the system as a headache that should be avoided. Is this happening? The 1988 and 1989 CCIB reports present evidence that clearly points in that direction.

In both 1988 and 1989, the complaints that would have been least likely to encounter bureaucratic hostility -- those made to the CCRB (CCIB) itself -- actually increased marginally, from 1,338 in 1987<sup>62</sup> to 1,366 in 1988<sup>63</sup> to 1,389 in 1989.<sup>64</sup> Meanwhile, the number of recorded complaints plummeted at the individual stationhouses and other commands where the accountability procedures would more likely be construed as onerous. In both years, they accounted for the entire falloff in recorded complaints and then some. From 1987 to 1988, they dropped by 600, from 3,399 to 2,799, or by 17.6%.<sup>65</sup> From 1988 to 1989 they dropped by an even larger amount, by 677 to 2,122, or by 24.2%.<sup>66</sup> In other words, in the space of two years, the number of complaints at the stationhouse and other command level dropped by more than a third, or 1,277, while the number of complaints to the CCIB itself grew by 51.

Nothing on its face could account for such disparate levels of complaints except the Ward policies the board was praising. If there were other reasons, they have not been explored publicly by the CCIB or the CCRB. It is our belief, again, that an independent review system, un beholden to the Police Department, would be far more prone to engage in this sort of crucial analysis.

What the review system is prone to now is the opposite -- a disposition to put a positive coating on many trends and statistics that require greater analysis. That the CCIB would attempt to pass off a decrease in annual complaints as a measure of police success, for example, is nothing new. It is part of a tradition of pronouncing whatever has occurred in the previous year -- an increase in complaints or a decrease -- a success. Thus, when complaints dropped dramatically in 1988, the CCIB called it "a significant achievement." By contrast, in 1971, in what was typical for years when there was an increase in complaints, a news release stated, "The present increase, as in the past, reflects the continued confidence in the board; recognition that grievances will be openly received and never stifled; knowledge that its investigations will reach all witnesses offered by both sides and, in addition, unearth other parties capable of contributing to the facts. It also suggests a feeling that the investigations, hearings (if necessary), and dispositions are equitable and just, and a realization that courteous treatment is always afforded those concerned."<sup>67</sup>

Another possibility, of course, is that there was simply an increase in police brutality that year -- particularly since police shootings at the time reached such proportions that the department's firearms-discharge policy was rewritten and significantly tightened.

(5) DEFICIENCIES IN OTHER DEPARTMENTS. In 1988, the CCIB received 795 complaints against uniformed police or other

uniformed employees for agencies other than the Police Department.<sup>68</sup> Last year it received another 690.<sup>69</sup> By far the highest number of complaints, a total of 324 in 1989,<sup>70</sup> were leveled against members of the Transit and Housing police departments, which, by themselves, are two of the larger police departments in the country and which in 1988 considered 433 cases between them.<sup>71</sup> When coupled with officers from the Port Authority, the Human Resources Administration, the Sanitation Department, and several other agencies, in fact, these two police departments would make up the second largest police force in the country.

Yet they operate civilian review systems even less inclusive than that of the Police Department. In fact, they function in much the same way the Police Department system did before the reforms that came after the Conyers subcommittee report. The Transit and Housing police, for example, have civilian review panels made up entirely of Transit and Housing Authority personnel. Investigations are carried out entirely by sworn police officers from those departments. In the case of the Housing police, a Housing Authority spokesman said, the review of complaints frequently comes after penalties have been carried out.<sup>72</sup>

(6) THE QUESTIONABLE QUALITY OF CCIB INVESTIGATIONS. In its two year review, the CCRB concluded that perhaps the most significant measure of its effect on the department's disciplinary process is the number of cases in which it rejected



the recommendations of the CCIB in favor of different, usually more severe, determinations. According to the report, the board altered CCIB conclusions in 129 cases in 1988.<sup>73</sup> In 35, it substantiated claims that the CCIB said could not be substantiated or where it concluded that the officer involved could not be identified.<sup>74</sup> In the first eight months of 1989, the CCRB sent back 36 cases to the CCIB, dissatisfied with the investigations.<sup>75</sup> According to the board's report, nine were returned "because the board felt inadequate efforts had been made to enlist the complainant's cooperation," seven for interviews with additional witnesses, six for additional efforts to identify police officers responsible for allegedly abusive behavior, four for a clarification of witnesses' statements, four for medical records, and six for other miscellaneous reasons.<sup>76</sup>

In addition, the board made and implemented several recommendations to improve a wide array of investigatory capabilities on matters as basic as a "severe lack of writing skills."<sup>77</sup>

The effect of these efforts cannot help but be positive. However, more significantly, they point up an essential and problematic fact about the current board structure. As the board noted in its two-year assessment: "The New York City CCRB has no investigative resource of its own and relies solely upon evidence collected by the Police Department and presented to the Board in writing. The board relies upon the visual observations of the Police Department's investigators with regard to the demeanor and

forthrightness of witnesses. In other words the outcome of the Board's deliberations is wholly determined by the information it receives from the Police Department."<sup>78</sup>

Given this fact, the case recommendations rejected by the board and the investigations sent back for further work can only be looked at as indications of greater problems that are far more difficult for the board to ascertain because the investigatory apparatus is essentially outside of its hands and in those of the department whose officers are the subjects of the investigations.

In several cities, including Toronto, San Francisco, and Washington, D.C., independent civilian investigators handle complaints or analyze the work of police investigators in cases open to dispute. Given the CCRB's own experience, the need for something similar in New York is clear.

(7) THE LACK OF AN INDEPENDENT VOICE. There are many examples in government of agencies set up to monitor large bureaucracies and to prod them into improvements, the city comptroller's monitoring of municipal departments being the most prominent local one. This relationship is lacking between the CCIB, the CCRB, and the Police Department. As an agency made up of Police Department employees, the CCIB has been enthusiastic in its praise of police commissioners and police policy. The CCRB, with half its members appointed by the police commissioner, has seldom, if ever, publicly criticized the department or its commissioners and, if anything, has offered praise, particularly of Ward, even as he tried to curb its powers.<sup>79</sup> Resolution of

differences between Ward and the CCRB often came after consultation with the Police Department's counsel, whose chief client is, of course, the commissioner.

With half the board members beholden to the police commissioner, even the strong recommendations they made after Tompkins Square received the most perfunctory public follow through. In its two-year assessment, the CCRB concluded, "The major recommendation of the board's Tompkins Square Park report for a change in department procedures, which was that officers in such situations be required to wear more visible identification, was accepted and implemented by the commissioner."<sup>80</sup>

Yet this is partial truth in the extreme. The board recommended that the department explore the use of riot helmets with badge numbers on them or such other devices as numbered arm bands and vests to facilitate identification. The department has purchased numbered helmets and requires their use in many situations. But a responsive, independent board would have evaluated for the public whether this initiative met its concerns -- whether the numbers were prominent enough and whether the helmets were preferable to armbands or numbered vests. Even more important, other significant recommendations, such as the development of a new, up-to-date police photo identification system, have not been implemented. What happened to these? Is the CCRB content with the lack of progress? An independent agency would be on the case in a highly public way.

By remaining aloof from this issue, the board not only pulls back from useful recommendations, but further distances itself from the public.

## CHAPTER 4 -- TOMPKINS SQUARE PARK EXPERIENCE

How do the gaps in the civilian complaint system affect the lives of those who have suffered police abuse? To answer this question, we interviewed 22 people associated with events in Tompkins Square Park -- victims, complainants, witnesses, and others.

The police riot in Tompkins Square put the civilian complaint mechanism to its most public test in 20 years. Despite some kind words for individual investigators, for the overwhelming majority of interviewees the experience was a disheartening one that did not provide them with the redress they felt they deserved.

The event itself was extraordinary. Although Mayor Koch and Commissioner Ward first tried to slough off the police riot as the work of provocateurs and extremists, they abruptly changed their positions when hours of videotape were disseminated to local television stations. They immediately decried police excesses that were impossible to ignore. Chief of Department Robert J. Johnston, Jr. subsequently issued a highly critical report, which cited a breakdown in the line of command and a lack of crowd-control training as mainly responsible for the horrible police performance.<sup>81</sup> The ranking officer on the scene was forced into retirement. Two of the key officers under him were transferred to less sensitive positions. Training procedures of

undetermined quality -- the first ended in a riot itself with eight officers injured -- were put into effect.

But what of the victims of this police riot -- the scores of people, most of them bystanders, who were beaten with fists and nightsticks, subjected to racial slurs and shoves, attacked often by waves of cops? To redress their grievances, they were directed primarily to the Civilian Complaint Review Board. Their experiences are the more telling arguments for dramatic change in the organization and institutional positioning of the board.

Most complainants -- roughly 100 of the 121 -- did not win the slightest form of redress, even though many of them committed hours to the complaint process. Their charges were not substantiated, or in the most dispiriting of cases were substantiated but did not lead to prosecutions because police perpetrators could not be identified. However, as shown in interviews with a sampling of 18 complainants and four others deeply involved in the Tompkins Square situation, this came as a surprise to virtually none of them. They had entered the process skeptically and with little expectation of ultimate success and, for the most part, they had their skepticism confirmed.

It should be pointed out that of the 22 people we interviewed, four found the process satisfactory, often much to their surprise, and that others, while critical of the process, had praise for various people within it, from police investigators to receptionists.

However the overall impression, following the findings of other surveys of complainant reaction to police-controlled boards, was critical. Beyond the lack of redress of grievances, which the complainants felt they received, their grievances fell into four areas: the necessity of dealing with what they viewed as a rigged procedure and to have to interact personally with police officers shortly after, and often while still feeling the effects of, police brutality; a lack of organization, aggressiveness or perceived commitment to validating their claims and finding the wrongdoers (which some found to be in contrast to more effective work by the Manhattan district attorney's office); a reluctance to look at systemic abuse rather than the particulars of individual cases; and a lack of inclusion and perceived concern, which would have been evident if they had been kept abreast of the progress of their cases. By the time their cases were closed without positive findings, usually after several months, the complainants looked at the notice in the mail as an anticlimactic reminder of a half-forgotten experience that they would have preferred to put behind them anyway.

The quality of the investigations themselves is hard to determine by any measure other than the small proportion of substantiated claims in a situation where widespread abuse was witnessed by millions of television viewers. Although the CCRB wrote in one of its comments on Tompkins Square of its "verifiable record" of diligence, it, in fact, refused to verify that record in interviews with the researchers of this report.

Sandra M. Marsh, the deputy commissioner and executive director of the CCRB, and the highest ranking paid city employee in the complaint process, declined requests for an interview. She also refused to answer a list of detailed written questions that she suggested the NYCLU delineate for her perusal.<sup>82</sup> Additional requests to others in the Dinkins administration led to an interview with Deputy Chief Kevin P. Farrell, the police commander of the CCIB, which covered broad areas, but which at Deputy Chief Farrell's insistence did not cover individual cases, information about which, he said, was confidential.

The reluctance to speak openly about Tompkins Square Park is an indication of the board's alienation from the citizens whose complaints it is charged with processing. No citizens attend its meetings. None reviews its findings. The unwillingness to speak to the NYCLU may at first seem understandable. After all, the organization has been on record favoring an independent, citizen-controlled review board for more than 20 years. However, it is the CCIB's and the CCRB's responsibility as government agencies to speak with all members of the public. The job of improving this crucial system is one that should be shared by those within the system and the public at large.

If there is a single, disturbing image that emerges from the interviews, it is that of a member of the public who has been badly beaten by police and who then has to take the grievance to other police officers and to hope against hope that he or she will get a fair hearing and a diligent response. What follows



are descriptions of some of these encounters. Not everyone we interviewed is quoted, but we believe the sampling gives a fair sense of the sentiments we found.

