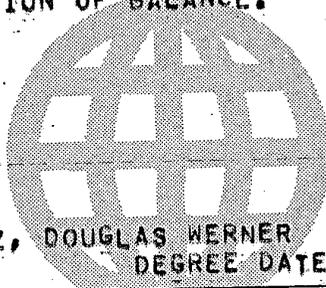


POLICE ACCOUNTABILITY: A  
QUESTION OF BALANCE.



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University of California, Berkeley, Ph.D., 1978

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Police Accountability: A Question of Balance

By

Douglas Werner Perez

A.B. (University of California) 1970

DISSERTATION

Submitted in partial satisfaction of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

Political Science

in the

GRADUATE DIVISION

OF THE

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..... DEGREE CONFERRED DECEMBER 9, 1978 .....

POLICE ACCOUNTABILITY:  
A QUESTION OF BALANCE

Douglas W. Perez  
Berkeley, 1978

TO: Sandy Muir  
Friend, Compatriot, Teacher

When I see Sandy light up a classroom and the minds of his students, I am reminded of the words Alcibiades used to describe another great teacher, Socrates:

"When I listened to Particles and other fine orators, I thought: They speak well. But nothing like this happened to me, my soul was not thrown into turmoil I was not enraged at myself for living so like a slave...He is the only man who ever made me feel ashamed."

Sandy's intellectual power is so great, his confidence so apparent that he makes his students question their own values and capabilities without attacking their individual worth. He is as disturbing as he is lovable. And thus, he is the consummate teacher.

## ACKNOWLEDGEMENTS

This study was completed under a CETA Project grant, developed by Jim Newman, Personnel Director for the City of Oakland, and George Hart, Oakland Chief of Police. I trust that the content of the work amply illustrates the ticklish nature of police review and of police discipline. Because of the emotional and political import of this subject, it took courage and integrity for these men to open up their citizen complaint process to an academician's scrutiny. I am eternally indebted to each for the opportunity to work on the problem of police accountability from the "inside".

Chief Hart deserves the respect of the people of Oakland and of his policemen for his intelligent, sensitive, and honest approach to police review. His deeply felt confidence in the people of his City and in his patrolmen is epitomized by the total freedom of access which he has allowed this project.

I am also greatly indebted to many other men who have allowed access to review organizations throughout the country. Jim Casey, Pete Meredith, Fred O'Hearn, Kit Perrow, Odell Sylvester, and Joe Rodrigues were each instrumental in opening up their review systems for study. In doing so, they all have indicated not only a confidence in their own systems,

but an interest in the potential development of new knowledge. This study could not have been undertaken without their assistance.

Within these various organizations, many practitioners have lent their cooperation to this comparative effort. I must thank these street policemen and review system personnel for taking time from their work days to reflect upon the issues of accountability which appear on these pages. Though a very limited list, I would like to specifically thank Bob Cancilla, Joe Colletti, Nolan Darnell, Roy Fox, John Gackowski, Peter Hagberg, Wanda Hutchinson, Ron Leon, Bill Moulder, Dick Rainey, Jim Simonson, Mike Stamp, and Dave Sylstra for their ideas and criticism. My debt to them and to their fellows is more than they may know.

I also acknowledge the tremendous contribution made to the study by three "intellectual dilectants" Dan Carter, David Leonard, and David Richman. Though neither practitioners nor students of police review systems per se, these men have shared with me reflections upon organizational life which have greatly illuminated the work. I would also like to thank the Survey Research Center at Berkeley and in particular, Selma Monsky and Steve Rosenstone for their methodical advise.

Three men who are experts in the field of administrative regulation helped me considerably with their unique talents for analysis and writing. Jerry Skolnick first posed for me the idea of doing a comparative study of police re-

view systems. Bob Kagan showed me a problem with my initial analytical framework and helped me to solve it.

And of course, there has been Sandy. Constant in his enthusiasm and flawless in his analysis, Sandy Muir's guidance has directed me far beyond what this study has produced. It was he who first interested me in studying the police, some ten years ago. And as the reader will soon discover, his development of the policeman's experience with coercive power is critical to this study. He is without question, the finest teacher I have ever known. This work can be dedicated to none other.

The support of my wife, Jeannie, has been crucial to the study's completion. She has tided me through those rough times in such an enterprise when one feels that it all might never fall into place. For her patience, criticism, faith, optimism, and love, there could be no substitute.

To all of them go my deepest thanks.

Doug Perez  
Berkeley, August, 1978

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## INTRODUCTION

A concern for the accountability of governmental actors is endemic to American political institutions. Indeed, accountability as a concept is integrated into the social fabric of America. This study compares various methods of reviewing alleged abuses of power by public agents. Specifically, it focuses upon street policemen as political and legal actors needful of review. We will examine five different types of administrative review systems in six police departments, as instruments for increasing accountability.

The nature of the police function requires that a great deal of discretion and power be entrusted to these actors. The emotional impact of what policemen do is such that their malpractice is always topical, always a source of public debate and concern. Thus, the police present particularly fascinating issues for the student of administrative accountability. They are extremely difficult to monitor through externally imposed regulatory mechanisms. Concomitantly, self-regulating socializing processes within the police subculture are particularly effective in controlling police behavior. Professional solidarity and norms of conduct are tremendously important to the street policeman.

The police review problem clearly outlines the balances which are endemic to any consideration of administrative account-

ability. We will see that rigorous review must be tempered with a concern for the counter-productive effects of over-zealousness. Similarly, maintaining the administrative integrity of the police organization must be weighed against the need for openness in review processes. Then too, the public's right to have input into the operation of its own governmental administration must be compared to the pragmatic, educated expertise of the professional.

Throughout our discussion we will see that the issues involved in police review can be illuminating for social scientists from a variety of academic perspectives. Using a sociological frame of reference, studying policemen can illuminate the limitations of judicialization, legalization, and bureaupathology. Also we are able to obtain a feeling for the difficulty of instituting change within internalized, self-sanctioning mechanisms. As organization theorists, studying policemen can teach us a great deal about the control of discretionary decision making, the limitations which expert knowledge impose upon an accountability scheme, and the difficulties inherent in dealing with organizational secrecy. As students of politics, comparing police review systems will illustrate for us some of the balancing of interests which so often characterizes accountability mechanisms. Police review systems must take cognizance of the interests of aggrieved citizens, of the community in general, of individual policemen, of police organizations, and of political elites of varying importance.

Studying police review mechanisms, then, can generate a rich body of knowledge for social scientists of various persuasions. The implications which our comparative study may develop should be interesting not only to academicians, but also to administrative practitioners who must deal with the pragmatic complexities of attempting to hold accountable a very powerful group of individuals.

## I. Organization of the Study

In our consideration of police accountability, we must begin by setting out the problem to be discussed. Part I will attempt to define accountability and develop an understanding of how American culture generally and the police subculture in particular affect police behavior and citizen attitudes toward policemen. In short, we will begin by considering why police abuses (and perceived abuses) occur.

What do we mean when we say that policemen should be held accountable for their actions? Accountable to whom? And using what as a standard of evaluation? Chapter one points out that administrative accountability includes concerns endemic to both legislative and judicial accountability. The administrator must answer to a constituency as well as to the law. As administrators, policemen must act legally. Yet, they must have a concern for equity in the application of the law. They must balance the liberty of the individual against the rights of the general society. As they do so, multiple concerns will affect their decisions and after-the-fact evaluations of those decisions.

In chapter two, we will consider how life in modern day America creates natural police/citizen communication problems and hostility. For the policeman as well as for the citizen, American values and lifestyle experiences influence the nature of police/citizen interactions. These norms and experiences place significant cultural limitations upon the ability of any review system to deter future conflict between policemen and

citizens.

Then, in chapter three, the policemen's world must be discussed. How does the police experience on the street affect accountability systems? What problems are unique to the policing experience? How do violence, coercive power, and militarism influence the policeman's behavior? We shall see that all of the dynamics studied in chapter two and three combine to isolate policemen from the citizenry.

In Part II, we must begin our consideration of the review of police conduct by considering the many limitations which operate to inhibit regulation. Chapter four discusses a variety of non-administrative forms of regulation such as civil litigation, legislative controls, and grand juries. We will see that most extra-administrative mechanisms are severely limited in their ability to monitor the police.

In chapter five then, we will discuss some problems common to police organizations and many complex organizations. Organizational secrecy, expert knowledge, and professional solidarity all place natural limitations upon the ability of administrative regulatory mechanisms to limit discretion. Rules themselves are of limited utility. In the face of the powerful forces outlined above, they can even be counter-productive.

In chapter six, we will conclude part II by considering some legal limitations of which any police review mechanism must take cognizance. The growing power of police professional organizations has meant the development of many codified and case law protections for policemen accused of misconduct.

In chapter seven, part III begins by outlining four sets of important questions which must be asked of any review system. Here, we must develop those specific concerns which our comparative study will use to evaluate the five types of police review systems specifically treated by the study.

The rest of part III will deal with the specific systems studied. Chapter eight, reviews the Contra Costa County California Sheriff's Department complaint process. This system, somewhat of a throwback to earlier days, is an informal, non-centrally monitored review system. It is reminiscent of times when political necessity did not demand uniformity and objectivity in citizen complaint handling. While it is a dated process, it is indicative of systems operating in 20% of today's police departments.

Chapter nine considers the Oakland, California Police Department's internal review mechanism. Such systems operate in most contemporary police departments. It is a completely "in-house" review mechanism, known in police circles for its thoroughness and tenacity. The Oakland system can be considered the optimum internal system from several frames of reference.

The much talked about idea of civilian review of police conduct will then be treated. Chapter ten studies the Berkeley, California Police Review Commission. This Commission is the only operational civilian review board in the United States. Its processes are completely external to the Berkeley Police Department, and are the subject of much controversy.

Chapter eleven deals with several "hybrid" review systems which attempt to compromise between civilian review and internal review systems. The Chicago, Illinois and Kansas City, Missouri, review organizations treated here, utilize civilians in positions where most police review systems employ sworn personnel. They are interesting offshoots of political struggles over civilian review.

Finally, Part III will close with a discussion of the much heralded Ombudsman style of reviewing citizen complaints. In San Jose, California a city ombudsman monitors police conduct in several ways. He is also involved in police policy questions. Of particular interest in chapter twelve will be the opinions of policemen about that system.

Part IV will attempt to draw implications from the observations and assertions presented theretofore. Chapter thirteen is a comparative look at the review systems. Although the presence of many variables makes direct comparisons problematic, some careful generalizations about effectiveness of these various systems will be set forth.

Chapter fourteen is a general discussion of the implications which the study has for police organizations and police review systems. Chapter fifteen considers the implications of the study for students of organizations of administrative accountability in general.

## II. Data Collection

It is important to briefly outline the procedures followed in accumulating data on our various review organizations.<sup>1</sup> Six systems in all were monitored throughout the study. The systems studied were located in Berkeley, San Jose, Oakland, Chicago, Kansas City, and Contra Costa County, California. Initial research attempted to develop an overview of the organization milieu within which each review system operated. Administrators and policemen were interviewed and the organizational "climate" was observed. Community leaders were contacted in the various jurisdictions in order to ascertain their perceptions of existing review mechanisms.

The author was introduced by various academicians and practitioners to the chiefs of police of several local organizations. When the Oakland Police Department was contacted, Chief George Hart was so interested in the idea that he developed a City of Oakland project to fund the study. Unlimited access to Oakland's Patrol Division and Internal Affairs Section was granted.

More important, the study was able to approach other police organizations as a "project of the Oakland Police Department" (rather than as a University of California study). I am convinced that the hearty cooperation which the study then received

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<sup>1</sup> The reader may seek a more detailed explanation of the methodology of the study. The Appendix A, additional discussion is presented. Only an overview of the research process will be offered here.

from most of the police organizations involved was a product of this affiliation with Oakland Police Department.<sup>2</sup> Through Chief Hart, the author engineered invitations to visit and study all of the other police organizations researched.

Formally, the project began with a study of the codified rules and procedures of each review organization. Review system personnel were monitored performing their various functions. Citizen complainants were observed filing grievances, investigators were accompanied while doing case work, and (where applicable) formalized hearing processes were scrutinized. Complaint investigation files were randomly selected in each jurisdiction and studied in order to develop a firm understanding of the entire investigative process and its "products". Over 250 hours were spent in direct observation and preliminary informational interviews. Over 100 hours were spent riding along with policemen and investigators at various organizations.

To tap the attitudes of complainants, a written survey was developed with the help of the Survey Research Center at the University of California at Berkeley. This mailout questionnaire attempted to ascertain complainant's opinions as to the fairness and thoroughness of investigatory processes. Complainants from each type of review organization were contacted utilizing this method. (The specific questionnaire used and its results are included in Appendix A.)

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<sup>2</sup>See Appendix A's methodological note concerning the problems of being so identified.

In order to further evaluate the fairness and thoroughness of complaint review systems, and to develop an understanding of the behavioral impact which various systems have upon policemen, another tool was utilized. Random samples of policemen were chosen at each of the six police departments studied. In depth interviews were conducted with each policeman while he or she worked out on the beat. The total sample included over sixty police officers. Each officer was interviewed for between two and four hours. Almost 180 hours were spent on police officer interviews. These open ended discussions considered the fairness of existing systems, alternative review processes, the deterrence potential of various review mechanisms, and so forth. (Additional discussion of sampling techniques and of the methodological legitimacy of these interviews is included in Appendix A.) Officers were also asked to answer written questionnaires which asked questions similar to those considered in the citizen complainant's survey.

Thus, our study has attempted to analyze various review systems from the frames of reference of the community in general, police administrators, complaining citizens, and street policemen. Each of our "systems" chapters will speak of all of these perspectives as specific processes are analyzed.

Our discussion should logically begin with a brief development of the problem of police abuse. In the remainder of this introduction, we shall consider the historical and demographical significance of police malpractice.

### III. History of Police Malpractice

Both in England and in the United States the formation of professional police organizations has largely been viewed by scholars as an effort to do two things at once. First, the creation of such organizations sought to deal with what was almost unbelievable street crime and mass violence. Second, early police organizations sought to protect political and economic elites from the "dangerous classes".<sup>3</sup> When formal police organizations were in their infancy, there was little concern over the potential for police abuses. The use of force and harassment of citizens (or any other abusive tactics) were cause for little alarm on the part of political elites. As Lane notes, in his study of Boston's first police department "No members of the government in 1837 voiced...suspicion of police as possible oppressors."<sup>4</sup>

In the early days of police organizations, a cavalier attitude existed toward the very few protests which were launched against police violence. Lane notes that the Boston City Council rejected one complaint relating to a beating and denial of bail stating "it may happen that the complainants belong to a class not often exposed to the treatment they are likely to meet with in a watch house or jail."<sup>5</sup>

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<sup>3</sup> See Roger Lane, Policing the City of Boston, (Harvard University Press; Cambridge, 1967); and Allan Silver, "The Demand for Order in Civil Society' A Review of Some Themes in the History of Urban Crime, Police and Riot", in The Police, David J. Bordua, ed, (John Wiley and Sons; New York, 1967).

<sup>4</sup> Ibid, pg. 38.

<sup>5</sup> Ibid, pg. 35.

Overtime, rising standards of public order (originally aimed at criminality, violence, and riot) began to be applied to police conduct also. The enforcers of law and maintainers of order themselves became subjects of concern. By the turn of the century the policing of the police had become a "problem".

The problem of police abuse was to receive sporadic publicity over the first half of the twentieth century. Calls for reform of the police were numerous. Besides occasional press coverage, police malpractice was uncovered in riot commission studies (wherein the most flagrant and abusive of tactics surfaced) and Supreme Court decisions (wherein daily, routine malpractice received attention).

In 1917, the East St. Louis riot investigation prompted a congressional committee to note:

The police shot into a crowd of Negroes who were huddled together making no resistance. It was a particularly cowardly exhibition of savagery... A Negro was brutally clubbed by a policeman who found him guilty of the heinous offense of hiding in an icebox to save his life. 6

Similar findings concerning riots in Chicago (1919),<sup>7</sup> in New York (1935),<sup>8</sup> and in Detroit (1943)<sup>9</sup> indicated that police violence, particularly against blacks, was widespread

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<sup>6</sup>Report of the Special Committee Authorized to Investigate the East St. Louis riots, HR, 35th Congress, Second Session, Doc. Number 1231 (July 15th, 1918), pg. 1-24.

<sup>7</sup>The Chicago Commission on Race Relations, "The Negro in Chicago: A Study of Race Relations" (Chicago: University of Chicago Press; 1922).

<sup>8</sup>The Mayor's Commission on Conditions in Harlem: The Negro in Harlem: A Report on Social and Economic Conditions Responsible for the Out-break of March 19, 1935 (New York Municipal Archives, Unpublished).

and almost unchecked throughout this period.

In 1931, the commonplace nature of station house and curbside abuses was prominently noted by the Wickersham Commission.<sup>10</sup> This prestigious committee noted:

...the third degree...that is, the use of physical brutality or other forms of cruelty to obtain involuntary confessions...is widespread...physical brutality, illegal detention, and refusal to allow access to counsel to the prisoner is common...brutality and violence in making an arrest also were employed at times... 11

Another presidential commission, this one in 1947, confirmed the continuing problem of police brutality and other forms of malpractice.<sup>12</sup>

Such routine abuses also began to catch the eye of the federal judiciary. The United States Supreme Court overturned convictions obtained through the use of third degree techniques in Brown vs. Mississippi, 1936.<sup>13</sup> In Brown, a coerced confession was thrown out by the Court on the grounds that it was "untrustworthy".

Then in Ashcraft vs. Tennessee,<sup>14</sup> the Court excluded confessions which resulted from 36 continuous hours of interrogation. The Court felt that after such a lengthy period of in-

<sup>9</sup>Governors Committee to Investigate Riots Occurring in Detroit, June 21, 1943, Final Report (August 11, 1943).

<sup>10</sup>The National Commission on Law Observance and Law Enforcement, Government Printing Office, Washington, D.C., 1931.

<sup>11</sup>Ibid, pg. 4.

<sup>12</sup>The Presidents Commission on Civil Rights, To Secure These Rights (Simon and Shuster; New York, City, 1947), p.25.

<sup>13</sup>297 US 278, 56 S. Ct. 461, 80 L. Ed. 682 (1936)

<sup>14</sup>322 US 143, 64 S. Ct. 921, 88 L. Ed. 1192 (1944).

terrogation there was "a presumption of coercion."

In 1952, in Rochin vs. California,<sup>15</sup> the Court excluded evidence obtained by pumping the stomach of a suspect. The Court stated "this conduct shocks the conscience...they are methods too close to the rack and screw to permit of constitutional differentiation." Still, these decisions were only a preview of what was to come in the 1960's.

In 1961, the Court decided a case relating to police malpractice which was to be of monumental import. In Mapp vs. Ohio<sup>16</sup> the federal exclusionary rule of evidence was applied to the states. This decision meant that any evidence obtained illegally by law enforcement agents would not be accepted in a court of law as proof of criminal culpability. (In chapter four we will discuss further the exclusionary doctrine and its consequences for street policemen.)

Finally, in an effort to further reduce the risk of brutal treatment to which criminal suspects are subject, the Court involved itself in the prospective regulation of police conduct in the famous Miranda decision.<sup>17</sup> In Miranda, the U.S. Supreme Court laid down specific guidelines for police interrogations of criminal suspects.<sup>18</sup>

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<sup>15</sup> 342 US 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952).

<sup>16</sup> 367 US 643, 81 S. Ct. 1684, 6 L. Ed. 2nd 1081, (1961)

<sup>17</sup> Miranda v. Arizona 384 U.S. 436, 86 S. Ct. 1602, L. Ed. 2nd 694 (1966)

<sup>18</sup> As we will discuss in chapter two, citizen misunderstandings about this particular decision are often productive of police/citizen tensions.

Thus, the problem of police abuse has been a subject of concern for some time. Commonplace abuses have historically been the subject of commissions and judicial review. However, it was not until the late 1950's and the tumultuous 60's that police abuse became truly topical throughout all of American society.

#### IV. The Focus of the 1960's

The police may be dangerous if the antagonism between them and the public increases...under the prod of racial violence and student protest. Obviously, civil strife of this kind has the effect both of increasing the physical and social dangers to which the police are subject. It is then reasonable that the police should protect themselves by drawing close together and becoming more hostile to the public. This is where the police are likely to be at the core of any "backlash" and why they can be a dangerous force in a democratic society. 19

The 1960's saw the expansion of both black and student protest. As these protests grew, the problem of police riots became apparent. Each of these phenomena exacerbated the problem of day-to-day police malpractice (which Westley notes). Black protest, student protest and police riots each in turn lead to a greater general awareness of police abuses. This awareness then led to administrative experiments aimed at effectively policing the police.

In 1961, the Civil Rights Commission found that police abuse, particularly directed against blacks, was still a problem in everyday law enforcement. "The statistics suggest that Negroes feel the brunt of official brutality proportionately more than any other group in American society...among the complaints of police brutality received (by the Department of Justice), in the two and a half year period ending June 30, 1960 the alleged victims were Negroes (which constituted approximately 10% of the total population) in 35% of the cases..."<sup>19a</sup>

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<sup>19</sup>William A. Westley, Violence and the Police, (MIT Press Cambridge, Mass., 1970), p.,XIII.

<sup>19a</sup>United States Commission on Civil Rights, Justice, Report No. 5, 1961, quoted in Raymond J. Murphy and Howard Elinson, editors, Problems and Prospects of the Negro Movement (Wadsworth; Belmont, Ca., 1966), pp. 228-229.

The rage which this continuing conduct generated in an increasingly vociferous and enfranchised black population was to explode in large scale urban riots on many occasions in the middle and late 1960's. As Black Panther literature put it, "we want an immediate end to police brutality and murder of Black people".<sup>20</sup>

The resurgence in black militancy (focused upon police abuses) was echoed by other more "stable" members of the established political order. When the McCone Commission investigated the 1965 Los Angeles riot in Watts, Mervyn M. Dymally noted that it was "because Blacks have 'generally expected the worst from the police and generally received it' that they resent them so."<sup>21</sup> To ease this resentment Dymally advocated the establishment of a civilian review board.<sup>22</sup>

Over time citizens and politicians from many diverse parts of American society have testified to the existence of these problems.<sup>23</sup> There can be little doubt as to the existence

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<sup>20</sup> Philip S. Foner, ed., The Black Panthers Speak (Lippincott; New York City, 1970).

<sup>21</sup> As quoted in Robert M. Fogelson's book Violence as Protest (Doubleday; New York City, 1971), p. 187.

<sup>22</sup> Ibid., p. 187.

<sup>23</sup> For some statistics on the amount of malpractice which does go on, see Albert J. Reiss, Jr., The Police and the Public (Yale Univ. Press; New Haven, 1971), esp. chpt. IV.

of legitimate grievances (especially on the part of minority groups) against the police.<sup>24</sup>

Because of their monumental economic repercussions and frightening "race war" implications, the riots of the 1960's caused more concern than ever before to be focused upon police abuses. We have noted that police misconduct has been a topic of concern to several earlier riot commissions. However, the holocausts of the 1960's brought into focus more clearly the problem of Black/police relations. Of perhaps equal moment were the student protests of the same 60's. These protests brought home the reality of over reactive violence on the part of policemen to a social and economic strata of American society which had never before dealt with such issues.

At Columbia University in 1968, police were reported to have "rampaged" during the Columbia University student strike.<sup>25</sup> On the Berkeley campus of the University of California, the "People's Park" riot of 1969 eventuated in the death of one bystander and the blinding of another citizen by police shotgun fire.<sup>26</sup> At Jackson State University in 1970 police gun fire was responsible for the death of two students and the wounding of 10 others involved in a riot at that location.<sup>27</sup>

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<sup>24</sup>It should be noted that the lack of delivery of police services has been considered by some, even in the 1960's as a more crucial problem to Black neighborhoods than is brutality. See Algernon D. Black, The People and the Police, (McGraw Hill; New York City, 1968), p.28; Task Force Report; The Police (U.S. Government Printing Office; Washington D.C., 1967), p.148; or Martin Luther King Jr., as cited in George Berkley's, The Democratic Policeman (Beacon Press; Boston, Mass., 1969) p. 147.

<sup>25</sup>"The Scranton Report", The President's Commission on Campus Unrest, "The Killings at Jackson State" (Government Printing Office; Washington, D.C., 1970)

Finally, the issue of police abuses and police violence was brought to a head during the Kent State shootings of 1970. Though these shootings were not the responsibility of police officers, they still were the focus of nationwide concern over the use of lethal and even non-lethal force on the part of police officers.<sup>28</sup> Generally, student political movements, were concerned with the Draft and with the Vietnam War. But they found police brutality, harassment, and verbal abuse to be peripheral issues easily amalgamating otherwise silent students into radicalized politics.

As Westley arned, there was a police reaction to these events of the 1960's. "Police Riots" occurred in Los Angeles, at the Century Plaza Hotel in 1967,<sup>29</sup> in New York City, at the Grand Central Station 'Yippie' demonstration in 1968,<sup>30</sup> and most dramatically at the Chicago Democratic National Convention in 1968.<sup>31</sup> Perhaps Chicago did more than any other single event to convince the "silent majority" of the existence and gravity of the problem of police abuses. The Chicago "police riot"

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<sup>26</sup>Rodney Stark, Police Riots (Wadsworth Publishing; Belmont, California, 1972)

<sup>27</sup>Rodney Stark, op. cit., p. 6.

<sup>28</sup>See the Scranton Report, op. cit.

<sup>29</sup>Rodney Stark, op. cit., p. 6

<sup>30</sup>New York Times, March 23-25, 1968.

<sup>31</sup>See Norman Mailer's, Miami and the Siege of Chicago (Signet Books, New York City, 1968).

received extensive television coverage. Millions of Americans viewed the violence as it happened. The Convention riot had a particularly strong impact because during this riot members of the press were accosted on numerous occasions by club-wielding policemen.<sup>32</sup> This involvement of the press expended media coverage and consequently the public's rage.

These events of the 1960's all generated concern over police malpractice. "Police brutality" became a household phrase. Black riots, student riots, and police reactions all were tremendously important in mobilizing concern and awareness in the general public.

Yet riots, for all of their political import, are not the focus of our study. Neither is the type of large scale corruption which has tarnished the police image in many cities. Large scale gratuities with organized crime, payoffs, and shakedowns are not the subject of our inquiry. We seek to discuss the everyday types of police misconduct which eventuate in citizen complaints. These commonplace, day-to-day abuses (and alleged abuses) are received as complaints, investigated and adjudicated by various types of administrative accountability mechanisms. Before we look at the problem of police abuse and at those systems, we must first discuss the nature and extent of such citizen directed malpractice. What types of police-

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<sup>32</sup>Regarding riotous police accesses also see John Hersey's excellent reconstruction of The Algiers Motel Incident, (Alfred Knopf; New York, 1968).

directed complaints do citizens normally file? Let us consider the demographics of police abuses.

## V. The Nature of Police Malpractice

Most of the above historical review has focused upon the problem of police brutality and violence. Of course, the use of excessive force by policemen is a highly publicized and much studied issue. As Stark concludes:

(The) Unnecessary use of force by the police is a relatively routine occurrence. The case seems conclusive. The police advocate illegal use of force. Official commissions have frequently reported that the police do engage in brutality. Survey studies show that significant numbers of Americans claim they have been the victims of police brutality. And finally, systematic observations of the police in action, indicate that such behavior is relatively common. 33

But brutality and the excessive use of force are not the only forms of malpractice with which we are concerned. Let us consider the types of police abuses normally reported by citizens.

Verbal abuse is a common complaint lodged against police personnel. This includes racial slurs as well as general discourtesy on the part of officers. The President's Commission on Crime in the District of Columbia found that the use of such terms as "boy", and "nigger" was widespread. The Commission concluded that "in most cases the language is chosen deliberately to demean the citizen and demonstrate superiority of the officer."<sup>34</sup> Such slurs are the exception rather than the rule in the California police departments considered by our study. Nevertheless, such complaints continue to take up a significant percentage

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<sup>33</sup>Rodney Stark, op. cit., p. 83

<sup>34</sup>"Report on the Metropolitan Police Department", President's Commission on Crime in the District of Columbia, (U.S. Government Printing Office; Washington, D.C., 1966), p. 67

of the time of police review systems.<sup>35</sup>

"Harassment" is also a significant problem. It normally takes the form of illegal detentions and illegal searches. As Reiss notes, the civilian review board in Philadelphia found 19% of their complaints charged illegal searches or detention. A total of 22% of the Review Board's complaints were for "harassment".<sup>36</sup>

Tangential to these other types of complaints are "discrimination" complaints. Such grievances relate to disparities in the application of the law. The discretionary decision to arrest or not to arrest is particularly important in this vein. Polls conducted in San Diego, Philadelphia, and Denver indicate that minority groups feel police discrimination on grounds of race is widespread.<sup>37</sup>

"Failure to take action" is also an important problem.<sup>38</sup> It is crucial that street cops feel free to exercise their discretionary decision making authority not to arrest. However, the exercise of such discretion often offends members of the public. We have already noted that the lack of law enforcement is often perceived as a critical problem in ghetto areas.

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<sup>35</sup> At the Oakland Police Department racial slur complaints make up 5% of the Internal Affairs Bureau case load. Rude conduct complaints make up a total of 14%.

<sup>36</sup> Albert J. Reiss, Jr., The Police and the Public (Yale University Press; New Haven Connecticut, 1971), p. 153.

<sup>37</sup> See David H. Bayley, and Harold Mendelsohn, Minorities and the Police (McMillan; New York City, 1968), pg. 134-135; and Joseph D. Lohman and Gordon E. Misner, "The Police and the Community" (U.C. School of Criminology; Berkeley, 1966), vol. 1 pg. 56-58, 172-173; vol. 2 at pg. 100.

"Missing property" is a final major area of concern. Significant numbers of citizens charge policemen with losing or appropriating the citizen's personal property. The authenticity of such claims is hard to evaluate. Quite often, citizens may be mistaken about the amount of money they possess (at the time of arrest for example). Nevertheless, these complaints are numerous. They are perhaps the most potentially damaging complaints to the community's perceptions of police honesty. Decisions to arrest (or not to arrest) or to use force are decisions of judgement. Such decisions are subject to debate and perceptual distortion. Theft is a problem of a different order. It is "wrong" per se. It is illegal prima faciae. For the trusted public servant, no "degree" of culpability exists regarding theft.

This then is a brief rundown of the types of daily police malpractice with which all of our review systems concern themselves. While this brief summary may be indicative of the nature of police abuses, we must take care when considering whether or not police statistics indicate the gravity (in numerical terms) of these problems. Citizen complaints against policemen are rarely filed. In 1976, for example, only 623 complaints were filed in Kansas City,<sup>38</sup> only 335 were filed in Oakland,<sup>40</sup>

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<sup>38</sup>Such complaints make up 6% of the caseload at Oakland P.D. Internal Affairs.

<sup>39</sup>Where the population is 500,000 and the police department has 1,200 policemen.

<sup>40</sup>Where the population is 340,000 and the police department has 650 policemen.

and only 229 were filed in Berkeley.<sup>41</sup> These numbers are small relative to the number of police/citizen contacts which occur in everyday life. Berkeley P.D., for example, estimated in that same year that there were 500,000 police citizen contacts in that city alone.<sup>42</sup> Intuitively, it seems inconceivable that so many contacts would generate only 229 complaints.

It is thus understandable when many authors and politicians argue that police departmental statistics only indicate the "tip of the iceberg" regarding dissatisfaction with the police.<sup>43</sup> Ed Cray is illustrative on this point:

Deep in the ghettos are the hundreds of other complaints real and imagined, nursed by members of minority groups...Those who do complain, either to the department itself or to other agencies empowered to review police activities, are not representative of the great mass of victims of police malpractice. They are not hopelessly apathetic or alienated or at least their apathy and alienation have been momentarily submerged in anger. <sup>44</sup>

It is not really clear why so few complaints are filed. However, as we shall see, arguments are made that existing complaint systems themselves stifle the registration of bona fide complaints. Processes ostensibly aimed at allowing citizens redress of grievances can add to general frustration and apathy in the citizenry, some systemic conventions can actually create

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<sup>41</sup>Where the population is 120,000 and the police department has 240 policemen.

<sup>42</sup>From Berkeley Police Department Internal Affairs Report for 1976.

<sup>43</sup>See Algernon D. Black, The People and the Police, (McGraw-Hill; New York, 1968), p. 94.

<sup>44</sup>Ed Cray, The Big Blue Line (Coward-McCann; New York, 1967), p. 175.

credibility problems for modern police organizations.

#### VI. An Important Assumption

As with any complex administrative problem, holding the police accountable for their actions involves balancing a variety of organizational and societal interests. The street policeman must be allowed a great deal of latitude within which to pursue his charge. He must feel free to use force when it is required, to arrest when necessary, and to aggressively enforce the law. Concomitantly, in the interests of justice, he must be able to mediate and to counsel rather than take official action. Society demands no less of its law enforcement agents than the prudent exercise of a high degree of administrative discretion.

Therefore, accountability systems must do several things at once. Such processes must rigorously investigate alleged police abuses and deter future malpractice. They must also exonerate policemen when they have acted properly and legally. Neither task can be sacrificed in favor of the other. All of society would suffer if an accountability system ignored either charge.

Any monitoring process will necessarily concern itself with two methods of behavior control: regulation and socialization. External regulation of human behavior is, for the police organization, the easiest method to implement. To define rules, organize adjudicative procedures, and enforce sanctions is a

relatively low cost enterprise. It can protect the organization from criticism and develop a perceptual legitimacy in the external environment. However, regulation can be very ineffective in its actual influence upon behavior. Any formalized process can be subverted, cheated, and abused by its administrators as well as by the population policed. Thus, formal mechanisms are of limited utility.

Self-sanctioning, self-regulating control mechanisms are, on the other hand, extremely effective in controlling human behavior. When individual desires, professional standards of competence, subcultural expectations, and organizational goals are congruent, accountability is internalized. The individual cleaves to socially desirable behavior patterns because he wants to. This process is known, of course, as socialization.

For all of its effectiveness, however, socialization has its drawbacks. It is extremely problematic to attempt to artificially fashion linkages between individual, subcultural, organizational, and societal goals. Multiple goals make "desired behavior" difficult to define. Individual personalities and collective behavior patterns can inhibit the inculcation of new values and norms of conduct. Thus, for all of their effectiveness, socialization processes are difficult and costly to manipulate. Utilizing such self-sanctioning mechanisms leaves the police organization vulnerable to criticism when such systems fail.

Police accountability then must develop from a compromise

between externally imposed sanctioning systems and internalized, "professional" norms of conduct. Each speaks to the age old question classically debated by Protagoras and Socrates; can virtue be taught? We must address this question briefly as it outlines the most basic assumption of the instant work.

Protagoras, of course, argued that virtue could be taught. Indeed, he reasoned, that in day to day interpersonal relations each individual communicates supports to others. These communications 'teach' behavioral expectations. He argued, that they directly influence individual behavior. Thus, Protagoras indicated a belief in the strength of socializing mechanisms.

But Protagoras argued further that the punishment of evil doers should also be an attempt to educate. He felt that punishment as retribution was only the "unreasonable fury of a beast"<sup>45</sup> and not rationally related to the goal of deterring future wrongdoing.<sup>46</sup> Therefore, Protagoras would agree that insuring accountability is a complex problem. It consists of balancing various methods of influencing human behavior in a positive way. The processes of indoctrination or conditioning which it entails are achieved through both regulation and socialization.

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<sup>45</sup>From Plato's Protagoras, Benjamin Jowett's translation (Bobbs-Merrill Co.; New York, 1956), p. 22

<sup>46</sup>For a modern view of the irrationality of vindictive punishment, see Karn Menninger, The Crime of Punishment (Viking Press, New York, 1966).

One may side, however, with Socrates' argument that virtue cannot be taught; that it resides within the individual as a non-transferable part of personality. If such is the case, then review systems need only couch themselves as reactive, adjudicative mechanisms. They need only concentrate upon the redress of specific citizen grievances.

It is the assumption of this work that Protagoras' argument is persuasive. Our comparative discussion of police review systems will weigh heavily the prospective abilities of each process to influence police behavior. It is the firm conviction of the author that such influencing can and does go on; that "virtue can be taught".

Much of our discussion may appear to be wasted time to the reader who rejects the ability of systems to influence behavior. Nevertheless, even he who rejects Protagoras' argument should find our treatment of review systems of interest. For we will concern ourselves with the adjudicative fairness, investigative thoroughness and decision making objectivity of each system. Comparing police review systems as adjudicative mechanisms should be important to any student of accountability. For some, such comparisons will be an end in themselves. For our study, they will comprise but a portion of the analysis.

Let us turn to consider accountability conceptually, the historical roots of limited government, and the nature of the police experience.

## BIBLIOGRAPHICAL ESSAY

## I.

Basic to the study of police accountability is an understanding of the policeman's subcultural norms, and police organizational dynamics. Happily, there are a growing number of good books on these subjects.

An excellent look at the historical roots of police organizations and police problems is Roger Lane's, Policing the City: Boston 1822-1885 (Harvard Univ. Press; Cambridge, 1967). A feeling for "what policemen do" can be obtained through L. H. Whittemore's Cop! (Holt, Rinehart, Winston; New York, 1969) or Jonathan Rubenstein's, City Police (Farrar, Straw & Gironx; N.Y., 1973). Whittemore's work is a close look at three policemen in three cities as they go about their daily business. Rubenstein is a somewhat encyclopedic look at the organization of police systems and particularly the delivery of patrol services. James Q. Wilson offers a rich organizational analysis of eight different police departments in, Varieties of Police Behavior (Harvard Univ. Press; Cambridge, 1968).

The psychological experience which policework puts man through is critical to this or any other study of police behavior. William Westley's pioneering work, Violence and Police (M.I.T. Press: Cambridge, 1970) is still illustrative of the policeman's preoccupation with violence. Jerome Skolwick's

Justice Without Trial (John Wiley & Sons; N.Y., 1967) treats danger and authority as two variables which affect not only the individual policeman, but police organizational dynamics as well. William K. Muir's development of the policeman's experience with coercive power in, Police: Streetcorner Politicians (Univ. Chicago Press; Chicago, 1977) is rich with insight into the propensity for policework to both frustrate and fulfill the goals and desires of individual officers. Particularly useful and easy reading are Joseph Waumbaugh's books on the police experience, The New Centurions (Little, Brown; Boston, 1970), The Blue Knight (Atlantic - Little Brown; Boston, 1972), and The Onion Field (Delacorte; N.Y., 1973).

## II.

In setting up the problem of police accountability, one must consider several works which develop understandings of American values and norms. Roscoe Pound's ingrossing work The Development of Constitutional Guarantees of Liberty (Yale Press; New Haven, 1957) is an excellent, readable treatment of what is a complex history. He develops the common law system from the middle ages to the time of the U.S. Constitution. Equally indispensable is Seymour Martin Lipset's The First New Nation. (Anchor: N.Y., 1967). This monumental study of American values and norms is useful in understanding the

policeman and the citizen who confront each other in contemporary America.

Several works which refer quite unsympathetically to the police are useful in developing an insight into the type of antagonism which policemen see (particularly in ghetto areas) and to which they often react obusively. Soul on Ice by Eldridge Cleaver (McGraw Hill; New York, 1967), George Jackson's Soledad Brother (Coward; New York, 1970), and James Baldwin's Nobody Knows My Name (Dial Press; New York, 1961) are classic indictments of the police, the criminal justice system, and American society in general.

Bayley and Mendelsohn's Minorities and the Police (Free Press; N.Y., 1968) is an important study of citizen and police attitudes towards each other. It forms a more thoughtful basis for an understanding of police/citizen tensions. Paul Chevigny's Police Power (Panther, N.Y., 1969) is a widely read look at police abuses in New York City. Combined with Robert Daley's powerful look at New York P.D., Target Blue (Dell; New York, 1974), one can begin to develop a feeling for the limits of reform both within and without police organizational central systems. An important article which looks at the politics of police review is Stephen Halpenn's "Police Employee Organizations and Accountability Procedures in Three Cities", (Law & Society Review).

## III.

In developing question sets for application to our various review systems, Lou Fuller's The Morality of Law (Yale Press: New Haven, 1964), was critical in setting up the first 'systematic integrity' question. In developing his criterion of analysis, he discusses timeless concerns of legal analysis (such as consistency, retroactivity, and clarity which may be applied equally to diverse legal cultures, police review systems, or the disciplining of children. Fuller's rich treatment of legal morality is important for any student of the law, social systems, or human behavior.

The behavioral impact question has been particularly difficult to research. Many of the works listed above are helpful in developing an understanding of the limits (both formal and informal) which policemen and police organizations place upon the ability of review systems to impact upon police behavior (Chevigny and Berkeley speak directly to the issue). Then too, J.D. Thompson's classic book on organization theory, Organizations in Action (McGraw-Hill; N.Y., 1967), is rich with information as to the limits of any central mechanisms impact upon complex organizational behavior.

However, a critical part of the behavioral impact question concerns theories of deterrence. There is little agreement as to the deterrent effects of the criminal justice system, capital punishment, or punishment generally. Of particular utility then has been the report developed.

Concerning legitimacy, Thurmar Arnold's brilliant work The Symbols of Government (Yale Press: New Haven, 1935) is as timeless as it is insightful. His development of the critical significance of symbols and symbolic action has been very important to our community legitimacy question. Indeed, Arnold's work, though some forty years old, is central to our correlations about the importance of "window dressing" to police review systems.

The counterproductivity of police review systems has received little attention to date. Muir gives us a brief but insightful look into the programatic, subcultural consequences of overzealous internal review. On a more theoretical level, Jeffrey Jowell's article, "The Legal Control of Administrative Discretion" (Public Law, Autumn 1973) is an excellent short piece. It outline many of the drawbacks of formal central systems. Jowell is particularly cognizant of the costs which must be weighed in utilizing legal controls in any endeavor.

#### IV.

Little or nothing has been written about some of our types of systems. The Contra Costa non-centralized system and the hybrid systems of Chicago and Kansas City has not been the subject of particularly insightful studies. The other three types of systems studied however, have been the subject of important works.

Internal Affairs systems throughout the United States have been developed along the lines prescribed by O.W. Wilson in Police Administration (McGraw-Hill; N.Y., 1963). This work is worthy of perusal if for no other reason than its reputation among practitioners as the final authority on police organization. Wilson's centralized I.A. modeled is followed by systems which I found operative in Oakland, San Francisco, Los Angeles, Chicago, and Kansas City.

Concerning the Ombudsmen, several of Walter Gellhorn's books are excellent. His comparative look at the office, Ombudsmen and Others (Harvard Univ. Press; Cambridge, 1967), is rich in historical and cross cultural information about the problem of controlling administrative behavior. Gellhorn's When Americans Complain (Harvard Univ. Press; 1966), is more directly related to police accountability. He has an extensive section on police review by internal, external (civilian review boards), and Ombudsman type mechanisms.

Civilian review is so topical (and has been for so long) that many have had their say about its theoretical utility. Unfortunately, very little of what has been done in the area is very good. As is the case with policemen, scholars who have treated the issues of civilian review have often gone too far in an effort to uphold intuitively held beliefs. A very well balanced piece is that of Wayne Kerstetter, "Citizen Review of Police" (completed for the Chicago Bar Association on a fellowship at the University of Chicago's Law School). Though Kerstetter's piece is perhaps the best short treatment

of the theoretical utility of various forms of civilian review, it has not been published. Algernon D. Black's book about the New York civilian review board, The People and the Police (McGraw-Hill; N.Y., 1968), is another balanced treatment. It is indicative of the potential which such systems hold for the police as well as for community interests.

#### V.

For the implications portion of the work, Philip Selznick's work has been most edifying. TVA and the Grass Roots (Harper & Row; N.Y., 1966) and Law, Society, and Industrial Justice (Russell Sage Foundation; N.Y., 1969) have been extremely important in developing an understanding of techniques for civilianizing police review and the limits of legality respectively. These brilliant works strike that perfect blend between the study of theory and practice which is all too often wanting in organization theory and of public administrations generally.

Leon Mayhew has lent us his insight into the different strengths of socialization and regulation in Law & Equal Opportunity (Harvard Press; Cambridge, 1968). This study develops the idea (presented in our concluding discussion) that regulatory mechanisms can influence values and norms, but are of limited import compared to subcultural norms and

deeply ingrained social values.

Finally, in his important book The Limits of the Criminal Sanction (Stanford Univ. Press; Palo Alto, 1968) Herber Packer has developed an important conceptualization of two models of the criminal justice system. His due process model presents theoretical ideals of legality toward which the American legal fraternity would take the system. The crime control model presents the more progmatic ideals toward which policemen would point. This work underwrites our concluding discussion about the necessary disparity between legal ideals and the reality of crime control on the street.

TABLE I  
APPENDIX A

## Berkeley P.D. Comparisons

		PATROL DIVISION	SAMPLE
AGE	: Average	29.4	28.8
SENIORITY:	Average	5.5	4.75
SEX %	: M	94.5	91.7
	F	5.5	8.3
RACE %	: W	64.6	66.8
	B	22.8	16.6
	S/S	6.3	8.3
	O	6.3	8.3
	Minority	35.4	33.2

127 Patrolmen (As of 6/29/77)

TABLE II

Contra Costa Comparisons: 10/26/77

		<u>PATROL DIVISION</u>	<u>SAMPLE</u>
AGE	: Average	32.9	33.5
SENIORITY:	Average	6.2	6.4
RACE	: Caucasian %	94.8	91.7
	Black %	2.1	8.3
	S/S %	1.0	0.0
	Women %	2.1	0.0
	Minority %	5.2	8.3

TABLE III

O.P.D. "FINAL" Final Sample Comparisons: 10/21/77

		PATROL DIVISION	SAMPLE
AGE	: Average	30.8	30.6
SENIORITY:	Average	5.9	5.5
RACE	: Caucasian %	63.2	58.3
	Black %	21.9	25.0
	S/S %	8.6	8.3
	Other %	6.3	8.3
MARITAL STATUS	: Married %	72.5	83.4
	Single %	16.4	8.3
	Divorced %	11.2	8.3
EDUCATION:	H.S. %	23.1	16.6
	A.A. < %	38.5	50.0
	A.A. ≥ %	21.8	8.3
	B.A. ≥ %	16.6	25.0
MILITARY EXP.	: %	66.0	58.3

## APPENDIX B

1. What was your complaint(s)? (PLEASE CHECK ALL THAT APPLY.)

- Brutality
- Arrested for no reason
- Police didn't do what they should have
- Police made remarks about my race
- Police took my money (or property)
- Can't remember
- Other (PLEASE DESCRIBE: \_\_\_\_\_)

2. How did you file your complaint?

- By phone
- By mail
- In person
- Officer came to my home
- Can't remember

3. If you filed your complaint in person, where did you go to file it? (PLEASE ENTER NAME OF ORGANIZATION OR GROUP.)

\_\_\_\_\_

4. Which of the following best describes your feelings about the location of the complaint office?

- The location made it easy for me to file my complaint.
- The location made it a little hard for me to file my complaint (PLEASE EXPLAIN: \_\_\_\_\_)
- The location made it very hard for me to file my complaint. (PLEASE EXPLAIN: \_\_\_\_\_)
- The location didn't matter or had nothing to do with filing my complaint.

5. If you had a complaint to file in person, where would you rather go to file it? (PLEASE CHECK ONLY ONE BOX, FOR YOUR FIRST CHOICE.)

To a police department building

To some other office building

To a community service center

Have an officer come to my home

I don't care. Doesn't matter where.

Other. (EXPLAIN: \_\_\_\_\_ )

6. How did the person act who interviewed you about your complaint? (PLEASE CHECK ALL THAT APPLY.)

Friendly and courteous

Concerned, seemed to care about my complaint

Professional, but disinterested

Rude and unfriendly

Argued with me

Too sympathetic, I felt I was being "snowed"

Other (EXPLAIN: \_\_\_\_\_ )

7. If you had another complaint to file, who would you rather talk to about it?

A uniformed police person

A plain clothes police investigator

A civilian investigator

A civilian clerk

Makes no difference

Other (PLEASE DESCRIBE: \_\_\_\_\_ )

8. Who do you think should investigate complaints against a police officer?

Another policeman of the same rank

The policeman's supervisor

Civilians

Lawyers

No preference

Other (EXPLAIN: \_\_\_\_\_)

9. What happened to your complaint?

They decided I was right, the police wrong

They decided I was wrong, the police right

I heard about the decision, but couldn't understand what it meant

I never found out what they decided

Other (EXPLAIN: \_\_\_\_\_)

10. Regardless of what they decided, how good a job do you think they did in investigating your complaint?

(PLEASE CHECK ONE BOX IN EACH OF THE FOLLOWING.)

- A. In your opinion, was the investigation fair or not?

Completely fair

Mostly fair

A little fair

Completely unfair. A cover-up

Don't know

B. In your opinion, how thorough and careful was their investigation?

- Very thorough and careful
- Fairly thorough and careful
- Not too thorough or careful
- Not at all thorough or careful
- Don't know

C. In your opinion, did you feel that the investigators favored you or the police?

- Favored my story
- Favored the police's story
- Completely impartial. Didn't favor either of us.
- Don't know

11. To sum up, how satisfied are you with the final decision of the complaint investigation?

- Very satisfied
- Somewhat satisfied
- Not sure
- Somewhat dissatisfied
- Very dissatisfied

12. What changes (if any) do you think should be made in the complaint system?

13. In order to know if some people are treated less fairly than others, the following information would be very helpful.

A. What is your age?

<input type="checkbox"/>	Under 21	<input type="checkbox"/>	35 - 39
<input type="checkbox"/>	21 - 24	<input type="checkbox"/>	40 - 49
<input type="checkbox"/>	25 - 29	<input type="checkbox"/>	50 - 59
<input type="checkbox"/>	30 - 34	<input type="checkbox"/>	60 or older

B. What is your race or ethnic origin?

<input type="checkbox"/>	American Indian (Native American)
<input type="checkbox"/>	Black or Afro-American
<input type="checkbox"/>	Oriental/Asian
<input type="checkbox"/>	Spanish Speaking/Spanish Surname
<input type="checkbox"/>	White/Caucasian
<input type="checkbox"/>	Other (PLEASE DESCRIBE: _____)

C. What is your sex?

<input type="checkbox"/>	Male	<input type="checkbox"/>	Female
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14. Please use this space to tell us anything that you think we should know about the system.

## Part I: The Problem of Police Accountability

Policemen play a variety of roles in American society. This simple truism causes a great deal of confusion for policemen, for police executives, and for the public as well. The street policeman is at once a politician and a judicial actor. Perhaps most importantly, he is an administrator. The discretionary decisions he makes in administering the law directly affect and are affected by the quality of life in society.

This first section seeks to do two things. First, we will consider the nature of governmental accountability and apply our conceptualization of it to the police. Then, we will consider some of the influence upon police behavior of which an accountability mechanism must be cognizant. We must discuss social norms and democratic values endemic to American culture. Such values will affect the behavior and expectations of both parties to police-citizen interactions. Then, the pragmatic dynamics of street police work will be discussed. Perhaps the singularly most important determinant of police behavior is the policeman's subcultural experience. An understanding of it is basic to the study of police accountability.

In this first part then, we will set out the problem of police accountability by considering the nature of administrative accountability and the dynamics of police behavior.

## Chapter 1 ACCOUNTABILITY

### I. The Nature of Law

As legal administrators, policemen can be imagined to serve a variety of functions. They may be seen as referees in the ongoing conflict that is mass society. To some, they are the front line troops of an oppressive army which occupies the streets in the name of privileged classes. Then too, policemen can be couched as socializing agents who act as cohesion builders in anonymous modern society.

There are, in fact, a multiplicity of ways of viewing the police role. And these various viewpoints relate directly to the diverse manners in which men have thought of the nature of the law itself. Some scholars, such as Durkheim, see the law as a cohesive force, molding an efficient social fabric from what would be chaos.<sup>1</sup> Renner, on the other hand, brings a Marxist tradition to legal studies.<sup>2</sup> He sees law as an instrument which maintains and confirms basic cleavages in society.

Perhaps most persuasive is Edward Hoebel's notion that several basic "law jobs" are common to most societies. Hoebel lists social control, conflict resolution, adaptation and social change, and norm enforcement as his four jobs.<sup>3</sup> It is

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<sup>1</sup> Emile Durkheim, The Division of Labor in Society (The Free Press; N.Y., 1933).

<sup>2</sup> Karl Renner, The Institutions of Private Law and Their Social Functions (Routledge & K. Paul; London, 1949).

<sup>3</sup> Edward A. Hoebel, The Law of Primitive Man (Harvard Univ. Press, Cambridge, 1954), p. 10

easy enough to envision police practices which correspond to each of these jobs. We can thus see the diversity of legal and social functions which policemen must perform.

While these four functions are conceptually different, the pragmatic reality of what the everyday policeman does on the street is basic to all. At the crux of the policeman's job is the problem of balancing the individual's liberty against the social necessities of regulation. The street cop's daily dilemma is the basic dilemma of social life, so beautifully presented by Mill:

What then is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society? <sup>4</sup>

For millions of years, since man developed into a communal animal, this question has been central to the human condition. This assignment of interests to "individuality" and to "society" embodies the stuff upon which religions, morals, laws, indeed all human organization and social conduct are based.

The job of the work-a-day policeman has always been to wrestle with this balance. He must use his skill, intelligence, and common sense to properly define the limits of individual conduct as it impedes upon collective interests. No matter how well our codified and judicial law is constructed, no matter how strong social behavioral norms are, no matter how effective

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<sup>4</sup>John Stuart Mill, On Liberty (Bobbs-Merrill; N.Y., 1956), p. 91.

religious indoctrination may be, people in mass society require policemen to define and preserve this delicate balance. It is indeed a most basic job of the law.

When we seek to hold policemen or any governors accountable for their actions, we seek to make sure that they are not capriciously employing a limit upon individual behavior. We demand that they define this limit according to objective laws and principles without reference to particularistic, discriminatory criterion.

As Selznick tells us:

"The impulse to create a legal order is, in the first instance, a practical one. From the standpoint of the rulers, power is made more secure when it is legitimate; from the standpoint of the ruled, fears of oppression are allayed. Thus, legalization is rooted in the problems of collective life." 5

We demand of administrators that the limits which are placed upon individual behavior by policemen are neither too restrictive nor too expansive. Either could have disastrous consequences.

Restricting individual liberties too far can stifle individual creativity and productivity. It can perhaps sow the seeds of revolution. Too expansive a grant of individual liberties can allow civilization to regress. It can withhold protection from those who would be victimized by the naturally powerful.

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<sup>5</sup> Philip Selznick, Law, Society, and Industrial Justice (Russell Sage; New York, 1969), p. 12

Since the street cop actually applies the law, his actions have the most direct of effects upon how the rights of individuals are balanced against those of society. Holding policemen accountable to certain standards of conduct then is critical to the administration of justice. Insuring police accountability is as important as is any phase in the legislative or judicial processes which define and administer the criminal law.

## II. The Concept of Accountability

What does it mean to hold governmental agents accountable? Accountable to whom? And on what grounds? Behind the accountability problem lie two schools of thought about the origins of governmental action. One school sets forth the responsibility of democratic government to be responsive to the will of the sovereignty. Thus, systems must be constructed which deter the majority from abusing the (God-given or natural) rights of the minority.

Legislative accountability and judicial accountability each reflect one of these two conflicting ideas. If we consider briefly legislative and judicial accountability, we will be able to better understand administrative accountability, the crux of this work.

In theory, legislative accountability obtains in a democracy through the operation of suffrage. The actions of legislators are supposed monitored by the public. Through the ballot box, popular opinion is changed into law by these closed monitored representatives. If legislators do not cleave

to the dictates of the masses, they will either be recalled or voted out of office.

This theoretical notion of legislative accountability has deep roots in American culture. And it is not a latent ideal. As Tocqueville noted some 150 years ago, "in America the principle of the sovereignty of the people is not either barren or concealed, as it is with some other nations; it is recognized by the laws."<sup>6</sup>

Pragmatists will argue that the masses are neither interested in nor informed about the actions of legislators. Yet even the cynics agree that legislative reflection of popular will forms the basis for that legislative accountability which does exist. Media campaigns are directed at voter preferences. The science of getting elected does involve exhorting the populace to 'throw the rascals out'. As McCloskey tells us, both the voters and the politicians of America feel that legislative accountability does operate through the ballot box.<sup>7</sup> Both in theory and in the perceptions of Americans, legislative accountability assures that the decisions of the people's representatives reflect popular will.

Judicial accountability is of a different order. Judges are bound by codified law and most importantly by "higher principles" of equity, fairness, and professional conduct. Their

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<sup>6</sup>Alexis de Tocqueville, Democracy in America (Washington Square Press; N.Y., 1968), p. 33

<sup>7</sup>Herbert McCloskey et.al, "Issue Conflict and Consensus Among Party Leaders and Followers", APSR 5th (June 1960), 406-27.

first allegiance is to the Constitution and its basic principles. This "higher law", to which judges "answer", is derived directly from the people. It is not changeable through ordinary legislative means. The accountability of the judiciary to "the law" thus acts as a check upon the tyranny of the masses.<sup>8</sup>

Judges are placed, in theory, above the political milieu specifically so that they will not be responsive to the momentary whims of the masses. Federal judges serve life terms with only stipulation for their tenure being that they perform in a professional way. The Constitution's "good behavior"<sup>9</sup> requirement has translated itself in practice into meaning that only gross legal incompetence is grounds for removal. Since the removal of Samuel Chase failed in 1805, federal judges have developed a significant immunity to political attack. Only 10 times in history have federal judges been impeached by the House, and only 4 times has the Senate actually removed a judge.<sup>10</sup>

Of course, on the local level, judges are more often than not elected. But judicial elections tend to differ in style from legislative ones. Legislative campaigns exhort the voter to support public policy positions of all sorts. Judicial campaigns rarely do so. Instead, judicial campaigns extole the

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<sup>8</sup>This potential tyranny, of course, was the central concern of Hamilton and his followers when they pushed for the institutionalization of the U.S. Supreme Court.

<sup>9</sup>See article III, Sec. 1, U.S. Constitution

<sup>10</sup>See Henry J. Abraham, The Judicial Process 3rd ed. (Oxford Press; London, 1975) pp.38-46

legal competence of the candidate and (if a true contest is involved) perhaps the incompetence of the incumbent. Seldom does incompetence as a legislator enter elections as an issue (save in the sense that an "incompetent" legislator is one who does not represent the will of the people.)

Thus, election campaigns outline the basic difference between legislative and judicial accountability. In the American system, the legislator is accountable to the people, the judge is accountable to the law.

Of course, these are not at all pure distinctions. Legislators do consider the law and the Constitution when they act.<sup>11</sup> And legislators do hold each other to answer on occasion to "professional" standards of conduct. Then too, judges consider the political ramifications of their decisions. To state that they act completely independent of politics would be foolish.

Yet these two types of actors do present accountability problems of different sorts. If only in emphasis, legislators and judges must develop working styles which adapt to existing accountability mechanisms in different ways. And American society employs different accountability schemes to each.

Thus, when one discusses legislative accountability, one is concerned with whether or not voters are informed about, interested in, and responsive to political questions decided by legislators. One wishes to know if popular will is being

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<sup>11</sup>Tocqueville noted in 1831 that the expertise of the lawyer is often sought by the legislator. See op. cit., p. 105.

read and served. Legislators, concomitantly, concern themselves with public opinion polls and image producing media campaigns which seek to lessen the uncertainty which they face in the accountability system of elections.

Concerning judicial accountability, different dynamics have developed. Whereas everyone has the right to an opinion (and a vote) about how well legislators are performing their charge, judges are left to be monitored by their colleagues. The esoteric nuances of the law are supposedly such that only the legal profession can properly evaluate the judge's performance. Thus, local bar associations and the ABA monitor judges. Rarely is one replaced (even through the election process) without having transgressed against accepted legal practices or ethical cannons of the legal sub-culture. Judges are much more free to perform irrespective of popular opinion, but they are in theory held accountable by their colleagues to 'the law'.

The two different emphasises then of legislative and judicial accountability are of responsiveness (to popular opinion) and substantive competence (as defined by colleagues).

### III. Administrative Accountability

Administrative accountability is even more complex than legislative or judicial accountability. A balancing of concerns is necessary for a system to be able to monitor the administrator effectively. For the task of administration encompasses signifi-

cant parts of the legislative and judicial functions.

Administrators apply the law as defined by the legislature and as interpreted by the judiciary. Thus, within the governmental structure the administrator must concern himself with several other sets of actors (and their decisions). The administrator's prime task is, in one sense, to apply laws and regulations which have been defined and refined elsewhere. He must do so in an objective, non-discriminatory manner.

The administrator's tasks should be thus subject to review on the basis of their substantive correctness. As with the judge, the administrator must be held accountable to formal legal standards of competence. Conformity to codified and judicially made law is central to the administrator's function. Indeed, the elimination of caprice is the very basis from which the need to codify administrative rules developed. The "culprit... is the arbitrary decision...based upon improper criterion that do not relate in any rational way to organizational ends. The paradigm arbitrary decision is one that is based upon particularistic criteria such as friendship, ascriptive criteria such as race, or upon caprice, whim, or prejudice."<sup>12</sup>

Yet, like the legislator, the administrator must react to his constituency. He must consider the will of those citizen's whom he contacts. He must use discretionary latitude to make

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<sup>12</sup>Jeffrey Jowell, "The Legal Control of Administrative Discretion", Public Law, Autumn 1973, p. 186.

the law meaningful, realistic, human, and responsive to the needs of citizens. The administrator must temper the rigid dictates of the law with an understanding and empathy toward the citizens whom it touches. In short, the administrator must employ Cardozo's so-called "method of sociology" by importing equity, social welfare, and public policy concerns into his decisions.<sup>13</sup>

Administrators are usually in direct, constant contact with a more limited populace than are legislators. The administrator develops an expertise in dealing with this narrow constituency which is far greater than that accumulated by the legislators. Legislators, after all, are involved in a multiplicity of endeavors concerning many diverse interest groups. The administrator learns over time the desires and needs of his specific constituency well. He can (in theory) directly empathize with the problems which the formal legal system creates for a regulated populace.

Thus, it is altogether proper that the administrator be allowed great discretionary latitude within which to deal with his constituency. His applications of the law should be more dynamic, more alive than rigid codifications could ever be.

The problem of administrative accountability then becomes one of allowing the administrator freedom of action, while making sure that he does not abuse that leeway. The administrator must always act 'legally' and 'objectively' toward the public. He

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<sup>13</sup>See Benjamin N. Cardozo, The Nature of the Judicial Process (Yale Univ. Press; New Haven; 1921), Lecture III.

must not use the law for capricious or unfair ends. Concomitantly, when the formal structure of the legal system is unresponsive to certain real life situations, the administrator must be expected to exercise his discretion to develop equitable governmental responses to the problems of citizens.

The administrator must therefore be held accountable to the law as is the judge. He must also be held accountable to his constituency as is the legislator. For the administrator and for administrative review systems, this multiple accountability problem is partly a product of these sometimes contradictory standards of evaluation.

Often, the public, in the form of his clientele, makes unreasonable demands upon the administrator. Put simply, the law often does not allow the administrator to be responsive to the wishes of the citizenry. The consequent lack of sensitivity which the citizen perceives in the administrator can generate cynicism, distrust, and formal complaints about his conduct. These complaints must be somehow handled by an administrative accountability mechanism.

The obverse of this legality problem is that administrators may often be put in a position where they feel compelled to act illegally (or at least non-legally) in order to accomplish their functions. Often, the specific tools necessary are not available to perform a given task. For example, a welfare worker may not be able to give immediate monetary aid to people who are literally destitute. Emergency funds for such cases

are often lacking. In such situations, the worker may feel compelled to falsify documents in order to achieve the desired result (clearly within the welfare worker's charge) of providing aid for the needy. Legal restrictions which affect the administrator may thus limit his ability to be responsive to the citizenry.

Another problem develops out of the administrator's expertise. Both in the legal sphere and in the political realm, the administrator constructs an expertise in dealing with his particular substantive problems and clientele. That expertise can allow him to balance the judicial and legislative functions which he must perform. The administrator's experience and substantive knowledge provide him with a wealth of information to utilize in responding to citizen needs while remaining within the letter of the law.

However, this expertise also provides the administrator with a shield behind which to hide from external review. Like the judge, the administrator's knowledge can be in some ways non-reviewable by laymen. Who is to know precisely what an administrator can and cannot, should and should not do for a client in the field? Can anyone save the administrator's colleagues, be in a position to effectively evaluate his actions?

Having very briefly considered the nature of the complexity of administrative accountability, we will now turn to consider why all of this is relevant to the control of police abuses.

#### IV. Police Accountability

Policemen are administrators. They administer the criminal law as it is defined by legislators and interpreted by the judiciary. Policemen on the street operate in a great many more capacities than that of administrators of course. They can be seen as politicians,<sup>14</sup> as generalized social servants,<sup>15</sup> or as judicial actors. However, the policeman's part in determining how the criminal law shall be applied to people on the street places him in an administrative role. His position is analogous to that of the welfare worker, F.A.A. commissioner or parole board member.

As administrators, policemen aptly illustrate the balances which must be made between conformity to legal codifications and discretionary latitude illustrated above. In fact, isolated from his superiors and other would-be-watch-dogs, the policeman on the street is extremely difficult to monitor. This makes him a particularly fascinating administrative actor to study.

Policemen must enforce the law objectively and with substantive correctness. Every affirmative action which a policeman takes must be "legal" in a strict, judicial sense. For all the leeway which it must allow him, an accountability mechanism aimed at reviewing police conduct must hold him strictly answer-

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<sup>14</sup> See William K. Muir Jr., Police: Streetcorner Politicians (U. Chicago Press; Chicago, 1977).

<sup>15</sup> See James Q. Wilson, Varieties of Police Behavior (Atheneum; N.Y. 1972), ch. 7

able to the law.

On the other hand, because he is a legal and administrative actor, the policeman must be allowed by an accountability mechanism to shield himself behind the laws of the land. If his actions are legal, it would be extremely problematic for the street cop to be held in error by a review system.

Police work is, of course, often labeled "law enforcement". Indeed the major focus of police training concerns the law enforcement tasks of the police. Yet, only a small part of the policeman's job is truly involved with positive enforcement of the law.<sup>16</sup> Much more prevalent in his working life is the policeman's general order maintenance function.

The police must maintain order in society. They do this in various ways, most often not related to the formal application of the criminal law. As do other administrators, the police utilize semi-legal, non-legal, and even illegal methods to go about this order maintenance task.

As pointed out above, this often happens because the law is unresponsive to the practical realities of human problems. Then too, often policemen (as legislators reacting to their constituencies) do not enforce the codified dictates of the law in the interests of justice and equity.

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<sup>16</sup>Noted elsewhere by Morton Hunt, The Mugging (Signet; N.Y., 1972), p. 50; Albert J. Reiss, The Police and the Public (Yale Univ. Press; New Haven; 1971), p. 64; Jerome Skolnick, Justice Without Trial (John Wiley; & Sons; N.Y. 1966), p. 33; and James Q. Wilson, op. cit. p. 17.