#### THE NIGHT

Bob Arihood is 6 feet tall and built like a football player. Around the East Village, where he has lived for 19 years, he is often mistaken for an undercover police officer and professes to having had a reflexive faith in the police until the Tompkins Square riot. His account of his three beatings that evening is bolstered by videotape of one particularly brutal attack by at least five police officers.

He had left a bar at 7th Street and Avenue B at about 1:30 a.m. August 7th and was walking down Avenue A amid milling crowds, police and the noise of a police helicopter overhead, en route to a deli to buy cat food, milk and the New York Times. He stopped across the street from a sidewalk cafe at 6th Street. "There were protesters, but as far as I could see, it was a regular night," he recalled. "I'm standing there talking to people, when all of a sudden these guys come charging and people started running. I didn't run because I figured I didn't do anything and then the cops (about four or five) came up to me and said, 'What are you doing here?' I said, 'I'm just standing here.' One said, 'Well, get the fuck out of here.' I didn't even have a chance to move -- they started hitting me high and low. As I kept going back, with my arms up, they finally quit

and went back on the line. As I went back, I heard screaming. I saw a woman lying on the sidewalk, on the east side, covered with blood. I went over to the line of police, which had regrouped, and asked for an ambulance. Finally, they said, 'We'll send one over.'

"An Emergency Service Police vehicle came and I'm standing there and a cop comes over and I say without thinking, 'Jesus Christ, look what you guys done!' I wasn't shouting at him. I said it without thinking and he said, 'I didn't do it.' I went and put my hand on his shoulder and said, 'I'm sorry, I don't mean you. I know you didn't do it.' He said, 'Get the fuck out of here. Take your fuckin' hand off of me and get outta here.' I tried to explain to him. He started to hit me. I said I'd just gotten the ambulance and I'll leave, but there's a truck behind me and I can't. He goes to hit me overhead and I grab his nightstick to stop him, but his little buddy, who was driving the truck, comes up behind me and starts hitting me over the head and back. So I ran. I had to roll around the edge of the truck and I tripped on a manhole cover and went down. And then they just all piled on. I'm laying on the ground and they've beaten me and then some cops get out and start running so they can get in on it. Then this one big son-of-a-bitch calling me names and asking me how I like it, he pulls me up by my hair and some guy goes by, a plainclothes officer, and says, 'He's a collar.'

"So I walk with them over to the truck. I'm not resisting, just filling out forms, and I'm asking the short guy what's going

on again. Why the late hits? The whistle was already blown, I was already down. The short guy says nothing. Then the guy who started hitting me comes up and says, 'Get the fuck out of here.' I started to hobble off, and my friend Jacob helps me out. We're standing down on the corner of 4th and A. We talk to people walking by. I was bleeding above the elbow. I think they're not gonna come this far. This time they keep coming in the middle of 4th and 5th and everybody runs and I can't. I can't move. So I'm walking around the corner and they're coming. Two of them come after me. At that point I'm crying because I know there's nothing I can do. They're calling me names and they stop at the corner and they pick up a 2 by 4 and throw it at me. I came home, sat down to eat an apple. Couldn't eat. Couldn't open my mouth. They'd smashed a salivary gland. It was like tasting a lemon. My head was sore. My right knee I still can't bend. I had bruises from my head down to my ankle. It was a month and a half before I got any sleep at all."

A few days later Bob Arihood attended a community meeting at which Norman Siegel, executive director of the NYCLU, encouraged people who suffered police brutality to file complaints with the Civilian Complaint Review Board. Arihood did so. "Well," he recalls. "It was strange. The secretary gave me forms to fill out and then called me in to interview me. You sit down and introduce yourself. She turned on a tape recorder. It was the Police Department, and I didn't know who I would be dealing with. I felt like I was walking into foreign territory."

Arihood was interviewed by a CCRB investigator in what he considered a pro forma way, particularly when contrasted with the reception he got at the Manhattan district attorney's office. The DA investigation led to indictments of two police officers. However, both cases against both officers resulted in acquittals. More than a year later, Arihood said bitterly of his CCRB experience, "It was a waste of time and money, because the Police Department will not allow them to prosecute cases to the fullest." [The departmental trials are scheduled for June 27, 1990.]

Many of the stories told by Tompkins Square complainants sound depressingly similar: horrifying beatings by police, followed by complaints to a police-controlled entity that the victims are quite naturally wary of, followed by strong arguments for a different, independent system.

Stuart Frankel had left a friend's house and was walking down St. Marks Place from Second Avenue toward First Avenue, the police helicopter overhead, when he saw a cluster of police in riot gear and on horseback break into a charge, apparently after someone shouted something at them. "Several policemen came running down the street, just beating up people, running over people. Several were approaching me, and one of them just shouted, 'Run,' which seemed like a good idea at the time, so I turned around and started to run and immediately I was pushed and fell into a concrete planter and cracked my knee. Then I was picked up, I don't know by how many policemen, and thrown against

the wall and struck a few times with nightsticks and that was it. I tried to get up and walk, which I couldn't do so well. A kind lady passing by helped me."

He was on crutches for a week and says that well over a year later, if he undertook strenuous physical work, he would still feel the pain.

"I found the CCRB by looking in the phone book," he recalls. "I was hoping they'd be able to find out who ordered that particular charge down St. Marks Place. I found out that the only thing they can do is recommend individual action against individual policemen. I was not able to identify any individual policemen. I'm pretty sure that none of them were wearing shields.

"Maybe they were interested, maybe they were not," Frankel says. "Whether they were actually interested or not, they clearly were not able to do anything. It's the police department investigating itself."

The most common -- and seemingly commonplace -- procedures involving the CCRB can take on a threatening aspect to complainants who have experienced police brutality. Rob Murphy became caught up in the Tompkins Square riot after leaving his apartment at 12:30 a.m. August 7 to buy cigarettes. On the corner of Avenue A and 5th Street at about 3 a.m., Murphy saw a bottle hit the street and soon after police with raised clubs charged into a crowd of 50 to 100 people. He became separated from his friends and says he heard someone yell, "Get him!" as he

was running toward Avenue C. Two policemen who were not wearing riot gear caught him on the now deserted street, pummeled his legs, arms, and lower back, and after they told him to get up against a wall, he says, continued to strike him, screaming that they would teach him to throw bottles at them. Murphy says he pleaded that he didn't throw bottles, but says the beating didn't stop until he and the police saw a well-dressed woman heading up Avenue C to them. She walked him down Avenue C until he found his friends.

Two days later, Murphy attended the community meeting where Siegel suggested that victims of brutality file complaints with the CCRB. He lodged his complaint at the 6th Precinct.

This involved going to the desk at the stationhouse, asking the sergeant for a form, and waiting for it to be typed by police personnel. Police stations can be intimidating for many people under normal circumstances. In this case, Murphy says it was particularly so. As were the waits at CCRB headquarters, which he sensed were needless. "I felt they just made me wait to make me wait -- and it's really a depressing place," he says. The investigation ended without a finding of substantiation. "The feeling I got was I was kind of bothering them," he says.

For Paul Dordal, as well, the ordinary became irksome in the CCRB process. Dordal was having drinks in a bar three blocks from the scene of the Tompkins Square confrontation when he and others heard what turned out to be the police helicopter hovering above. As they left the bar at 1st Avenue and 10th Street

sometime after 1 a.m. and stepped into the avenue, he says he saw a platoon of officers marching down 10th Street and making a "military" left onto First Avenue. To his recollection, there were about 25 officers in riot gear. He says that without provocation, an officer at the head of the line said to him, "Do you want some of this?" waving a baton. Dordal says he turned to head for the safety of the bar when he was grabbed by a helmeted officer and dragged into the street. There, he says, he was beaten by nine or 10 officers, sustained massive contusions, and suffered soreness for a lengthy period. He was treated at Beth Israel Hospital.

His experience at the board indicates how, from the perspective of the complainant, procedures that seem appropriate and necessary take on a different appearance. Dordal says he saw the board mentioned in the newspaper after the riot and made contact with it. He then received several letters from the board, which, he says, told him that he would have to appear for an interview by a certain date or that his complaint would be dropped. He says that on numerous occasions, when in phone contact with police investigators for the board, he complained of the deadlines, saying that they seemed intimidating to him after having been beaten. His suspicion of the board, he says, only grew when his initial interview was conducted by a police sergeant, given the fact that it was police who had beaten him.

Michael Trazi Williams found himself feeling the same sort of anxiety on his first visit to the board offices. Williams is

an accomplished professional musician who had left a friend's apartment at 12th Street and Avenue C at 12:45 a.m. August 7 to escort a young visitor from Japan to a restaurant where he was to meet a friend. As they looked for the restaurant, they saw a group of 20 officers at 9th Street and Avenue A, but were unsure what had provoked their presence. As they walked toward First Avenue with their backs to the park, Williams was hit on the top of the head without warning, he says, first with a club and then with what he believes was a riot shield. He fell down, got up, and, holding his head in his hands, looked back at the officer he believes struck him, whom he describes as white, stocky, and 5-foot-11 or taller. Williams says the officer called him "nigger" and yelled, "Move, move, move! Get the fuck out of here." He says he staggered as fast as he could to First Avenue, where he saw two officers coming toward him from the rear and right side. One, he says, was white or possibly a light-skinned Hispanic, about 5-foot-9 with a moustache. The other was black, chubby, and shorter than 5-foot-9. People were running up 9th Street toward First Avenue. Williams says he was trying to walk in the same direction, dizzy from the blows. In front of 442 E. 9th Street, he was struck by a nightstick on the back of his right ear, sustaining a gash about an inch long. He was hit again on the right cheekbone and fell down, losing consciousness. When he awoke, his left calf, ankle, back, neck, right arm, fingers, and wrist were throbbing, the result, he believes, of further pummeling. His Japanese friend was trying to help him up when,



Williams says, he saw the officer who first attacked him charging toward him yelling, "Get the fuck out of here." Williams says the officer called him "nigger" and "black motherfucker" several times and jabbed his club into his stomach.

He found his speech slurred when he tried to speak with them. He says his Japanese friend, Maejima Sogo, was struck, too. If Williams had done anything to provoke such a series of attacks, it did not lead to his arrest. Williams says the officer told Sogo to carry Williams home. They called 911 and hastened to the Beth Israel emergency room.

Williams says he has suffered four blackouts and numerous headaches since the attack and has sustained injuries that impair his ability to work. Within a month of the attack he contacted a lawyer who drafted his complaint and arranged an interview at the CCRB. As with Dordal, the commonplace became intimidating. He arrived early at the Puck Building where the CCRB's offices are located and, while waiting for his lawyer, found he could not remain in the lobby. There were simply too many police officers going in and out of the building for him to feel anything but intimidated. Only the appearance of his lawyer and the relaxed demeanor of the receptionist and the officer who interviewed him, a Sgt. Bottoms, calmed him.

#### NON-COMPLAINANTS

For all their reticence and skepticism, at least the victims quoted above made complaints. There is no telling how many

victims of police violence, at Tompkins Square Park or in general, rejected the thought of dealing with the CCRB because of its connection to the Police Department. Chet Mazur, who lives on 7th Street off of First Avenue left a neighborhood bar after 12:30 a.m. and says that while walking on Avenue A, he saw many people running from the police and several officers hitting a woman of about 20, who was screaming and bleeding. Later, on Avenue A, he claims he was stopped by a taller, older white officer who asked him where he was going. "I live here, let me walk," he says he replied. Next, he claims, the officer pushed him against the window of a laundromat and began shoving him up the street. He says five or six younger officers jumped him and started kicking and beating him with their nightsticks. Mazur recalls that as he rose, one of them slammed him against the back of the head with his stick. He says he turned and ran into his building.

He attended a community meeting at St. Brigid's Church in which residents were urged to make complaints to the CCRB and CCRB members present were heckled for not handling complaints more aggressively. "They were kind of torn apart by the audience," he remembers, explaining why he chose not to file. "I became skeptical and knew from other people's experience that it wouldn't do any good to file a complaint with them. You just compare any video of what happened to the number of cops indicted and you know how much good the CCRB does."

One of the most articulate advocates of community residents filing complaints with the CCRB, the Rev. George Kuhn, pastor of St. Brigid's, came to roughly the same conclusion as Mazur. Despite his clerical collar, Kuhn was nearly beaten by police in the midst of his nightlong effort to exert some restraint on police officers and demonstrators and to document the abuse he was witnessing. "There were scenes evocative of documentary films of Nazi Germany," he recalls. "The cops would just charge and club anybody in sight. I couldn't believe what I was seeing. I tried to take a picture of a cop who was clubbing someone -- he didn't have a badge on -- and he swung at me. I got my camera out of the way. If I hadn't moved my camera fast enough, I would have had a broken hand." Still, at the community meeting at his church two nights later, he advised victims to file their complaints at the CCRB.

Within a few months, however, he had lost faith in the board and argued that it should be disbanded. His strongest feelings stemmed from a gut realization that he could not deal with investigators who were also police.

Speaking of his rectory, he recalls, "Two plainclothes guys came here, and they said they were from the investigative staff of the CCRB, and if I hadn't been a little bit sensitive to it I probably wouldn't have known that they were policemen. They put a tape on and they started asking me very specific questions. I said, 'Take the tape off -- you're speaking to me like a lawyer.'

And they said, 'We're just trying to get the general information.'

"So I said, 'Fine, put the tape in,' and I let it go at that. I said, 'Are you a cop by the way?' and he said, 'Yeah.' I said, 'Are you carrying a gun right now?' and he said, 'Yeah.' So I said, 'Why am I talking to you? I'm very angry about what's going on and I want an investigation. Why am I talking to a man with a gun?'

"He said, 'Well, that's the way we're set up and we're concerned about this, too.' So I said, 'Go back, let's start this again, because I was going to stop the interview. So we'll put another tape in and we'll start again.' He said, 'No, let's keep that.'

"So I said, 'Get out of here.' I threw them out of the house. I wouldn't talk to them."

For each of these complainants and victims, lodging a grievance became a needless source of tension and suspicion because the investigative apparatus is so much a part of the Police Department. For each, responding to the system with faith and trust was nearly impossible. In some cases, such as Williams's and those of a scattering of other complainants such as Dean Kuipers and Tisha Pryor, goodwill and concern on the part of police employees assigned to the bureau overcame initial feelings of suspicion. It is clear in our random interviews, however, that these feelings are in the minority and that this goodwill, commendable in its own right, helped appease feelings

that would not have been present to begin with in a more rationally devised system.

Those feelings were summed up by Bob Arihood's description of his initial visit to the CCRB as a venture into "foreign territory." "It's the police investigating themselves," said Stuart Frankel.

Arguments over civilian review boards usually leave out the very human responses of aggrieved citizens. The public is asked to feel for the police officer acting honorably who would purportedly second-guess him or herself while needing to move quickly. Proponents of civilian-controlled boards often focus their arguments, understandably, on results of police-controlled boards that leave the vast majority of cases unprosecuted and that probably leave great numbers of cases unreported. From the observations of complainants comes another perspective and argument for civilian control of the review process -- that after having been brutalized or otherwise abused by police officers, citizens should not have to confront in face-to-face encounters, investigators from the very bureaucracy that employs their assailants. Paul Garrin, an accomplished video artist who made one of the key videotapes of the Tompkins Square riot, and who was pummeled by at least five officers, should have been a key resource person for the CCRB and the CCIB. Instead, he remembers that his first encounter with the board, when he called to file his complaint, destroyed his trust. "A sergeant answered the phone," he says. "I immediately had no confidence."

## THE INVESTIGATIONS

Suspicious on the part of many Tompkins Square complainants were only confirmed by aspects of the investigation that they found lacking. These can be summed up as follows: (1) there was an aura of either detachment, lack of initiative, or suspicion and hostility on the part of many investigators; (2) the basics of a good investigation, including rosters of all the police at the scene and clearly organized and annotated videotapes, were missing; and (3) if a complainant could not identify the assailant or the identification was not readily apparent on videotape, a case was as good as dead.

These factors, added to the natural suspicion many complainants had about the process forced cynicism to high levels.

Deputy Chief Farrell, the commanding officer of the Civilian Complaint Investigation Bureau, whom queries were referred to after Deputy Commissioner Marsh refused to speak with our researchers, maintains the investigative job was a good one. He points to the allocation of scores of investigators to the case, a canvass of 1,600 residents and others in the immediate area of Tompkins Square, the use of state-of-the-art video equipment at private video companies when warranted, and assistance from the Police Department's Internal Affairs Unit, the chief of department's office, the district attorney and the FBI. The ordinary flow of work in the office was largely put on hold so that there could be a massive focus of attention on Tompkins

Square, he says. "I used everybody I could lay my hands on that was appropriate," he notes. "This was an all-hands-on-board type thing."

Of the complainant response to the investigations and investigators -- some praise and much varied criticism, he says, "It doesn't surprise me that you had this range of response. There are personality clashes, differences of opinion, and some people believe if they say something happened, we should be able to prove it happened."

How much of the dissatisfaction is due to personality clashes and the like, and how much is due to deeper problems in the investigations, will be a matter of continual debate. The most fundamental source of information -- the investigative files themselves -- are confidential. However, the reports and observations of complainants are valuable for three reasons. First, they underscore the depth of skepticism inherent in the present system. Second, they provide details of the investigations that raise questions about their thoroughness and extent. Several complainants, for example, complained of poorly organized videotapes, of investigators who exited the room as they were viewing these tapes, leaving it to the complainants to figure out where and when the actions they were viewing were taking place, and of investigators who seemed to lose interest in the cases when the complainants said they could not identify their assailants. Third, the number of similar observations and

experiences re-enforcing each other adds weight to the statements of the complainants.

Alan Levine, a law professor at Hofstra University and board member of the New York Civil Liberties Union, represented several complainants before the CCRB. His experience provides a context for the observations not only of his clients, but of many who appeared before the board.

The sergeant investigating the complaints of his first two clients took down basic information from them and then showed them tapes. "In both cases, they sat in front of a TV set and were told to watch," Levine recalls. "The sergeant walked away. There was no commentary from the sergeant in terms of location or time either at the beginning or as the tape was running. For most of the time, he was not in the room. The tape was shown on a piece of shlock equipment -- nothing better than an ordinary TV set. I recall talking to some of the investigators about doing other things, like getting rosters of who was there. They said the rosters didn't exist, that people came from all over the city, that nobody knew who was there. They claimed they didn't have up-to-date ID photos, only photos taken when they were recruits or ones that were several years old. After that I lost faith that anybody was very diligent.

"Being told they couldn't find who was there seemed to me to be entirely implausible. If they had the list, they certainly could have excluded a large number of people from being present at different times and locations. If you can knock off two-



thirds of the people, you can begin to account for much of the rest. The idea that they weren't looking hard for that struck me as evidence they weren't looking hard for people."

Other points struck Levine. Two of his clients, Dordal and Murphy, were never shown photographs from which they might have been able to identify their assailants. They were not asked about other incidents they witnessed, although each, in Levine's words, "saw a lot." In the case of a third client, Paul Garrin, however, he found that the agency was "energized." "Paul was certainly very public," he surmises. "He talked to everybody. And they not only had his videotape, but Clayton Patterson's, which records Garrin's beating. They couldn't run away from his case, and they pursued it hard. They found two officers. If they found those two officers, there are certainly others who are identifiable."

Levine has other thoughts about how the investigations might have been pursued. "If you have these tapes broken by time, and place, and you have the complainants come in and you break them down as to where they were at given times, eventually you can work this into a computer printout fixing every bit of tape as to time and place and locating complainants and witnesses in the same manner. You don't have to be a rocket scientist to see that, if you coordinate that information, you'll find a number of people at the same place at the same time. Maybe you get all those people back together and things begin to develop from there -- leads to other witnesses who can help complete a picture."

The focus of the CCRB investigation as it appeared to him, Levine says, was "solely in querying complainants about their own beatings rather than attempting to document patterns of misconduct that were already, through videotape, the subjects of a high level of documentation."

The strands of Levine's analysis come up over and over in interviews with complainants. There is the sense of routine, by-the-book investigations in many cases, a sense that inquiries were limited to individual cases that would be closed if the complainant could not make an identification, that the video material was not used to best advantage.

For Murphy, for example, a pro forma investigation with a police sergeant led him to the conclusion that "with her and throughout the whole investigation, their concern seemed to be whether I could ID the two policemen that hit me. I needed to ID them (or there was no case). They showed me tapes. I looked through them to get a sense of what was taking place, what time, where it was taking place, when. They (the investigators) didn't help me. He left and went into another room. Basically, I was trying to reconstruct what happened. He had told me, 'Okay, when you see the cops that hit you, tell me (before he left the room).' I really doubt they even looked at the tapes. He didn't seem to know anything about it."

"My first interview was typical. A sergeant asked me questions, just clarifying some of the things I had said. She didn't seem to be trying to get any extra information out of me.

Did I feel there was a good-faith effort made? No, because I never got the feeling that they were actively investigating, but were just there, and if I happened to have conclusive evidence and could ID the police that hit me (they would prosecute), but other than that, they didn't seem to show much interest in conducting investigations."

Dordal, too, wound up frustrated. The CCRB substantiated that he was beaten, but said that it could not determine the identity of the officers who beat him. Dordal, who served as an army communications specialist and described the "military" left face onto Avenue A just before his attack, had pressed investigators to determine who led the "platoon" of men onto the street. He claims they told him they could not establish the identity of this platoon or its leader. Drawing on his military background, he finds this implausible.

Paul Garrin, the video expert, found that his confidence in the investigation, already minimal, dropped even further when he had to watch his tape and Patterson's on "crummy" equipment filled with fuzzy images and high levels of extraneous audio noise.

He also says there was no attempt to use him as a resource on other cases. The most remarkable one he witnessed -- and filmed -- was that of the police clubbing Ken Fish, the tour company operator who still feels the physical effects of the attack.<sup>83</sup>

Fish, by most accounts, was the person who sustained the worst injuries of the evening. Watching the confrontation on Avenue A and 6th Street in which several other complainants were injured, he suddenly realized that a police charge was heading in his direction. "I was on the side of a fire truck and I started to flee," he recalls. "I was running toward the back end of the fire truck, and I remember the sight of a police officer just wielding a stick at me, and then he hit me over the head. He hit me once and I went straight down to the ground. At that point there was a period where I actually got up and I started walking down the middle of the street. You can liken it almost to being a zombie because I was just kind of walking down the street like something out of the living dead." Fish needed 44 stitches in his forehead and sustained a fractured skull. His eyes, swelled closed that night, were bloodshot for a month. His sense of memory and smell are impaired to this day.

His experience with the CCRB, he says, was wanting. He called in his complaint in the first week after the incident and was visited by a lieutenant when he was physically incapable of traveling to board headquarters. "He was totally indifferent -- he just seemed like a note-taker," says Fish. "It just seemed like a job to him, doing everything by the book. Then a few days later he called back to ask more in detail about the circumstances. These were questions he had asked before. I definitely got the impression they were looking for

inconsistencies. Maybe they were just looking closely at the critical point when I was hit, but that's the impression I got."

"I do remember a couple of weeks after that calling him up and asking for a transcript of the interview, and being told I would have to get a subpoena. About a month or so later I called to find out the status of my case, and after getting passed from person to person, I was told that it had been closed. Without any identification of the officers, they said, there was nothing they could do."