It is altogether proper that policemen do this. As Selznick tells us, policemen and all administrators should focus upon long range societal goals and not upon the realization of legal ideas.<sup>17</sup> In fact, policemen and the entire legal establishment are cautioned by the California Penal Code to apply its specifics with this same latitude:

"The Rule of the Common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its objects and to promote justice." 18

In practice this means that the street policeman may verbally chastise a first-time shoplifter rather than making an arrest. Or he may settle a bar room brawl by exhorting participants to 'go home and sober up'. He may avail a drunk of a taxi ride rather than a night in jail. Or he may threaten young "toughs" with physical harm if they continue the harassment of 'honest citizens'.<sup>20</sup>

In these and many similar ways, policemen maintain order in society without resorting to enforcement of the law. They cleave to the dictates of the situation. They hear, evaluate, and respond to their constituency in a common sensical fashion.

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<sup>17</sup> See Philip Selznick, Law Society, and Industrial Justice (Russell Sage; N.Y., 1969), pp. 11-18.

<sup>18</sup> State of California, Penal Code, Preliminary Provisions, Section 4.

<sup>19</sup> As Hunt notes, there are "a broad range of practical and effective ways of dealing with suspects which the policeman knows to be technically improper but considers morally justified." From Morton Hunt, The Mugging (Signet Books; N.Y., 1972), p. 82.

This democratic nature of police work (wherein we have analogized the policeman's role to that of the legislator) has been noted by Black in his study of the social organization of arrest. Black notes:

The greater part of the police workload is case-by-case, isolated contacts between individual policemen and individual complainants...as shifts occur in the desires of the atomized citizenry who call and direct the police, changes ripple into policemen's routine behavior. The pattern of police compliance with complainants gives police work a radically democratic character. 20

Thus, policemen must act legally and be answerable to the law. Yet their job is more complex, more diverse than that of the judge. As legislators do, they must also react to a constituency which can have a significant impact upon their daily work environment.

For policemen to do either of these things to excess would be catastrophic. If policemen reacted totally to their constituencies, without regard for the dictates of the law, the result would be an end to law itself. The consequent form of criminal law would be a sort of "khadi justice"<sup>21</sup> in which "rulings are not determined by a formal rational law, but instead are oriented on ethical, religious, or political postulates which can make due allowance for what appears equitable."<sup>22</sup> This form of justice would be diametrically opposed to American

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<sup>20</sup> Donald J. Black, "The Social Organization of Arrest", printed in Earl Rubington and Martin S. Weinburt eds., Deviance: The Interactionalist Perspective (MacMillian; N.Y. 1972), p. 155.

<sup>21</sup> Coined by Max Weber in Law in Economy and Society 2nd ed., translated by Edward Shils and Max Reinstein (Harvard Univ. Press, Cambridge, 1922), p. 213.

<sup>22</sup> Henry W. Ehrmann, Comparative Legal Cultures (Prentice-Hall; Englewood Cliffs, 1976), p. 30

norms of due process.

Yet were the police to attempt to apply the rigid constructs of the law universally, an almost more abhorrant chaos would ensue. If everyone who was technically "arrestable" were arrested, the courts and jails of America would be swamped with bodies and cases.<sup>23</sup> What's more, the eventual cost to society in terms of individual freedom would be a price which hardly anyone would be willing to pay.

Because they must answer to both the public and to the law, because they are so conspicuous, and because they must so often resort to other-than-legal tactics, the police are the repository of most complaints about the criminal justice system.

As Chevigny illustrates:

For legislators and judges the police are a godsend, because all of the acts of oppression that must be performed in this society to keep it running smoothly are pushed upon the police. The police get the blame, and the officials stay free of the stigma of approving their highhanded acts. <sup>24</sup>

## V. Conclusion

Earlier in this chapter we asked several questions about holding governmental agents accountable. We wish generally to know to whom and on what grounds administrators should be held responsible for their actions. Our brief treatment of accountability has developed the notion that administrative account-

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<sup>23</sup> Many authors have noted that the police tend to under-enforce the law. For example, see Black, *op. cit.*, p. 156; Wilson, *op. cit.*, p. 49; or George E. Berkley, The Democratic Policeman (Beacon Press, Boston, 1969), p. 119.

<sup>24</sup> Paul Chevigny, Police Power (Vintage; N.Y., 1969), p. 280.

ability is of a dual nature. Administrators, and therefore policemen, should answer to the people in the form of their street constituency (the legislative accountability analogy) and to 'the people' in the form of the formal constructs of the law (the judicial accountability analogy).

The most basic balance which a police accountability system must strike is this; it must allow the policemen great latitude within which to work and yet require that he cleave to the dictates of the formal legal system. It is neither an easy nor a particularly clear balance to make. Yet, all of the review systems which we shall study must attempt it.

At this point, we will begin to consider the various phenomenon which may have impact upon the policeman's work behavior. First, we must look at the general societal norms of conduct which will be operative in police/citizen interactions on either side. It is toward a consideration of American norms and values that we now turn.

## Chapter 2 SOCIETAL INFLUENCES UPON POLICE BEHAVIOR

### I. Introduction

Street policemen and those they police are all influenced by societal norms and value patterns which are uniquely American. In this chapter we will discuss some of the social norms and dynamics endemic to American culture which create conflict between policemen and citizens.

Cultural values and societal complexity itself can create police/citizen problems in three ways. First, the experience of being raised and educated in America can create unreasonable expectations about how they should be received by their fellow countrymen while performing their duties. These police expectations can give rise to conduct which may be perceived as abusive. Third, cultural norms and societal dynamics which we will herein discuss can foster genuinely abusive behavior on the part of policemen.

This abusive behavior comprises only a part of the alleged misconduct which review systems must consider. The majority of "cases" investigated by any of the review organizations studied herein involve perceptual problems of the first or second kind (above). Yet even though citizen ignorance of the law or of police practices is at the root of most complaints, those complaints are no less valid a subject for review by accountability mechanisms. An enraged citizen must be allowed to grieve official behavior. And all allegations must be investigated on the chance that they do involve genuine police abuse.

So the main purpose of this chapter will be to consider briefly some societal norms and dynamics which shape the policeman's and the citizen's expectations of police work. It is interesting to note at the outset that Bayley and Mendelsohn's study of police and citizens in Denver found:

Recruits bring to police work the same kind of evaluation of the police made by people generally. They are neither more starry-eyed nor more cynical. 25

Thus, it will be interesting to see how some of the same cultural norms and social dynamics affect people on either "side" of the police/citizen interaction.

In the instant chapter, we will first consider the generalized distain and/or fear of government endemic to American social and political institutions. We will trace the historical roots of the anglo-American concept of limited government to its present influence upon police/citizen encounters. Then, we shall proceed to consider some basic American democratic values, classically outlined by Parsons and Lipset. We will place special emphasis upon how American conceptions of equality affect the policeman on the street. Third, we will see how complexity itself in mass, modern day society has created problems for the policeman and for the citizen. Finally, a brief but important section will relate how the media, and especially television, have exacerbated the perceptual problems theretofore discussed.

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<sup>25</sup>David H. Bayley and Harold Mendelsohn, *Minorities and the Police* (MacMillian; N.Y., 1968), p. 33.

## II. Limited Government

We have couched the balance between the rights of the individual and those of society as central to human society. Defining this balance is the most crucial task which the law has to perform. In America, this trade off has traditionally leaned in favor of the individual. This is because a mistrust of power has always been central to the anglo-American experience.

America was settled by men who fled clerical and feudal oppression of the Old World. Aside from its "story book" implications,<sup>26</sup> this fact is important to our discussion of American policemen. For the American mistrust of power which developed as a consequence of this flight, is deeply ingrained in our social, political, and religious institutions. American political campaigns are laced with rhetoric about restricting governmental power. Our American fixation with democratic representation affects every form of organization from schools to corporations, from military systems to churches. Such democratic forms of organization are fundamentally aimed at curbing the excesses of power which governments, groups, and individuals might develop.

The idea that the powers of government should be limited by the rights of the individual is not, of course, strictly an American notion. Its roots are deeply embedded in English history (as we shall presently discuss). It is important to

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<sup>26</sup>See Louis Hartz, The Liberal Tradition in America (Harcourt, Brace, & World; New York, 1955), p. 3.

note that citizen's rights and guarantees of liberty are very different in the other great legal system operative today. Under the civil law system, law is seen as a product of the government and not of the people. Laws are "exhortations addressed to the agencies of government as to how they ought to act."<sup>27</sup> They are not 'supreme law' (as in the common law system), binding upon citizen and government alike.<sup>28</sup>

The anglo-American concept of limited government traces its roots back to Feudalism. As Abraham states:

The core of the Feudal law was the concept of fealty, which long prevailed after the passing of feudalism. Ruler as well as subject was bound--there were well-defined rights and obligations to be adhered to by all parties. Private rights of freeman were not subject to arbitrary change, and the primary task of the monarch was to preserve and protect the law. 29

Originally, the English king held court and decided cases personally. When the king's court developed into a system of courts, the judges on those courts decided cases "according to the common custom of England, as the king was bound to do when he sat in person."<sup>30</sup> In English legal theory then, the law was pre-existing and was found by the king or by his justices. The 'government' was accountable to law.

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<sup>27</sup> Roscoe Pound, The Development of Constitutional Guarantees of Liberty (Yale Press; New Haven, 1957), p.8.

<sup>28</sup> Also see John H. Merryman, The Civil Law Tradition (Stanford Univ. Press; Palo Alto, 1969).

<sup>29</sup> Henry J. Abraham, The Judicial Process (Oxford Press; London, 1975), p. 10.

<sup>30</sup> Roscoe Pound, op. cit., p. 8.

It was up to Bracton to boldly declare in the 13th century that the King was "under God and the Law--for the Law made the King".<sup>31</sup> This notion was preserved through a succession of common law scholars (including Coke and Blackstone) until centuries later it was firmly ingrained in English legislative, judicial, administrative, and social systems.<sup>32</sup>

When the colonials of America rebelled in 1775, it was not to overthrow the existing governmental system so much as it was to secure their rights as free englishmen.<sup>33</sup> The basic tenants of limited government were then written into the Articles of Confederation. So weak was the central government which the Articles of Confederation. So weak was the central government which the Articles constructed, that the Constitution was born as a second attempt to form an effective government. When many felt this new government was too restrictive of individual rights, the Bill of Rights was added to specifically secure numerous individual liberties.

The ninth and tenth amendments in particular attest to the American preoccupation with limiting government:

- IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.
- X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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<sup>31</sup>As quoted in Henry J. Abraham, op. cit., p. 11

<sup>32</sup>ibid., pp. 8-14.

<sup>33</sup>See Pound, op. cit., chpt. 3; or Daniel Boorstin, The Genius of American Politics (Univ. of Chicago Press; Chicago, 1953).

The English tradition of limited government had thus been expanded and solidified as basic to American political institutions. In time, this concept was to permeate our social institutions as well. This limitation upon authority extends even into family life where Americans are noted for the freedom which they allow their children from absolute parental control.<sup>34</sup>

The ubiquitous limited government norm manifests itself in police/citizen relations in several ways. First, the administrative and judicial institutions which have developed in America place significant obstacles in the paths of the police. These obstacles restrict the actions of policemen severely when compared to the *carte blanche* afforded police in most countries.

As in Herbert Packer's "due process model" of criminal process, the American judicial system questions the policeman's investigative skills and competence in many ways.<sup>35</sup> The judicial system often stresses (as does Packer's model) the possibility of error on the part of the street policeman. The process, in short, rejects "informal fact finding processes as definitive of factual guilt, and... (insists) on formal, adjudicative, adversary fact finding processes in which the factual

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<sup>34</sup> See Tocqueville, *op. cit.*, p. 231; and Seymour Martin Lipset's excellent discussion of this and compilation of various studies on the subject -- in The First New Nation (Anchor; N.Y., 1967) p. 213-221.

<sup>35</sup> Herbert L. Packer, The Limits of the Criminal Sanction (Stanford Univ. Press, Palo Alto, 1968)

case against the accused is publicly heard by an impartial tribunal."<sup>36</sup> The highly formalized processes of the American judicial system then question both the policeman's street sense and his investigative competence.

Policemen feel 'handcuffed' by these formalized restrictions. As noted in chapter one, other-than-legal means are sometimes resorted to by the police in order to perform their charge. Such activities are often rationalizable by the police as necessary given the "unreasonable" restrictions of the American criminal justice system.

Less formalized, and yet much more important to police behavior, is the constant ostracism which policemen face from the American public. The distrust of government which we have outlined manifests itself in a disgust for policemen which is constantly apparent to the American street cop.<sup>37</sup> The American populace clings to stereotyped "dump cop" notions of the intelligence and competence of American street policemen. As Reiss and Bordua put it, "the American...public seems unwilling to accord the police status either in the European sense of status honor as representatives of the state or in the more typically American sense of prestige based on the claim of occupational competence."<sup>38</sup> (Later, we will discuss more fully occupational competence when considering police expert knowledge and professionalism.)

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<sup>36</sup> *ibid.*, pp. 163-164.

<sup>37</sup> Michael Banton notes similar problems for policemen in Great Britain in The Policeman in the Community (Tavistock Publications; London, 1964), p. 198, 215.

This dynamic is in two ways productive of citizen/police tensions. First, the presence of distrust of the police can cause citizens to be overly aggressive, rude, and even assaultive toward the police.

Second, policemen can react to this ostracism with self righteous indignation. As Buckner points out:

A police officer is the target of more hostility, most of which he personally did not earn, than is the occupant of any other position I can think of in society. It seems so senseless to the officer, he knows he does good things, and when he arrests people, he thinks it is usually for their own good or for the good of society. To be greeted with hostility in many situations does not square with this self-conception, so the officer assumes that the moral character and social control of the hostile person is in some sense defective. 39

Many polls have found that most Americans respect policemen.<sup>40</sup> Yet only a small percentage need indicate an overt disdain for the street cop for him to constantly feel ostracized. His uniform, his patrol car, and his mission all make him very visible on the job. The constant pressure of always being in view of someone with disgust in their eyes can cause anyone to react vehemently. Thus, a constant psychological pressure is exerted upon the beat man because of our generalized distrust for government.

### III. Democratic Values

Various authors have attempted to define an American value system in a way which would explain what appear to be universally

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<sup>38</sup> Albert J. Reiss, Jr. & David J. Bordua "Environment and Organization: A Perspective on the Police", in David J. Bordua's The Police (John Wiley & Sons, N.Y. City, 1967), p. 25.

<sup>39</sup> Hubbard T. Buckner, "The Police: The Culture of a Social Control Agency", unpublished Ph.D. dissertation, U. California, Berkeley, Sociology, 1967, p. 333.

accepted values in our culture. Daniel Boorstin's Genius of American Politics, Louis Hartz' The Liberal Tradition in America, C. Wright Mill's The Power Elite, and David McClelland's The Achieving Society are only a few examples of attempts to analyze the elusive "character" of American society.

In addition to these more analytical pieces, several authors have examined large populations seeking hard data on values which Americans hold dear. Robert Lane's Political Ideology and Almond and Verba's The Civic Culture have attempted to survey the values and norms which intuition tells us are operative in American culture.

In his comparative work, The Social System,<sup>41</sup> Parsons has developed a set of "pattern variables" which can be used to analyze a society's value system.<sup>42</sup> Applying this analytical method to the American social value system (and expanding upon Parson's variables) Lipset's monumental work The First New Nation singles out equality and achievement as the two values which have distinguished American society throughout history.<sup>43</sup>

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<sup>40</sup>For example see Bayley and Mendelsohn, op. cit., pp. 39-48; or see the compilation of such polls in The President's Commission on Law Enforcement and Administration of Justice's Task Force Report: The Police (U.S. Government Printing Office, Washington, 1967), pp. 144-149.

<sup>41</sup>Talcott Parsons, The Social System (The Free Press; Glencoe, Ill., 1951)

<sup>42</sup>Parson's schema states that a society's value system may emphasize different combinations of five variable sets. His distinctions are achievement-ascription, universalism--particularism, specificity--differences, affectivity-affective neutrality, and self-orientation--collectivity-orientation. The specific meanings of all of these are left out of our discussion in the interests of brevity. See *ibid.*, p. 58-88.

Lipset defines equality as the belief that "all persons must be given respect simply because they are human beings; (the belief) that the differences between high and low-status people reflect accidental, and perhaps, temporary variations in social relationships".<sup>44</sup> The achievement value, a corollary of equality, holds that success "should be attainable by all, no matter what the accidents of birth, class, or race. Achievement is a function of equality of opportunity."<sup>45</sup> Of course, such schematics of analysis always over simplify reality. Yet a deeply held belief in these values has been found to exist in the American populace.<sup>46</sup>

These values are most important to our discussion of the affects upon police behavior of the American social milieu. They influence the attitudes of citizens and policemen towards each other in several crucial ways. First, equality of opportunity tends to become translated into equality of condition as a value. This is particularly true of the "young, enlightened of especially, underprivileged members of society."<sup>47</sup> Such persons tend to expect substantive equality to develop in and through American institutions.

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<sup>43</sup> In Lipset's analysis, equality and achievement are to be distinguished from elitism and ascription. See Lipset, *op. cit.*, pp. 237-257.

<sup>44</sup> *ibid.*, p. 2

<sup>45</sup> *ibid.*, p. 2

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See Almond and Verba, *op. cit.*, pp. 68-78; de Tocqueville, *op. cit.*, pp. 141-144, pp. 169-173; or Robert V. Robinson and Wendell Bell, "Equality, Success, and Social Justice in England and the United States." Vol. 43, No. 2, *Am. Soc. Rev.*, April 1978, pp. 125-141.

These people (the young and disadvantaged) also happen to be most often in contact with the police. Their indignation over the criminal justice system and general social inequities can create extreme tensions between themselves and the police. The fact that policemen arrest many more minority people than whites (per capita), the perceived 'harassment' of youths by the police, the perceived differential standards of prosecution for white collar or political crimes versus street crimes, all can tug at the citizen's egalitarian values.

Policemen are the most visible symbols of the governmental and social system which is somehow responsible for the gap between egalitarian values and the reality of stratified American society. Feelings of resentment run high, especially among minorities and youths, toward that system. The police then often suffer the brunt of these explosive feelings of resentment, generated from basic American social values.

Hostility and violence aimed at the police is, of course, only half of the problem. Egalitarian and achievement values are also held by policemen. When they themselves are subject to discriminatory treatment as a group, they "come to look upon themselves as an oppressed minority, subject to the same kind of prejudice as other minorities".<sup>48</sup> As New York City Police

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<sup>47</sup>Robinson and Bell, op. cit., p. 141.

<sup>48</sup>Seymour Martin Lipset, "Why Cops Hate Liberals--and Vice Versa", in Bousignore et al eds., Before the Law (Houghton Mifflin; Boston, 1974), p. 103.

Commissioner, Michael J. Murphy stated in 1965:

The Police officer, too, belongs to a minority group-- a highly visible minority group, and is also subject to stereotyping and mass attack. Yet he, like every member of every minority, is entitled to be judged as an individual and on the basis of his individual acts, not as a group. 49

This idea sounds foreign, even silly to many. But the street policeman's feelings of oppression are very real and very important. The rookie policeman on the beat quickly learns that he is typecast as "another cop" along with his brother officers. He is assumed by the public to be authoritarian in his personality structure, not too smart, a 'gun nut', politically conservative, brutal, insensitive, bigoted, and so forth. Any or all of these things may, of course, be true of a given policeman. But when the young street cop sees the public treat these assumptions as fact, he is offended. He feels, as Buckner stated above, that he does not deserve these labels. He also feels, as Commissioner Murphy stated, that he has the right to be judged on his own merit.

In recent years, much attention has been focused upon the dynamics of being a minority group member in America. The frustration which minorities feel when they are denied the theoretical equality endemic to American society, has been graphically illustrated in the streets. Yet the frustration which the policeman faces when he is discriminated against may be even

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<sup>49</sup> *ibid.*, pp. 103-104

more weight' in its significance. For most policemen have lived their lives as members of the dominant American majority. Unlike Blacks or Chicanos or Native Americans who have suffered discrimination all of their lives, the white policeman is new to the minority experience. If he is unable to rationalize, understand, and deal with this loss of equality, his reaction may be one of open hostility toward the public. The self-righteous indignation of the white policeman then, may hold more potential for violence than that of racial minority group members.

The inequities which both citizens and policemen see in their interactions with each other, thus conflict with basic, critical American social values. The treatment which each group receives from the other fosters open conflict between them. The street cop's feelings of resentment at being discriminated against on ascriptive grounds are particularly problematic. These feelings can be productive of behavior which will eventuate in problems in police/community relations and in difficulties for a police accountability mechanism.

#### IV. Societal Complexity

The pace of life and of change in mass American society has taken its toll on our social structure and upon us all as human beings. The types of dynamics which accompany rapid movement, uncertainty, and anonymity in society cannot help but effect police behavior and police-citizen interactions. In this section, we will touch upon the consequences of this "future shock"<sup>50</sup> for the policeman. Its full exploration is worthy of considera-

ation in depth at another time.

The rapid development and mobility of economic goods and services in modern America makes for a great deal of uncertainty in everyday life. New products, health scares, and increased interest in environmental protection make economic life confusing for all. Everywhere, economic uncertainty makes problematic what people used to take for granted. The "rip-off" is somehow more morally acceptable than the "theft". White collar crime and crime by government are used to rationalize the illegal tax deduction or the appropriation of another's goods.

Similarly, technological change makes life more facile. yet confusing everyday. Added to these phenomena are the simple mathematics of population growth. Each of these things seems to create not only uncertainty, but an equally significant anonymity in contemporary America. Neighbors, even co-workers no longer know each other well. The policeman on the beat has become a nameless uniform. He speeds through the night in radio directed prowl cars without stopping to say hello or 'shoot the breeze' with people in the street.

The effects of all of this upon policemen are of tremendous significance. First of all, the street cop is affected as an ordinary citizen; he is confused, often disoriented toward evolving values which were once constant. But his confusion is

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<sup>50</sup> Coined by Alvin Toffler in his book of the same name (Bantain Books; New York, 1971).

perhaps more psychologically distressing than that of the rest of us.

For the policeman's role is often one of appellate or executive decision maker in the daily conflict between individuals in society. In this capacity, the street cop often moralizes for people by choosing between conflicting value structures or what Barnard labels "private codes".<sup>51</sup> Thus, policemen must often decide whether young vandals should answer to the law (and citizen victims) for their mischief, or simply be admonished in the interests of justice (and the youth's future records). The policeman must decide whether the brutal husband should go to jail to pay for his wife beating or be left with her in the interests of preserving the family situation (and perhaps children's parental images).

Policemen must constantly make decisions wherein their own 'codes' are in conflict as much as are the interests of the involved citizen. Barnard states that when executives are faced with such conflicts, one of three things happens; 1) either there is a paralysis of action, accompanied by emotional tension and loss of confidence; or 2) there is conformity to one code and violation of another resulting in a sense of guilt and loss of self-respect for the decision maker; or 3) there is found some substitute action which satisfies immediate desire or im-

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Chester Barnard, The Functions of the Executives (Harvard Univ. Press; Cambridge, 1973), chpt. XVII.

pulse or the dictates of one code.<sup>52</sup> When the second situation occurs often, Barnard tells us, this will result in the destruction of that code and further psychic trauma.

Street policemen thus find out in their work that the law and acceptable standards of conduct are often contradictory. They are sworn to uphold the law and to maintain order. Yet over time policemen find that the criminal justice system, the citizenry, and even their own administrative hierarchy can all thwart the performance of this charge. Policemen can become confused, frustrated, apathetic, and desperate about social organization and their own particular function within the division of labor. In ever-changing American society, they can lose faith in their own beliefs and in the future.

This psychological uncertainty approximates the sociological state of anomie. The concept of anomie was, of course, coined by Durkheim<sup>53</sup> and refined by such authors as Merton<sup>54</sup> and Parsons<sup>55</sup>. Anomie develops when imbalances occur in the social order. It is a sort of normlessness wherein the individual loses faith in the future and in his own values. Such imbalances, or inconsistencies of morality and legality become apparent to policemen in many ways unrelated to their roles as moralizers.

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<sup>52</sup>This is taken almost verbatim from Barnard, *ibid.*, p. 264.

<sup>53</sup>Emile Durkheim, The Division of Labor in Society (N.Y.: MacMillan, 1933), and Emile Durkheim, Suicide (Glencoe: Free Press, 1951).

Policemen find that the due process oriented legal system focuses upon procedural rather than substantive guilt. Criminals go free because esoteric "technicalities" of the courtroom (and not factual responsibility) determine judicial outcomes. Street cops learn that most citizens mouth their concern about crime without willingly taking the responsibility to get involved in protecting themselves and their neighbors. The beat officer sees that white collar crimes are rationalized as part of life while police corruption of the most insignificant nature (i.e., accepting free coffee) is assailed as unconscionable. The political revolutionary is often sanctified while the street policeman is ostracised. In a thousand different ways, the police are made to feel that they are considered lesser individuals because they have taken on the charge of maintaining order in society.

As Westley sums it up:

The Policeman's world is spawned of degradation, corruption, and insecurity. He sees men as ill-willed, exploitative, mean, and dirty; himself a victim of injustice, misunderstood and defiled.

He tends to meet those portions of the public which are acting contrary to the law or using the law to further their own ends. He is exposed to public immorality. He becomes cynical. His is a society emphasizing the crooked, the weak, and the unscrupulous. Accordingly, his morality is one of expediency and his self-conception one of a martyr. 56

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<sup>54</sup>Robert K. Merton, Social Theory and Social Structure, Revised Ed. (N.Y.; Glencoe Free Press, 1957).

<sup>55</sup>Talcott Parsons, op. cit.

It is easy to understand how experiencing all of the trauma and degradation of the worst of human suffering can make individuals cynical about human nature. What is more, most policemen develop a concomittant cynacism about the law (which they theoretically enforce and which to most people they graphically represent). The street cop sees it as a tool, most often abused by the strong and powerful to oppress the weak and disenfranchised.

The policeman must adjust to the consequent condition of psychic strain, alienation, or anomie which he experiences. Various scholars have suggested forms of adjustment to anomie common to different individuals, occupational groups, deviant subcultures, and so forth. As Niederhoffer points out, "In the police system, the typical adaptation to anomie is cynacism... it consists of diffuse feelings of hate and envy, impotent hostility, and the sour-grapes pattern."<sup>57</sup>

Many sociologists have noted that policemen tend to be cynical about the law, police administrators, Blacks, Chicanos, politicians, and many other groups and institutions.<sup>58</sup> Of course, not all policemen are hopeless cynics<sup>59</sup> but the tendency in police work for the working experience to produce cynicism

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<sup>56</sup>William Westley, The Police: A Sociological Study of Law, Custom and Morality, (unpublished doctoral dissertation, Univ. of Chicago, 1951) as cited in Arthur Niederhoffer, Behind the Shield (Anchor; N.Y., 1969), p. 97.

<sup>57</sup>Arthur Niederhoffer, Behind the Shield, (Doubleday; Garden City, N.Y., 1967), p. 98.

is over-whelming.

The product of this frustration, victimization, anomie, and cynicism is an almost ubiquitous "we" and "they" syndrome within the police subculture. This we and they notion is perpetuated by the subculture as an attempt to protect the collective psyches of all policemen. It represents, in Durkheim's parlance, the creation of a social solidarity among the police. This solidarity is necessary to replace that which conventional morality and law create for most citizens.

The policeman's uncertain state of anomie then is a product of a breakdown in social solidarity. For the individual street cop, the most natural insurance against anomie is to cleave to that social solidarity which is most readily available. So, he turns to his fellow policemen ("we") to receive psychological sustenance and reassurance. Ostracized, victimized, and degraded by others, he cleaves to his brother officers as does no other occupational group. The comradeship of the locker room becomes all important. There are, therefore, few "loners" in police work. Most policemen intensely require the approbation of their peers.

A tremendously significant gap then is created, isolating the policeman from the citizen.<sup>60</sup> As James Ahern, former Police

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<sup>58</sup>For example, see Arthur Niederhoffer, *ibid.*, p. 98; or Michael Banton, The Policeman in the Community, (Basic Books; N.Y., 1964), p. 169; or George T. Berkley, The Democratic Policeman, (Beacon Press; Boston, 1969), p. 12

<sup>59</sup>See William K. Muir's thoughtful treatment of the "cynic perspective" in The Police "Streetcorner Politicians", *op. cit.*, especially, pages 175-177.

Chief of New Haven states:

No one outside the policeman's closed fraternity knows the cop. Shrewdness and mistrust separate him from the people in the houses his speeding car passes. He does not mix with them. They do not seek him out. 61

Mass societal life also affects policemen and police work in less dramatic ways. Anonymity between policeman and citizen can mean a serious loss in the policeman's ability to solve problems informally. As Banton points out, "the communities with the highest level of social control are small, homogeneous, and stable...in such communities social order is maintained to a very large extent by informal controls of public opinion, and there is little resort to formal controls such as...the full time appointment of people to law-enforcement duties." 62

In an increasingly complex, heterogenous, and unstable community, such informal controls are impossible. Anonymity in contemporary America manifests itself in a lack of interdependence between people. 63 This lack of interdependence means that people will more often consult the police to resolve disputes. Concomitantly, those disputes will be of a more polarized nature due to ever-increasing diversity and uncertainty. Policemen must thus solve more disputes involving less social homo-

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<sup>60</sup> See Jerome Skolnick, Justice Without Trial (John Wiley & Sons; N.Y., 1966), p. 44; or George F. Berkley, op. cit., p. 12, regarding this isolation.

<sup>61</sup> James F. Ahern, Police in Trouble (Hawthorne Books, N.Y., 1973), p. 2

<sup>62</sup> Michael Banton, op. cit., p. 2

geneticity between disputants than ever before. The potential for police-citizen conflict thus created is obvious.

Similarly, people in an increasingly anonymous society will tend less often to settle disputes between others or lend aid to policemen. The costs of 'becoming involved' in order maintenance or crime control become too high for the individual. It becomes increasingly acceptable to allow the police to solve what before would be informally handled between citizens. The policeman is no longer a person who 'shouldn't be bothered' with trivial matters. He becomes a 'public servant' whose duty it is to be on call for any and all citizen requests.

Policemen react to this dynamic with disgust. Being called to a residence to discipline children while father is away, for example, is becoming a police assignment of greater frequency. Such assignments make policemen cynical about people in general. They often result in citizen complaints about the lack of seriousness with which such "problems" are approached.

Thus, in an increasingly mobil, complex, anonymous, and generally confusing society, the policeman's behavior is affected in important ways. Again, as in the previous two sections, the consequences for police-citizen interactions tend to be negative.

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<sup>63</sup>For excellent short discussions of the potential for informal dispute resolution where social inter-dependence is great see Stewart Macaulay, "Non-Contractual Relations in Business", *Am. Soc. Rev.* vol. 28, pp. 55-66; or Takeyoshi Kawashima, "Dispute Resolution in Contemporary Japan", in Arthur Taylor von Mehren (ed.), Law in Japan: The Legal Order of a Changing Society (Harvard Univ. Press and Charles F. Tuttle Co; Tokyo, 1964), pp. 41-54

## V. Television

In treating all of the above societal influences upon policemen, we often found that the public's misunderstandings about the law and police work lead to unreasonable citizen expectations about police services. In no single area are so many misconceptions and falsehoods created and perpetuated as in the media's treatment of the police.

Motion pictures and the written press do not escape blame here. However, television's impact, has to be considered monumental in its influence. Since fewer and fewer people read books or newspapers, the public's reliance upon television for its understanding of the police (or anything else) in contemporary America is becoming almost universal.

The biggest problem in terms of unreasonable expectations does not come from news presentations. However notorious news people are for their sensational and simplistic accounts of police work, they are not the prime transgressors. It is the T.V. police series which generates so much misunderstanding about police. And since these series' are so popular, this disparity of expectations is hardly about to lessen or disappear.

Two basic problems are generated by such series'. First, a totally unreasonable portrayal of police success is normal for such shows. Baretta and Kojak 'always get their men'. It may, of course, be said that this creates a deterrent effect in the populace which inhibits criminal activity. The significance of that effect (if any) is unknown. What this portrayal

does do is create animosity in citizen/victims when their particular robber or burglar isn't found. Since this occurs most of the time,<sup>64</sup> a lot of hostile, indignant citizens complain about police incompetence. And too, policemen react indignantly to this citizen ignorance of reality.

A second major problem encountered by the police is that citizens have totally incorrect expectations about their rights when arrested. The Miranda decision requires that under certain very limited circumstances, suspects must be advised of their rights to remain silent and consult an attorney.<sup>65</sup> This decision only applies if the suspect is to be interrogated.

Street policemen make most arrests. Detectives rarely do so. The beat man will almost never interrogate a prisoner. This is left for the detectives to do (normally the day after an arrest). Thus, the Miranda decision almost never requires a street cop to "read his rights" to a suspect.

Television has chosen, however, to make this 'reading of rights' a standard procedure for all of its pretend policemen. When people see this done over-and-over again, they begin to expect it of the real police. When the real police fail to live up to their expectations, citizens become irate. A signifi-

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<sup>64</sup>Solved or "clearance rates" for felony crimes are usually in the neighborhood of 20% or less. This means that 80% of the time, the police never find the perpetrator. In terms of successfully returning stolen property, figures are much worse. About 5% nationally is recovered. See F.B.I. Uniform Crime Reports (published in Washington by the U.S. Government Press) for any year.

<sup>65</sup>Miranda v. Arizona, 384 U.S. 436 (1966)

cant amount of hostility (and a larger number of complaints) is generated toward the police because of this one phenomenon. Such citizen expectations are known among policemen as the "Jack Webb syndrome".

Thus, even the fantasy world of television can create police/citizen tensions and cause confusion which will manifest itself in official complaints against the police.