Colin Campbell, an East Village bartender who participated in a peaceful demonstration in the park before the riot, says he called the CCRB several days after the event to tell investigators that he was a witness to Fish's beating as well as several others. He says he was interviewed at CCRB headquarters some time after that. "It was okay," he recalls. "I was kind of suspect. It was all cops, some in uniform, and I was kind of intimidated. I made a statement which I felt they pretty much disregarded because I was part of the demo. Afterwards, I kept calling them, but I never heard anything. They didn't send any letters or call. Anything I learned about what was going on I learned from the newspaper."

"It was just a stonewall," he concludes. "The cops didn't want to give away each other, and I understood that. All the information the CCRB gets is from the cops. They're half civilians, but all their information they get from police

investigators. So how could their investigation possibly indict any cops?"

There were some complainants in our survey who had praise for the process. One, Dean Kuipers, a journalist with a downtown newspaper, summed up the attitude of most of these people when he said of the officer who investigated his case, a Sgt. Mitchell, "I didn't want to trust him," but that the investigator won his trust. He and his friend Tisha Pryor had been subjected to vicious attacks accompanied by slurs, Kuipers being called a "fag motherfucker" by one officer and Pryor a "black nigger bitch" by another, he says. As something of a surprise to both, the CCRB substantiated their claims.

Although Marina Mollichelli, manager of a restaurant at 7th Street and Avenue A, criticized the quality of the police ID photos that were shown to her -- as did Kuipers and Pryor -- she too said she was treated well and had no complaint about the CCRB. She was attacked and detained by two ranking police officers, who were subsequently indicted. The charges against each of them were later dismissed.

However, in most cases the suspicions voiced by Fish -- a lack of serious effort to identify police abuse -- were more common than words of praise. Because of the CCIB/CCRB policy of not disclosing information about individual cases, it is impossible to tell whether Fish's suspicions about the ineffectiveness of the investigation are true. What is verifiable, though, is how similar his suspicions are to those of

others whose cases were pursued by the CCIB/CCRB. Even in cases where indictments were handed up, many complainants attributed that to the district attorney's office and were reluctant to credit the police investigators. John McBride, who was alongside Garrin taking pictures atop a van at Avenue A and 6th Street, was struck in the leg by a nightstick before he could flee. He submitted to a CCRB interview, but said, "I didn't feel at ease, I didn't really feel he'd believe me no matter what I said. I didn't get the feeling he was being as objective as he could have been, as was appropriate. The CCRB spent considerably more money, manpower, and time than the DA's office, but the DA's office was the only one to ID the officers."

Another complainant, Linda Dixon, who recalls being hit in the back with a nightstick shortly after leaving an Avenue A restaurant, remembers her interview at the CCIB headquarters. "I wasn't allowed to listen to the audio on the tapes. At one point, I turned up the sound, and one of the officers came over and turned it off. They were showing videos of Avenue B and I told them that I couldn't possibly identify anyone over there because I was on Avenue A and First Avenue. There were only police officers in the room with me, which pretty much summed up who was running the show. They didn't even take down descriptions I gave them. Basically, it seemed like they were trying to hinder the investigation as much as possible. They weren't hostile, though. They were pretty pleasant."

"About nine months later, I got a letter saying that everything was being dropped for lack of evidence."

#### THE HEARING

Complainants' suspicions often did not end with the CCIB or CCRB. Many grew cynical when their cases were dismissed or lost in the courts where the district attorney could not win a conviction out of the six indictments that were handed up. Paul Garrin and others felt that their cases were not pursued as vigorously as they could have been. A team of observers from the New York Civil Liberties Union attended the departmental hearing April 5, 1990 of the two officers charged with assaulting Garrin, Eric Vecchi and E.J. Skrzypek. Generally, the observers found that the case was presented before Administrative Judge Deidre Tompkins in a passive manner by Joseph Flynn, an attorney with the department's Police Advocate Group.

Steven L. Glauberman, a cooperating attorney with the NYCLU, reported, "It seems to us from what we observed and know that Flynn spent very little time preparing the witnesses. Flynn seemed to be using either a previously taken deposition of each witness or perhaps the grand jury testimony of each witness as the basis for his questions."

The equipment used to show tapes to Garrin and Patterson was outmoded and did not have the ability to freeze a frame, show the tape frame by frame, or run it in slow motion. Flynn did not ask Vecchi or Skrzypek to view the tapes at all, even though in



Skrzypek's case in particular, images of him flailing wildly with his club as Garrin shouted that he was getting off the van and pleaded not to be hit were in marked contrast to Skrzypek's testimony. The officer testified that he merely brandished his nightstick in front of Garrin and "tapped" the van.

The cross-examination of Garrin by defense counsel Joseph Lebray took the form of long statements delivered in an indignant, near-shouting manner. Flynn generally did not object, although the judge, on her own, reprimanded Lebray for the form and tone of his questions.

By contrast, direct testimony and cross-examination of Vecchi and Skrzypek collectively took less than an hour. Flynn's cross-examination of witnesses who supported the two officers was minimal as well. Captain William Plackemeyer, for example, testified that he ordered the van from which Garrin was filming to be cleared. Flynn never queried him about the incident or whether he knew or ever saw the two officers on trial that night. As the captain was about to be dismissed, Glauberman passed Flynn a note suggesting three questions -- whether Plackemeyer had seen the officers near the van, whether he observed debris or bottles being tossed from the van, and whether he observed officers without badges or with their badge numbers covered. Flynn asked the first question and Plackemeyer testified he did not see either officer that night. The attorney decided not to ask the last two questions, claiming they were irrelevant, according to Glauberman's report. Yet a freelancer's still .

photographs appear to show Vecchi with a badge number covered with black tape or a mourning band.

If the quality of the prosecution is an indication of the quality of the broader search for and prosecution of wrongdoers, it gives considerable cause for thought.

#### CONCLUSIONS

Given the suspicions, reservations, and frustrations of most of the complainants and victims interviewed for this report, it is not surprising that they are quite articulate in describing the need for a new review mechanism. A few of them can speak well for what seemed to be the general sentiment.

The Rev. George Kuhn: "I think the board should be disbanded. I've asked that anybody of goodwill on the CCRB resign and do it publicly. It doesn't matter whether you go on that board as a friend of the commissioner or with good intentions. It's so structured as to render anything you do ineffective. I think the only reason people went through the CCRB is because we had that meeting, and there were people, including myself, who encouraged others to go through the CCRB. I'd never do it again. I feel betrayed."

Michael Trazi Williams: "The unwritten rule among police to protect each other prevents the truth about police misconduct from being known. Look at all those people who've died at police hands over the last few years and how most of the police are never held accountable. If lawyers, judges, community leaders,

and other civilians made up the CCRB, the chances would be better for thorough investigations that hold cops accountable. As it exists, the review board is an institution whose primary purpose is to allow civilians to vent their anger at police misconduct, and that's all."

Bob Arihood: "The City of New York has to pass statutes that will make it possible for an independent body to investigate police behavior. I'm not saying there can't be police on it. There's a legitimate need for a police force, but not when it's a power unto itself. You've got to have some civilian oversight, and we don't have that."

## CHAPTER 5 -- THE EXAMPLE OF OTHER CITIES

There are two models New York City can follow in plotting a more credible and potentially more effective system for investigating citizen complaints of abuse. The first is the varied systems of citizen review that an estimated 70 towns and cities have developed in the past 20 years. The second is the highly developed system for investigating corruption, which the Police Department implemented after the Knapp Commission report.

In analyzing what has been effective in systems with a heavily civilian bent, local authorities would do well to consider the reflections of a CCRB study of various complaint systems that was issued in January 1986. The study reported that, "We found in our discussions with civilian agency heads that the more successful relationships between civilian agency and police department were predicated on enabling legislation which gave the independent agency subpoena power and access to departmental records, coupled with a strong, supportive municipal government which backed the agency up and listened to its recommendations. Given the fact that the agency was there to stay, the police department leadership was more likely to accept its presence and develop a working relationship. Of course, the attitudes of leadership on both sides was critically important, and good communication with as little preconceived hostility as possible facilitated a successful partnership."<sup>84</sup>

Among the cities with some component of civilian-controlled review are Washington, San Francisco, Cincinnati, Detroit, Atlanta, Toronto, and Milwaukee. The forms can be very different, due to variations in local government and the way the issue was framed. Certain broad trends account for the spread of civilian oversight. Many observers point to a suspicion of government and a feeling for the need for greater oversight growing during the Watergate scandal and again during the Iran-Contra scandal. This led to the approval of civilian-oriented reform even in a conservative city such as San Diego, where voters approved a mild form of civilian review in a referendum in November 1988.<sup>85</sup> Second, the complexion of many cities has changed dramatically since the New York vote. Many, including New York, are made up in the majority of people of color, the populations generally conceded to be the victims of the most abusive behavior on the part of heavily white police departments. Third, population trends notwithstanding, the issue in many cities has risen somewhat beyond the stark racial polarization that characterized past campaigns. Increasingly, the concept has emerged as a simple issue of good government. In this formulation, the monitoring of governmental agencies is seen as an inherent good, one that embodies the intentions of the framers of the Constitution. Proponents of civilian review are apt to quote James Madison from The Federalist Papers: "You must first enable the government to control the governed; and in the next place oblige it to control itself."<sup>86</sup>

These strands have come together in many cities that have surpassed New York in the extent of their use of civilian controlled review boards. Often they have civilian-controlled boards that recommend findings to a police commissioner. Sometimes civilian investigatory staffs replaced investigations units made up of police. On occasion, the ultimate decision in abuse and brutality cases resides with boards with general oversight of police departments. There seems to be a consensus, as indicated in the CCRB report, that for a review process to work, it needs the active cooperation of the city administration and its police hierarchy, motivation for police officers to testify candidly, and ongoing support from members of the public.

#### REFORMS ELSEWHERE

Although in some cities civilian reform has been instituted by referendum, most often it has come into existence by mayoral directive or city council action, almost always following a high profile incident of brutality. In San Francisco, the current version of the Office of Citizen Complaint was established after a friend of the mayor was beaten by police at a post-Super Bowl party in 1982. In Chicago, police in the department's citizen complaints office were replaced by civilian administrators and investigators after a black dentist complained he was roughed up while being stopped for not having a light over his rear license plate. The dentist was a close friend of Rep. Ralph H. Metcalfe (D-Ill.), who conducted hearings on alleged police abuse that

provoked a flood of stories, some of them from black police officers.<sup>87</sup> In Cincinnati, it was a flurry of shooting incidents that ended in the deaths of four black residents and four white police officers that led, in 1979, to the establishment by the City Council of an Office of Municipal Investigation, which probes complaints against police and other municipal employees and reports to the city manager.<sup>88</sup>

Each city has dealt with key issues in different ways.

Those issues include:

(1) Who processes and investigates complaints? Because of a reluctance to rely on investigations by police officers of fellow officers, several cities have opted for civilian investigative units. In San Francisco, for example, civilians investigate all complaints. They are paid considerably more than the civilian investigators in New York, starting at \$39,000, as much as \$14,000 higher than salary schedules permit for their New York counterparts.<sup>89</sup> In part as a result, their ranks include lawyers, former private investigators, and two or three former police officers who worked for departments other than San Francisco's. In Chicago, the entire unit is made up of civilians,<sup>90</sup> although over the years there has been controversy about the links between many of these civilians and the department. In Cincinnati, only non-police officers in the Office of Municipal Investigations probe complaints against police.<sup>91</sup> In other cities, such as Detroit, there is a heavy mix of police and civilian investigators.

Some cities, such as Milwaukee, Berkeley, and Toronto, have various overlapping structures. A citizen who files a complaint has a choice in the first two cities of whether he or she wants it investigated by an internal police unit or an external civilian unit.<sup>92</sup> In Toronto, a team of eight civilians reports to an independent public complaint commissioner, who can review and reinvestigate any internal police investigation that leads to an action by the police commissioner that is unsatisfying to a complainant.<sup>93</sup> Numerous other civilian-controlled agencies, such as those in Dade County, Fla., Atlanta, New Orleans, and Dallas, rely essentially on police investigators for information, much in the manner of New York.<sup>94</sup>

(2) Who should pass judgment on civilian complaints? The growing number of civilian-controlled review agencies are constituted in a wide variety of ways. In Atlanta, the Civilian Review Board is made up of 27 civilians who break into five-person hearing boards headed by a chair appointed by the mayor.<sup>95</sup> In other cities, the number of members on review boards is usually less than a dozen, with five in Milwaukee,<sup>96</sup> for example, and seven in Washington, D.C.<sup>97</sup> They are usually appointed by the mayor with the approval of the city council. Sometimes, they will be selected from lists approved by blue-chip screening panels or submitted by widely respected community agencies. In Dade County, for example, where an Independent Review Panel has jurisdiction over 19,000 county employees, including police, nominees are submitted to the County Commission by such agencies



as the Community Relations Board, Community Action agency, Dade County Bar Association, Dade County League of Women Voters, Dade County Association of Police Chiefs, and the county manager, who selects a member from his staff.<sup>98</sup>

As important as the membership of the board is its placement in the bureaucratic structure. Many boards, such as New York's, are placed within the structure of the Police Department. The rationale often is that since the police commissioner is ultimately responsible for disciplining his force, he should have control over the mechanism that advises him. It is also thought that having civilians involved in the internal workings of the investigative process encourages rigor and impartiality. Chicago also has such a system. The problems with it, however, are manifold. The two greatest are issues of public credibility and true independence from the police. In Chicago, the number of relatives of Chicago police officers, including the wife of a former police superintendent, who served as agency staff, threw the independence issue into prominence.

Among the agencies established outside departments are those in such diverse communities as Detroit, Dade County, Cincinnati, New Orleans, and Berkeley. They are often staffed with their own teams of investigators and often have jurisdiction beyond police to the entire body of municipal workers. Their budgets are independent of the department's. Frequently they are empowered to recommend disposition and punishment to the police commissioner.<sup>99</sup>

The ability to recommend appropriate discipline is a particularly crucial one, which Commissioner Ward attempted to remove from the board in New York City, setting off criticism among board members and muted criticism in the last board report.

Beyond recommending findings and penalties, some boards have the power to submit their findings to authorities above the highest ranking uniformed police officer. In Atlanta, findings are made to the mayor.<sup>100</sup> In San Francisco, if the police chief makes a determination at variance with the recommendation from the Office of Citizen Complaints, the case can be appealed to a five-member police commission, which presides over the department in much the same manner as the Board of Education presides over schools in New York.<sup>101</sup> In Berkeley, if a citizen opts to have a complaint investigated by the Police Review Commission, recommendations, after public hearings, are submitted not to the police chief but to the city manager.<sup>102</sup>

In Toronto, a citizen dissatisfied with the disposition of a case by the police chief can appeal the decision to the Office of Police Complaint Commissioner, which after conducting its own investigation, can order a public hearing conducted by a 24-person board of inquiry. Members of the board are appointed a third each by the Ontario attorney general and solicitor general, the Toronto Metropolitan Council, and the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association. The board observes a higher standard of proof than other civilian agencies -- beyond a reasonable doubt -- and can

administer its own discipline, with the maximum penalty being dismissal from the force. The board's decisions can be appealed to the courts.<sup>103</sup>

In addition to acting on individual complaints, many of these boards, including the last three mentioned, are empowered to, and do, issue regular reports on police activity and policy, recommending changes in procedure.

These active boards are considered the most advanced in terms of civilian monitoring of police, but they, too, encounter difficulties that sometimes stand in the way of optimal performance. To work, they need cooperation from the police and from the citizenry.

(3) How can cooperation from all parties be encouraged? Police, in many cases understandably, have been wary of cooperation with civilian boards. In their own self-interest, in New York and other cities, they have a mechanism that protects them from sanctions in a way that appropriate procedural safeguards does not. This is the code of silence, which, as long as it holds, insures that the witnesses who most often can furnish incriminating information, i.e., fellow officers, remain mute. For the public, the issue of involvement is different. Police review, after a highly publicized and controversial use of force by officers, often becomes the issue of the moment in the city. But particularly in minority communities, where concerns over jobs, housing, and social services are everpresent, the moment often fades. The most highly structured boards have on

occasion simply slipped from existence because of a diminution of public interest.

Resistance to civilian boards has proven to be enormous among police officers, but in some cities there have been ingenious attempts to break through the wall. Berkeley stands out as an example. In the mid-'70s it negotiated the cooperation of officers in the review process in exchange for labor benefits. The adjoining City of Oakland negotiated a more limited agreement of the same sort. Subpoena powers have frequently proven to be useful where negotiated agreement has not come to pass.

Authorities also point to time and familiarity as being the great levelers in promoting cooperation of varying degrees among officers. The boards almost without exception are not composed of the sorts of hacks or anti-police bigots that the police unions initially envision. This shows in results of civilian review boards. Although comparative data is imprecise and problematic, in many situations it appears that the civilian review boards are no more severe in dealing with police than departmental boards, although their credibility among civilians is usually higher, according to most authorities.

Furthermore, civilian boards often provide procedural safeguards to officers that are usually absent from departmental mechanisms. In most well-run boards, for example, there is a serious effort to reduce the numbers of unsubstantiated cases. If a case can't be substantiated, the officer leaves the process with an unblemished record. There are no notations in his file,

no presumptions of guilt unless the board determines that a standard of proof has been met.

Gaining the cooperation and support of the public is also critically important. Frequently boards face what their advocates call a sort of "postpartum" resistance following their births. Activists who fought for their creation move on to other battles. Police unions continue to fight this one. The boards sometimes fade from public view and lose a number of bureaucratic battles that lead to a lessening of their power. Detroit is one city that has tried to guard against this by requiring that its five-person Board of Civilian Police Commissioners hold weekly public meetings and conduct at least one of those meetings monthly at a neighborhood location. The board has jurisdiction over civilian complaints as part of its supervisory authority over the department.

Along with a sense of impartiality and fairness, a credible record of investigation is what in the long run engenders community support. Again, information is fragmentary, but in the most widely cited survey of six review mechanisms (Douglas Perez 1978), the Berkeley civilian board was the only one deemed substantially satisfactory by a significant number of complainants whose claims were rejected. Overall, it was found to be impartial by nearly 65% of complainants, thorough by more than 85% and fair by 73%.<sup>104</sup> The Berkeley Police Department's parallel apparatus was deemed impartial by just under 30% of complainants, thorough by 47% and fair by little more than 35%.<sup>105</sup>

The all-police system then in neighboring Oakland was deemed impartial by slightly less than 10% of complainants, thorough by a little more than 23%, and fair by 11.5%.<sup>106</sup> In Kansas City, which used a mix of civilians and police in investigations, as New York does today, the results were worse than they were for the all-police board in Berkeley (18%, 22%, and 16% respectively).<sup>107</sup>

This broad, somewhat impressionistic overview does not touch on all issues involving civilian review. Among the topics that involve major policy decisions are the conciliation of cases that can be better served in this manner than through a quasi-judicial process, the level of proof needed for substantiation, procedures for appointments to the board, a board's relationship to the full disciplinary process, and the process of appeal of its judgments. The overview does not mean to suggest that these boards are panaceas or that many of them have not become enmeshed in bitter political battles of their own. This, given the subject matter of these boards, is an inevitability, and it can be argued that many of the boards that receive only sporadic public attention, such as New York's, are the ones that are less successful.

#### BRUTALITY VS. CORRUPTION

The city can also look to the vigor with which the Police Department has addressed corruption as a model for how to grapple with police abuse and brutality. The anti-corruption effort is a national model. In the most direct way, it was the result of

Frank Serpico's breaking of the blue wall of silence and of the Knapp Commission investigation that ensued. Coming out of this was the acknowledgement that corruption was not the vice of a few bad apples, but systemic. Presently, 420 worn officers working with the Internal Affairs Division and the Field Internal Affairs Units are engaged in the task of routing out corruption. Twenty years after Serpico first went to The New York Times with his story, the common belief is that despite drug and corruption problems involving individuals and perhaps small isolated rings, systemic, department-wide corruption has not returned to a bureaucracy, which, before this, had been scarred by scandal on a 20-year cycle that seemed to function like clockwork.

By contrast, the chair of the Civilian Complaint Review Board recently described brutality and abuse as limited to a few "bad apples." The investigative force battling abuse and brutality is roughly a quarter the size of the one geared toward corruption. And nobody can say with authority how bad a problem abusive behavior is in the Police Department. While the anecdotal information -- the outpourings and comments at various public hearings, the talk on the street in many minority neighborhoods -- would indicate the problem is large, the statistical base of complaints established over two decades by the CCRB is simply too small, too subject to fluctuation, and too unmoored from a direct relationship with actual instances of abuse to provide insight.

The question is whether the time has come to deal with brutality in as serious a way as the Police Department deals with corruption.



## CHAPTER 6: RECOMMENDATIONS

An effective Civilian Complaint Review Board must be independent, powerful, and worthy of public trust. It should be able to investigate charges of police abuse as exhaustively as the Police Department is expected to investigate criminal acts of all kinds and to treat police brutality as seriously as the department treats police corruption.

While the police commissioner should maintain broad authority in determining discipline, the CCRB should be expected to comment on and criticize police policy and action and, in extraordinary circumstances, to overrule the police commissioner.

To that end, we believe the CCRB should:

(1) be established outside the Police Department and made up of 12 civilians who are representative of the city's population. The mayor should appoint three members and designate one as the chair; the president of the City Council and the Comptroller should both appoint two representatives each; the City Council majority leader should appoint two members and the City Council minority leader should appoint one member. The remaining two members of the CCRB should be the New York City criminal justice coordinator and the chair of the City's Commission on Human Rights. This would make the CCRB responsive to both elected officials and the public. Chairing the CCRB should be a full-time job with pay comparable to that of other

city agency heads. The chair should be assisted by a full-time general counsel to lead the staff of investigators;

(2) have investigators who are civilians with no allegiances to the Police Department. Its investigators should be professionals, paid on a higher scale and be able to compete for career track promotions. This would help to attract and retain an experienced and talented staff;

(3) have expanded jurisdiction that includes police or peace officers employed by any city or quasi-city agency. This should include, but not be limited to, the city's Police Department, Transit Authority Police, Housing Authority Police, Sanitation Police, and Health and Hospitals Corporation Police;

(4) operate with the understanding that great power over discipline remains with the police commissioner and his counterparts at the other law enforcement agencies in the city, but that, in exceptional cases, it could overrule them, and impose sanctions on officers. A suggested way of implementing this is detailed below;

(5) be given the power to issue subpoenas and requisition copies of reports related to the alleged acts of misconduct from law enforcement agencies. These tools are necessary to develop effective investigations of acts allegedly involving personnel from law enforcement agencies;

(6) hold regular public meetings and engage in education and media campaigns to spread awareness of its existence and the rights of citizens in encounters with the police. The CCRB

should (A) hold open, public meetings in each borough twice a year; (B) publish monthly reports in the City Record as well as in the department orders of each law enforcement agency containing the results of all cases in which sanctions were approved; and (C) issue quarterly reports on the total number of complaints filed in each borough and recent dispositions. The report should include the number of cases recommended for sanctions by a CCRB panel, an appropriate law enforcement agency head, the full CCRB and how many complaints were dismissed;

(7) have the authority to investigate, hold hearings, and issue reports on patterns and practices of police abuse. Beyond disciplining individual cases of police brutality and abuse of power, the CCRB would track systemic patterns of abuses and hold departments and commissioners accountable for their actions or inactions;

(8) maintain procedural safeguards to protect the rights of civilians and police officers. This would encourage both to have more faith in the proceedings. Detailed operating procedures for the CCRB and its investigators should include a provision excluding from an officer's personnel file at the Police Department or other law enforcement agency information about a case against him or her that was not substantiated.