#### IV. Conclusion

We have briefly discussed in this chapter some commonly held values and misconceptions which the American public and policeman hold about each other. Also, we have noted how life in a confusing society can widen the police/citizen communication gap. All of these phenomena can create unreasonable expectations, cynacism, distrust, and open hostility on both sides of the police/citizen interaction.

As if these problems were not enough, we must now consider another set of influences upon police behavior which can generate police abuses and citizen perceptions of same. It is toward the far more controlling dynamics of the policeman's subcultural experience which we now turn.

### Chapter 3 THE POLICE EXPERIENCE

We have discussed American cultural values and social dynamics which affect police behavior and generate conflict between citizens and the police. There are problems unique to the experience of being a policeman and being involved in the police subculture which also influence police behavior. In fact, the affects of subcultural norms and the police job experience upon policemen are even more significant than those treated in chapter two.

In the present chapter, we shall consider the ways in which violence, the exercise of coercive power, and militarism affect the police experience and accountability schemes. Each of these phenomenon are not, of course, completely unique to police work. Many administrative actors utilize coercive power to attempt to 'control' their clientele and to lessen organizational uncertainty. Then too, a variety of social welfare agents operate within hostile working environments. But the policeman's working milieu and subcultural experience are permeated with the potentiality of violence. And too, he is constantly preoccupied with the extortionate model of control. The ubiquitous nature of these concerns influence the policeman's working personality, and thus his propensity to generate complaints. They will have impact upon any review system. Violence and the exercise of coercive power will necessarily influence the standards of conduct to which policemen can be reasonably held.

Violence and potential violence in police work has received more attention than any other dynamic in the field. Let us consider this problem.

### I. Violence

Every evening millions of American homes have their television sets tuned to watch police related programs. These programs are ripe with what Joseph Wambaugh refers to as "cosmetized violence".<sup>1</sup> Such media representations have instilled in the average American a notion that police work is one continuous violent confrontation between the good guys of the law and the bad criminals.

We we have noted, police rookies bring these same perceptions to the job when they are first hired. But in reality there is really quite little violence in police work. While death statistics seem alarming; the percentage chance of an officer being killed is very small.<sup>2</sup> Putting aside the issue of deaths on duty, job related injuries are no higher in police work than in many occupations. Despite preconceived notions, several occupational groups suffer greater potential for job related injuries.<sup>3</sup>

However, while there is little overt violence in police work, the significance of "potential violence" cannot be over-

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<sup>1</sup>From an interview entitled "Violence is not Beautiful", by Bob MacKenzie, printed in TV Guide Magazine, Nov. 10, 1973.

<sup>2</sup>An average 100 officers have been killed per year for the last 10 years...see Uniform Crime Reports, F.B.I., (Wash., U.S. Govt. Printing Office, 1967-1976.)

estimated. The President's Commission on Law Enforcement and the Administration of Justice studying policemen on the street, found that "observers of police street work in high crime neighborhoods of some large cities report that 10% of those frisked were found to be carrying guns and another 10% were carrying knives".<sup>4</sup> Given the problem of policing in an increasingly violent society, police paranoia about violence and its potential occurrence is understandable. The day-to-day potential for violence which the street cop faces on the job is great.

Policemen and police organizations are therefore constantly aware of the possibility of violent confrontation between policemen and citizens. In order to protect the rookie cop, police training procedures attempt to instill in him an awareness of potential violence and his own vulnerability. While most of the time unwarranted, a fear of violence is considered necessary for the street cop's own safety.

A paranoia is instilled in the recruit by police academy training procedures. He learns how many policemen are killed each year. He is taught ways of remaining alert to the types

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<sup>3</sup> A recent, three year study by the National Safety Council indicates that Highway Maintenance people, refuse collectors, and firemen all suffer more disabling injuries per hour worked than do policemen. See San Francisco Chronicle, July 6, 1978, p. 23.

<sup>4</sup> See a report by the President's Commission on Law Enforcement and the Administrative of Justice; "The Police", The Challenge of Crime in a Free Society (U.S. Government Printing Office, Wash. D.C., 1967), as quoted in Christian P. Potholm, and Richard Morgan, Focus on Police (Schenkman Publishing Co. Cambridge, 1976), p. 311.

of situations which are most dangerous. Careful attention is given to permanently fixing in the young cop's mind the potentiality for violence at any moment.<sup>5</sup>

So the new policeman is taught to be constantly on the guard for what Skolnick has labelled the "symbolic assailant".<sup>6</sup> He learns "to identify certain kinds of people as symbolic assailants, that is, as persons who use gestures, language, and attire that the policeman has come to identify as a prelude to violence".<sup>7</sup> This practice lessens the individual street policeman's uncertainty by making him safe from surprise attack.

The police academy focuses upon many techniques with which the rookie should approach those "normal" situations that are potentially dangerous. "Examinations of circumstances under which police officers were slain in 1972, continues to disclose a most urgent need for officers to be more alert in connection with all their duties regardless of how routine these duties may seem, or have been in the past."<sup>8</sup> The academy rookie learns

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<sup>5</sup>As the old salt Kilvinsky talks to the young rookie in The New Centurion, "'See those pictures partner?' and Kilvinsky pointing to the glass covered portraits of university division policemen who had been killed on duty. 'Those guys aren't heroes. Those guys just screwed up and they're dead. Pretty soon you'll get comfortable and relax out there, just like the rest of us. But don't get too comfortable. Remember the guys in the pictures.' See Joseph Wambaugh's The New Centurians (Dell Books, N.Y., 1972), p. 61.

<sup>6</sup>Jerome Skolnick, Justice Without Trial (John Wiley & Sons, N.Y., 1967) chapter 3.

<sup>7</sup>Ibid., p. 45.

<sup>8</sup>FBI Uniform Crime Report, 1972 (U.S. Government Printing Office, Wash., D.C., 1973), p. 42.

that seemingly normal occurrences, such as domestic disturbances, are to be approached with the utmost caution.

When he reaches the street the young cop is again a student. Now he is taught by a training officer on the beat. He learns more pragmatic tricks of the trade, designed to keep him safe. The rookie cop is told for example, "never trust another man's search". (When taking a prisoner into custody from another officer, one should always search him again, "just in case".) The rookie learns never to stand in front of a doorway or a window (but always to one side or the other). The number of possible mistakes that a rookie cop could make is, of course, astronomical. Yet an effort is made in the police academy and in field training exercises to teach the officer as many safety techniques as is possible.

Thus, the officer begins to develop methods of identifying potential violence even before he patrols by himself. The young policeman is taught that his own preservation may depend upon his ability to classify individuals quickly as to their demeanor and intentions.

More than any other judicial actor, social welfare agent, or organizational decision maker, the policeman on the street is pressured by time constraints. His discretionary decisions are often made in a fraction of a second. Yet, they can have the utmost significance for citizens. The need to make correct decisions quickly tends to effect the propensity of policemen to

generate complaints.

All human beings tend to form stereotyped images of groups, individuals, situations, etc. Such images are tools used by the individual in an effort to simplify his existence. Considering the complex amount of inputs with which the human mind must deal, the individual tends to form stereotyped images which Murphy calls "infinite labor savers".<sup>9</sup> The mind simply does not have the time or the patience to constantly compute perspectives from which to deal with individuals, groups, or situations.

Stimuli which come into the mind are therefore screened by these mental constructs. Stereotypes are formed in an effort to simplify the individual's thinking processes and to give the person a stable perspective from which to view a given concept. An individual, Gordon explains, who has stereotyped all Blacks as being lazy and stupid, for example, may have great difficulty with such a construct when he meets a Black doctor, lawyer, or educator.<sup>10</sup> Because it is important to have such conflict relieving mental constructs, the individual will resist accepting his perceptions of the Black person as being truly a contradiction to his stereotyped image. He thus might rationalize that the Black doctor is "not really that smart",

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<sup>9</sup>Gardner Murphy, Experimental Social Psychology, (Harper Brothers, N.Y., 1937).

<sup>10</sup>See Rosemary Gordon, "Stereotype of Imagery in Belief of as a Ego Defense", in The British Journal of Psychology (Cambridge Univ. Press, 1962).

or that the Black person is a freak of nature. These are methods by which the mind seeks to maintain its simplistic mental image set. The set is, after all, constructed in an effort to simplify the mind's work and lessen internal psyche conflict.

Decision makers, all bureaucrats, and all individuals, stereotype. But the need to stereotype is greater amplified in police work. The ever present threat of violence exacerbates such tendencies. Because of his paranoia about unexpected attack, the street policeman must learn a "perceptual shorthand" to identify symbolic assailants.<sup>11</sup> Since he must be able to identify assailants and violent situations quickly, the information sets of clues (or stereotyped constructs) which facilitate such identifications are crucial.

This perceptual shorthand is not a "latent" type of knowledge. It is a very important tool, learned and refined by the individual cop on the beat. It is a part of the policeman's "expert knowledge". This 'sixth sense' allows the policeman to deduce (through mental images and shorthands) a maximum amount of knowledge from a minimum amount of information.

Of course, there are tremendous problems with stereotyping. Under the pressure of time, using minimum amounts of information upon which to make their discretionary decisions, policemen make mistakes. They make more mistakes, more often than do

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<sup>11</sup>Jerome H. Skolnick, op. cit., p. 42.

other administrators. (Remember, most administrators have the luxury of making their decisions over protracted periods of time.) Given the potential arsenal of weapons which the policeman possesses, it is understandable that policemen's mistakes generate significant numbers of complaints. Such complaints tend to be of a more emotional nature than those generated by other complex organizations and/or public agencies.

No review system will lessen the tendency for policemen to be weary of the potentiality of violence on the street. Nor should it attempt to do so. No after-the-fact review mechanism can allow the street cop more time within which to make his crucial decisions. Therefore, policemen are particularly difficult agents to attempt to hold accountable. It is important too, for any review system, to be careful that it not inhibit the street policeman from making the quick decision as rationally as he can. For to inhibit such decision making would be to place the policeman in a precarious position and to thwart the interests of society.

The natural fear that is then developed in the policeman, begets a negative reaction from the average citizen. Although a significant number of policemen are killed each year, there are millions of interactions between citizens and policemen which proceed without incident. The fear of violence, which may be ever present in the psyche of the police officer, is usually

unjustified. Most citizens are not accustomed to considering themselves as symbolic assailants. They therefore, view the policeman as excessively edgy, paranoid, or rude.

Citizen complaints about police demeanor and behavior are often generated due to this differential perception of the importance of citizen/police interactions. For example, the vehicle traffic stop is a fairly commonplace occurrence. It is nevertheless perceived as a potentially dangerous incident by the street cop. While every citizen may be stopped several times in his lifetime, he will normally perceive the situation as being calm and casual, if not unimportant. The police officer, on the other hand, may recall from his training that hundreds of police officers have been killed at "routine" traffic stops. He may believe that his life is in jeopardy. The officer approaching a stopped vehicle may therefore, unbuckle his gun snap, place his hand over his weapon, and pay close attention to all of the actions and voice intonations of the driver.

A "normal" situation as perceived by the citizen can thus be pictured as a possibly violent one by the police officer. If the policeman perceives the situation as potentially violent, and if the citizen is indignant over the vehicle stop, a potential citizen's complaint is in the offing. In the citizen's mind, the disparity between the gravity of the situation and the amount of aggressiveness exhibited by the police officer can easily lead to a conclusion that the policeman is violent, abusive, and overly authoritarian in his demeanor.

Then too, policemen believe intuitively (and are specifically taught) that they should always gain and maintain control over potentially violent situations.<sup>12</sup> "Always come on strong", "never show weakness", and "let'em know who's boss" are common admonitions. In gaining and maintaining an 'edge' over the citizen, the policeman often incurs the wrath of same. This generates significant numbers of citizen complaints.

It is important to note that the types of interactions which generate apprehension in the policeman are frequently faced by street cops. Family quarrels, bar fights, traffic stops, and juvenile crowd situations are all commonplace in police work. These types of situations may be perceived as normal, everyday occurrences by citizens. They are, however, potentially violent confrontations, of the utmost gravity in the eyes of police officers. Thus, the propensity for citizen/police conflict to develop in police work is exacerbated by a police pre-occupation with potential violence and the search for symbolic assailants.

While our consideration of violence and potential violence in police work has been brief, it would be hard to over-emphasize the importance of this phenomena. Its influence within the subculture is ubiquitous. From his first day as a recruit, to

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<sup>12</sup>See John H. McNamara "Uncertainties in Police Work: recruits background and training in David J. Bordua's book, The Police John Wiley & Sons, N.Y., 1967), p. 212-213.

his last day on the street, the policeman is constantly aware of the potentiality of violence. He would be foolish if he were not. Yet, this preoccupation naturally generates complaints. It imposes significant limitations upon the ability of any police review system to lessen the number of citizen complaints received.

## II. Coercive Power

Policemen are considered powerful individuals. They wear badges and guns and uniforms. They are licensed by society to confine, to intimidate, and at times to kill in defense of those who would be victimized by the illegitimate use of power. They are agents of behavioral control.

Because they are "expected" to use coercive methods to maintain order, policemen are involved in what are highly emotional interactions with citizens. Popular conceptions of the policeman's power and the rights of citizens tend to aggravate the American propensity to be suspicious of governmental agents. Thus, the application by policemen of coercive power tends naturally to generate citizen complaints.

In this section, we shall discuss the nature of coercive power. We will consider how accountability is affected by the policeman's preoccupation with the extortionate model of behavioral control. While we do not have the time here to completely treat the problem of coercive power, we must outline one of the important work done by William K. Muir, Jr. in

this field.<sup>1</sup>

Of course, there are types of power other than coercion. The street cop can often control people and situations through exhorting them to do the "right" thing. Then too, a policeman may overcome the resistance of a citizen by offering an attractive exchange of something of value to the individual. Thus, a reciprocal power relationship may develop.

But, as Muir points out, "of the three techniques of power--trade and truth and threat--only the last, the means we call coercion, seems on first acquaintance mean and barbaric... The human qualities which appear to be required for the practice of coercion seem incompatible with any civilized notion of the good."<sup>2</sup>

All administrative actors are powerful. They often can control citizens so that their actions conform to the wishes of the administrator. The uniqueness of the street cop lies in his constant preoccupation with coercion, the apparently less "civilized" of control tactics. A hostile relationship is inherent in many police/citizen contacts. American egalitarian norms and role expectations negate the policeman's ability to use exhortation or reciprocity to control many individuals with whom he comes into contact. Many do not respect

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<sup>1</sup>See William K. Muir, Jr., Police: Street Corner Politicians, (University of Chicago Press, Chicago, 1977).

<sup>2</sup>ibid., p. 48.

his legitimacy as a legal authority. They see the cop only as the local bully, denying them what they want. Then too, the street cop is limited in terms of what he may offer in return for reciprocal power exchange. Often, all he can offer an individual is freedom from official challenge. (Controlling a citizen's behavior in this way is, as we shall see, extortionate and not reciprocal). He has few positive things to exchange.

To exercise coercive power is to control conduct by means of threats to harm. Under certain circumstances, society condones such behavior and labels it the "exercise of authority". The extortionate transaction consists of an antagonistic relationship between victim and victimizer. The victimizer takes a hostage of the victim, something he values highly. The victimizer then demands a ransom in order to secure the safety of that hostage.

For example, a policeman (victimizer) may extort a group of teenagers (victims) to 'move along' under the threat that he will arrest them for curfew violations if they refuse. In this case, the hostage is the physical freedom of the teenagers. The ransom is their accession to the policeman's demands. The extortionate model is particularly adept at illustrating the limitations and strengths of the street policeman as a wielder of power.

A problem for the supposedly 'powerful' policeman is that some people are not vulnerable to the extortionate transaction.

Extortionate power relationships are two sided. Both parties must participate, or the intended coercion fails to obtain. Policemen deal often with people who are immune from coercion for several reasons.

First, some people possess very little in the way of tangible goods, social position, or psychological security. Such persons have, in effect, little or nothing that can be taken as hostage by the coercive power wielder. For example, the skid row derelict is not easily controlled by the street policeman through coercive means. Muir's paradox of dispossession thus states that "the less one has, the less one has to lose."<sup>3</sup> The totally disposed have nothing to lose.

Second, some people do not care about the potential hostages which they do possess. If an individual doesn't care that his possessions may be harmed, said possessions are of little use to the potential victimizer. The family squabble illustrates this point well. In the heat of empassioned argument, husbands and wives often care little for each other, themselves, their chattels or their marriage. The policeman can have a great deal of trouble quelling such "beefs" and coercing settlements. This paradox of detachment states that "the less the victim cares about preserving something, the less the victimizer cares about taking it hostage."<sup>4</sup>

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<sup>3</sup> Ibid., p. 44

<sup>4</sup> Ibid., p. 44

Third, the policeman (or any coercive power wielder) must be able to make his threat to harm seem believable to the victim. If he has not the sufficiently nasty reputation to threaten, the victimizer will fail to extort that which he wishes. For the exercise of the threat to harm ends the extortionate game; the hostage is destroyed and the victimizer's powerful position dissolves. To the street policeman, this means he must be able to bluff. His courage and tenacity must be beyond question else his threat be meaningless. The crowd scene illustrates this dynamic. Faced with superior numbers, the policeman must have a nasty enough reputation to extort behavior without actually physically handling people. The paradox of face states, "the more nasty one's reputation, the less nasty one has to be."<sup>5</sup>

Finally, some individuals do not understand the policeman's threat or the importance of their own hostages. Under such circumstances, the irrationality of the victim makes the victimizer's threat worthless. Thus, the person who is drunk, high on drugs, or delirious for whatever reason is difficult to control. The paradox of irrationality states that "the more delirious the victim, the less serious the threat."<sup>6</sup>

It has been important for us here to take some time to deal with the limits of coercive power because of how those

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<sup>5</sup>Ibid., p. 44

<sup>6</sup>Ibid., p. 44

limits affect the policeman's perceptions of the police/citizen interaction. Policemen see themselves as relatively powerless individuals. Joseph Waumbaugh, the 10 year L.A. cop turned author, is apposite. "It's absurd to speak of policemen as powerful. Policemen don't have much power. They work under constant surveillance and restrictions."<sup>7</sup>

Waumbaugh probably refers to police departmental and legal restrictions here. However, the street policeman's feelings of powerlessness are focused upon such specific restrictions because it is convenient to do so. He stereotypes 'the courts' or 'the departmental administration' as somehow responsible for these feelings because this is easy. The irony which this section must illustrate clearly and which the street policeman deals with constantly, is that policemen are as often the victims of coercive power transactions as they are the instigators of them.

Muir states:

The Policeman is society's "fall guy", the object of coercion more frequently than its practioner. Recurrently he is involved in extortionate behavior as victim and only rarely does he initiate coercive action as victimizer...the irony of the policeman's lot is his authority, his status, his sense of civility, and his reasonableness, impose terrible limits on his freedom to react successfully to the extortionate practices of others. His alternatives are sharply foreclosed; he works within a much smaller range of choices than do this illegitimate and non-official adversaries." <sup>8</sup>

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<sup>7</sup>From an interview, "Violence is Not Beautiful" with Bob MacKenzie, printed in TV Guide Magazine, Nov. 10, 1972.

<sup>8</sup>William Muir, op. cit., p. 45

The policeman is thus, often extorted. He can feel impotent in attempting to perform his charge. The potential weapons which he possesses make him appear more powerful than any other administrative actor. Yet in his day-to-day working environment he is victimized continually by ostensibly "weaker" citizens.

Most non-police people have no conception of this dynamic of police work. They consider assertions such as Waumbaugh's as self-serving, over-emotional rhetoric. Thus, the coercive power transaction affects police review systems in several ways.

First, the citizen's notions of the policeman's inability to coerce tend to generate indignation and conflict. These manifest themselves at times in the generation of citizen complaints. Citizens reacting to being coerced will often complain about the excesses of the victimizer.

Second, the street cop will often see the complaint process as just one more way in which he is victimized by "the system". He will react with self righteous indignation toward being held to answer to citizens' charges of abuse. His cooperation with the review process and faith in its fairness will be problematic at best.

Any review system will then, have to deal with a significant perceptual gap between police and community understandings of the nature of "police power".

#### IV. Militarism

The police are organized along what are commonly called 'paramilitary' lines. Strict chains of command, uniform dress codes, personal grooming standards, and formal inspections characterize most urban and suburban police organizations in America.

The police are often at a loss to explain why this is so. Of course, uniforms make the police recognizable by citizens in need of assistance. And uniformity is meant to instill discipline in the troops and strictly define responsibilities. Most police administrators have no further rationalizations for this militarism.

Yet other administrative organizations dealing with the rights of citizens seem able to develop structures which fix responsibility without resorting to such extremes. And while it is obvious that policemen must be recognizable, haircuts, shaves, and shoeshines hardly determine police visibility on the street. It seems that tradition, more than any single factor, dictates that the police organize themselves in this fashion.

Police militarism is an important issue because there are so many drawbacks to its operation. Requiring grown men to get haircuts and shine their shoes is demeaning both to police officers and to the supervisors who must require it. It is hardly commensurate with the responsibilities and powers which both the street cop and his supervisor possess.

Perhaps most important is that this obsession with uniformity and conservative appearance often seems petty to the street policeman. "Don't they have better things to worry about?" and "My hair length is my own business!", are common comments heard especially from rookie policemen. In the words of one veteran Internal Affairs Investigator, "the haircut and shoe-shine stuff puts everybody in a negative frame of mind when they go out on the street. The first thing the department hits a guy with is negative--'get your shoes shined! And the first thing he does out on the street is look for some poor citizen to take it out on."

Perhaps just as important is the 'Gestapo' image which such militarism creates. Citizens often append the Gestapo label to their complaints about the police. Ramsay Clark takes it one step further. He feels that the paramilitary psychology of police personnel, "based on force and fear", actually increases the amount of police directed violence in America.<sup>9</sup>

Skolnick points out that this paramilitary focus tends to produce a martial concept of order among the police. "Internal regulations based on martial principles suggest external cognitions based on similar principles."<sup>10</sup> Thus, militarism can foster an over emphasis upon law enforcement to the exclusion of less formal ways of handling situations (a problem to which we have already alluded).

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<sup>9</sup> See Ramsay Clark, Crime in America (Simon and Schuster; N.Y., 1972), p. 162

<sup>10</sup> Jerome H. Skolnick, op. cit., p. 11

Generally, the militarism of police organization promotes self-serving subcultural norms and goals by making more formal the isolation of policeman from citizen.<sup>11</sup> Paramilitary organization "virtually ignores the vital interpersonal relationship between police and public."<sup>12</sup> By thus increasing isolation, militarism increases cynacism, the importance of the symbolic assailant, and police solidarity (which creates specific difficulties for review organizations).

If so much is to be said against militarism, why does it persist? Certainly 'tradition' has not a strong enough influence to perpetuate such a problematic phenomenon. Reiss and Bordua have an interesting idea on the subject. They point out that police chiefs are usually strictly accountable to local political elites. Chiefs also enjoy insecure tenure of office due to the "controversial nature of police work and the often irrational and unpredictable nature of political fortunes in municipal government."<sup>13</sup> This produces a militaristic organizational outlook. Again Reiss and Bordua:

Given strict accountability plus insecurity of tenure, we can expect a kind of obsession with command and a seemingly irrational emphasis on the twinned symbols of the visibility of the commander and the obedience of the force. Some of the rhetoric of command in the police literature likely arises from an attempt to protect the chief by the compulsive effort to over-control subordinates, almost any of whom can get him fired. 14

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<sup>11</sup>See George F. Berkely, op. cit., p. 35.

<sup>12</sup>Ramsay Clark, op. cit., p. 122.

<sup>13</sup>Albert J. Reiss, Jr. and David J. Bordua, "Environment and Organization: A Perspective on the Police", in David J. Bordua ed., The Police (John Wiley & Sons; N.Y., 1967), p. 52.

Yet such political realities alone cannot explain police militarism. Other public officials and administrative agencies inhabit insecure positions within local political milieus, without developing the rigid structures which the police do. What makes the difference? Wilson describes a critical difference in one of the most important books ever written about the police:

"...the police department has the special property (shared with a few other organizations) that within it discretion increases as one moves down the hierarchy. In many, if not most, large organizations, the lowest-ranking members perform the most routine tasks and discretion over how those tasks are to be performed increases with rank...(in police work)...the lowest-ranking police officer--the patrolman--has the greatest discretion and thus his behavior is of greatest concern to the police administrator. The patrolman is almost solely in charge of enforcing those laws that are the least precise, most ambiguous (those dealing with disorderly conduct, for example)... 15

Thus, the street policeman has a significant amount of power vis-a-vis the police organization. In order to attempt to control his behavior, typically the organization develops militaristic chains of command, formalized grooming regulations, and sets of rigid 'General Orders' which seek to systematize the operations of what is a very non-routine type of job.

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ibid., p. 52

15 James Q. Wilson, Varieties of Police Behavior, (Atheneum; New York, 1972), pp. 7-8.

## V. Summation

Policemen are fascinating subjects to consider when studying accountability. Police work and police organizations exhibit administrative problems common to all complex organizations and all public agencies. However, there are significant differences between the policeman's working experience and that of other administrators. We have seen in this chapter that policemen work in a violent, hostile atmosphere. They are constantly involved in coercive power relationships both as victims and as victimizers. Their working environment requires a siftness of decision unknown to other public agents. The street policeman is effectively isolated from the citizen he polices by all of these dynamics complicated through the military organization of police systems.

As we consider various forms of police review, we must realize that the "effectiveness" of such systems will be limited by these dynamics. Then too, we must remember that review systems can have important counterproductive effects upon policemen and police organizations. An accountability process may be so tenacious, so rigorous, so unforgiving as to exacerbate the types of cynacism, frustrations, and alienation which we have considered. Indeed more malpractice and not less might be the product of such a process.

In this chapter we have discussed some of the dynamics of the police experience which affect the propensity of police/citizen conflicts to develop. Also, we have considered briefly

some limitations which violence, isolations, etc., place upon police review systems. In Part II, we will send out limitations upon the ability of any system to hold policemen accountable for their actions.

## Part II: The Limits of Regulation

We have seen in Part I how various dynamics of life in American society will affect the ability of any system to hold policemen accountable for their actions. Police/citizen conflict is generated out of deeply held beliefs in the democratic values of equality and achievement. The complexity of life in a mass, unstable social system generates confusion (in policemen and citizen alike) concerning the proper role of policemen in America. The misunderstandings and conflicts thus generated are compounded and maintained by self-serving, sensational media portrayals of the police and their functions.

More important to the behavior of the individual policeman is his work background. This powerful experience molds policemen together into a subcultural brotherhood of tremendous significance. Most policemen suffer from isolation, cynacism, and anomie as a result of dealing with potential violence and being victimized by coercive powerwielders. Each of these phenomena can create police/citizen tensions and limit the ability of any system to deter police abuse or objectively investigate allegations of same.

Thus, we have seen how cultural and subcultural influences can determine police behavior and citizen behavior toward the police. In Part II, we will begin to develop an understanding of the specific problems of attempting to deal with police

abuses and alleged police abuses. In developing this understanding, we must discuss the important limitations which operate upon formalized regulatory schemes. We will consider these limitations in three ways.

First, our study shall briefly consider the potential of several non-administrative forms of police review. Rather than blindly assuming that administrative models are most desirable, we must discuss the potential of extra-administrative accountability mechanisms.

Second, we will discuss some of the limits of administrative regulation which are endemic to complex organizational life. As we shall see, formalized regulatory schemes, even those completely internalized to the police organization, are also limited in their abilities to have impact upon police behavior. In fact, the creation of such systems can have deleterious, counterproductive effects upon administrative organizations and individual behavior.

Third, several sets of legal limitations affect the reception and investigation of complaints and the disciplining of errant policemen. These legal restrictions must be treated before we can even define indexes of evaluation to apply to each review system.

## Chapter 4 NON-ADMINISTRATIVE REGULATION

All of the police review systems treated in Part III are administrative control systems. Each process is under the direct control of the same political unit which controls the respective police department. All, therefore, are potentially subject to the same administrative secrecy, solidarity, and nepotism problems of the police. Before our discussion focuses exclusively upon such processes, we must consider other, non-administrative forms of review.

What limits the potentiality of judicial review of police abuses? Why are Grand Juries not found vigorously pursuing malpractice? How effective is the power of the press in influencing police behavior? Each of these (and several other extra-administrative organs) have been suggested by various authors as potentially effective accountability mechanisms. Each, however, has significant drawbacks. Let us consider the potential of several types of non-administrative control mechanisms.

### I. The Civil Litigation

In theory, both state and federal judicial avenues are available for citizens to utilize in achieving redress of police related grievances. The abused citizen may sue an errant policeman in state court and seek common law tort remedies. These remedies take several forms. Policemen are personally responsible for punitive damages assessed by a court.

The jurisdiction for which a policeman works may also be held responsible for punitive damages assessed by a court. The jurisdiction for which a policeman works may be held responsible for compensatory damages <sup>1</sup> and for general damages.<sup>2</sup> Thus, both the individual policeman and the government which hires him may be held to answer for his abuses.

In federal court, the citizen may sue law enforcement officers for violations of federal civil rights. Specifically, Section 1983 of the Federal Civil Rights Act is the chief vehicle for federal actions against the police. The statute provides:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Generally, civil litigation has not developed its potential as an accountability mechanism. In point of fact, practical consideration cut down significantly the ability of most aggrieved citizens to utilize this avenue of redress. While some increase in its utilization has begun, the civil damage

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<sup>1</sup> Compensatory damages are monies which replace the out-of-pocket costs of a aggrieved citizen. For example, someone who is beaten by the police may sue for hospitalization costs, doctor bills, medical expenses, lost wages, and so forth.

<sup>2</sup> General damages are meant to remedy the pain and suffering through which a plaintiff has been put.

action is still limited in its effect upon the police.

Regarding state civil actions, the limitations of the process are many. Most civil cases are based upon claims of false arrest, malicious prosecution, and assault. The first two claims are negated if the citizen is convicted of the offense. If a citizen claims assault, his ability to collect damages can be severely limited by the common police practice of "cover charging".<sup>3</sup>

Cover charging involves charging citizens with resisting arrest or assaulting an officer when the citizen has been beaten. This effectively does two things. It creates an automatic rationalization for police violence. It also adds a charge to be "bargained" away in exchange for citizen cooperation with the police. Cooperation takes the form of not filing suit.<sup>4</sup>

The civil damage avenue then is effectively limited to situations which criminal charges are dropped or are never brought. Even there, however, drawbacks are evident. The process is "relatively ineffective in controlling lawless conduct by the police, this evil being in fact compounded by the tendency of lower courts to identify their mission with that of maintaining the morale of the police force."<sup>5</sup>

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<sup>3</sup> See Paul Chevigny, Police Power (Vintage Books; N.Y., 1969), p. 255.

<sup>4</sup> Ibid., Chapter 8, "Force, Arrest, and Cover Charges", p. 136, discusses this practice in New York City.

<sup>5</sup> Lon Fuller, The Morality of Law (Yale Press: New Haven, 1964), p. 81

Especially in an age when federal court decisions are often seen as "handcuffing" the police, local courts are reluctant to allow attacks upon police practices.

More specifically, the civil damage route requires the citizen to take the initiative to obtain legal aid and commit his personal resources. Many of those citizens who are perhaps most often abused by the police do not have the resources to so commit. Nor do they have the practical ability to communicate their plight to lawyers and to courts.

This speaks directly to the pragmatic, courtroom limitations of the process. Those citizens often abused do not appear on the witness stand, to have a veracity comparable to that of the average police officer. The officer's demeanor, language, posture, and legal expertise all limit the ability of any citizen (but especially those of lower socio-economic status) to make an effective argument challenging the policeman's professional integrity.

Then too, in order to receive reparation for damages, civilians must prove that they "are respectable in the sense that they have some measure of status and financial security in society and have acquired the kind of reputation which can be 'damaged' by illegal police activity".<sup>6</sup> Many citizens who are abused by the police simply have no such reputation to be

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<sup>6</sup> Caleb Foote, "Tort Remedies for Police Violations of Individual Rights", 39 Minn Law Review 493 (1935).

damaged. Thus, even if they are not charged criminally and are able to secure legal counsel, many citizens are severely limited in their ability to bring successful actions against errant policemen.

Federal civil actions are even less successful. As Chevigny points out, "federal courts do not like to interfere with the enforcement of state laws."<sup>7</sup> For all of the hysteria generated by some U.S. Supreme Court decisions, federal courts are in fact extremely reluctant to move their area.<sup>8</sup>

As a practical matter Robert Olson points out:

The federal civil action against misuse of force by the police suffers from the same weaknesses that limit the availability of a state tort remedy: The expense of bringing suit, inherent difficulties in proving a case and convincing a jury, the correlation of damage awards with the moral worth of the plaintiffs, relatively judgement proof defendants, and (in some jurisdictions) the immunity of the municipality. <sup>9</sup>

As noted briefly above, civil damage litigation against the police is on the increase. For example, a 1977 study indicates that "civil suits" settlements, and judgements against Los Angeles P.D. have risen from \$11,361 in 1970 to \$577,095 last year--and have exceeded \$550,000 in each of the last five years."<sup>10</sup> The civil litigative avenue may then be beginning to open up as an effective accountability mechanism. If it is utilized more over time, some argue that its fiscal impact

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<sup>7</sup> For a judicial statement of this reluctance see Rizzo v. Good, 96 S. Ct. 598 (1976).

<sup>9</sup> Robert Olson, "Grievance Response Mechanisms for Police Misconduct", 55 Vir. Law Rev. 909 (1969), p. 925

<sup>8</sup> Paul Chevigny, op. cit., p. 256.

will become a most significant tool in fighting abuses.<sup>11</sup>

Civil damage suits may not therefore, be totally rejected as accountability mechanisms. Despite their growing import, however, such avenues have not historically functioned as effective monitoring devices. Their drawbacks continue to be numerous. Their usage continues to be limited.