Here is a how a new procedure could work:

All complaints against law enforcement officers should be referred to the CCRB. They could be made in writing or to a 24-hour telephone hotline that would be publicized extensively.

Complaints should then be assigned to investigative teams. Their findings of fact and recommendations for action should go to a panel of three CCRB members.

The panel would consider the investigators' report and make its own recommendation to the full board.

The full board, considering the panel's and investigatory team's reports, would make recommendations to the police commissioner or appropriate law enforcement agency head or to the district attorney.

The panel and board could also reject the staff's findings and dismiss the complaint before it is forwarded to the police commissioner or other law enforcement agency head.

Law enforcement agency commissioners could either accept or reject the CCRB's recommendations. Previous police commissioners have frequently disregarded the board's recommendations, and officers involved in brutality or abuse cases have received the equivalent of a slap on the wrist. To convince both the commissioners and the public that police brutality will be taken seriously, we recommend that the CCRB have the power to override the rejection of its recommendations by a commissioner in extreme situations.

When a commissioner discards the CCRB recommendations, the matter should be returned to the board for review. The full 12-member CCRB, would need a 2/3 vote, to sustain its original disciplinary recommendation over the commissioner's or other law enforcement agency head's veto. If the override is effected, the

case would go to an administrative law judge for a formal hearing. If the 2/3 vote is not obtained, the decision of the police commissioner or other law enforcement agency head would become effective.

Of course, if a commissioner accepts the CCRB recommendations, the officer also should be entitled to a hearing before an administrative law judge and to be represented by counsel.

The administrative law judge should be empowered to hear evidence, make formal findings and recommend sanctions to the appropriate law enforcement agency head. The administrative law judge should apply a "clear and convincing" standard of proof.

If the findings of the administrative law judge are ignored by the head of a law enforcement agency, the case could be reconsidered by the entire CCRB. If 3/4 of the CCRB's members vote to restore the sanctions, the agency head would be overruled and the sanctions imposed.

The sanctions could include fine, reprimand, suspension and dismissal.

If the case against an officer is dismissed or the officer exonerated, the complaint should be expunged from his employment file at the Police Department or other law enforcement agency.

Finally, we recommend that citizens engaging in demonstrations, picketing or other public activities, bring videotape cameras to those events and activities. More than anything else, it was the presence of such cameras in the crowds

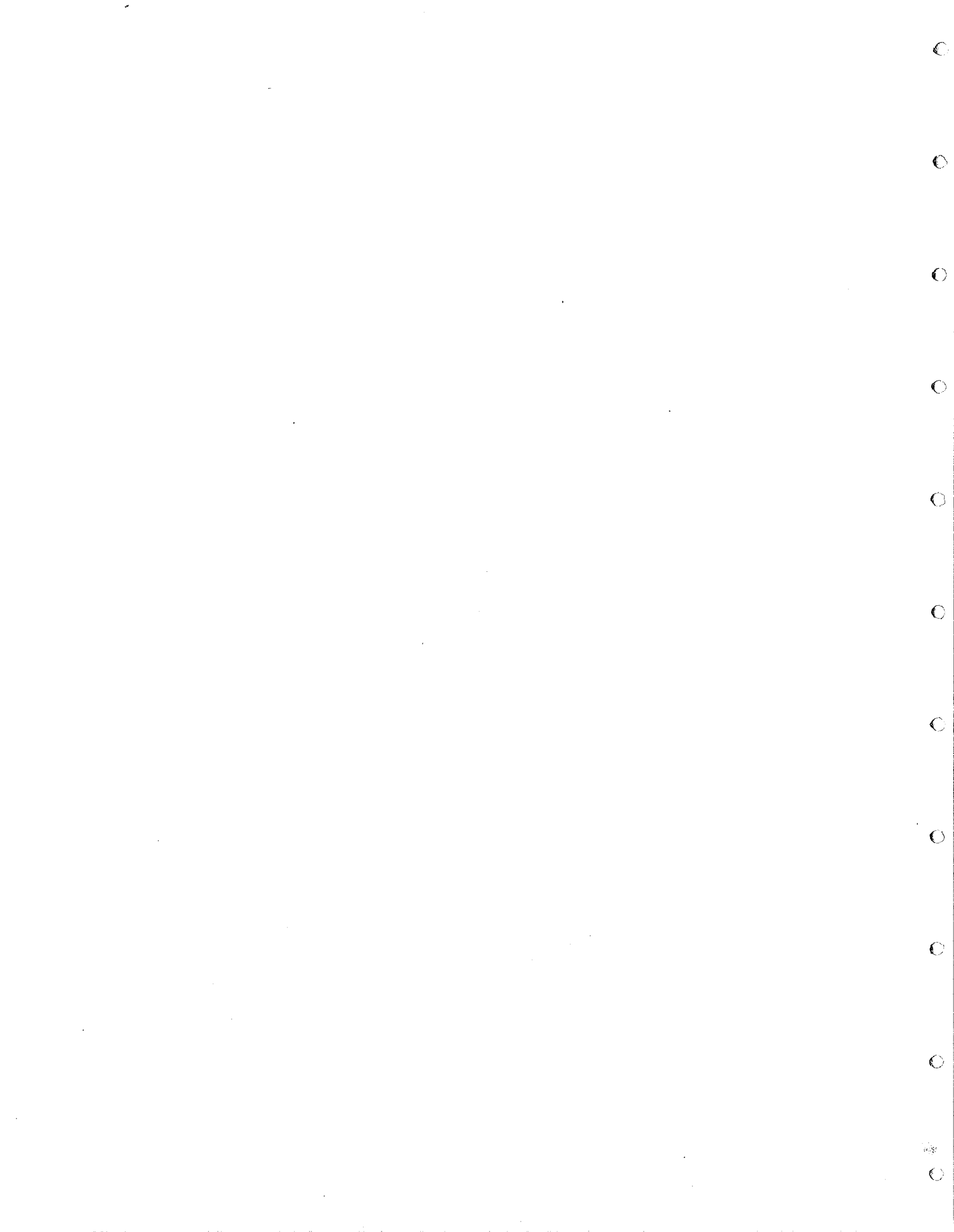
of citizens at Tompkins Square Park that forced city officials to acknowledge publicly the police misconduct, and has raised anew the issue of effectively monitoring the police in New York City.

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## APPENDICES

### NOTES

1. Initially, Koch and Ward expressed disbelief of reports of police brutality at the Tompkins Square Park area on August 6-7, 1988. In a news conference at City Hall on August 8, 1988, Koch stated, "Take a cop on at your peril, and a cop at his peril will use undue force. We are prepared to support every cop who uses appropriate measures to prevent illegalities." New York Newsday, August 9, 1988, p. 25.  
Ward said he had no evidence that the police acted improperly, New York Daily News, August 9, 1988, and Koch said that the police have no requirement "to be meek in the face of a physical assault upon them." Ibid. Both men indicated, however, that officers using excessive force would be disciplined. Ibid. Commissioner Ward also defended police actions during the melee but added that "some cops may not have had enough supervision." New York Post, August 9, 1988.
2. New York City Police Department, Report of the Civilian Complaint Review Board on the Disposition of Civilians' Complaints Arising From Police Department Action Occurring At Tompkins Square Park on August 6-7, 1988, dated April 1989 ("1989 CCRB Report on TSP"), p. 5.
3. Based on analysis of (i) the 1989 CCRB Report on TSP, (ii) the 1989 CCIB Report (defined in note 5 below), and (iii) a letter from Sandra Marsh, Deputy Commissioner of the CCRB to Martin Gottlieb, it appears that 32 cases were brought against 17 police officers involved in the Tompkins Square Park incident. These cases included 17 cases pursuant to action recommended by the CCRB, 9 cases pursuant to action recommended by the Police Department Chief of Patrol, and 6 criminal cases pursuant to indictment brought by the Manhattan District Attorney's Office. However, some police officers were subject to actions brought by more than one of the aforementioned investigatory agencies. Thus, there are actually 18 cases involving 17 police officers. See 1989 CCIB Report, p. 5.
4. New York City Police Department, Report of the Civilian Complaint Review Board, New York City Police Department October 1987 - December 1989 ("1987-1989 CCRB Report"), p. 28.



5. The 1989 CCIB Report states on page 4 that there are now 12 civilian investigators working for the CCIB, constituting 22% of the investigative staff. Thus, based on these figures, the total number of investigators should be 54. This number, however, conflicts with a news report on April 19, 1989 in The New York Times, that the total number of investigators is 73. The NYCLU has learned that the difference is probably attributable to supervisory personnel at the CCIB consisting of police officers of the rank of sergeant or higher. See "17 Officers Named in Tompkins Sq. Riot," The New York Times, April 19, 1989, particularly the comments of Mary Burke Nicholas, CCRB Chairwoman, and Commissioner Ward.
6. In 1985, 7,073 complaints were filed with the CCRB. New York City Police Department, Civilian Complaint Review Board 1986 Annual Report ("1986 CCRB Annual Report"), p. 27. In 1989, 3,515 complaints were filed with the CCRB. New York City Police Department, Civilian Complaint Investigative Bureau 1989 Annual Report ("1989 CCIB Annual Report"), p. 1. In 1987, 4,757 complaints were filed with the CCRB and 4,178 complaints were filed with the CCRB in 1988.

References to the number of complaints filed in a particular year and percentages derived therefore may vary slightly from annual report to annual report because minor adjustments are made by later years' reports. Also it should be observed that some complaints filed in one year may not be closed or disposed of until a succeeding year.
7. Letter, dated February 26, 1990, from Sandra M. Marsh to Martin Gottlieb.
8. Ibid.
9. 1989 CCRB Report on TSP, p. 8. In addition, 41 cases were resolved in the category of "officer unidentified." Ibid. p. 9.
10. Even the Police Department conceded that police officers were not prepared to deal with the situation in Tompkins Square Park area in August 1988. In the aftermath of the police riot, the CCRB and Robert J. Johnston, Jr. made detailed recommendations for training programs for police officers relating to crowd control and street disorders. 1989 CCRB Report on TSP, p. 12; Memorandum, dated August 23, 1988, from Robert J. Johnston, Jr., Chief of Department to Benjamin Ward, Police Commissioner, pp. 7-14.
11. 1989 CCRB Report on TSP, p. 7.
12. 1987-1989 CCRB Report, p. 17.

13. The New York Times, June 30, 1966.
14. Ibid.
15. For a detailed description of the PBA opposition to civilian review of police actions see "NO! Says the P.B.A." by Thomas R. Brooks, The New York Times Magazine, October 16, 1966.
16. "State Law Asked on Police Boards," The New York Times, February 21, 1966.
17. Ibid.
18. "NO! Says the P.B.A.," The New York Times Magazine, October 16, 1966, p. 37.
19. See note 16.
20. See note 18, pp. 124-126.
21. "86 Youths Seized in West Side Raid," The New York Times, November 7, 1966.
22. See note 18, p. 126.
23. Ibid., p. 124, 126.
24. New York City Mayor's Advisory Committee on Police Management and Personnel Policy, 1986 ("Zuccotti Committee Report"), p. 187.
25. "Panel Sees Some Police Racism in New York," The New York Times, November 15, 1984.
26. "Police Curb Complaint Board's Power," The New York Times, March 24, 1989, p. B3.
27. See note 5.
28. 1987-1989 CCRB Report, p. 31.
29. New York City Police Department, Civilian Complaint Investigative Bureau, 1988 Annual Report, ("1988 CCIB Annual Report"). According to page 1 of the report, on January 26, 1989, Commissioner Ward redesignated the investigative unit of the Civilian Complaint Review Board, the Civilian Complaint Investigative Bureau (CCIB).
30. This is not to say that the CCIB and CCRB hear every case alleging abuse by police officers. Some number of them are handled by the Police Department's Internal Affairs Division. A department spokesman said that this can take

place when the "reputation of the department is deemed to be on the line." In an interview, the CCIB's Deputy Chief and Commanding Officer, Kevin P. Farrell, said he was uncertain precisely how many abuse and brutality cases were investigated by the Internal Affairs Division.

31. 1989 CCRB Report on TSP, p. 7.
32. Ibid., p. 7, 13.
33. Ibid., p. 13.
34. Ibid.
35. 1987-1989 CCRB Report, p. 17.
36. Ibid., footnote 20.
37. Even if Ward did not have power to grant statutory immunity he could have demanded responses from employees that upon pain of termination would have yielded responses, subject to the limitation in Garrity v. N.J., 385 U.S. 493 (1967), that none of the responses could have been used in support of any criminal prosecution.
38. 1989 CCIB Annual Report, p. 14, Table 11 ("Dispositions of Complaints Received in 1988 and 1989"). The percentage is based on 4,170 complaints, not the total of 4,178 complaints because Table 11 indicates 8 complaints are "open."  
Table 10 ("Disciplinary Actions Recommended by CCRB") indicates that in 1988, 205 complaints were "substantiated" and an additional 117 complaints were classified as "other misconduct noted" (*i.e.*, determination that an act of misconduct other than that alleged in the complaint was committed by the subject employee). No explanation is provided as to how Tables 10 and 11 differ. Prior to the publication of this report, the NYCLU made several telephone calls to query Deputy Chief Farrell about these tables but he did not return any of the calls.  
The CCRB, in its two-year report for the years 1987 and 1988, points out that one measure of the adequacy of Police Department investigations of civilians' complaints is the percentage of cases which are able to be resolved. To support this concept the CCRB curiously adds the total number of disciplinary actions from Table 10 (including substantiated complaints and complaints in which other misconduct is noted) and the number of unfounded and exonerated complaints in Table 11 but excludes the number of substantiated cases appearing in Table 11 itself. No explanation of this use of statistics is provided and the number of substantiated complaints in Table 10 (205) is not the same number as in Table 11 (157). However, this

unorthodox methodology seems to have the effect of raising the rate of resolution on the merits -- 628 out of 4,179 complaints or 15%.

39. 1989 CCIB Annual Report, p. 14, Table 11. The percentage is based on 3,262 complaints, not the total of 3,515 complaints because Table 11 indicates 253 complaints are "open." Table 10 indicates that in 1989, 216 complaints were "substantiated" and 50 complaints were classified as "other misconduct noted."  
Applying the CCRB's methodology to 1989 numbers, the rate of resolution on the merits would be 460 out of 3,515 complaints or 13%.
40. 1987-1989 CCRB Report, p. 10.
41. Ibid., p. 7.
42. Ibid.
43. 1989 CCIB Annual Report, p. 10.
44. 1989 CCRB Report on TSP, p. 11.
45. 1989 CCIB Annual Report, p. 14. Tables 10 and 11. For a further explanation see notes 38 and 39.
46. Ibid.
47. 1987-1989 CCRB Report, p. 9. Our computation is 84% based on using the same method of computation but the more updated numbers for 1988 contained in the 1989 CCIB Annual Report.
48. Interview of Werner Petterson by Martin Gottlieb, April 1990.
49. 1989 CCIB Report on TSP, p. 11.
50. 1989 CCIB Annual Report, p. 14, Table 11.
51. New York City Police Department, Civilian Complaint Review Board 1986 Annual Report ("1986 CCRB Annual Report"), p. 27.
52. 1989 CCIB Annual Report, p. 14. In 1986, 5,128 complaints were filed; in 1987, 4,757 complaints were filed; and in 1988, 4,178 complaints were filed.
53. Zuccotti Committee Report, p. 177.
54. 1989 CCIB Annual Report, pp. 1, 7; 1988 numbers are based upon 4,178 complaints filed in 1988 and 4,757 complaints filed in 1987 (the source of these numbers are the 1987-1989

CCRB Report, p. 7, and the 1989 CCIB Annual Report, p. 7, respectively).

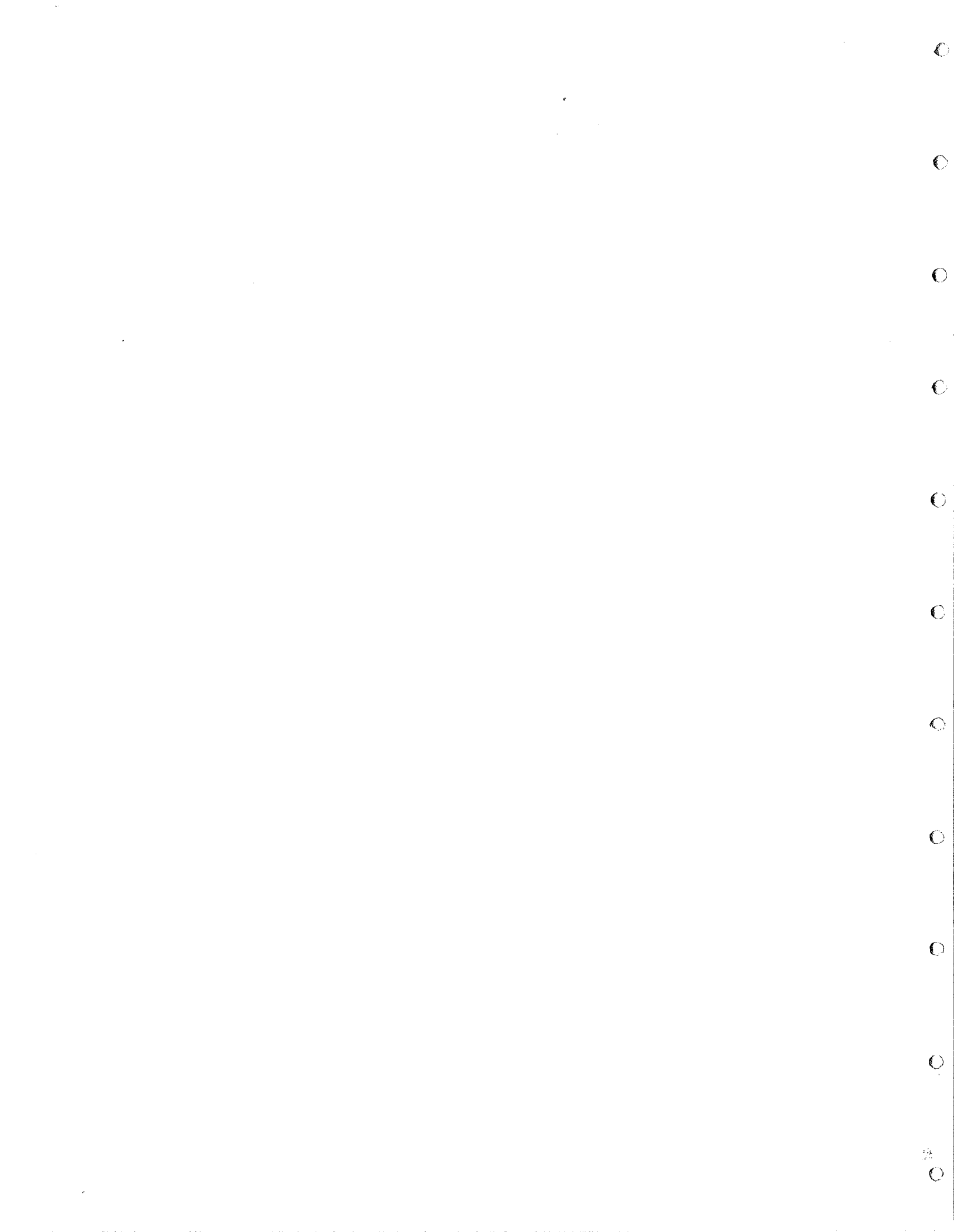
55. 1988 CCIB Annual Report, p. 1. The number of complaints filed in 1987 according to the 1988 CCIB Annual Report is 4,755 while in the 1987-1989 CCRB Report the number is 4,757. The discrepancy is explained in footnote 2 of the 1988 CCIB Annual Report.
56. 1987-1989 CCRB Report, p. 6.
57. 1988 CCIB Annual Report, p. 2.
58. Ibid.
59. Ibid.
60. Ibid.
61. 1989 CCIB Annual Report, pp. 2-3.
62. 1988 CCIB Annual Report, p. 8, Table 6.
63. 1989 CCIB Annual Report, p. 10, Table 6.
64. Ibid.
65. See note 60.
66. See note 61.
67. Press Release No. 17, dated March 6, 1972, issued by Police Department, City of New York.
68. 1989 CCIB Annual Report, p. 20.
69. Ibid.
70. Ibid.
71. Ibid.
72. Telephone conversation, June 7, 1990, between Martin Gottlieb and a Housing Authority official.
73. 1987-1989 CCRB Report, p. 8.
74. Ibid.
75. Ibid. p. 11.
76. Ibid.

77. Ibid., p. 12. See also p. 29.
78. Ibid., p. 9.
79. In the insightful words of a previous CCRB document setting forth a comparison of different civilian review systems completed in 1986, the board wrote: "A decrease in complaints received can mean misconduct is decreasing, or that the agency is losing credibility and no one is seeking redress there, or that complainants are being prevented from filing complaints." Nationwide Survey of Civilian Complaint Systems, January 1986, New York City Police Department Civilian Complaint Review Board, p. 36 ("1986 CCRB Nationwide Survey").
80. 1987-1989 CCRB Report, p. 17.
81. See note 10.
82. See Appendix D.
83. Meanwhile, police opened a second investigation concerning Garrin. With his potentially incriminating video shown on many television stations, Garrin was one of the most prominent of the Tompkins Square victims. On the day after the riot, he received two anonymous threatening phone calls, and the day after that another two. He recalls the language in some of them: "You better get the fuck away -- they're gonna get you." "Paul, you stupid motherfucker, you got the whole Police Department against you." "You can run, but you can't hide."
- He says he reported the calls to the CCRB and was later interviewed by the Internal Affairs Department and the FBI. "That's the last I heard about it," he said.
- A class action lawsuit has been filed on behalf of Paul Garrin. In addition to seeking damages for Garrin, the suit seeks to end a longstanding pattern of police abuse, namely, interference with persons photographing and otherwise recording police actions. In addition to Garrin, at least three other photographers were beaten by the police at Tompkins Square Park area on August 6-7, 1988.
84. 1986 CCRB Nationwide Survey, p. 29.
85. Two versions of a proposal of a civilian review board were presented to voters in San Diego. One form called for a strong civilian-oriented body and the other called for a milder body. Although voters approved both versions, the milder version was implemented because it received more votes.