## II. Public Prosecutors

Viewed in broad perspective, the American legal system seems to be shot through with many excessive and uncontrolled discretionary powers. But the one that stands out above all others is the power to prosecute or not to prosecute. The affirmative power to prosecute is enormous, but the negative power to withhold prosecution may be even greater, because it is less protected against abuse.<sup>12</sup>

Both the affirmative and negative powers of the public prosecutor can theoretically be utilized to control errant police behavior. Prosecutors can choose to vigorously pursue abusive policemen through applying criminal statutes to situations involving police misconduct. Prosecutors may also choose not to prosecute civilians when they have been illegally handled by the police. Each power has been argued as being of great

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<sup>10</sup>L.A. Times, Sun. Dec. 18, 1977, part VIII, p. 12

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<sup>12</sup>Kenneth Culp Davis, Discretionary Justice (Univ. Illinois Press; Chicago, 1971), p. 188

potential impact upon police behavior. There are significant drawbacks to both however. In this section, we shall consider the improbability of criminal charges being filed against errant policemen. In the next section, we shall subsume a discussion of the prosecutor's power to ignore illegally seized evidence to a general discussion of the exclusionary rule.

Davis illustrates one part of the difficulty of expecting prosecutors to monitor the police; prosecutors are completely free to pursue or ignore whatever potentially actionable criminal activity they choose. If they were effectively independent of the police, prosecutors could in fact be expected to exercise some control over abuses through the exercise of this power.

In reality, prosecutors are not independent of the police. They are linked to the police in a direct fashion. The day-to-day operations of each organization depend upon reasonably amiable working relationships with the other. The prosecutor depends upon the police for investigative help.<sup>13</sup> Since prosecutors are evaluated by their conviction rates (and their investigative staffs are always very limited) they must consistently cooperate with the police. As Olson notes, "because the public

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Concomitantly, the police depend upon prosecutors to bring convictions and to then allow plea bargaining power with which raise their clearance rates. See Jerome Skolnick, Justice Without Trial, (John Wiley & Sons, N.Y., 1967), ch. 8, p. 164

prosecutor must cooperate closely with the police force, he can ill afford to alienate the agency which detects criminal conduct he is charged to combat."<sup>14</sup>

To expect under these circumstances that the prosecutor will rigorously pursue police abuses is not at all logical. The nepotistic expectations which most hold for police internal review mechanisms are equally applicable to prosecutorial review. Several studies confirm the fact that prosecutors are reluctant to question police procedures.

Louis Schwartz considers the public prosecutor to have a "hopeless conflict of interests" when reviewing police abuses.<sup>15</sup> His study of the Philadelphia D.A.'s Office found that, "in the nature of things, the D.A. cannot and could not be an effective instrument for controlling police violence."<sup>16</sup> Schwartz's study of D.A.'s files revealed a significant percentage of cases wherein policemen should have been prosecuted for criminal offenses. In none had criminal actions been instituted.

Aside from these practical concerns, prosecutors also must consider the political ramifications of rigorously pursuing police abuses. Public prosecutors are normally elected

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<sup>14</sup>Robert Olson, op. cit., p. 928

<sup>15</sup>Louis B. Schwartz, "Complaints Against the Police: Experience of the Philadelphia D.A.'s Office, 118 U. Penn. Law Rev. 1023 (1970).

<sup>16</sup>Ibid., p. 1024

officials. Especially in urban areas, they must take cognizance of the political power of police organizations. Then too, they must realize that a significant segment of the population would consider the prosecution of policemen as an attack upon "law and order."<sup>17</sup> Thus, the pursuit of malpractice could mean political suicide for the public prosecutor.<sup>18</sup>

In prosecuting policemen for criminal actions then, the public prosecutor is very limited in his ability to have any effect upon abuses. It is not realistic to expect that prosecutors should even want to become involved in such problems.

We must now consider perhaps the most controversial of non-administrative controls; the exclusionary rule. For the purposes of this brief discussion we shall not differentiate between the prosecutorial or the judicial application of this rule. Unlike with criminal prosecutions of officers, public prosecutors do have incentives to apply the exclusionary rule. Since prosecutors are evaluated by their conviction rates, they will tend not to prosecute cases wherein they fear that relevant evidence will be judicially excluded.

Such exclusion by the prosecutor will, of course, tend to incur the wrath of the police. But its effect upon police morale will be much less significant than would be the criminal

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<sup>17</sup>The law and order argument stems from the idea held by many that "any systematic imposition of criminal sanctions could cripple law enforcement". See, Robert Olson, *op. cit.*, p. 928.

prosecution of officers. In fact, some argue that the impact of exclusion upon the police is minimal at best. Let us treat some of the important arguments outlining the limitations of the rule.

### III. The Exclusionary Rule

Under the 4th Amendment to the Constitution, the people of the United States are guaranteed the right "to be secure... against unreasonable searches and seizures". In order to enforce this right, the U.S. Supreme Court has applied the exclusionary rule of evidence to the nation's courts. Since 1886 in federal courts and since 1961 in state courts, the rule has rendered inadmissible in a criminal proceeding, evidence obtained illegally by law enforcement officials.<sup>19</sup> Thus, "evidence obtained by an illegal search and seizure could not, under the present Supreme Court holdings, be considered admissible in any criminal prosecution in the land."<sup>20</sup>

The exclusionary rule effects four types of illegal law enforcement activities.<sup>21</sup> First, evidence gained from illegal searches and seizures (as an example the search of a residence

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In Los Angeles, the late U.S. Attorney Robert Meyer was supposedly forced to resign for prosecuting several police officers on federal civil rights charges. See L.A. Times, Sunday, Dec. 18, 1977, Part VIII, p. 12.

<sup>20</sup> The Landmark cases are Boyd v. U.S., 116 U.S. 616 (1886) and Mapp v. Ohio, 367, U.S. 643 (1961).

<sup>21</sup> Steven R. Schlesinger, Exclusionary Injustice (Marcel Dekker; N.Y., 1977), p. 1

without a warrant) is excluded.<sup>22</sup> Second, confessions secured in violation of the 5th or 6th Amendments are excluded. An example here is the famous Miranda case.<sup>23</sup> Third, the rule excludes identification testimony secured improperly. An example is the illegally conducted police lineup.<sup>24</sup> Finally, the rule sanctions police methods which "shock the conscience" (such as stomach pumping to obtain swallowed evidence).<sup>25</sup>

The purpose of the exclusionary rule is "to deter-to-compel respect for the constitutional guarantee in the only effectively available way-by removing the incentive to disregard it."<sup>26</sup> In theory, law enforcement officers will be educated by the application of the rule. Wishing to obtain convictions (and presumably to observe the rights of suspects) they will pay close attention to its application and cleave to the 'judicial instructions' which it imports.

A rigorous debate over exclusion has always been central to law enforcement and to the legal profession. Social scientists' attempting to prove or disprove its deterrent effect

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<sup>21</sup> See Dallin H. Oaks, "Studying the Exclusionary Rule in Search and Seizure", 37 U. Chi. L. Rev. 665, 665 (1970).

<sup>22</sup> Mapp v. Ohio, op. cit.

<sup>23</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

<sup>24</sup> Gilbert v. California, 388 U.S. 263 (1967).

<sup>25</sup> Rochin v. California, 388 U.S., 263 (1967).

<sup>26</sup> Elkins v. U.S., 364 U.S. 206 (1960), p. 217.

have been subject to attack on methodological grounds.<sup>27</sup> Recent studies pro and con have been guarded at best in their evaluations of its effects.<sup>28</sup> The debate is lengthy and includes methodological concerns far too complex for our present discussion. In this brief section, we shall discuss some persuasive arguments against the exclusionary rule's effectiveness as a deterrent of police malpractice.<sup>29</sup>

To begin with, the pragmatic operations of the American legal system are such that policemen do not (and cannot) learn from the exclusion of evidence. Decisions relating to the admissibility of evidence or confessions is only one of a multiplicity of concerns which affects plea bargaining dynamics. If a search is of questionable legality, its fruits rarely get close to a courtroom. Then too, when exclusions are made in open court, policemen are usually not present. And even if the errant officer is privy to the exclusion, "trial judges do not explain clearly to officers why their evidence is being excluded, nor do they suggest to the officer how such mistakes may be avoided in the future."<sup>30</sup> Direct 'learning' from the operation of the rule then is minimal.

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<sup>27</sup>For examples of such studies see: Oaks, op. cit.; James Spiotto, "Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives", 2 J. Legal Studies 243 (1973); Michael P. Katz, "The Supreme Court and the State: An Inquiry into Mapp v. Ohio in North Caroline", 45 N.C.L. Rev. 119 (1966); Stuart Nagel, "Testing the Effects of Excluding Illegally Obtained Evidence", 1965 Wisc. L. Rev. 283; and Bradley C. Canon, "Is the Exclusionary Rule in Failing Health? Some New Data and a Plea Against A Precipitous Conclusion", 62 Ky. L. J. 681 (1973-74).

<sup>28</sup>See Schlesinger, op. cit., pp. 50-56.

What policemen do learn from exclusion is a cynicism toward the entire judicial system. Exclusion is, to the average policeman, the quintessence of all that is bad with the "procedural" versus substantive guilt focus of our due process system. As a practical matter, the rule frees factually guilty criminals.<sup>31</sup> The policeman has dealt with those criminals on the street. He has seen the suffering of their victims. His indignance toward a system which frees the "guilty" on procedural technicalities is great. Thus, as Justice Powell notes, "although the rule is thought to deter unlawful police activity...if applied indiscriminantly it may well have the opposite effect of generating disrespect for the law and the administration of justice."<sup>32</sup>

The 'indiscriminant' nature of the rule brings up another point. No differentiation is made between evidence seized as a result of blatant acts of harassment and evidence "seized by an officer acting in the good faith belief that his conduct

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<sup>28</sup>The author must here emphasize that there are persuasive arguments which hold the rule to be sound public policy. We shall only focus upon the shortcomings of the rule as they relate to the everyday type of citizens' complaints which concern our study. The fact that the rule may be extremely effective in influencing certain types of police behavior is not here debated. What we shall assert is that its impact upon the use of force, verbal abuse, harassment, and so on is minimal at best.

<sup>29</sup>Schlesinger, op. cit., p. 59.

<sup>30</sup>See Spiotto, op. cit., p. 247.

<sup>31</sup>Stone v. Powell 44 L. W. 5313, 4320 (1976).

<sup>32</sup>Ibid., 5334, Justice White, dissenting.

comported with existing law and having reasonable grounds for this belief".<sup>33</sup> Thus, the rule in effect ignores those efforts which law enforcement officers do make to learn its applications. The after-the-fact nature of this sanction can therefore generate cynacism in even the most professional, intelligent and dedicated policeman.

Finally, for the purposes of our discussion, we must consider perhaps the most crucial problem with the rule. Exclusion only relates to the acceptability of evidence at the bar. It thus does not afford any redress to the overwhelming majority of people who are victimized by police malpractice. It does not apply to police actions which are not aimed at prosecution and conviction. The rule does not affect the types of verbal abuse, racial discrimination, brutality, and harassment which constitute the overwhelming majority of citizen complaints.

Even if one concludes that the exclusionary rule does deter police malpractice then, its importance is very limited for our discussion. Most citizen complaints stem from police/citizen complaints which do not concern themselves with the discovery of evidence of any kind (verbal or physical). The after-the-fact rule making operative within the process of exclusion is

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Ibid., 5334, Justice White, dissenting.

not only ineffective in influencing most abusive behavior, but can be counterproductive generally in its impact upon malpractice.

We have so far considered non-administrative methods of control which are controlled by the legal profession. One judicial organ exists, however, which is ostensibly an expression of popular will. We must consider the potential which the Grand Jury holds for curbing police abuses.

#### IV. Grand Juries

In theory, the Grand Jury could be an effective accountability mechanism for controlling the police.<sup>34</sup> Though only twenty states maintain this ancient organ,<sup>35</sup> its two specific purposes can both act as checks upon abusive police tactics.

One function of the Grand Jury is to bring indictments.<sup>36</sup> This charge in theory infuses the popular will into the prosecutorial function. Just as petit juries act to check the state's power to prosecute citizens, the Grand Jury is supposed to check the state's power not to prosecute. Thus, the Grand Jury could require the type of prosecution of police malpractice which we have seen (in section B) does not obtain from the public prosecutor's office.

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<sup>34</sup>Our brief discussion of the Grand Jury will not systematically differentiate between federal and local Grand Juries, though their functions do differ in emphasis.

<sup>35</sup>This is, of course, the primary function of Federal Grand Juries. See Henry J. Abraham, The Judicial Process, 3rd Ed. (Oxford Press; N.Y., 1975), p. 107.

Grand jurors do not depend upon the direct cooperation of the police. They are not politically dependant upon good police morale. Thus, Grand jurors should be more free than is the Prosecution to exercise effective control over police abuses.

In practice, Grand Juries do not perform their theoretical "watch dog" function. They have neither the time, the expertise, nor the inclination to pursue day-to-day malpractice on the part of the police. With respect to the prosecutorial function, the Grand Jury "functions with rare exceptions simply as an extension of the prosecutor's office. The prosecutor who presents a case to the Grand Jury effectively dominates the proceedings."<sup>37</sup>

Ironically, the dynamics which surround the indictment process have developed the Grand Jury's role into exactly the opposite of its theoretically intended function. It is not at all a watch dog for the people, monitoring corrupt administrative practices and checking the prosecutor's discretion. Instead, the Grand Jury is used most often in police related cases as a scape goat for the public prosecutor. As Tigar and Levy conclude:

The grand jury performs its historic function, sifting evidence to determine whether a crime has been committed, in very few cases. Most district attorneys send only

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<sup>36</sup> See generally Richard Younger, The People's Panel (Brown Univ. Press; Providence R.I., 1963).

<sup>37</sup> Herbert L. Packer, The Limits of the Criminal Sanction (Stanford University Press; Stanford, 1968), p. 209

controversial cases to the grand jury--for example, a case involving alleged police misconduct, in which the D.A. can present a less-than-credible case for indictment; the grand jury can return "no bill" (fail to indict) and the decision has an air of impartiality nonetheless. 38

The second function of the Grand Jury, of course, is to hold public investigations and issue presentments. "Runaway grand juries" occasionally do vigorously pursue political corruption and act independantly of the public prosecutor. This occurs so rarely, however, as to be a relatively ineffective tool for monitoring day-to-day police abuses. The Grand Jury lacks its own investigative capabilities. It must depend upon the police and the prosecutor for most of its information.<sup>39</sup> It must necessarily be limited then in its consideration of daily malpractice.

The public prosecutor has a tremendous impact upon the inquisitorial functions of the grand jury. Some authors feel that the organ should be abolished because prosecutors abuse its investigative capabilities for their own ends. Federal Grand juries in particular, have been used "to give government lawyers compulsory process for obtaining criminal discovery explicitly forbidden them by the Federal rules of Criminal Procedure."<sup>40</sup>

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<sup>38</sup>Michael Tigar and Madeline R. Levy, "The Grand Jury as the New Inquisition", in John J. Bousignore et al eds., Before the Law (Houghton Mifflin Co.; Boston, 1974), p. 297.

<sup>39</sup>For an example of how a grand jury's investigation may be controlled by the public prosecutor, See Peter Maas's excellent treatment of police corruption in New York, Serpico (Viking Press; N.Y., 1973).

The grand jury then, for all of its theoretical potential is an almost totally ineffective weapon for dealing with everyday police abuses. It is so closely controlled by the public prosecutor as to fall prey to most of the drawbacks which that office exhibits in terms of holding the police accountable. In fact, the grand jury has developed into a potentially oppressive arm of law enforcement. It is hardly likely to be utilized as an effective mechanism for the review of police malpractice.

#### V. Legislative Controls

In theory there exists some potential for legislative monitoring of police practices. As Gellhorn points out:

Legislatures themselves engage in very considerable policing of administration, and have done so forcefully. They have some powerful weapons. Investigations, appropriations pressures, "watch dog committees", and the like have kept law makers closely in touch with law administrators. 41

Besides such general tools, the casework approach could also be utilized by legislators to deal with individual instances of police abuse. K.C. Davis points out that "casework does provide a check, it keeps bureaucrats on their toes, it corrects some injustices, and it sometimes means better administration."<sup>42</sup>

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<sup>40</sup>Ibid., p. 300.

<sup>41</sup>Walter F. Gellhorn, When Americans Complain, op. cit., p. 20

<sup>42</sup>Kenneth Culp Davis, Discretionary Justice, op. cit., p. 149.

But limitations upon legislative control are many. Some legislators put pressure on administrators irrespective of the merits of a client's case. This can create more maladministration than it cures.<sup>43</sup> Then too, when this "customer is always right" dynamic becomes manifest, administrators can become cynical and unresponsive to individualized legislative appeals. The expertise of the administrator in terms of substantive knowledge and practical experience, makes it relatively easy for him to ignore the occasional message from an inexperienced legislator.<sup>44</sup>

However, these dynamics are endemic to legislative attempts at controlling any sort of administrative malpractice. More important political realities make legislative control of the police in particular an unrealistic expectation.

As we saw in section B, it is considered to be political suicide in many places to question police practices. As Berkley observes, "not only do city councils decline to oversee police operations, but they frequently refuse to approve any proposal that would antagonize the police department or its membership."<sup>45</sup>

Thus, in general legislators do not feel free to criticize the police. A great deal of latent support for police institu-

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<sup>43</sup> See Walter F. Gellhorn, *op. cit.*, p. 136.

<sup>44</sup> *Ibid.*, p. 136.

<sup>45</sup> George F. Berkley, The Democratic Policeman (Beacon Press; Boston, 1969), p. 154.

tions is perceived by legislators to exist in the American middle class. In some jurisdictions, the political power of that support is not latent but painfully obvious to legislators and reformers alike. Again Berkley notes, "still more disquieting are indications that the police may exert more influence on the legislatures than the legislatures do on the police."<sup>46</sup> Besides the influence of policemen's associations and conservative, pro-police feeling, the legislator must consider the naked political power of the votes of policemen and of their families.

It is not then politically reasonable to expect any effective legislative control of police malpractice. Though the tools to monitor abuses are available to legislatures, reality dictates that they not be utilized toward this end.

Heretofore, we have considered only inter-governmental organs as control mechanisms. It remains for us briefly to evaluate the potential which one non-governmental institution has for influencing police malpractice. It is toward the press that our discussion now turns.

#### VI. The Press

Arthur Niederhoffer writes that "police departments are extremely sensitive to the power of the press, perceiving it

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George F. Berkley, *op. cit.*, p. 155.

as the barometer of public opinion."<sup>47</sup> Indeed police administrators and street policemen alike are keenly interested in media portrayals of their activities. Administrators in particular vigorously monitor the press' coverage of police departmental events. Police executives normally serve in their capacities at the pleasure of local political elites, and are not protected by civil service tenure regulations (as are street policemen). Thus, they attach a political importance to such coverage. The indirect effects upon police organizations of the press can be many. Budgetary allotments, intra-governmental cooperation, and the general administrative integrity of the police organization can all be adversely affected by poor press. Thus, the press may influence police accountability by rigorously covering abusive behavior and seeking out malpractice. In theory, administrators will react to such publicity by tightening internal controls. Also in theory, the individual street cop will change his own behavior (and seek to influence that of his brother officers) in order to avoid adverse publicity.

There are several practical problems with this scenario. First, the press in America does not normally tend to be critical of the police. The press and the police tend to be interdependent. The police often grant favors (especially in

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<sup>47</sup>Arthur Niederhoffer, Behind the Shield (Anchor Book; N.Y. 1969), p. 234.

terms of access to information) in exchange for favorable treatment of the police. This has prompted one author to note that, unlike in Europe, "the press in the United States tends to treat the police deferentially rather than critically."<sup>48</sup> In a study of the New York City press in 1961, Benjamin Stalzer found that the press was, if anything, sympathetic to the police. Because of this interdependence, Stalzer found that positive press coverage created in readers "attitudes favorable to law enforcement, willingness to cooperate with the police, and confidence in the police force."<sup>49</sup>

The press does not then usually pursue police abuses of the daily sort. The occasional, truly ignominious case of malpractice does, however, tend to be covered extensively by the media. Policemen know this and are generally disgruntled over the sensational nature of such coverage.<sup>50</sup> This leads to a second problem with the press as an accountability mechanism. Even if the press did attempt to monitor abuses, it would only indirectly affect the street cop (through pressures exerted by his administrative hierarchy). Street policemen themselves do not respect the press enough to give credence to its infrequent criticism of police activities.

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<sup>48</sup> See George F. Berkeley, op. cit., p. 165.

<sup>49</sup> Benjamin Stalzer, "Press Portrayal of the New York City Police Department" (unpublished Master's dissertation, Bernard M. Barush School of Bus. and Pub. Ad. City College of New York, 1961) as cited in Arthur Nierderhoffer op. cit., p. 123.

<sup>50</sup> See James Q. Wilson, Varieties of Police Behavior (Atheneum, N.Y., 1972) p. 81.

Many studies have found a powerful distrust for the press among street policemen.<sup>51</sup> Nierhoffer's study of police cynicism found that 95% of young patrolmen and 75% of all patrolmen felt newspapers "in general seem to enjoy giving an unfavorable slant to news concerning the police, and prominently play up police misdeeds rather than virtues."<sup>52</sup>

Our interviews with policemen in different departments confirm these findings. Policemen tend to be very cynical about the content of newspaper and television coverage of police malpractice. It would therefore be unrealistic to expect street cops to give much credence to any media efforts at monitoring police conduct. One Berkeley policeman's comment is illustrative; "Whenever somebody (policeman) complains to me about the newspapers, I tell em, 'hey man, tomorrow they'll be usin' that shit to wrap the fish in down at the wharf'. That's about how important it is!"

This grass roots police disdain for the press combined with the press' propensity to eschew systematic criticism make the potential influence of the press to be slight.

## VII. Conclusion

Few non-administrative methods of monitoring police abuses have significant potential for being as effective as adminis-

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<sup>51</sup> See James Q. Wilson, op. cit., p. 81; or William Westley, Violence and the Police (M.I.T. Press; Cambridge, 1970), pp. 95-96.

<sup>52</sup> Arthur Nierderhoffer, op. cit., p. 234.

trative systems. Yet, these accountability mechanisms should not be ignored. Some extra-administrative avenues of redress, such as civil litigation, are increasing in their significance for citizens and in their impacts upon individual police behavior.

Then too, the indirect effect of these non-administrative control mechanisms upon police abuses can be significant. For while street policemen can successfully ignore the press, for example, police executives cannot. Such external mechanisms may generate important pressures within police organizations which can be effective in influencing behavior. Thus, the existence of extra-administrative systems, even if they are themselves relatively ineffective, can be of importance in developing genuine accountability of the police.

Chapter 5  
THE LIMITS OF ADMINISTRATIVE REGULATION

I. Introduction

In chapter four we saw that many review mechanisms exist which might be able to provide some accountability of the police. Yet most of these non-administrative systems are very limited in their impacts upon police behavior. Because of political realities, problems of access, and so forth, these mechanisms cannot be depended upon to hold policemen accountable for their daily actions.

Thus, we must turn to consider the potential of administrative review mechanisms for doing this difficult job. Administrative mechanisms for review of police conduct usually form part of the police departmental structure. (As we shall see, only in one municipality in America maintains a police review mechanism completely divorced from the police department itself). Administrative review mechanisms do not suffer from some of the problems outlined in chapter four. Complete access to police departmental records and police personnel give these systems a distinct edge over non-administrative, external systems. We would expect that police departmental systems will have much less trouble gaining cooperation from policemen and much more success in ferreting out the truth in their formal investigations than external systems. (Of course, whether or not police departments would wish to do such ferreting is a separate matter and one of great concern to us.)

However, even those administrative systems, run by and completely within police departmental hierarchies, have their limitations. Police organizational dynamics are similar to those operative in most complex organizations. Problems unique to social welfare organizations everywhere are applicable to the police. Confusion about goals and means are important. And too, organizational secrecy is an even greater problem in police systems than it is in other systems.

This chapter will attempt to outline some of the limitations which organizational dynamics impose upon administrative regulatory systems. We have seen how American value systems and the experience of being a policeman tend to influence police behavior. We have discussed the tremendous limitations of external, non-administrative regulation. Now, we must discuss how complex organizational life itself can cause problems for any accountability mechanism.

First, we will discuss organizational goals and the difficulty of agreeing upon them. Then, we must consider the means toward those goals. Herein we will appraise the limitations of rules for controlling future police behavior and holding policemen accountable for past behavior. Third, it will be important to discuss who should make rules. The problems of expert knowledge versus democratic policy formulation will be thus considered. Finally, we will deal with the limitations of organizational secrecy and professional solidarity upon police

review.

Let us begin by discussing the confusion over defining goals for the police organization.

## II. Organizational Goals

Policemen are legal actors. As such, they are accountable to the codified law and common law of their respective jurisdictions. But, as we have seen in discussing the exclusionary rule, criminal law is very limited in its impact upon police behavior. Much of what policemen do is non-legal, and therefore not subject to the penal code's provisions.<sup>1</sup> In order to hold policemen accountable for activities which do not relate to "law enforcement", rules and regulations must be developed which are organizationally sound. Unlike a penal code's ubiquitous jurisdiction, these rules will be limited in their application. They will only hold policemen accountable to administratively determined behavioral standards. Organizational rules will not be enforceable in a court of law.

Yet in order to be able to develop such rules, those who do so must first determine the organizational goals toward which specific regulations will aim. For most, it is assumed that the organizational mission of the police is known, agreed upon, and well defined. In fact, the goals of the police are often multiple, conflicting, and vague. And because they are, confusion can be created for the organization, for the police officer,

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<sup>1</sup> See Chapter 4, section 3.

and for the review system.

What is the mission of the police? Is it to enforce the law? Is it to maintain order? Is it to protect lives and property? Is it to be of service generally to the community? Each of these things could be agreed upon as an important goal for the police. Yet each is also inconsistent with the others under certain circumstances. The balance between these goals must be struck somewhere in the police organization. As it does in most public service agencies, this goal confusion makes agreement upon rules problematic.

As we shall see, the goals of the police system often clash. The officer is expected to "get rougher on crime" and become less 'oppressive' in the same moment. Such conflicting signals make problems for the development of an accountability mechanism. How can norms of conduct be developed and enforced for the street policeman when it's not at all clear what society wants him to do most?

As example of this goal confusion (and consequent accountability problems) occurred at the Oakland Police Department during the life of this study. Four patrolmen were fired (and several others disciplined) for their participation in the destruction of a club house belonging to a local motorcycle gang.<sup>2</sup>

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<sup>2</sup>In chapter seven we will discuss this particular incident in greater detail.

After an extensive internal investigation into the matter, the Chief of Police concluded that the errant officers had grossly violated their trust as policemen. They had wantonly vandalized and destroyed property belonging to private citizens.

Community outrage over the firings was subdued, but apparent. Letters to the editor and communications to the Police Department indicated that a significant segment of the population was aghast at the Chief's actions. In the words of one telephone caller; "You know those motorcycle creeps live just like pigs! How can they fire policemen for doing their jobs?"

Some policemen felt the same way. They rationalized the actions of their fellow officers as necessary due to the violent nature of the motorcycle gang. Breaking up the gang's headquarters was seen as an illustration to the gang of police power. The Chief's actions made these officers feel as if they didn't have the department 'behind' them in their work.

Thus, the general deterrent effect of allowing the police to harass certain members of society was seen by some policemen and some citizens as being a proper goal of the police. Observing the rights of all citizens indiscriminantly was somehow rationalized as secondary in its import.

If some officers (and more importantly citizens) will so rationalize overt vandalism by policemen, it is clear that contrasting signals are to goal orientations are often received by the police. Developing criterion by which review systems

will evaluate police conduct will therefore be difficult at best. Can a standard of conduct be developed to which he may be rigorously held? Will that standard survive the scrutiny of policeman, citizen, and administrator alike?

### III. Discretion and Rules

The very essence of administrative bureaucracy is the formulation of rules in the form of both statutes and regulations. Rules are meant to limit the discretionary latitude of the administrative decision-maker. A dependence upon such rules "reflects a political philosophy that views as unacceptable the unlimited freedom of administration decision-making, where the decision-maker is not subject to direct accountability to the electorate. Rules are thus seen as a means of reducing the free exercise of discretion and of providing specific standards against which official decisions may be measured."<sup>3</sup> This philosophy, Professor Davis' "extravagant version" of the rule of law,<sup>4</sup> favors strict administrative rules of conduct, subject to judicial review. Many theorists call for the restriction of the administrator's discretion through the imposition of such strict rules.<sup>5</sup> The police in particular are targets of such ideas.<sup>6</sup>

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<sup>3</sup> Jeffrey Jowell, "The Legal Control of Administrative Discretion", Public Law, Autumn 1973, p. 184.

<sup>4</sup> Kenneth Culp Davis, Discretionary Justice (Illinois Univ. Press; Chicago, 1971), p. 30

<sup>5</sup> Besides K.C. Davis, op. cit., see Theodore Lowi, The End of Liberalism (Norton Press; N.Y., 1969); and Henry Friendly, The Federal Administrative Agencies (Harvard Univ. Press; Cambridge, 1962).

However, the development of such rules is problematic for many administrative functions. And there are particular problems with applying this philosophy to the police. As we have seen, goal definitions are of initial concern to anyone attempting such rule definition. And goal definition is troublesome in police work. Yet the tendency to define sets of rules and procedures and apply them to police activities is almost universal. Why is this so?

Aside from the protection of the Chief (above), the organization generally can be protected by the imposition of rules. Rules can act as shields behind which administrators may hide.<sup>7</sup> There are also important internal organizational goals to be achieved by the utilization of rules. They insulate administrators from potential political pressures by standardizing, mechanizing, or objectifying organizational activities. Rules are rigid constructs behind which administrators may stand firm. They can either legitimize action taken or, just as important, rationalize non-action.

In fact, rules can be so protective of administrative decision-makers, that the demand for them can come from those whom they ostensibly control. As Kagan notes in his study of the Wage and Price Freeze of the first Nixon administration, "the demand for ruled-based decision came from below as well as from

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<sup>6</sup>See K.C. Davis, *op. cit.*, chapter III.

<sup>7</sup>See Jowell, *op. cit.*, p. 190.

above. O.E.P. officials (lower level administrators) often expressed discomfort or criticized C.L.C. (the policy determining body) if they faced a situation for which no clear rule had been issued, and they pressured C.L.C. for additional clarifying rules."<sup>8</sup>

Rules can aid in the planning and routinization of administrative tasks. They fix responsibilities. They aid in distributing resources, controlling certain types of demands, and normalizing any number of administrative functions. In short, they can streamline the organization. As Weber tells us of his bureaucratic model, strict rule systems will promote precision, speed, consistency, continuity, unity, rigorous coordination, harmony, and economic efficiency in administrative bureaucracies.<sup>9</sup>

Finally, all rules will have the benefit that they announce and (hopefully) make clear official policies to those whom they affect. This will relieve tension in the individual and facilitate the obedience to policies by underlings.

Rules have their defects, however, and particularly in the field of police administration. The first problem with resorting to rules is illustrated by the types of trade-offs which we

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<sup>8</sup>Robert A. Kagan, "Varieties of Rule-Application: A Case Study by An American Bureaucracy", paper presented to the Seminar in Bureaucratic Politics, Center for Law and Society, U.C. Berkeley, Fall, 1975, p. 28.

<sup>9</sup>Max Weber, in Max Rheinstein (ed.), Max Weber on Law in Economy and Society (Harvard Univ. Press; Cambridge, 1954), p. 349.

noted in chapter one are endemic to administrative accountability. Rules are resorted to in order to lessen arbitrary governmental action. Concomitant to the development of such control, however, is a decrease in the responsiveness of administrators to their constituencies. After all, rules are meant specifically to cut down discretionary latitude.

The problem of rigidity which rules can create in an administrative bureaucracy has been called "legalism". This legalism can paralyze the operations of the governmental process.<sup>10</sup> It is characterized by rigidity and an attention to form sans any concern for the substantive effects of administrative actions. In the long run, the dynamics of legalism can actually promote arbitrariness (The original target of rule formulation). Jowell is again illustrative:

Rules may easily catch within their ambit technical violators whose actions could not be said to have contravened the objectives of the enforcing administration. For example, a parking meter will not show understanding or mercy to the person who was one minute too late to place his coin in the slot, because he was helping a blind man across the street. Rules thus permit legalism, which, because of its close affinity to arbitrariness (namely, lack of rational relation to official ends), may cause dissatisfaction on the part of "technical" violators.<sup>11</sup>

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<sup>10</sup>See Michael Crozier, The Bureaucratic Phenomenon (Univ. of Chicago; Chicago, 1964); or the President's Advisory Council on Executive Organization (The Ash Council), A New Regulatory Framework (U.S. Government Printing Office; Washington, 1971).

<sup>11</sup>Jowell, op. cit., at 192.

Jowell's note speaks directly to our concerns about accountability mechanisms which deal with citizen complaints. Complaints about police actions will be generated in greater numbers the more policemen rely upon specific rules (i.e., the penal code's rigid constructs) rather than upon common-sensical discretionary judgements about how the law should be administered. Put simply, the more arrests made (or citations issued) due to rigid rule application, the more often arbitrariness will involve in the system the "technical" violator who has not transgressed the spirit of the law.<sup>12</sup> The more technical violators sanctioned, the greater the dissatisfaction with police services. The greater the citizen dissatisfaction with police services, the greater the number of complaints. And too, investigations into complaints which come from such "technical" violators must find policemen "technically" correct. Thus, citizen dissatisfaction with police review mechanisms (as well as with the police generally) will develop out of legalism.