86. Quoted in "Civilian Oversight of Policing -- United States of America," a paper prepared by Werner E. Petterson ("Petterson").
87. Ibid., pp. 4-6.
88. U.S. Department of Justice, Community Relations Service, Compendium of Civilian Oversight Agencies -- Civilian Oversight of Police, prepared by Werner E. Petterson, Conciliator ("Compendium"), pp. 13-14.
89. Based on information obtained from San Francisco Office of Citizen Complaints, Fiscal Year 1990-1991, p. 3.
90. Compendium, p. 3.
91. Ibid., p. 6.
92. Ibid., pp. 13-14.
93. Ibid.
94. Ibid., pp. 8, 21, 22, and 23.
95. Ibid., p. 23.
96. Petterson, p. 43.
97. Ibid.
98. Compendium, p. 8.
99. Ibid., pp. 3, 4, 8 and 9.
100. Ibid., p. 23.
101. Ibid., p. 16.
102. Ibid., p. 10.
103. Ibid., p. 14.
104. Wayne A. Kerstetter, "Who Disciplines the Police? Who Should?" in Police Leadership in America: Crisis Opportunity, edited by William A. Geller ("Kerstetter"), p. 162. Percentages are derived from survey done by Douglas Perez in 1978.
105. Ibid., p. 164.
106. Ibid.

107. Ibid.





§ 440. **Civilian complaints against members of the police department.** (a) **Policy.** It is hereby declared to be the public policy of the city of New York in order to preserve the independence and integrity of police service, that civilian complaints against members of the police department of the city of New York shall be reviewed fairly and impartially by the review board established in this section and shall be investigated and dealt with fully and fairly by the appropriate officials regularly charged with the governance and discipline of the police department without interference by any person or group of persons not regularly in police service.

## POLICE DEPARTMENT

## § 440

(b) **Definitions.** As used in this section:

1. The term "mayor" means the mayor of the city of New York or any official acting on his behalf or in his place and stead.

2. The term "commissioner" means the police commissioner of the city of New York or any official acting on his behalf or in his place and stead.

e. The term "police department" means the police department of the city of New York.

4. The term "civilian" means any person who is not a member or full-time employee of the police department.

(c) **Review of civilian complaints.** There shall continue to be within the police department a review board, with the power to receive, to investigate, to hear and to recommend action upon civilian complaints against members of the police department. The board shall consist of twelve members, of whom six shall be members of the public selected so that one resident from each of the five boroughs of the city and one citywide representative are members. The public representatives shall be appointed by the mayor for terms of two years with advice and consent of the council in the same manner as is provided in section thirty-one. Six members shall be appointed by the commissioner for terms of two years. Each member appointed by the commissioner must have been, for a period of at least one year prior to his appointment to such board, a regularly appointed, full-time member or full-time administrative employee of the police department. Any such member shall be a member of the board only for such time as he or she is so employed. In the event of a vacancy on the board during the term of office of a member by reason of removal, death, resignation, or otherwise, a successor shall be chosen in the same manner as was the member whose position became vacant. A member appointed to fill a vacancy shall serve for the balance of the unexpired term. Neither the mayor, the commissioner, nor any other administrator or officer of the city of New York shall have power to authorize any person, agency, board or group to receive, to investigate, to hear, or to require or recommend action upon civilian complaints against members of the police department except as provided in this section, provided that nothing herein shall limit or impair the authority of the commissioner to discipline members of the force pursuant to law.

(d) Rules of procedure; staffing. 1. The board shall establish rules of procedure, which may provide for the establishment of panels or a board of not less than three members each, which shall consist of at least one public representative to act on behalf of the board. No panel shall consist entirely of public representatives. Such panels may recommend action on civilian complaints against members of the police department.

2. The commissioner shall assign personnel of the police department to assist the board and conduct investigations on its behalf.

(e) Attendance by police officers. No member of the police department or other person shall be disciplined or otherwise penalized for his failure to appear before or respond to the inquiries of any person, agency, board or group appointed by the mayor, the commissioner, or any administrator or officer of the city of New York to receive, to investigate or to require or recommend action upon civilian complaints

against members of the police department, unless such person, agency, board or group shall be duly appointed in accordance with the provisions of this section.

(f) Prosecution; right to hearing. Notwithstanding anything herein contained to the contrary, this section shall not be construed to prevent investigation or prosecution of members of the police department for violations of law by a duly constituted court having jurisdiction, a grand jury, district attorney or other law enforcement agency; nor shall this section be construed to permit a member of the police department to be fined, reprimanded, removed, suspended or dismissed, except upon written charges, after such charges have been examined, heard and investigated by the commissioner, one of his deputies or the assistant to the commissioner.

(g) Separability. The invalidity of any provision or provisions of this section shall not affect the validity of the remaining provisions thereof but such remaining provisions shall continue in full force and effect.

#### CASE NOTES

¶ 1. The appointment of a commission by the Mayor to investigate alleged police corruption and the City's anti-corruption procedures was not improper under this section where the purpose of the commission was to generally explore the overall situation regarding police corruption and not merely to hear and recommend on specific civilian complaints regarding the derelictions of particular police officers.—*Kiernan v. City of N. Y.*, 64 Misc. 2d 617, 315 N. Y. S. 2d 74 [1970], *aff'd*, 306 N. Y. S. 2d 967 [1970].

¶ 2. Proceedings before the Civilian Complaint Review Board not being final intra-agency determinations, the records thereof can be exempted by the New York City Police Department from the operation of the Freedom of Information Law.—*People v. Morales*, 97 Misc. 2d 733, 412 N. Y. S. 2d 310 [1979].

¶ 3. NYC Council is vested with power to amend voter-initiated measure to eliminate the requirement that all Civilian Complaint Review Board appointees be full-time members or employees of the police department. *Caruso v. City of New York*, 136 Misc. 2d 892 [1987].

#### HISTORICAL NOTE

Added by L. L. 1966, No. 40.

Subd. (a) amended L. L. 55/86 § 1.

Subd. (c) amended L. L. 55/86 § 1.

Subd. d added L. L. 55/86 § 2.

Subds. e-g relettered L. L. 55/86 § 2 [formerly Subds. d-f].

Subd. (c) amended at General Election, November 7, 1989.

February 8, 1990

Deputy Commissioner Sandra Marsh  
Civilian Complaint Investigative Bureau  
New York Police Department  
295 Lafayette Street  
New York, New York 10012

Dear Commissioner Marsh:

As we discussed over the phone, I was hoping to talk with you and other pertinent members of the bureau in two regards -- about the Tompkins Square investigation and more generally about broad policy issues involving the CCIB and the CCRB, some of which relate to other cases that have come to the attention of the bureau and/or the board. Should such an opportunity arise in the near future, I would still like to avail myself of it in the hope of coming to as fully considered a report as possible.

In lieu of an interview, you said you would consider questions if they were limited to Tompkins Square and submitted in writing and that you would then decide whether to respond to them. My objective is to gain as clear an understanding of the investigation as possible. To that end, I am interested in these questions: How large was your Tompkins Square investigation team? Was it broken down by task and, if so, how? Is there any sort of breakdown of how the 12,000 investigative hours mentioned in one of your reports were spent?

Can you describe the 1,600 person neighborhood canvass described in your Tompkins Square report? How was the canvass undertaken and what was its purpose? Was thought given to other forms of community outreach along with the canvass and the appearance at a key community meeting following the disturbances? What is the bureau or board policy, if one exists, about who answers agency phones to speak to potential complainants - police, civilians, or either depending on scheduling? What was the interviewing approach for the Tompkins Square defendants - a standard one established by the agency or one modified for this particular circumstance? If there is a standard manual, would it be possible to obtain it? What sorts of questions were investigators instructed to ask?

When showing complainants videotape of the evening, did officers have a protocol they were to follow and, if so, what was it? Can you describe what effort was made to find civilian witnesses to alleged instances of abuse in addition to the

complainant? What protocol was followed for the interviews of police officers? What questions were asked, what was the setting, who aside from the officer was present? What answers did the officers generally give, if there was uniformity or near uniformity in response to these questions? How was the decision made to give limited immunity to ranking officers? Were other forms of immunity considered? If so, what were they? Were tactics designed to elicit answers from members of the department considered? Can you delineate those and why they were rejected?

When did the bureau organize or obtain a roster of officers at the scene? What is bureau/board policy about going over such a roster with complainants? How were the names used further the investigation? Was a file of photos of the associated officers compiled? If so, was it broken down in various ways i.e., by race, sex, age, physical appearance? Were any photos shown to complainants? What are the agency's procedures in regard? After a complainant explained what he or she contended had taken place, what efforts were made to locate witnesses who might have corroborated the account? How, in the 17 instances in which charges were proffered, were the suspects identified? How did the CCIB decide what charges to recommend in these cases and are there cases you can share where there was some case that ended in a decision not to press charges? How did it come to a different decision in cases where it varied with other investigators? Did the Police Commissioner offer written explanations when he chose a different disciplinary sanction than the one recommended by the CCRB?

What is the final disposition of the 17 cases generated by the CCIB and the cases coming out by other law enforcement agencies? To what extent have the various recommendations in the CCRB Tompkins Square report been implemented? How, if at all, have your internal procedures changed as a result of Tompkins Square?

Our intent in asking these questions is to get as full a picture of the Tompkins Square investigation as possible. If, if not most, of the questions can probably be answered extemporaneously by yourself or by other experienced agency personnel. Because our deadline is fast approaching and I am operating without the benefit of an interview with Ms. Nickerson which was scheduled for this week but then cancelled, I would like that you provide me with a response within a week. Thank you for your consideration. I hope to hear from you soon.

Sincerely,



Martin Gottlieb



# CIVILIAN COMPLAINT REVIEW BOARD

POLICE DEPARTMENT, CITY OF NEW YORK

295 LAFAYETTE STREET, 3rd FLOOR

NEW YORK, N.Y. 10012

TELEPHONE: (212) 323-8750

SANDRA M. MARSH

*Deputy Commissioner/Executive Director*

February 26, 1990

Mr. Martin Gottlieb  
New York Civil Liberties Union  
132 W. 43rd Street  
New York, NY 10036

Dear Mr. Gottlieb:

In reply to your letter dated February 12, 1990, please be advised that all of the Board's recommendations regarding the Tompkins Square Park incident have been implemented.

With respect to the more than 35 questions you asked relating to the internal investigative procedures used by the Civilian Complaint Investigative Bureau in the Tompkins Square Park case, we must decline disclosure in the interest of preserving the integrity and confidentiality of this and future investigations.

A number of cases were referred to the Police Commissioner by the Board.

The following is a synopsis of the status of those cases:

- Case #62506 - Not guilty after Department trial
- Case #62507 - Guilty after Department trial.  
Penalty - 1 year suspension imposed.
- Case #62655 - Acquitted at Criminal trial - Department trial commenced 2/8/90, adjourned to 4/5/90.
- Case #63143 - Acquitted at Criminal trial - Department trial commenced 2/8/90, adjourned to 4/5/90.
- Case #62891 - Acquitted at Criminal trial - Department trial scheduled for 4/12/90.
- Case #62892 - Acquitted at Criminal trial - Department trial scheduled for 4/12/90.
- Case #62953 - Guilty after Department Trial. Penalty to be imposed.

Case #62719 - Judge dismissed District Attorney's  
 tion. Appeal pending by District 2  
 New York County.

Case #63237 - Acquitted at Criminal trial - Depar  
 trial commenced 2/1/90, adjourned t

Case #63353 - Department trial commenced 2/15/90  
 reserved.

Case #63354 - Guilty after Department trial - pen  
 10 days suspension.

Case #62718 - Guilty after Department trial - pen  
 15 days suspension.

Case #62823 - Guilty after Department trial - pen  
 15 days suspension.

Case #62824 - Guilty after Department trial - pen  
 10 days suspension.


Case #62906 - Guilty after Department trial - pen  
 13 days suspension.

Case #61789 - Guilty after Department trial - pen  
 30 days suspension.

Case #63158 - Guilty after Department trial - pen  
 10 days suspension.

I trust this information will be helpful to you.

Very truly yours,



Sandra M. Marsh  
 Deputy Commissioner

SMM/saw