Another basic problem with attempting to develop systems of rules is that rules may not in fact be effective at influencing official behavior.<sup>13</sup> No matter how specific rules

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<sup>12</sup> Also see James Q. Wilson, "The Police and the Delinquent in Two Cities", in Controlling Delinquents, S. Wheeler, ed. (John Wiley & Sons; N.Y., 1968).

<sup>13</sup> See, for example, Joel F. Handler, "Controlling Official Behavior in Welfare Administration", 54 California Law Review 479 (1966).

attempt to get, they must be interpreted by the applier. No set codifications can completely account for the diversity of human behavior, even in attempting to control the most faciel of administrative tasks.

Because such interpretation must be done, administrators must develop notions of the policy implications behind sets of specific rules. Since these policy notions will develop within the organizational and subcultural environments of the respective administrators, rules may pale to insignificance in their actual impact upon behavior. As Kagan notes:

A tacit understanding may develop in a police department that the purpose of Section 5 of the Motor Vehicle Code is to maintain an orderly flow of traffic and to protect human life, and it does not further that purpose to give tickets to drivers who proceed cautiously through a light that is stuck on red, or to ambulances rushing to a hospital. The rule, it is implicitly agreed, does not "apply" in such cases because it doesn't make sense, in terms of the public policy "behind the rules", to apply it. Thus, intro-agency conceptions of principle, purpose, or policy are used to determine which specific circumstances in concrete cases should be treated as irrelevant to the applicability of the rule (such as the color of the car, or the driver's lateness for an appointment), and which ones make the case so "different" as to compel a judgement that the rule shouldn't be applied. 14

For the majority of his tasks, rules are irrelevant to the policeman. Police work, as any street cop will tell you, is mostly common sense. Rules cannot be developed which will be

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<sup>14</sup>Robert Kagan, op. cit., p. 9.

definitive of the way policemen should act. As James Q. Wilson notes:

No very useful--certainly no complete---set of instructions can be devised for what the officer should do with say quarreling lovers. Defining a policy in such matters is difficult not because the police have not given much thought to the matter or because they do not know how they should be handled, but because so much depends on the particular circumstances of time, place, event and personality. Psychiatrists do not use 'how to do it' manuals and they have the advantage of dealing with people at leisure, over protracted periods of time and periods of relative calm. 15

Even elaborate penal codes cannot effectively limit the policeman's discretion by delineating "the" way to handle domestic disturbances, bar fights, juvenile gang fights, etc.

A more general statement of this problem comes from Louis Jaffe. As Jaffe notes, "the political or technical situation maybe so indeterminate that beyond a certain point it will not do to insist, as Professor Davis or Judge Friendly would, on rule making; the situation may not be ready for rules and possibly may never be."<sup>16</sup>

Thus, two points are being made simultaneously about police work and rules. First, it may not be desirable to attempt to utilize rules to control police behavior. Second, even if it

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<sup>15</sup>James Q. Wilson, Varieties of Police Behavior (John Wiley & Sons, N.Y., 1968), at pp. 65-66.

<sup>16</sup>Louis L. Jaffe, "The Allusion of the Ideal Administration" 86 Harvard Law Review, p. 1190.

is desirable, it may be impossible to do so.

Perhaps at the root of the problem of rules in police work is the misconception that policemen are bureaucrats. Policemen are administrators, they are public servants, they do work in complex organizations, and they do deal with specific legal codes. Somehow, over time, we have come to consider the policeman a bureaucrat and the police organization a bureaucracy. While the latter may be true, the former most definitely is not. And confusion over this simple fact has led to attempts at over regulation of police conduct which may actually foster misconduct.

The administrative hierarchies of police departments reproduce classic Weberian bureaucracies.<sup>17</sup> There, specificity of rules, control of subordinates, and differentiation of functions are obviously analagous to Weber's requirements. However, these dynamics do not apply to the cop on the street.

The policeman's discretionary powers are great. It is impossible to specifically define rules which control his options on the street. He is not observed by a supervisor when he works. In fact, policemen are largely invisible to the police organization once they leave the building to 'hit the street'. Then too, policemen are generalists. For as much as experiments have tried to do so, it has largely been impossible to functionally specialize basic police patrol functions.

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<sup>17</sup> Max Weber, The Theory of Social and Economic Organization, A.M. Henderson & Talcott Parsons, Trans. (Free Press; Glencoe, Illinois, 1947).

In these and many other ways, the basic street patrolman differs greatly from Weber's bureaucrat. The nature of the function is such that it simply cannot be bureaucratized. Yet, because of reasons stated above, there is a marked tendency in police organization, and within municipal governments, to expect such bureaucratization, to develop. The development of rules is one simple way in which administrators attempt to do this.

Because rules can be used as shields, however, they can generate citizen dissatisfaction. Then too, the street policeman often feels that the rules instituted attempt to codify the codifiable. Those policemen who are disciplined are often seen as victims of an arbitrary system of rules. They sometimes are pictured by their fellow policemen as sacrificial lambs, who are given up by the system in an administrative effort to buy community legitimacy.

We have seen that there are problems both in defining goals and in defining means, in administrative agencies. Selznick has aptly summed the problem for us:

Means tyrannize when the commitments they build divert us from our true objectives. Ends are impotent when they are so abstract and unspecified that they offer us no principles of criticism and assessment. 18

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<sup>18</sup> Philip Selznick, *T.V.A. and the Grass Roots* (Harper, Torchbook; N.Y., 1966), p. X of Preface.

#### IV. Who Makes and Applies Rules?

We have taken some time to discuss the significant limitations which rule making faces in the police organization. Nevertheless, for reasons also discussed, rule making does continue. The alternative, it seems, would be to trust to the goodness of 600,000 policemen nationwide that they will obey all laws and act responsibly (and responsively). Police brutality and police corruption being sensational issues, in this and other eras of American history, such trust is neither existant nor likely to develop.

Given that rule bound regulatory schemes do exist, the next question is; who should make the rules? Then too, who should apply them? In setting up these two questions simultaneously, we will be touching upon more organizational dynamics which relate to the control of administrative discretion. Specifically, we will discuss expert knowledge and bureaupathology.

Who is in a position to determine rules and maintain discipline in police organizations? Can non-police people reasonably be expected to know what standards to apply to police conduct? Can the police be trusted to discipline their own? These questions are central to our entire comparative look at police review systems. Here, it is important to note that the trade-off is one between deference to expert knowledge and democratic norms of representation in the formulation of public policy.

Policemen consider themselves experts at their craft. They must exhibit varying degrees of skill in the fields of law,

medicine, psychology, firearms, and self-defense. The modern American police officer is familiar with principles of constitutional law, codified law, investigative procedures, interrogation techniques, as well as the more "nuts-and-bolts" knowledge of his beat. This talent, or combination of talents and abilities, is unique to police work. Street policemen feel that it sets them apart from "laymen."

More important than substantive areas of knowledge is the policeman's "sixth sense". This uncanny ability to sense danger, or to "know" when someone is lying, is highly coveted within the subculture. Knowing when people are "dirty" or "wrong" indicates that a policeman is a man of experience. It takes time to sharpen such intuitive skills. One must understand individual motivation and human emotions. In police circles the ability to do so is considered a mark of one's cunning. "Street sense" then is crucial to the street policeman's subcultural reputation. It is an integral part of his self conception of competence.

Expert knowledge relates to the problem of discretion. Therefore, expert knowledge is central to any discussion of accountability. As Selznick points out, "the expert insists upon an enlargement of discretionary powers. He joins the ranks of other experts in denying to the layman the right to judge among alternatives when these lie within the province of specialized experience."<sup>19</sup>

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<sup>19</sup>Selznick, op. cit., p. 65.

The problem of administrative control of knowledgeable experts is particularly interesting when applied to the field of police work. For twenty years (very much at the insistence of sociological theorists) policemen have been receiving college educations. A feeling of "professionalism" has developed in an occupational group where once the "dumb flat foot" was the norm. The ability of police organizations to hold their charges strictly accountable has been severely hampered by such recent trends toward "professionalization" in law enforcement. Halpern is apposite:

The legitimacy of the authoritarian organizational ethos may well have been a victim succumbing to the combined weight of the new professionalization and unionization. Many who are better educated and trained than their predecessors, indoctrinated to think of themselves as professionals and organized to pursue their goals, find it contradictory to then be subjected to the authoritarian accountability and disciplining procedures of police superiors. 20

In police work, a unique twist is added to the dynamics involved in the administrative control of experts. The expert knowledge of the street policeman is questioned by people external to the subcultural experience. The expertise of the legal or medical professional is almost universally considered of a specialized nature, not understandable to the layman. However, in police work this is debatable.

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<sup>20</sup> Stephen C. Halpern, "Police Employee Organizations and Accountability Procedures in Three Cities: Some Reflections on Police Policy Making", Law & Society Review, Summer, 1974, p. 576.

First, the sixth sense of the street policemen (so important in the police subculture) is considered less than legitimate, "professional" knowledge. The policeman's particularized expertise at this "craft" is acknowledged by many. But, its esoteric significance is not normally considered of greater gravity than that of any blue-collar craftsman. The existence of a substantive, definable field of knowledge is equally in question. While career police administrators argue the point, academicians have not yet conceded the existence of such a body of knowledge.<sup>21</sup>

Then too, part of the "problem" with policemen is the police experience itself. We have noted the isolation and cynicism which come to characterize most policemen. Even if a body expert knowledge (of the experiential type) did exist, many would argue that such knowledge itself is a bar to objective evaluations of police behavior. As Wayne Kerstetter states regarding the citizen complaint investigatory process:

"...if allowances are to be made for the difficulties and dangers of police work, and they should be, they must be made explicitly and at a high level where the community can address their reasonableness. The department has a clear role in explaining the necessities of police work. But it should be done in the open, not as a hidden assumption in an investigative report." <sup>22</sup>

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<sup>21</sup>See James Q. Wilson, op. cit., p. 29-30; or Richard Blum, Police Selection (Springfield, Ill.; Charles C. Thomas, 1964), Ch. IX.

<sup>22</sup>Wayne A. Kerstetter, "Citizen Review of Police Misconduct", A Report to the Police-Community Relations Sub-Committee of the Chicago Bar Association, no date, p. 25; this study was done at the University of Chicago's Center for Studies in Criminal Justice.

Kerstetter here alludes to the other side of the expert knowledge argument. Over time, all sorts of hidden assumptions can build within a disciplinary system. These assumptions may be based upon pieces of subcultural "knowledge" which are not acceptable to the public were they to come to light. For example, harassing prostitutes in a certain area of town may be so routine and accepted within a police department that harassment complaints from that area are virtually ignored.

The idea of built-in assumptions is important, because many theorists have noted the tendency for complex organizations to develop self-serving practices and policies. Moreover, through the imposition of rigid systems of rules, sub-organizations and even individuals can develop legalistic tendencies which arise from "ritualistic attachment to routines and procedures."<sup>23</sup> Labelled "bureaupathology", by Thompson, these patterns of behavior involve using rules to further personal interests at the expense of organizational (or perhaps societal) interests.

In order to avoid such bureaupathic behavior, it is felt by some that police policy decisions in the area of discipline should be opened up to external scrutiny if not control.<sup>24</sup>

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<sup>23</sup>Victor Thompson, Modern Organization (Alfred Knopf; New York, 1969), p. 152.

<sup>24</sup>For example, see the "Black Panther Petition for Neighborhood Control of the Police" in Bonsignove et al, Before the Law (Houghton Mifflin Co; Boston, 1974) p. 143.

The deference given by most to police administrators is not, then, granted by all. Yet, as we shall see in Part III, only two systems studied herein have any provisions for infusing other-than-police perspectives into police policy determinations.

In this chapter we have discussed administrative dynamics which affect police review systems indirectly. Our concern has been to understand what dynamics of complex organizational life might limit the development of police review systems. Before closing our discussion, we must consider one dynamic which, though prevalent in most complex organizations, is almost synonymous with police systems; organizational secrecy.

#### V. Organizational Secrecy

More than any other organization dynamic treated in this chapter, organizational secrecy imposes tremendous limits upon the effectiveness of any police review system. Secrecy affects police review in two ways. First, police organizational secrecy in general will severely limit the ability of any outside agency or individual to monitor police behavior or the organization's disciplinary processes. Second, solidarity among policemen (which is a product of isolation, cynacism, dealing with potential violence and so forth) will limit any regulatory system's ability to ferret out police malpractice. This is true even for internal systems.

"Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret...it hides its knowledge and action from criticism."<sup>25</sup> Complex organizations then isolate their inter-workings from the uncertainty of external environment.<sup>26</sup> Complex organizations create "boundary spanning" devices which buffer their internal workings from influences in the external environment.<sup>27</sup>

This being the case, any type of review mechanism will encounter great difficulty due to the natural tendency toward secrecy existent within the police organization. Especially if the control mechanism itself is "external" (i.e., a civilian review board) it can be severely limited by such internal secrecy.

Tendencies toward secrecy in police departments are stronger than in any other public agencies or complex organizations. Secrecy in police systems relates directly to the tremendous solidarity within the police subculture. Police solidarity is of overwhelming import to the subcultural experience. It is important for our discussion to take some time to consider the phenomena of solidarity within law enforcement.

Solidarity in police work is so strong and so easily observable that to some it symbolizes policemen and police organi-

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<sup>25</sup>Max Weber, & Gerth & Mills From Max Weber: Essays in Sociology (Oxford Univ. Press, New York City, 1973), p. 233.

<sup>26</sup>See James D. Thompson, Organizations in Action (McGraw Hill Co., New York City, 1967).

<sup>27</sup>ibid., pp. 70-77.

zations. Police solidarity is the product of a complex set of interacting variables. First, there is the solidarity which is endemic to any occupational group. Lipset points out that social settings within such secondary organizations as unions naturally create this type of occupational solidarity.<sup>28</sup> However, unions do not normally function within the hostile, violent and isolated atmosphere unique to police work. Therefore, the solidarity which is basic to unions or to any other occupational group must be viewed as less significant than that operational in police work.

Policemen are isolated from non-police people both on the job and socially.<sup>29</sup> This isolation is partly due to perceptions held within the community of the "police personality" (see chapter two). It is also due to the policeman's perception of people and the nature of life on the street. Policemen spend one-third of their waking hours playing the police "role". They constantly interact with either criminals, people in crisis, or other policemen. They therefore see a distorted slice of life. Being constantly exposed to people who are consumed by the tragedies of life, the policeman necessarily protects himself by isolating his psyche from the trauma of those around him. Isolated from the general populace and perceiving its animosity or

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<sup>28</sup> See Seymour Martin Lipset, Union Democracy (Glencoe; Gree Press, 1956).

<sup>29</sup> See James S. Ahern, The Police in Trouble (Hawthorne Books, New York City, 1973), p. 2.

at best indifference toward him, the policeman naturally cleaves to his brother officer. He looks to the police subculture for psychological sustenance.

Policemen depend upon their fellow workers, then, in a way that is foreign to almost all other occupational groups. Not only the psychological health, but the safety from physical harm of the working street cop is dependant upon his brother officers. Trust within the subculture must be great.

Given police interdependence, it is not hard to understand how norms of secrecy develop with respect to the citizen complaint process. Policemen accused of wrongdoing are defended by brother officers who do not wish to risk losing necessary peer group supports. Many authors have noted the tendency of policemen to cover up the malpractice of brother police officers.<sup>30</sup> Policemen sometimes will lie to do so, not only to internal investigators, but also in open court. As the most famous of police theorists, August Vollmer stated, to the Wickersham Commission:

"Eradication of disgruntled agitators, and incompetent policemen, police crooks, and grafters takes much time since it is next to impossible to induce police officers to inform on each other. It is an unwritten law in police departments that police officers must never testify against their brother officers." 31

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<sup>30</sup> See Morton Hunt, The Mugging (Signet Books, N.Y., 1972), p. 81; Albert Deutsch, The Trouble with Cops (N.Y.; Crown Publishers, 1965), p. 143; William A. Westley, Violence and the Police (Mit, Cambridge, 1970, pp. 111-112; Hubbard Taylor Buckner, "The Police: The Culture of a Social Control Agency", Univ. Calif., Berkeley, Ph.D. dissertation, 1967 Sociology.

A most illuminating indication of how police solidarity can affect review systems is presented in the work Signal Zero by George Kirkham.<sup>32</sup> In this work, Professor Kirkham explains how, as a part-time policeman, he came under the influence of secrecy norms. In order to "protect" a fellow officer, Professor Kirkham lied to an internal affairs officer investigating a charge of brutality. (The charge, Dr. Kirkham illustrates, was well founded!) Kirkham rationalizes his untruthfulness on the grounds that he had developed a close kinship with this particular officer while working in the volatile, hostile atmosphere of the inner city ghetto. The rationalizations and explanations which Professor Kirkham exhibits in this work are common to men who have gone through the street policing experience. His piece graphically illustrates how the problem of secrecy relates to citizen complaint investigatory processes.

## VI. Conclusion

In this chapter we have seen how many dynamics common to complex organizations and administrative agencies will limit the effectiveness of any police accountability mechanism. Before we turn to consider different types of review systems, we have one final task to perform. In the next chapter, we will very

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<sup>31</sup>August Vollmer, U.S. National Committee on Law Observances and Enforcement, Report on the Police, (Washington Printing Office, Washington, D.C., 1930), quoted in Westley, op. cit., p. 6.

<sup>32</sup>George L. Kirkham, Signal Zero (J.B. Lippincott; N.Y., 1976), chapter 11.

briefly outline some specific, legal limitations upon review systems.

Just as the American criminal justice system severely limits the ability of the police to arrest and convict criminal suspects, so too do our principles of limited government 'hamper' the operations of police review systems. Due process rights are available to all under American law. Though the policeman's protections from capricious official action are not as strong as the criminal suspect's, his shields are impressive. They can often thwart the substantive fairness (to aggrieved citizens) of police review systems.

## Chapter 6 LEGAL LIMITATIONS

Throughout our discussion we have seen many norms and dynamics which operate to hamper the rigorousness of police review systems. Democratic values, subcultural norms, and administrative dynamics will all limit police accountability mechanisms of any sort. As with the citizen/suspect, the policeman accused of abusive behavior is allowed certain rights under the norms of limited government discussed in chapter 2. These policeman's rights' operate to impede the effectiveness of police review processes. They are perhaps no more important than the limitations which we have heretofore considered, but they are more easily understood because of their codified form.

In this chapter, we will outline such codified limitations upon review systems. They include case law decisions, policemen's "bills of rights", civil service rules and procedures, and some interesting developments in the area of criminal discovery. We shall first treat those judicial due process requirements which are in theory applicable to all police disciplinary systems.

### I. Judicial Due Process Requirements

Policemen often bemoan the due process focus of the American criminal justice system. This is because they know that the system allows factually guilty criminals to go free on procedural grounds. The same sorts of judicial protections which shield criminal defendants are also available to policemen accused of

misbehavior. Generally, there are fewer judicial restrictions placed upon administrative investigations and disciplinary processes than are placed upon criminal proceedings. Nevertheless, due process requirements will hamper the thoroughness and tenacity of any review system. These administrative due process requirements are expanding to make investigating complaints and meeting out discipline more difficult over time.

Police departmental rules and regulations are subject to judicial attack on grounds of vagueness and overbreadth as are penal laws.<sup>1</sup> Many departments nevertheless maintain very general rules for example against "conduct unbecoming an officer". Such rules are only allowed to stand by courts when the acts alleged as violations of them are so "inherently wrong and reprehensible" that they need not be more specifically codified.<sup>2</sup> Some might wish a police review system to be much more vigorous than a criminal justice system generally, given the position of responsibility and trust in which policemen are placed. However, in codifying the rules of conduct to which policemen may be held, these judicial limitations will hamper any system's ability to be inclusive of all errant behavior.

Investigations into complaints are also limited by due process norms. Law relating to the taking of non-testimonial

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<sup>1</sup>Allen v. City of Greensboro, 322 F. Supp. 873 (M.D.N.C. 1971).

<sup>2</sup>Gee v. California State Personnel Board, 85 Cal. Rptr. 762 (App 1970).

evidence is the same for internal investigations as it is for criminal investigations. An officer's property is subject to the same search and seizure warrants requirements.<sup>3</sup> The use of wiretaps, body transmitters, and monitoring devices is covered by the same restrictions applicable to citizens in general.<sup>4</sup>

Similar to criminal defendants, accused officers may be compelled to participate in line-ups, give hair samples, take breath tests, and so forth.<sup>5</sup> But the analogies between restrictions upon administrative and criminal investigations are more numerous than might be intuitively expected (or desirable).

Of special interest is the Miranda decision's applicability to policeman.<sup>6</sup> Courts have consistently held that the rule applies similarly to policemen accused of criminal conduct as it does to civilian criminal defendants.<sup>7</sup> Thus, policemen have a right to access to counsel if they are accused of criminal activity. And, even though policemen are taught the admonitions of the Miranda rule, (and indeed apply the rule themselves), they are not expected to know its particulars when they themselves are being interrogated. Prior knowledge of the rights to silence and counsel are irrelevant to the rule's application.

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<sup>3</sup>See Boulware v. Battaqlia, 344 F. Supp. 899 (D. Del. 1972).

<sup>4</sup>Allen V. Murphy, 322 N.Y.S. 2d 435 (N.Y. 1971). However, there is an exception to this rule. Police departments may monitor all of their own communications equipment provided there is an announced policy to that effect.

<sup>5</sup>Schmerber v. California 384 U.S. 757 (1966).

Many will wish to de-formalize police review processes in order to generate a more open, healthy learning atmosphere around the process. Yet, judicial due process requirements allow policemen hearings in disciplinary cases. These hearings, give officers the right to call, confront, and cross-examine witnesses. They require a certain level of formality within the review system. While formal rules of evidence do not usually apply to such hearings, the evidence considered must be "relevant and credible" and must be at least "substantial" in its weight.<sup>8</sup>

Finally, punishment given to officers may be judicially reviewed as to its gravity. Courts will normally allow police departmental punishments to stand. However, they will reduce discipline if its harshness shocks the "sense of fairness" of the court.<sup>9</sup>

These general judicial restrictions upon review processes are often expanded through labor contracts and local law. In the next subsection we will deal with such added restrictions.

## II. The Expansion of "Policemen's Rights"

The judicial restrictions discussed above place significant limitations upon all review systems. However, they do stop

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<sup>6</sup>Miranda v. Arizona 384 U.S. 436 (1966). This is the famous case which requires policemen to advise suspects who are being interrogated of their rights to remain silent and to obtain counsel.

<sup>7</sup>Garrity v. New Jersey, 385 U.S. 493 (1967). Also see The Algiers Motel Incident by John Hersey. This book chronicles an example of a particular brutal murder committed by some Detroit policemen during the 1967 riots. The policemen's confessions were found to be inadmissible under the Miranda rule.

<sup>8</sup>American Rubber Products Corp v. N.L.R.B., 214 F. 2d. 47 (7th Cir. 1954) and Kammerer v. Board of Fire and Police Commissioners, 256 N.E. 2d 12 (Ill. 1970).

short of allowing some kinds of procedural safeguards (such as the right to representation by counsel during investigations or hearings). Policemen, for example, may be required to answer the questions of internal investigators<sup>10</sup> and in most jurisdictions may be required to take polygraph examinations (lie detector tests) as part of citizen complaint investigations.<sup>11</sup>

However, in three states, Police Officer's Bill's of Rights have been passed by legislatures.<sup>12</sup> Such bills seek to codify some of the judicially guaranteed rights above, and to expand the accused policeman's protections in other areas.

These acts place limitations upon interrogations. Each contains provisions related to the time and place of questioning. Each limits the number of persons who may be present during interrogations. Through these acts, officers are allowed counsel during interrogation and must be advised ahead of time of the nature of investigations. In Maryland, the accused officer must be presented a written statement of the charges and names of all witnesses before he is interrogated.<sup>13</sup> Furthermore,

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<sup>9</sup>Glass v. Town Board, 329 N.Y.S. 2d 960 (1972).

<sup>10</sup>Gardner v. Broderick, 393 U.S. 273 (1969).

<sup>11</sup>Roux v. New Orleans, 223 So. 2d 90S (La App. 1969).

<sup>12</sup>See California Government Code, Division 4 of Title 1, Chapter 9.7, Sec. 3300 etc.; Florida Statutes, Chapter 74-274, Section 1-5; and Annotated Code of Maryland, Crimes and Punishments, Art. 27, Sec. 727-734A.

<sup>13</sup>Annotated Code of Maryland, op. cit., Section 728 (5).

the Maryland bill allows that no force complaint against an officer shall be investigated "unless the complaint be duly sworn to before an official authorized to administer 'oaths".<sup>14</sup> In California, the 'Bill of Rights' provides that officers may not be required to take polygraph examinations under any circumstances.<sup>15</sup>

Aside from these bills, police officer's employee organizations have been able to expand officer rights through collective bargaining in various jurisdictions. In San Francisco, a "memorandum of understanding" between the San Francisco Police Officer's Association and the Police Department preceded the California State Police Officer's Bill of Rights by several years. This memorandum secured for San Francisco officers essentially the same rights which the legislature later codified.<sup>16</sup>

These protections, it can be argued, chill the complainant's right to redress of grievances. Furthermore, they force the formalization of complaint investigatory procedures. Perhaps most important, taken together, they severely limit the ability of complaint investigations to be thorough. They limit the ability of police review systems to monitor abusive policemen. Stephen Halpern sums up the limitations as he reflects upon the

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<sup>14</sup>Ibid., Section 728 (4).

<sup>15</sup>California Government Code, op. cit., Section 3307.

<sup>16</sup>From an interview with the head of San Francisco Police Department's Internal Affairs bureau, 1/12/77.

problem of Buffalo, New York:

The procedural safeguards won by police associations create incentives for police administrators either to resort to informal negotiations on a discipline problem or to forbear taking any action at all. In Buffalo, for example, a policeman's "Bill of Rights", more formalized internal accountability procedures, and the presence of a police association able to provide legal counsel to officer, combined to produce a situation comparable to plea bargaining. The two sides often agreed not to invoke formal adversary or arbitration proceedings, instead negotiating mutually satisfactory resolutions on an informal basis. 17

Such plea bargaining can also be observed in San Francisco where, as noted above, a strong officer's association has forced a formalization of the disciplinary processes.<sup>18</sup>

These advancements in the field of officer rights are not without merit, of course. Algernon Black, a former member of the short lived New York City civilian review board, feels that these rights may generate a great deal of respect among policemen for the administrative process and the due process system generally. He thus sees the police officer Bill of Rights developed in New York as "one of the valuable and lasting accomplishments of the Review Board."<sup>19</sup> For all of their drawbacks then, the expansive rights recently granted policemen may have positive

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<sup>17</sup> Stephen C. Halpern, "Police Employee Organizations and Accountability Procedures in Three Cities: Some Reflections on Police Policy-Making", Law Society Review, Vol. 8, No. 4, Summer 1974, p. 575.

<sup>18</sup> On several occasions the author witnessed such bargaining in open hearings. As in criminal court, officers were allowed to plead guilty to 'lesser offenses' (in terms of departmental procedures) in exchange for lighter disciplinary sanctions.

effects upon police morale. Morale, as we have seen, can be directly related to the generation of complaints.

Thus, the policeman's rights issue is another area in which our discussion must balance interests. Allowing more procedural protections to police officers will limit the investigative tenacity of any review process. Yet, the long term gains (in terms of police respect for due process norms) may be great. Later, we shall see more graphically the trade-offs operational in the area of officer rights.

### III. Criminal Discovery

In California, a recent set of cases has begun to expand criminal defendant discovery rights in an area that affects police review systems. Under California case law, a defendant charged with assaulting a police officer may use as a defense the argument that he was defending himself from excessive force on the policeman's part.<sup>20</sup> Thus, defendants charged with assaulting policemen will often argue that they themselves were the victims of assault by the police. Defendants then attempt to prove a propensity toward violent behavior on the part of the victim/witness police officer.<sup>21</sup>

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<sup>19</sup>Algernon D. Black, The People and the Police (McGraw-Hill; N.Y., 1968), p. 219.

<sup>20</sup>People v. Curtis 70 Cal 2d 347 (1969).

<sup>21</sup>California Evidence Code Sections 1101, 1102, and 1103, allow such a defense.

Under Pitchess v. Superior Court<sup>22</sup> defendants are allowed access to police departmental files which might indicate a violent character on the part of victim-policemen. Thus, internal investigations of previous citizen complaints can become evidence in later criminal actions. These files are used to impeach the credibility of the victim-officer.

Police administrators tend to jealously guard the confidentiality of their internal investigative processes. The Pitchess case has therefore caused quite a furor in police circles.<sup>2</sup> Police executives argue that opening up complaint investigations will chill the ability of investigators to obtain complete and candid statements from civilians and policemen alike. If statements made to investigators are later made public, it is argued, officers will never be truthful about wrong doing on the part of brother officers. Similarly, citizens will find their complaint rights chilled if their statements are made public. Not only will they fear police retribution, but they will feel annoyed by being subpoenaed into court to testify at trials unrelated to their specific complaint.<sup>24</sup>

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<sup>22</sup>11 Cal 3d 531 (1974).

<sup>23</sup>In fact, several bills have been introduced in the state legislature aimed at curbing the impact of these cases. For example, AB37 (1977), seeks to allow prosecutors the ability to rebutt Pitchess type evidence of officer violence with evidence of the violent tendencies of the criminal defendant.

<sup>24</sup>It should be noted that under Pitchess, a citizen may be subpoenaed to testify on an assault charge years after he files his complaint with the police department. This is because his complaint may be used to indicate a history of abusive behavior on the part of the victim-officer.

The issue is indeed a muddled one. Most observers agree that policemen rarely acknowledge malpractice on the part of other officers. Thus, the confidentiality "problem" may be a self-serving straw dog for police organizations. However, as time passes policemen are beginning to be more candid about malpractice within the profession. Indeed, during our study, numerous examples surfaced of officers officially protesting (to Internal Affairs bureaus) the actions of other policemen. These occurrences were observed in almost every police department studied.

To the student of police behavior, policemen reporting the malpractice of other policemen is certainly news. Unheard of historically, this healthy trend toward self-policing must be weighed heavily by our study. If opening up investigations might indeed chill this growing tendency, the Pitchess case (and its continuing expansion) presents a troublesome limitation to effective police accountability.

#### IV. Civil Service Review

In all of the police jurisdictions treated by our study, Civil Service Commissions operate with some degree of control over police departmental personnel matters. Thus, when the selection, promotion, disciplining, or termination of employees is involved, police executives are not free to exercise their own judgement.<sup>25</sup>

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<sup>25</sup>See Albert J. Reiss and David Bordue ed., The Police (John Wiley & Sons; New York, 1967), p. 48 etc.

Civil Service operates in an appellate capacity, reviewing disciplinary decisions after they are determined by police organizations. In Oakland, for example, any policeman who is disciplined with more than a one (1) working day suspension has a right to a hearing before the Commission.

Civil Service acts as a sort of civilian review board in its disciplinary review capacity. Its operations are important for our discussion here, because normally such boards are very defensive of errant officers. Quite often, in their deliberations, such commissions side with disciplined officers and against police administrators. During the life of this study, policemen fired for misconduct were given back their jobs at Berkeley P.D., Oakland P.D., and Contra Costa Sheriff's Office through Civil Service appeals.

This is by no means unusual. As Berkley comments:

One factor which prompts American police departments to go easy on their erring members and resort to transfers is the civil service. In most states and communities, civil service regulations tend to be highly inflexible and overprotective to government employees. 26

With Civil Service acting in this after-the-fact review capacity, its propensity to be lenient with errant policemen places tremendous limitations upon the ability of any review mechanism to pursue malpractice. These civilians (almost always lacking any practical knowledge of police work) tend to accept

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<sup>26</sup>George E. Berkley, The Democratic Policeman (Beacon Press; Boston, 1969), p. 141

violent behavior on the part of policemen as "understandable". They often take a sort of "boys will be boys" way of looking at police abuses. Police executives, not taking this view, are often frustrated by Civil Service commissions' abilities to rationalize unprofessional behavior.

#### IV. Conclusion:

Frequently accused of a benality or brutality then and sometimes found guilty, plagued by organizational problems, understaffed and underpaid the police have been sharply restricted by law in the performance of their task. At the same time they have been pushed by insistant public demands to function more effectively and the police have responded by crowding to the limits of the law and often passing beyond them affirming our conception of "our lawless police". 27

Police work and police organizations exhibit administrative problems common to all complex organizations and all public agencies. However, there are significant differences between the policeman's working experience and that of other bureaucrats and complex organizational decision makers. The nature of police work exacerbates general administrative difficulties found in all organizations. Several legal restrictions limit the ability of any sort of mechanism to handle citizen complaints. Pragmatic political concerns impede the ability of organs external to the police subculture to have influence over police behavior.

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<sup>27</sup>Gresham M. Sykes, Crime and Society, (Random House, New York City, 1956), p. 149

We have now developed an understanding of the legal, political and subcultural milieus within which police review systems operate. We have discussed a number of limitations upon such mechanisms. In Part III, we will develop some indexes of evaluation for application to each of our operational systems. Then, the specifics of each operation will be explored.

### Part III: Review Systems in Operation

In this part of the work, we will discuss the operations of five types of review systems and attempt to evaluate them individually. First, however, we must develop some sets of questions with which to evaluate our systems. In chapter seven, therefore, we will discuss some of the interests to be balanced by review organizations, and put together some important questions to use as indices of comparative analysis.

In chapter eight, we will begin by considering a non-centralized review system. Then in order we will discuss internal review, civilian review, hybrid systems, and the ombudsman. In each of the systems chapters, we will first set out the operations of the particular system and then apply our questions to the process.

## Chapter 7 CRITERIA OF EVALUATION

When comparing police review systems we will want to consider their relative effectiveness. Yet the meaning of "effective" is unclear. What is it that an effective accountability system does? What indices can we develop to use to evaluate each of our five types of systems?

We have considered the problem of police abuse in historical perspective, reflected upon the problem of accountability in general, reviewed the nature of the police experience, and discussed a variety of limitations operative upon regulatory systems. In doing so, we have discussed some of the specific difficulties of attempting to hold these actors accountable. The purpose of this chapter will be to develop questions about effectiveness which we will apply to each review system. We will do so with an eye for the peculiarities of police review already considered.

How shall police review systems be rated? What symbolic and pragmatic concerns must be taken into account by a police review mechanism? What interests must be balanced by formal regulatory mechanisms? In the first section we will begin to address these and other questions by considering what demands are placed upon police accountability systems. In the second section, with an eye toward balancing those interests, we will develop evaluative questions for use in our analysis.

## I. Interest Group Demands

Three major "interest groups" routinely make demands upon police review mechanisms. Police officers, complaining citizens, and the police organization (usually personified by the chief executive) all consistently interact with each of our review mechanisms. A fourth interest group, "the community" or "public", is of tremendous importance even though its desires are not so apparent and consistently manifest as are those of the other three. An effective review mechanism must concern itself with the desires, goals, and rights of each of these 'groups'. First, this section will outline the interests of the two groups which are most closely involved in particular acts of abuse and alleged abuse; policemen and complaining citizens.

Police work has a powerful influence upon the individuals who experience it. We have seen how police/citizen interactions will be negatively affected by the beat cop's fear of violence, his exercise of coercive power, and his psychological isolation from the civilian populace. Citizen complaints will tend to be generated out of the operation of these natural phenomena.

One must realize that complaints do not normally occur because policemen are naturally abusive or authoritarian individuals. (A number of studies have put that popular misconception to rest).<sup>1</sup> They occur because, as we have discussed,

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<sup>1</sup> See David H. Bayley and Harold Mendelsohn, Minorities and the Police (Free Press, N.Y.; 1968), p. 18; also Arthur Niederhoffer, Behind the Shield (Garden City N.Y.; Doubleday, 1967), pp. 132-147 or John H. McNamara, "Uncertainties in Police Work; The Relevance of Police Recruits' Backgrounds and Training", in The Police, David Bordua ed., (John Wiley & Sons; N.Y.; 1967), p. 193.

the nature of police work in America creates tensions within the individual officer and citizen. These tensions occasionally boil over and produce what is at least perceived as abusive behavior.

This is to say that occasional misconduct will manifest itself in most policemen at some time or other. Therefore, complaints are endemic to the police experience. Policemen are, of course, well aware of this. As one of Muir's Laconia officers stated, "If you're not getting in the shit six times a year, you're not doing the job."<sup>2</sup>

We must not, of course, discuss only the way in which policemen's experiences and understandings will affect police/citizen interactions. The citizen too will contribute to hostile police/citizen incidents through his confusion about the law, his simplistic understanding of police work, and (at times) his irrationality.

It is important, from the perspective of policemen, that a review system realize how many complaints are in fact the product of civilian ignorance, frustration, paranoia, vindictiveness, and even hysteria. Fewer complaints are actually the products of police malpractice.<sup>3</sup> People are often irate over

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<sup>2</sup>From William K. Muir Jr., Police: Streetcorner Politicians (Chicago; Univ. of Chicago Press; 1977), p. 26 "Getting in the shit" here means being the subject of Internal Affairs investigations.

<sup>3</sup>This assertion is gleaned from two years of experience in monitoring complaint investigations and observing citizen-complainants, and nine years of observing policemen in the field.

being treated in a quite legal and rational manner.<sup>4</sup> Then too, complainants are often mistaken about the circumstances surrounding their complaint because of their own inebriacy or delirium of some sort. Also, a significant number of complaints against the police are filed by "cranks". These individuals are sometimes mentally disturbed. More often, they are vindictive toward policemen generally.<sup>5</sup> Some citizens are so "street wise" that they understand the police review process well and utilize it in order to attempt to harass officers or get policemen "off their backs".<sup>5A</sup>

But the existence of genuinely abusive behavior on the part of some policemen cannot be ignored. As was illustrated in the Introduction, all police malpractice is not an aberration, produced by citizen ignorance or hysteria. Significant numbers of abuses do occur. The citizen/victims of those abuses must be allowed to take up their police-related problems with somebody possessing the authority to take corrective action and/or allow the citizen redress of their greivances.

Therefore, police review systems must take cognizance of

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<sup>4</sup>For example, a middle class citizen will often complain that when arrested--for drunk driving usually--he was searched and handcuffed, "like a common criminal". This procedure is, of course, not only legal, but indispensable security precaution.

<sup>5</sup>The existence of significant numbers of vindictive complaints is acknowledged not only by policemen and police organizations such as the International Association of Chiefs of Police, but also by academicians such as Wayne Kerstetter of the University of Chicago, See I.A.C.P., A Survey of the Police Department: Chicago Illinois, no date, p. 237 and Wayne A. Kerstetter "Citizen Review of Police Misconduct", an unpublished report to the Police-Community Relations Sub. Committee of the Chicago Bar Assn., no date, p. 20.

of the significant number of groundless complaints in several ways. First, a review system must guard against becoming too used to considering complaints "petty" or "frivolous". While many complaints are products of citizens ignorance, the existence of bona fide complaints of police abuse cannot be questioned. The one should not be mistaken for the other. A review system must rigorously pursue each allegation it receives to insure that legitimate grievances are not ignored.

On the other hand, a police review system must take care not to toy with the intelligence and honesty of policemen. It must not give too much credence to the truly groundless complaint. To do so, would invite policemen to reject the legitimacy of the system.<sup>6</sup> Any effective review system must keep in perspective the nature of police work. It must remember that the overwhelming majority of street policemen are honest, dedicated, intelligent individuals who should be treated as experts at their craft. It must, in short, weigh the policeman's expertise as heavily as it weighs the citizen's indignation.

Removed from the emotions of individual police/citizen interactions, the police organization and the community each

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<sup>5A</sup> This has been consistently pointed out by Internal Affairs investigators. One at Oakland P.D. estimates that 10% of his caseload involves such 'bogus' complaints.

<sup>6</sup> This could of course cause the breakdown of the review process. For, because of the existent secrecy and solidarity among policemen, no system will ever be able to work well without the cooperation of most policemen and police administrators.

have their concerns about review system operations. These concerns are not, of course, mutually exclusive. An interest in the delivery of police services or a generalized concern for the objectivity of citizen complaint investigations, for example, should be held by both of these interest groups.

Yet, there are some differences in focus which should be treated. Police organizations are interested in maintaining control over their personnel and policies. As are all complex organizations, they seek to preserve organizational integrity and to lessen the uncertainty which they face in their external environments. Police organizations in contemporary America are also interested in developing notions of 'professional' policing and of police administrative competence in the minds of the public and of political elites.

These concerns develop interesting consequences for police organizational behavior. Complaints which seem to be of inconsequential import are often handled informally or not at all by police organizations. Essentially, the stance taken toward 'minor' complaints is a defensive one. The organization (and individual policeman) are protected from external criticism in such cases. Important or "heavy" complaints, on the other hand, will generate investigations which would make even the most cynical police critics wonder at their thoroughness and rigor. Organizational defensiveness thus combines with political reality to create a sort of two tiered approach to the 'problem' of citizen complaints.

The community has some concerns about police review which are separate from those of any other involved actors. Most important is the idea that police review processes should be open to public scrutiny of some sort. This concept is of particular importance to minority communities in inner cities where police abuses are so often topical. Pressure for such scrutiny, as we shall see, has caused changes in review systems in several cities treated by our study.

The public can also be concerned about the fiscal costs of elaborate review mechanisms. Some of the systems we will study expend significant amounts of tax dollars to perform their tasks. And too, the community's concerns about review systems can parallel those of the individual complainant. The perceived objectivity and thoroughness of review can relate directly to the confidence which politicians and voters alike have in their police.

## II. One Case in Point

In chapter 5, we briefly alluded to a specific act of police malpractice which occurred in Oakland during the course of this study. This "case" can serve as a vehicle for understanding our evaluative criteria. (It also illustrates the rigor of internal review mechanisms). Here, we will briefly discuss the facts of the case and its investigation in order to make use of it for such purposes. While we have taken great pains to indicate that such a genuinely abusive incident is

rare, it is nevertheless, a proper example of the worst sort of malpractice with which a review system must be concerned.

In 1978, over the course of several months, naturally existent tensions had been increasing between the "Hell's Angels" motorcycle gang and the Oakland Police Department. Street officers had made some arrests (including that of the gang's leader) which did not sit well with the gang's membership. The motorcycle group's disdain for the police thus mounted (as did its outward defiance of police authority). Small incidents, for example, traffic stops, began to develop an extra edge of importance to the two groups of men (police and gang members). Finally, all came to a boil over a citation issued several club members outside of their clubhouse.

Two officers cruising in the area stopped to issue citations to gang members for "drinking in a public place". The cyclers had been sipping beer on the street in front of the clubhouse. When the officers presence became known within, more club members appeared from inside the building. When gang members began to surround the initial two officers at the scene, they called for help. Some shoving ensued between the two officers and the 10 to 20 gang members present. Finally, a fight broke out. (It is not clear exactly who began the fight, though common sense would indicate that it was not the policemen.) As more policemen arrived, the initial fight was quelled. One of the two officers was injured (he required hospitalization) as were several 'Angels' (who did not).

The call for help illicited such response that soon there were over 100 policemen in and about the area. As officers arrived to find a brother policeman injured, several lost their tempers and forced their way into the clubhouse. Followed by an undetermined number of officers, they began to wreak havoc on the clubhouse. Pictures were ripped, a pool table was cut up, and possessions were generally flung about the building. While no one was hurt, the incident ended up destroying several thousand dollars worth of property.

The motorcycle gang protested the incident to the Internal Affairs bureau of the police department, which began an investigation. <sup>7</sup> Lists of officers on the scene were drawn up and the long process of taking statements began. Written statements were obtained from 12 witness civilians and from 60 police officers. Over 50 photographs of the damage were taken. Several officers, guilty of misconduct, recontacted Internal Affairs to change their statements. While policemen were generally antagonistic toward the gang and defensive of each other, a number of officers admitted to misconduct themselves and/or noted the abuses of others.

Over the course of 30 days, a 250 page report was prepared and submitted to the Chief of Police. His disciplinary action eventuated in the termination of four officers and the disciplining

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<sup>7</sup> For articles, editorial comments, and citizen responses regarding the investigation, see the Oakland Tribune of 5/28/78, 6/2/78, and the week of 6/4/78.

of four others. (Disciplining in this case took the form of from 10 days to 6 months time off from the force without pay).

Local press coverage generally was complimentary toward the Department's treatment of the incident. Even a motorcycle gang member lauded I.A. investigators in a television interview. The public reaction, as noted in chapter five, seemed to indicate that people felt that the Chief's actions to be too harsh on the errant officers. A characteristic "boys-will-be-boys" type of attitude on the part of citizens seemed to relate directly to the perceived moral worth of the victims of the malpractice. Many citizens felt that such people (motorcycle gang members) should expect that sort of treatment from the police.

While the specifics of this case are unusual (especially in terms of the numbers of individuals involved) the investigation's course was not. It will serve well for the purposes of our analysis because it was politically volatile enough to generate community interest and comment. The overwhelming majority of citizen complaint cases, of course, do not develop such interest. As we discuss our criteria of evaluation, let us specifically consider the interests of involved and of uninvolved parties interested in this case.

### III. Criteria of Evaluation

Police review systems have both retrospective and prospective functions to perform. In developing indices of evalua-

tion, we will first consider the retrospective tasks of police review systems.

#### A. Systemic Integrity

In investigating allegations of police abuse, review mechanisms must concern themselves primarily with policemen and complainants. In performing this task, the review organization takes on the form of an adjudicative as well as investigative body. Our first question, or set of questions, must then relate to the abilities of a review system to perform these investigative and adjudicative functions. We wish to question here the integrity of the system.

"Integrity" is indeed an amorphous concept to attempt to evaluate. By questioning a review system's integrity we mean to ask whether it is fair, thorough, and objective. The integrity question focuses upon the way in which the process deals with specific complaints. How does it "adjudicate" grievances? Is it thorough in its' investigatory processes? Is the system fair to both citizen-complainants and policemen? Are decision making conventions reasonably objective in their evaluations of facts and statements?

Of course, the citizen's notions as to the objectivity and thoroughness of a review process may only be perceptually linked to the actual conventions of that process. In most review systems, complainants are privy to only a small part of the system's operations. Thus, while the citizen's perceptions of investigative procedure and systemic integrity are important, they may be factually inaccurate.

Then too, the citizen complainants' evaluations of a system's integrity will tend to be directly related to the outcome which that system develops relative to his or her complaint.<sup>8</sup> If a complaint is found to be unsubstantiated by a review process, the citizen may naturally feel that the process was unfair or biased. If a citizen's grievance is upheld and an officer disciplined, the complainant will tend to support the integrity of the review system. Since, most complainants are not substantiated, most complainants are not satisfied with review mechanisms, whatever their form.<sup>9</sup>

Of course, policemen too are so closely involved in police/citizen interactions that their analyses of review systems are warped by personal perspective. We must therefore look equally askance at policemen's evaluations of review systems. Though they know much more about the law, policemen often are far too defensive of their own conduct (and that of their brother officers) to expect them to objectively evaluate review systems.

Police and citizen evaluations in and of themselves, cannot then be expected to generate an objective analysis of review systems. We must attempt to base our analysis of systematic integrity upon grounds which are less subjective.

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<sup>8</sup>99.4% of complainants whose complaint cases found the police to be correct in their actions, were dissatisfied with our review systems.

<sup>9</sup>Our survey of complainant attitudes, taken across six (6) review organizations, found that 70% of respondents were dissatisfied with the systems.

Our look at the integrity of the retrospective work of review systems calls us to question the morality of each review system as a miniature legal system. As Selznick states:

The effort to see in law a set of standards, an internal basis for criticism and reconstruction, leads us to a true Grundnorm--the idea that a legal order faithful to itself seeks progressively to reduce the degree of arbitrariness in positive law and its administration. 10

We seek to know if our systems are consistent and fair to policeman and citizen alike. In questioning the integrity of a review system then, we bring to it those same questions which Fuller so aptly has directed toward legal systems generally. We seek to question what Fuller has labeled the "morality of law". 11

Fuller points out eight basic indices of "morality" in legal systems. All are opposite to processes which apply rules and behavioral norms to police conduct. Police review systems are not, in a strict sense, "legal" systems. We will in fact see that the over-judicialization and "legalization" of review processes can have deleterious effects for administrative accountability schemes. Nevertheless, Fuller's concerns for the morality of legal systems are concerns to which a police review system must speak. Fuller's eight "routes to disaster" for a legal system are:

First and most obvious lies in a failure to achieve

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<sup>10</sup> Philip Selznick, Law, Society and Industrial Justice (Russell Sage; N.Y., 1969), p. 12.

<sup>11</sup> Lon Fuller, The Morality of Law (Yale Univ. Press; New Haven, 1964).

rules at all, so that every issue must be decided on an ad hoc basis. The other routes are (2) a failure to publicize, or at least to make available to the affected party, the rules he is expected to observe; (2) the abuse of retroactive legislation, which not only cannot itself guide action, but undercuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change; (4) a failure to make rules understandable; (5) the enactment of contradictory rules or (6) rules that require conduct beyond the powers of the affected party; (7) introducing such frequent changes in the rules that the subject cannot orient his action by them; and finally, (8), a failure of congruence between the rules as announced and their actual administration. 12

Each review system must be evaluated in terms of its fairness to the individual complainant and accused policeman along these lines. While we will not treat all eight issues in each of the systems chapters, we must have an eye for the morality of each process as an adjudicative mechanism.

How then would this system integrity question be applied to our Hell's Angels case? We would ask, in that instance, whether the motorcyclists were allowed free access to the complaint process or not. Were all relevant statements taken? Was appropriate evidence collected? Were the rules applied to the disciplined police officers understandable, consistent, prospective, and impartially applied? Were factual conclusions drawn objectively? Did the complainants feel they obtained their 'day in court'? Did the officers feel that they had been fairly and legally treated?

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<sup>12</sup>Lon Fuller, *ibid.*, p. 39.

Thus, our evaluations of the integrity of these five types of review systems must be based upon a balanced analysis of several factors. Policemen's thoughts, complainants evaluations, direct observations, and theoretical discussions must all come to bear upon these assessments. By considering each of these sources of information, we will hopefully be able to develop an understanding of the thoroughness, fairness, and objectivity of investigations and decision making processes for each review system.

#### B. Behavior Control

Aside from these 'adjudicative' functions, a review system has more prospective tasks to perform. As one former police administrator noted, "the structures of corruption control are irrelevant compared to the 'messages' sent out about corruption control."<sup>13</sup> From the perspectives of the community and the police organization, the prospective effect of review systems upon police behavior is indeed more important than the way in which individual complaints are handled. In theory, of course, all of our interest groups should be concerned with the effects of various systems upon police behavior.

Considering whether a review system tends to deter police misbehavior is a separate concern from evaluating its integrity. As we shall see with respect to civilian review (in chapter 10)

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<sup>13</sup>Cited in Lawrence W. Sherman, ed., Police Corruption (Anchor Books; N.Y., 1974) p. 211.

a review system can be "fair" to both citizens and policemen and yet not impact significantly upon police behavior.

A system may affect future police conduct in several ways. First, the specific complaint adjudicative mechanism may be rigorous enough to deter malpractice of certain kinds. Of course, some hold that transgressions against acceptable behavior patterns are not deterred by potential sanctions.<sup>14</sup> For example, it can be argued that crimes of violence are idiosyncratic, emotional acts. They thus do not involve logical evaluations (by perpetrators) of the potentialities of apprehension and the severity of punishment. In the area of police abuses, over-reactive violence is an example. It usually occurs in the heat of passion and may not be deterred by any type of sanctioning system.<sup>15</sup>

However, certain types of deviant behavior involve decisional patterns which operate over more protracted periods of time. When an individual has the time to contemplate potential sanctions, there is evidence that such sanctions do exert a deterrent effect upon behavior. As the Panel on Research on Deterrent and Incapacitative Effects concludes: "Taken as a whole, the reported evidence consistently finds a negative association between crime rates and the risks of apprehension, conviction, or

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<sup>14</sup>For a summation of the issues currently contested in the field see the report of the Panel on Research on Deterrent and Incapacitative Effects, Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (National Academy of Science; Washington, D.C., 1978).

imprisonment."<sup>16</sup> As we study police review, we must consider how policemen evaluate the certainty of punishment and the severity of potential sanctions. A system which appears rigorous and severe to street policemen may significantly deter their propensities to abuse their powers.

Second, the integrity of a system can affect the propensity of the system to influence police behavior.<sup>17</sup> A review process which is considered "fair" by police officers can generate a significant amount of respect for citizen rights, administrative rules, supervisory personnel, and the rule of law in general. On the other hand, an abusive, tyrannical system can create a cynicism toward these same things which will limit its effectiveness. Officers who distrust the integrity of a review process can easily rationalize lying and cheating in an effort to "beat" that process. More generally, a police review system which is not considered fair and legitimate in the eyes of policemen will be unable to foster the types of self-monitoring tendencies which professional groups may generate.

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<sup>15</sup> Regarding police abuses specifically, see Chevigny's statement of disbelief in deterrence, Paul Chevigny, Police Power Vintage; N.Y., 1969., pp. 270-271.

<sup>16</sup> *ibid.*, p. 4.

<sup>17</sup> While systematic integrity and behavioral control are two separate issues, they are not mutually exclusive. As with all four of our "greater" questions, these two play upon each other in interesting ways. They make for a most complex analytical problem when attempting to compare review systems.

Third, behavior control is related to the specific learning which does or does not eventuate from a review process. If individual policemen learn what types of mistakes they are making in a positive, corrective atmosphere, they will tend to change their behavioral patterns so as to conform to newly achieved knowledge. If, however, a system points out mistakes in a negative, accusatorial fashion, individual learning may be limited. Indeed, individual officers may consciously resist acknowledging mistakes. No individual learning whatever may be realized. The effect then of the review process upon future police behavior can be very restricted.

Fourth, the police organization may learn through the citizen complaint process, and this learning may affect police behavior. The citizen's complaint can be viewed as a piece of feedback from the community. It indicates a specific problem in police-community relations. Many of these pieces of data will be of little use in evaluating rules and policies. However, a review process might glean significant knowledge from analyzing trends in complaints. If a review process systematically attempts to analyze complaints as data, it may generate policy and training implications which can influence future police behavior. This will affect the propensity for complaints to be generated.

As with the integrity question, the effects of review systems upon police behavior will be difficult to compare. No

easily quantifiable data can be generated on the point. Some data which is available was considered and then discarded as inappropriate to utilize when comparing the behavioral impacts of various systems. Numbers of complaints or complaint filing rates, for example, might have been utilized to draw comparisons as to the deterrent effects of different systems. Then too, the rates at which complaints received were found to be valid (i.e., the police were guilty of misconduct) might have been employed in our analysis.

But these figures are potentially influenced by far too many exogenous variables to be useful. We have taken ample time above to illustrate how many complaints are 'frivolous', 'minor', or 'procedural',<sup>18</sup> in nature. Add to this the demographic variables (i.e., race, socio-economic status, and particularly, education) which differentiate the citizen populaces involved, and the propensity for citizens in general to complain may vary greatly irrespective of the type of system employed. And considering that sustained rates are determined by the system's themselves, these statistics are hardly of use either.

Of importance, here will be the training systems of police departments. Through well organized, thoughtful training, young officers, can be taught role expectation, which will affect

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<sup>18</sup> Depending upon one's point of view, any of these labels can be used to denote complaints which are products of citizen confusion, maliciousness, or delirium.

their behavior on the street. If training systems make use of information collected by review systems, individual learning and behavioral change can be significant. We must consider then whether any of these systems so educates their street policemen.

Again, considering the Hell's Angels example, our behavioral control question would ask whether disciplining these eight policemen will affect the future behavior of other policeman and/or of the four officers who retained their jobs. Did the investigation generate any information to be used for training purposes either at the Police Academy or for in-service training? In short, our analysis of the behavioral impact of a process seeks to determine if any affect at all is developed from complaint review other than the specific hearing of the citizen's grievance and the disciplining of errant policemen.

Thus, as in our first criterion, we must rely upon observation and analysis to compare behavioral impacts. The policemen who made up our sample groups were asked specifically about the deterrent effects of each system. Their comments will be of some value. Still, because of perceptual distortion, policemen's opinions will not be definitive of the conclusions of our discussion.

#### C. Community Perceived Legitimacy

Ideally, a community must have faith in the integrity and efficiency of its public institutions. The police in particular must maintain community images which foster cooperation. The policing of society is not just a difficult job for police

departments to do alone. To expect a relatively small number of individuals to monitor and control the behavior of mass populations is to expect the impossible. In Oakland, for example, each officer on the street, day or night, is expected to police over 5,000 people. This ratio is fairly representative of the expectations organized policing has for its troops. When one considers the variety of human behavior, the demographic and social differences evidenced by large urban populations, the geographic and time constraints involved, it is evident that without community based support no modern police organization could maintain order in mass society.

Community images then are crucial to the operation of police systems. So much is this case, that we should aim one question squarely at those images. For nowhere are citizen based concepts of the police more squarely focused, than upon police misbehavior of the type which our study considers. We have noted earlier the history of police abuses and the salience of the issue since the early 1960's. Police abuse is an issue of such emotional impact that it is often given copious media attention. In order to assure itself of necessary support and thereby protect itself from external intrusion, the police organization must covet the positive support of the community.

With respect to police abuse, this means making every effort to deal with abuses effectively. But it means more. Police review systems must appear to be "open" rather than secretive.

They must appear to the public to be objective and thorough processes for adjudicating grievances. This concern is, of course, separate from the particularized concern which individual complainants have for systemic integrity (outlined in Part A of this section). Particularly problematic is the distortion which external perspectives bring to such integrity evaluations. As with the individualized perceptions of complainants, community perceptions of the legitimacy of a review system may not be realistically related to the actual operation of the system.

Community wide perceptions of legitimacy are critical to more than the pragmatic, day-to-day abilities of officers to perform their charge. The community's perceptions of the thoroughness of police review systems can affect the politics of the budgetary process. Such perceptions can influence the amount of political pressure which is exerted upon police administrators. They can relate directly to the stability of the administrative hierarchy of the police organization and indirectly to the morale and productivity of street policemen.

Our consideration of the community's "perceptions" of the legitimacy of review systems may seem a bit patronizing. To worry so much about perceptions, separately from more substantive points of analysis, seems to be concerned with "window dressing". Yet Arnold points out in his classic work The Symbols of Government that such concerns are far from frivolous. The perceived legitimacy of police review systems can be of the utmost significance to police/community relations. It is as

important as is the amount of malpractice itself. Arnold tells us that:

Almost all human conduct is symbolic. Almost all institutional habits are symbolic. The symbols are everywhere inconsistent. Society is generally more interested in standing on the side lines and watching itself go by in a whole series of different uniforms than it is in practical objectives. 19

Arnold's point is not to indict society for its short sightedness, but to illustrate the importance of those "uniforms". With respect to the criminal justice system, he states:

...when the enforcement becomes directed, not to preserve public safety or convenience, but to justify a moral attitude toward law regardless of public convenience---then the common-sense idea with which we started (that the system was meant to maintain order by eliminating the occasional truly incorrigible person) has become the mystical ideal called Law Enforcement. 20

Similarly with respect to police review systems, the mystical ideal of "Police Accountability" must be served by a review system. That system must appear to be objective and thorough and rigorous. It must also appear to deal sternly with errant policemen. The social solidarity which this punishment develops is important to the conceptions of limited government held by people in the general community.<sup>21</sup>

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<sup>19</sup>Thurman Arnold, The Symbols of Government (Harbinger Books; N.Y., 1962), p. 17

<sup>20</sup>ibid., p. 152.

<sup>21</sup>See Durkheim's discussion of the social solidarity of punishment, Emile Durkheim, The Division of Labor in Society (Free Press; N.Y., 1964), pp. 70-110.

Regarding the Hell's Angels case, we would here ask if the general community perceived the case to have been properly handled. Is there citizen faith that the victim/citizens were fairly dealt with and that policemen guilty of misconduct were properly disciplined? Does the community feel that the review organization has not "covered up" more abuses than it admits? If the community is convinced that this case was handled properly, is it also convinced that such prudent action is not idiosyncratic to this particularly volatile incident?

Community legitimacy could possibly be measured in quantifiable data if time and other resources permitted. Our study was simply not able to devote the tremendous amount of energy necessary for the compilation of such data. What is available are somewhat selective interviews with political and community leaders as well as studies of local press coverage of our review systems. Once again of limited value are review systems statistics (concerning the numbers of policemen disciplined for example). These may or may not relate to community perceptions of the effectiveness and legitimacy of our systems.

The general community's perceptions of the legitimacy of a police review system have a variety of potential influences upon policemen and police organizations. They can also affect the attitudes of complainants and the general social milieu within which policemen encounter civilians daily. Thus, we must heed Arnold's counsel well and rigorously evaluate the perceived legitimacy of our systems.

#### D. Counterproductivity

Our first three questions have considered the interests of policemen, complainants, and the general community. They have concerned themselves, with the retrospective and prospective tasks of review systems. They have focused upon the substantive as well as the symbolic effectiveness of accountability mechanisms.

One more important, over-arching question must be asked. Perhaps most aptly in the name of police organizations, we must ask of each system how well it performs its functions, how well it speaks to the above three areas of concern, without significantly impeding the operations of the police. For using formal regulatory mechanisms to attempt to control discretion has its drawbacks. As Jowell cautions:

...law has both strategic costs and benefits, and these should be recognized and balanced against each other in the light of the situation that it is purported to control before any conclusion as to the inherent desirability of the legal control of discretion can be reached. 22

Of course we have taken some time to note that it is not clear what police organizations are supposed to do. Do they maintain order? Enforce law? Provide services? Deter crime? Or does their function lie somewhere in between these sometimes exclusive tasks? The amorphous nature of the "product" makes

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<sup>22</sup>Jeffrey Jowell, "The Legal Control of Administrative Discretion," Public Law, Autumn 1973, p. 179.

police systems at once fascinating and frustrating subjects to study. It can also make accountability schemes problematic, since it is not apparent what police behavior is most coveted. (We often know what we don't want policemen to do, but seldom can we agree upon what the police should be doing!) As we evaluate our systems, we must attempt to consider how any and all of these functions might be impeded by an accountability mechanism.

A review system can induce several counterproductive tendencies in police organizations. It can negatively affect the morale of policemen and police administrators. This may happen because it is perceived as capricious in its imposition of discipline. This difficulty of course, relates directly to our first question above.

Second, a review system may impede the operations of the police organizational bureaucracy by interfering with the authority of administrators to supervise their charges. This problem, of course, usually develops only with external review mechanisms.

Third, some review systems involve themselves in the development of police organizational policy. Sometimes such policy development interferes with the educated, experienced, pragmatic policy development which normally proceeds along specialized lines of expertise. A variety of secondary complications can arise when the dilettante collides with the expert pragmatist. The thoughtful dilettante's perspective can, of course,

be useful to any organization. But when the theoretically developed policies of this perspective argue with the realities of organizational life (or street police work), allowing the dilettante control can be dangerous for organizational morale, productivity, growth, etc.

Of course, the most important counterproductive tendency which a review system may develop in a police organization is the depreciation of the services delivered by that organization. The policing which is done may suffer as a product of any and all of the aforementioned dynamics. We have duly noted that the definition and measurement of the "product" which a police system delivers is difficult at best. However, it may suffice to point out that a review system can actually generate more complaints; it can make policemen reluctant to make arrests and solve situations; and it can introduce policies which severely limit police responsiveness and efficiency.

Policemen must aggressively pursue their charge or the public suffers. If a review system genuinely deters policemen from solving people's problems, we must weigh the costs of its operation closely. For the consequences of developing timidity in policemen can be equally as deleterious for society as can those of developing abusiveness in the police.<sup>23</sup>

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<sup>23</sup>See Walter Gellhorn's discussion of how the Swedish Ombudsman system can generate over-cautious behavior in the police; Walter Gellhorn, The Ombudsman and Others (Harvard Univ. Press; Cambridge, 1967), pp. 248-249.

One local newspaper man reported that policemen at Oakland P.D. were disgruntled over the Chief's handling of the Hell's Angels case. (In actuality, officer reaction was mixed, with many policemen feeling that the actions of those disciplined had gone far beyond the bounds of acceptable professional behavior). We might ask then how widespread such cynacism was? Will it affect the rigor with which Oakland's policemen pursue their charge? Will the treatment which policemen received at the hands of I.A. create cynacism in street cops about the Department and the public? Basically, are the symbolic and pragmatic gains of utilizing such a method of complaint review outweighed by the costs?

While comparing all of our review systems, we must carefully analyze whether the "price paid" for effectiveness (in influencing police behavior, for example) is too great. A police review system is severely limited in its effectiveness by many factors already outlined in Part II. If it ignores such limitations and seeks to be overly rigorous in its pursuit of malpractice, the system can actually generate some of the types of behavior which it ostensibly seeks to dissuade. A review system which does so become a liability to the community as well as to the police. For the community in general will suffer directly from the counterproductive effects of ill-conceived accountability systems.

#### IV. Summation

We will attempt in Part III then to bring four basic questions to our analysis of five types of operative review systems. To review, the set of questions are as follows:

- 1). Systemic Integrity: Does the review system have integrity? Is it thorough and objective in its investigations and deliberations? Does it treat policeman and complainant fairly and impartially?
- 2). Behavior Control: Does the review system's operation affect the behavior of policemen on the street? Does it deter malpractice? Does it foster individual and organizational learning?
- 3). Community Perceived Legitimacy: Does the community in general have faith in the system? Do political elites and minority groups in particular perceive its operations as sufficiently rigorous in disciplining misconduct and in controlling behavior?
- 4). Counterproductivity: Is the review system counterproductive vis-a-vis the police mission? How great a price does society have to pay for utilizing this method of holding policemen accountable for their actions?

Each of our four sets of questions is related to the others. Yet, they are all in a sense separate concerns. Some of our five types of review systems will speak most readily to one concern at the exclusion of all others. It is hoped, however, that by applying these sets of questions to each of the different mechanisms, we shall develop a rich understanding of the types of trade-offs which must be made by those who develop and maintain accountability systems.

For seeking to hold anyone accountable involves balancing interests. The police, as we have seen, are at once very powerful and yet very vulnerable. They must be allowed great discretionary latitude within which to pursue their multi-variant tasks. Yet they have been historically prone to abuse that latitude.

To attempt to control the excesses of policemen, without hampering their ability to rigorously and aggressively police the streets, is our task. It is, perhaps, an impossible one. Yet, police work itself is fraught with the same types of dichotomies and paradoxes as is police review. Thousands of policemen attempt to do what is perhaps the impossible (in balancing all relevant interests and charges) to police the streets of modern America. We should not shirk from our task anymore than they do from theirs.

Let us turn to consider our five different types of systems in operation. We should be careful along the way not to be

too critical of any of our systems, knowing the difficulties which each of them faces.

Chapter 8  
NON-CENTRALIZED CONTROL

I. Introduction

If at all possible, experiments should be constructed so that they include control groups. In our consideration of the effectiveness of police review systems, we would ideally ask; what would happen if you did nothing? What sort of processes naturally deter police malpractice? What sort of perceptual legitimacy would develop within the community without a mechanism for the reception and adjudication of civilian complaints?

These questions are impossible to answer in the context of modern police work. The California Penal Code specifically requires that all of our west coast departments maintain a process for the reception and adjudication of civilian complaints.<sup>1</sup> The current chapter will consider what is, in the real world, the closest system to a control group. We shall herein discuss a large police organization which has no consistently utilized central control mechanisms for dealing with civilian complaints.

The non-centralized system here discussed is not subject to any review mechanism external to the department. This department's non-standardized, non-reviewable system of handling

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<sup>1</sup>Section 832.5 of the California Penal Code provides in part that; "Each sheriff's department and each city police department in this state shall establish a procedure to investigate citizen's complaints against the personnel of such departments."

complaints is the closest we might come to a "non-system". It is doubly important because its processes illustrate the type of complaint mechanisms operative in most police departments before the advent of the types of internal and external systems considered in later chapters.

The Contra Costa County Sheriff's Department is a relatively large police organization. It has 439 employees and about 300 sworn policemen. Its patrol division utilizes approximately 120 men to police an area of 584 square miles. A small minority population of 18,000 is concentrated in two areas of the Sheriff's jurisdiction.

The Sheriff's office polices a suburban and rural population of 180,000, the County's labor force is mostly composed of blue collar and white collar workers who commute to the Oakland/San Francisco bay area for work. The suburban nature of this population creates different dynamics (in terms of police review) than exist in our other departments. Unlike our other police organizations, the Contra Costa Sheriff's Department is not the focal point of significant political pressure aimed at controlling any of its internal processes. Indeed, the Sheriff's Department exists almost within a political vacuum. Geographically, the Sheriff's office is isolated from the majority of the population which it polices.<sup>2</sup> The Sheriff's Office has remained aloof from the types of highly publicized policy contests which characterize the relationships between our urban organizations and local political groups.

The Contra Costa Sheriff's Department has had to deal with no major riots of the kind experienced by inner-city departments. There are no university campuses within its jurisdiction, and no large cities. No significant minority communities exist like those which have in our other police organizations brought pressure to bear regarding accountability systems. Civilian control has never been an "issue". Nor has the Sheriff himself been subject to political pressures aimed at centralizing and "professionalizing" review systems.<sup>3</sup>

Thus, the system of receiving and adjudicating civilian complaints has never been centralized at the Sheriff's Office. The existing, non-centralized system is almost idiosyncratic in its handling of civilian complaints. Complaints are not, of course, totally ignored. No contemporary department could allow such a process. However, complaints are almost always handled at a local level within the departmental structure. Uniformed street sergeants investigate misconduct alleged against their own subordinates. Many modern police organizations delegate investiga-

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<sup>2</sup>The Sheriff's Office is physically located in Martinez, California which is an incorporated city. The unincorporated areas of the county-which it polices-are removed by significant distances from the Sheriff's Office facilities. The overwhelming majority of the population policed by the Sheriff's Office resides more than 20 miles from the physical plant of the department.

<sup>3</sup>Even a 1975 scandal (which resulted in several policemen being terminated for stealing), did not generate such pressures.

tions to line supervisors in such a way.<sup>4</sup> However, Contra Costa is relatively unusual in that it does not systematically monitor these local investigations.<sup>5</sup>

The Contra Costa system may seem illegitimate on its face, given the sophisticated, rigorous systems in operation at other police organizations. But, as we analyze this non-centralized system, we must consider several points. First, the Sheriff's Department does not maintain a centralized control system because there is no political necessity to do so. Centralized internal affairs organizations, ombudsman officers, and civilian review systems all cost money. Some of these processes utilize significant amounts of personnel and monetary resources from police departmental and city-wide budgets. Even the two men assigned to Internal Affairs at the Berkeley Police Department (the smallest investigative body studied) draw over 50 thousand dollars a year in salaries and expenditures from the departmental budget in order to accomplish their internal review function. Within the Contra Costa Sheriff's Department, such expenditures have never been politically "necessary". It is easy to see why

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<sup>4</sup> Los Angeles P.D., for example, assigns the overwhelming majority of its complaints to be handled at the local, division level. In Los Angeles, however, a centralized Internal Affairs organization does maintain a monitoring system which regulates the assignment of each case and exercises quality control over such delegated investigations.

<sup>5</sup> A recent survey indicates that only 18.3% of modern police organizations do not have centralized complaint systems. See Robert C. Cancilla, "Handling Citizen Complaints at the San Mateo County Sheriff's Office: A Manual of Policy and Procedures", unpublished Master Thesis, San Jose State University, Dec., 1977 p. 56.

the departmental administration has not taken it upon itself to create such structured review organizations.

Second, it must be remembered that (as noted in chapter 6), police employee organizations have never brought pressure to bear toward the creation of such organs. In fact the opposite has been the case. Instead of demanding the formation of professional control bodies, employee organizations have considered them superfluous. In Contra Costa County, after all, a civilian complaint procedure (though decentralized) does exist.

Finally, and most important, there are positive reasons for such non-centralized control. The decentralized model may appear more accessible, thorough, and responsive to certain aggrieved citizens. It may speak to their needs more directly than a formal, centralized process. And from the Sheriff's Department's perspective, the system is certainly the most protective of all those studied.

Let us consider the non-centralized civilian complaint system of the Contra Costa Sheriff's Department with an eye toward learning the positive dynamics which can develop from such an informal process.

## II. Non-Centralized Control Procedures

### A. Input Structures

Many of Contra Costa's complaint processes are throw-backs to the "old days" of law enforcement. For example, the Sheriff's Office refuses to accept anonymous complaints. Anyone who will

not sign the standardized complaint form or who mails in a complaint without giving their name and address, does not generate an investigation. Of all the organizations considered by our survey, the Sheriff's Office is the only one which maintains this policy. Such a convention in effect denies to anonymous citizens the right of redress of grievances. Sheriff's Departmental administrators feel, however, that such investigations would be a "waste of time".<sup>6</sup>

The overwhelming majority of complaints accepted by the Sheriff's Department are received over the telephone. As noted above, the Sheriff's Department's physical plant is geographically removed from the populace which it polices. Seldom does a citizen walk in to the Sheriff's Office building and file a grievance. The occasional complainant who does show up at the Sheriff's Office is interviewed by a uniformed policeman in the office of the Patrol Division Watch Commander.

When a complainant contacts the Sheriff's Office by mail or by phone, the department sends out a uniformed sergeant to contact the citizen (usually at his or her home). This sergeant brings with him departmental complaint forms. The forms are explained and the civilian is advised that he or she may fill them out and mail them in. Usually, the uniformed sergeant

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<sup>6</sup>From an interview with Contra Costa Sheriff's Office Division of Inspection and Control, on 6/2/77.

takes a statement immediately. The uniformed sergeant himself is in charge of the investigation.

The street sergeants who investigate complaints at the Sheriff's Department are given a great deal of latitude to deal with the complaint input process. Initially, they "try to squash it right there."<sup>7</sup> "Squashing" a complaint consists of explaining procedures to the complainant or even apologizing for the errant actions of policemen. Essentially, the process entails giving a satisficing answer to the aggrieved party. Simply put, the sergeant "cons" the citizen out of following through with the complaint. This process is usually successful. Officials at the Sheriff's Office estimate that between 70% and 90% of the complaints they receive are so "squashed".<sup>8</sup>

A rationalization does exist for allowing sergeants to thus limit formal investigations. Most administrators at Contra Costa feel that civilians are favorably impressed with the appearance at their residence of a uniformed sergeant. The theory is that civilians appreciate contact with the immediate supervisor of the accused officer. Thus, the citizen will perceive that the Sheriff's Office is taking his complaint seriously. He is lead to believe that someone who has immediate contact with the

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<sup>7</sup>From an interview with the Commander of the Inspection and Control Division at Contra Costa County, on 6/16/77.

<sup>8</sup>From a variety of interviews with street sergeants and administrators at Contra Costa County Sheriff's Office. From 1976 thru this writing in 1978.

erring policeman will, at the very least, admonish the officer. Contra Costa administrators feel that this process is more personalized and less "cold" than classic "internal affairs" systems.

This system is, of course, replete with problems. Sergeants might easily persuade or intimidate citizens out of filing legitimate grievances. The right to redress of governmentally directed grievances may be effectively thwarted by these conventions. There is no way to guarantee that it is not. "Short-circuiting" complaints which are minor in nature is an important function of any review process. However, doing so in such a fashion, isolated from any public or organizational scrutiny, can foster the most deleterious of abusive practices.

In Contra Costa, a full complaint investigation is generated only if a civilian fills out the forms provided by the sergeant. (A brief, informal record is kept at the division level of complainants who phone in but do not eventually fill out and send in the complaint forms.) Thus, complaint statistics from the Sheriff's Department are not really indicative of the number of aggrieved citizens who contact the organization. An actual count of complaints received is not officially kept.

It should be noted that the present section outlines processes generally followed within the Patrol Division of the Sheriff's Office. As there is no systematic, centralized monitoring system, other divisions within the department may have

developed different methods of handling complaints.<sup>9</sup> Our study is interested primarily in grievances generated by uniformed street policemen. We have therefore focused only upon the Patrol Division's system of handling complaints.

#### B. Investigations

As a general policy then, civilian complaints against patrolmen are handled by the Patrol Division. For the majority of complaints received, the highest supervisor aware of the investigation will be a lieutenant or "watch commander". This watch commander will assign the case to a street sergeant. The sergeant has full responsibility for the investigation of the complaint.

There are several exceptions to this rule of delegation. First, if the division commander determines that a complaint is "serious", it may be handled at a higher level.<sup>10</sup> It is interesting to note that at the Sheriff's Office, "serious" complaints involve either criminal or morals charges.<sup>11</sup> Complaints of excessive force or brutality, however, are not normally considered serious. They are not passed up the chain-of-command for investigation by the seldom used investigators of "Inspection and Control."

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<sup>9</sup> For example, the Sheriff's Office maintains three (3) separate jail facilities throughout the county wherein complainants are also generated.

<sup>10</sup> The "Inspection and Control Division" on rare occasions conducts such "higher" investigations. Unlike an Internal Affairs organization, "I. and C." has various other duties to perform including police officer training, police recruit background investigations, and the organization of a reserve police office corps.

Second, complaints are handled by I. and C. if they are generated from an outside agency.<sup>12</sup> Nowhere it is made clear why this policy exists. It may be a political concern of the Sheriff that he have a more accurate and in depth evaluation of complaints when they relate to other police departments. More probable is that high level administrators of the Sheriff's Department do realize the necessity for internal, centralized inspections. They, however, only take cognizance of those necessities when the potential exists that the Sheriff's Department may lose face and appear archaic to other law enforcement agencies.

Finally, the Inspection and Control Division will review a complaint should the uniformed sergeant's investigation find misconduct on the part of a patrolman. Investigations which have already resulted in "sustained" findings<sup>13</sup> are sent up the chain-of-command above the division level. If higher administrators are not satisfied, they may reassign such cases either to the division commander or to I. and C. investigators.

Investigations themselves proceed along very informal lines. Street sergeants do not "interrogate" their charges as is done

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<sup>11</sup>For example, accusations that officers might be guilty of theft, smoking marijuana, or cohabitation will usually be considered "serious" and handled centrally.

<sup>12</sup>For example, an officer arrested for or suspected of any criminal activity by another department will generate a centrally controlled investigation.

<sup>13</sup>"Sustained" meaning the accused policeman was found guilty of misconduct.

elsewhere. The employee's side of the incident is normally obtained by the street sergeant in a casual talk with the patrolman. These "talks" usually occur out on the officer's beat. They will often take place in the relaxed atmosphere of a coffee shop. The street sergeant will obtain "statements" from witness officers in a similar manner. Statements are paraphrased by investigating sergeants. Rarely is a policeman required to answer a complaint in writing. Quite often, a complaint is investigated even before police reports about the incident are written. The initial talk between employee and sergeant then can affect the way official police reports are written. (Seldom does an officer contradict himself between verbal statement and written report.)

When a written investigation is compiled, it consists of the paraphrased statements of accused officers, witness officers, witness citizens, and complaining citizens. As a rule, no statements are taped or hand written by the actors involved. (On occasion, a memo will be written by the accused officer and included in the complaint investigation.) No formalized check list exists to standardized the complaint investigation process.

### C. Deliberations

Once an investigation has been completed, a "finding" must be developed wherein the accused officer(s) are either found guilty of misconduct or exonerated of wrong-doing. Findings at Contra Costa Sheriff's Office are suggested by investigating

sergeants and then reviewed above. Formalized investigations are normally sent up the chain-of-command only as high as the commander of the Patrol Division. All complaints wherein officers are found to be not guilty of misconduct (as per the sergeant's recommendation) are then filed at that level. Depending upon their gravity, however, allegations of abuses which are substantiated by local investigations may be reviewed as far up as the Sheriff himself. This after-the-fact review of sustained complaints is the only central monitoring which occurs on a regular basis. No check whatsoever is kept upon "unsubstantiated" complaint investigations.

There are no formal hearings or deliberative processes in the Sheriff's Office complaint system. The highest supervisor to review a complaint investigation (often a lieutenant) makes the final determination as to officer culpability. Neither the civilian complainant nor the accused officer has any right to appeal the decision of the local supervisor. Should an investigation find misconduct to have occurred, the officer is subjected to a "revolutionary" disciplinary system now in its experimental stages. This system deserves our closer attention.

#### D. Correction Without Punishment

In the fall of 1975, the Contra Costa Sheriff's Department began to employ a new disciplinary system.<sup>14</sup> The department had experienced problems with its disciplinary processes in the form of employee grievances, civil service hearings, and court liti-

gation. Beside the organization's problems, there was the individual employee to consider. Under the conventional system:

"There appeared to be no real attempt to improve the employee's performance. There was nothing to indicate to the employee that the organization wanted him to stay with the department and to improve his performance...suspensions and demotions did not appear to have the desired effect on the employee. The employee after a disciplinary action was generally very negative in his attitude towards the department." 15

It was decided by the Sheriff that a new system was needed to replace the more traditional, punitive system. The new plan is based upon a process developed by John Huberman, an industrial psychologist in a British Columbia plywood mill.<sup>16</sup> A preliminary attitudinal survey conducted at the Sheriff's Office indicated that morale and performance had indeed suffered because of existing disciplinary processes.<sup>17</sup>

Several premises underwrite this revolutionary system. As Richard Rainey (its developer) points out:

1. Punishment in terms of reprimands, suspensions, demotions, etc., generally does not improve or change an employee's behavior or work performance.
2. Punishment is generally detrimental to one's self-image.

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<sup>14</sup>At the Sheriff's Office, this new system involves various sorts of disciplinary problems. It includes sustained citizen complaints, avoidable vehicular accidents, and shooting policy violations.

<sup>15</sup>From an unpublished report to the Sheriff by Richard Rainey entitled "Correction Without Punishment", p. 23.

<sup>16</sup>See John Huberman, "Discipline Without Punishment", Harvard Business Review, July-August, 1964.

3. Every employee needs to maintain a positive self-image or sense of self-approval or self-worth.
4. Conformance to departmental rules and regulations cannot be forced on an employee through punishment; it occurs only when the employee knows the rules and chooses to conform to them.
5. Change or improvement in an employee's behavior come about if the employee chooses to change his behavior.<sup>18</sup>

Rainey thus rejected regulations and designed the new system to take advantage of the strengths of self-controlling behavioral patterns. The system is thus meant to be a positive, "counseling and training" approach to discipline. It consists of four "phrases" all of which are supposed to give the policemen opportunities to correct performance deficiencies. When an officer is found guilty of misconduct, he is "placed" into Phase One. Phase One consists of a "friendly" interview with the officer's sergeant. A written record of this interview is made. The positive corrective actions taken are also noted. Such actions normally consist of verbal admonishments, but can involve specialized training. (For example, an officer who is placed into the system

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<sup>17</sup> See Richard Rainey and John Quartarolo, "Correction Without Punishment", The Police Chief, January 1978, p. 40.

<sup>18</sup> Ibid., p. 40.

because he is responsible for an on-duty vehicular accident, may be required to attend defensive driving classes.)

An officer will enter Phase Two if he is involved in a disciplinary incident within three months of the Phase One interview (again, disciplinary incidents may include general job performance problems and driving problems as well as substantiated citizen complaints.) Phase Two consists of an interview with the officer's sergeant and lieutenant (duly recorded) and perhaps additional training. Phase Three becomes implemented if a problem occurs within three months of Phase Two. Here, the division commander is involved in the interview. Phase Four follows if an additional incident occurs within six (6) months of Phase Three. In Phase Four, the employee is confronted by the Assistant Sheriff and sent home for a day (with pay) to "think about" the severity of his disciplinary problem(s). If another problem occurs within one year, the employee is terminated under Phase Five.

Up to Phase Three, division commanders determine the training required by disciplinary problems and the particular phase into which an officer is placed. Considerable flexibility exists to skip or repeat phases at the commander's discretion. Thus five transgressions are neither necessary nor sufficient to insure termination of an errant employee. Beyond Phase Three, the Assistant Sheriff or Sheriff himself decides the outcome of the process.

"The system is seen as an effort to improve the employee's future behavior through these constructive interviews and positive training."<sup>19</sup> Thus, the process seeks to supplant more traditional sanctioning mechanisms which utilize suspensions, fines, demotions, transfers, or official reprimands as punishment for errant behavior. In order to be a genuinely positive system, the plan includes purging rules which expunge written records of interviews and "phasings" if employees are not involved in disciplinary problems for prescribed periods of time. Thus, the employee who makes a genuine effort to improve his job performance can erase all traces of disciplinary proceedings which in traditional systems might later affect career objectives such as promotions.

If, on the other hand, an employee does not improve and is terminated under the plan, the department will have a well documented record of positive efforts it has made to help the errant employee. Contra Costa administrators feel that the system will thus develop a codified record of transgressions which will stand up to the review of the Civil Service Commission or the courts (should a terminated employee appeal a disciplinary firing.)<sup>20</sup>

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<sup>19</sup> Ibid., p. 41.

<sup>20</sup> In practice the Plan has a very limited history. We cannot make any definitive predictions as to its' long term effect upon behavior and subcultural norms. However, this disciplinary experiment should be monitored by administrators both within and without enforcement circles.

Having briefly outlined the Contra Costa decentralized system, let us turn to analyze the process with respect to our four "greater questions."

### III. Evaluation

#### A. Systemic Integrity

Generating a complaint in the Contra Costa review system appears to require little effort on the part of complaining citizens. The complainant need not travel to the police department itself in order to file a grievance. Most organizations, of course, will take complaints over the phone or thru the mail. But, the Contra Costa process eliminates the convention that complaining citizen's statements be taken at the police department itself.

An offshoot of this practice is that the complaining citizen need not be intimidated by police departmental facilities. He or she is, of course, confronted by a uniformed police sergeant when filing a grievance. However, this "confrontation" occurs in the familiar surroundings of the complaining civilian's own residence. Thus, as Contra Costa administrators are quick to point out, the process eliminates a confrontation with the complaining civilian amid "coercive" or "intimidating" police departmental surroundings.

It is important that any review mechanism allow citizens complete and easily obtainable access to its processes. The Contra Costa system might appear to be the most "easily" mobilized

process studied. However, there are many problems with this input process.

First, this is the only system studied which refuses to take action on anonymous complaints. Each of our other processes has long since taken note of the potential fears of complainants. Other systems have all made some allowance for generating investigations when citizen complainants refuse to identify themselves. A bona fide complaint may not be filed because a citizen fears police retribution for taking such action. These types of fears must be considered if a review system is to be objective, impartial, externally perceived as legitimate, and able to generate feedback as to its agent's performances.

Second, the explicit function of the system's input mechanism is to "stifle complaints". Street sergeants who contact complaining citizens tend to defend their charges against almost any accusation, no matter how well founded. When a uniformed sergeant arrives at the residence of a complaining citizen, he may use his intellect, poise, and charm to satisfactorily explain departmental procedures or the actions of erring policemen. He may also use his uniform, badge, and general "police carriage" to deter (if not intimidate) civilians from filing grievances. No one inside or outside of the organization can really monitor what goes on in these private sergeant/complainant discussions. The potential for abuse at this point in the system is indeed great. Our survey of complainant's attitudes, in fact, turned

up several respondents who complained of having been rudely treated by street sergeants at Contra Costa. These complainants stated that sergeants did attempt to dissuade them from filing a complaint.

Historically, the police have often been guilty of intimidating complainants. A study conducted in Washington, D.C. found that almost 40 percent of citizens filing complaints against policemen in 1962 were charged by the police with filing false charges. The False Charges section of the Penal Code was invoked only 0.3% of the time regarding citizen complaints against other citizens.<sup>21</sup> Similar problems existed in Los Angeles and New York City.<sup>22</sup> In Philadelphia, standard operating procedure used to include arresting citizens for "resisting arrest or disorderly conduct whenever the person charged the police with brutality."<sup>23</sup>

Judicial review of police abuses was discouraged, as well as the filing of complaints. As late as 1964 in Boston, "when an arrested person is detained in jail overnight, it is the practice to require him to sign a paper releasing the police from all civil liability for acts connected with his arrest and detention. Signing such a paper is a condition of his discharge

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<sup>21</sup>National Capital Area Civil Liberties Union, "A Proposed Revision of the System for Processing Complaints Against Police Misconduct in the District of Columbia", June 1964, p. 17.

<sup>22</sup>See Ed Cray, The Big Blue Line, (Coward-McCann, N.Y., 1967), p. 179.

<sup>23</sup>Philadelphia Review, "First Annual Report", September 15, 1959, p. 5.

from custody."<sup>24</sup>

Thus, reluctance on the part of citizens who wish to complain is not a product of irrational paranoia. It is reasonably based in fact. It can deter bona fide complaints from being filed. This fear must be considered by any review system. Police review processes must attempt to overcome it, if they genuinely seek to monitor police abuses and to improve the quality of policing delivered to the citizenry.

Aside from the input stage, the lack of centralized monitoring in Contra Costa fosters additional problems with respect to the system's integrity. It is problematic to expect that street sergeants will investigate their own charges objectively, and rigorously without some sort of monitoring of these investigations. As Lawrence Sherman points out:

What is at stake is no less than conflict of interest--in a sociological, if not legal, sense. Investigation is a very intuitive and "muddling through" process, the success of which is often determined by the zeal of the investigator. To the extent that an internal investigator defines himself as betraying his own kind, he may be that much less zealous. 25

We shall see in the next chapter, that even centralized, rigorous internal review processes are not perceived as being

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<sup>24</sup>Lou L. Fuller, The Morality of Law (Yale Univ. Press; New Haven, 1964), p. 158

<sup>25</sup>Lawrence W. Sherman, "Police Corruption Control: New York, London, Paris", in Police Corruption: A Sociological Perspective, ed. by Lawrence W. Sherman (Anchor Books; N.Y., 1974), p. 227.

thorough and objective by sources external to the police organization. The problems of investigative thoroughness exhibited in the Contra Costa system are so monumental that they required little comment. The immediate supervisor of an accused officer is a "brother" policeman. He is part of the police sub-culture. To expect that he will rigorously hold his peer accountable without any systematic review of his investigation is tantamount to expecting that police abuse itself will spontaneously disappear. Both might happen. To expect that they will, however, is a bit optimistic. Citizen respondents to our survey do not hold such optimism. Among Contra Costa complainants, 43.4% feel that some civilian monitoring of those investigations is necessary.

For a complaining civilian, no appeal exists from the street sergeant's decision. No more formalized process operates wherein the complainant may be heard (i.e., a formal hearing). Similarly, appeals to those higher in the departmental hierarchy are seldom effective.<sup>26</sup> This is especially the case due to the non-centralized nature of the grievance process. Sergeants who have defended the actions of Deputy Sheriff's are in turn defended by lieutenants.

Since no centralized process exists to monitor the investigations done at localized levels, a complaint may be stifled

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<sup>26</sup> Several complainants bemoaned the insensitivity to appeals of high ranking Sheriff's Department officials.

without the "acceptance" of the complaining civilian. The grievance is rarely considered again by any member of the department.<sup>27</sup> Bona fide complaints as well as "trivial" ones may therefore be stifled by such a system.

The Contra Costa system does not standardize the complaint process itself. Complaint investigations are handled differently by supervisors in diverse parts of the organization. Therefore, no consistency necessarily develops throughout the process. This lack of standardization in the complaint process can generate negative feedback from uniformed officers as well as from complainants. While the Contra Costa process most often protects erring policemen, it can be viewed from their perspective as capricious and unfair.

That police officers can believe a disciplinary process to be idiosyncratic is very important. Lon Fuller's concern that laws must remain consistent in their application is here apposite. Officers on the street can harbor feelings of self righteous indignation toward internal discretionary processes which are not given even-handed application.

Most of our Contra Costa policemen indicated a disdain for the disciplinary system which related to this lack of consistency. As one officer noted, "it's not the same for everybody. One sergeant will protect the guys he likes...bend over backwards for them...then another guy'll try to fry everybody."

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<sup>27</sup>When a complaint is considered again, it is usually due to the potential political influence of the complainant.

How is such an obviously biased and inconsistent system rationalized?

Contra Costa administrators point out that most Internal Affairs processes appear rather aloof and "mysterious" to complaining citizens. These administrators claim that the use of uniformed police personnel to handle complaints is perceived by citizens as more responsive than is the referral of complaints to more isolated investigative personnel. Centralized internal investigative personnel may indeed be more "professional", "objective" and "correct" in their investigative techniques. However, the closed nature of such processes can be the basis of doubt in the minds of complaining citizens as to the legitimacy of investigative systems. Contra Costa officials feel that their process averts these problems.

Then too, Contra Costa supervisors note that civilians may perceive such a system as effective because the errant policemen's supervisors are in charge of investigations. At San Jose P.D., both civilian and police personnel often demand to talk to "policemen" when confronted by a civilian intake official.<sup>28</sup> Thus, to some civilian complainants, only police personnel are acceptable as complaint investigators.<sup>29</sup>

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<sup>28</sup>From interview with Rudy Belluomini, civilian intake analyst at San Jose P.D.'s I.A., 6/21/77.

<sup>29</sup>Our survey indicates, however, that while 39.1% of Contra Costa respondents agree with such supervisory investigation, only 19.9% of all complaints (across all six organizations) so agree.

On balance, the integrity of the Contra Costa, non-centralized system is highly suspect. No bona fide attempt is made to make the system objective or fair to complainants. The thoroughness of investigations is usually limited to that amount of effort which is necessary to protect policemen and the organization. Street policemen and administrators make no secret of this.

Some citizens are highly impressed by decentralized system of supervisors handling complaints. Yet most feel that the objectivity, thoroughness, and fairness of the system is suspect. From an analytical perspective, the cynacism which some of our complainants hold for the process is well founded. Though obviously feasible in Contra Costa County, the integrity of this system is so problematic that it could hardly survive even the most cursory scrutiny of any other local political system.

#### B. Behavior Control

No foolproof system will ever be devised to avoid tensions between line troops and administrative staff. Contra Costa's decentralized system, however, significantly lessens such tensions. At the very least, it can be said to focus disciplinary responsibility where some feel it should lie; with the immediate street supervisor.<sup>30</sup> Theoretically this convention should create an administrative atmosphere most condusive to the control

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<sup>30</sup>See O. W. Wilson, Police Administration 3rd Ed. (McGraw Hill; New York, 1972), p. 210.

of abusive police behavior.

The decentralized system requires that the accused employee's supervisor spend his time to investigate complaints. The more complaints received, the more of the supervisor's time so spent. Eventually, this should lead to anti-complaint pressures being generated between supervisors and employees. The supervisor who must work harder when his troupes receive many complaints will eventually attempt to control misconduct by his men. The end product then should be an organizational pressure to minimize the number and gravity of complaints.

We have discussed the tremendous significance of police sub-cultural norms and the solidarity within the police subculture. The decentralized process is potentially strong in light of these dynamics. If the system successfully generates anti-complaint pressures, those pressures come from actors closest to the street cop experience; street sergeants. There is every likelihood that pressure from such co-workers will be more effective in influencing police behavior than pressure from almost any other actors.

The Huberman disciplinary system too holds great potential for influencing police behavior. Its positive, training focus can change the type of adversariness which (as we shall see) germinates in other review systems. In theory, it can foster organizational as well as individual learning. It can aid in breaking the tremendous solidarity among police co-workers<sup>31</sup> which

creates external distrust of police organizations. The Huberman Plan may make policemen more positively disposed toward changing errant behavioral patterns. It seeks to correct police malpractice without punishing police officers. Theoretically, it may succeed in effecting much positive change without the counter-productive side affects which obtain from other, more rigid disciplinary processes.

Unfortunately, the Contra Costa decentralized system has in practice not lived up to its theoretical potential. Its prospective affect upon police behavior is minimal at best. Contra Costa officers exhibit less knowledge of departmental procedures for handling complaints and less acceptance of the citizen's right to make a complaint than any of our other sets of interviewees. These officers indicate that little or no pressure has ever been generated formally or informally against malpractices relating to citizens.

Several things may explain these findings. Perhaps the decentralized investigative process is so uncontrollable that policemen and sergeants feel they are completely free to act as they please without fear of review. Then too, even when review does occur, the Huberman Plan may allow malpractice to flourish by not "punishing" errant officers. Many police supervisors in

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<sup>31</sup>By allowing officers to acknowledge mistakes--of their own and of others--without fear of official retribution. As one officer stated, "the system works so you don't feel to uptight about making a mistake."

Contra Costa and elsewhere are concerned about the lack of punishment in the Huberman Plan. These men feel that without the ability to inflict punishment, no disciplinary system can effectively monitor police malpractice. Policemen are "only" given purgeable written reprimands for whatever transgressions they commit (short of terminable offenses). Therefore, an erring policeman is not required to "pay" for his misdeeds.

Many administrators feel that policemen functioning under this system will soon learn that their abuses do not lead to punitive sanctions. They will then feel free to misuse their power in a variety of ways. Thus, such a non-punitive system would issue a sort of carte blanche to abusive street policemen. The lack of political saliency of police accountability as an issue in Contra Costa allows the experimental system to operate without external opposition. However, in areas where police malpractice has become an issue over time, it seems apparent that the Huberman Plan would encounter difficulty. Opposition would come from both police administrators and from civilians.

The totally decentralized system has an additional problem. The process does not allow the departmental administration to obtain feedback regarding certain complaints of significant interest. This means that the organization does not learn from the complaint process. The overwhelming majority of complaints initially received are not transformed into knowledge. (Com-

plaint patterns could, of course, be of use to the organization.) Complaint information is not available to training personnel, planners, or supervisors. Even those few investigations done "formally" are quite often handled at a level removed from the administrative decision making apparatus. Thus, policy decisions are made in ignorance of trends in citizen feedback. The inability of the system to learn, to generate information from complaints is detrimental to the interests of organization, citizen, and street policeman alike.

It must be noted that all of the problems of the Contra Costa system may relate to a central reality of this police organization and of this suburban population: there is a paucity of complaints in the first instance. So few are received each year in Contra Costa<sup>32</sup> (and such a small percentage are formally "investigated") that an awareness of the complaint process has not developed among policemen. Officers do not focus upon citizen complaints and investigatory processes as they do in our more urbanized organizations. Their lack of concern over complaints is very unusual among modern policemen. This indifference is translated into a disregard for the citizen's right to grieve.

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<sup>32</sup>Approximately 45 official investigations are handled each year. This number is, for example, about one third of that handled by Berkeley P.D.; an organization of similar size.

The impact upon day-to-day police behavior of Contra Costa's completely decentralized citizen complaint process is therefore slight. Policemen do not take complaints (or complainants) seriously. As one patrolman put it, "I'm not worried about complaints, my Sergeant takes good care of me."

### C. Community Perceived Legitimacy

Analytically, the Contra Costa complaint review mechanism is perhaps the least likely of all systems to be considered "legitimate" from the community's perspective. It is completely confidential, offering no information to the public or to the aggrieved citizen about the process in general or about specific investigations. Administrators at the Sheriff's Department candidly state that the avowed purpose of the input process is to stifle complaints. Then too, investigations are handled by the immediate peers of accused officers. At every turn, the process is subject to attack in terms of its ability to afford citizens the right to petition for redress of grievances.

The ability of any organization to objectively and thoroughly investigate its own activities must be seriously questioned by anyone who is a student of human nature. While we know that public organizations perform internal review functions well at times, their ability to be truly critical of their own competence and honesty has to be examined. As Albert Reiss points out "Accountability in a democratic society requires that a citizen's complaint cannot become the property of the very agency against

which the complaint is lodged."<sup>33</sup> In Contra Costa, this is indeed what happens. The complaint, once lodged, is investigated (if at all) in the most clandestine fashion. It is even kept from the view of the organization's own hierarchy! Only if the street policeman's peers find him guilty of misconduct, is the case reviewed by anyone remote from the accused officer. And as the President's Task Force on the Police comments, "unless the public has access to reliable information (about internal investigations), it is likely to assume the worst."<sup>34</sup>

Despite these analytical assertions regarding community legitimacy, it must be re-emphasized that the Contra Costa process has not come under significant attack from the community or from local political elites. Because of this lack of political pressure, the Sheriff's Department has placed its own organizational goals above those of the complaining citizen. The instant process protects policemen and the police organization. Of course, as Ed Cray notes:

The Department's goals do not necessarily correspond to those of the aggrieved citizen seeking some sort of satisfaction; the department is concerned solely with the violation of its own rules, not of state law. This divergence of ends, couples with the almost unswerving secrecy surrounding investigation... makes the internal review mechanism an unsatisfactory means of redressing civilian complaints. 35

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<sup>33</sup> Albert J. Reiss, Jr., The Police and the Public; (Yale Univ. Press; New Haven, 1971), p. 204.

<sup>34</sup> Task Force Report: The Police (U.S. Government Printing Office, Washington, D.C., 1967), p. 197.

<sup>35</sup> Ed Cray, op. cit., p. 213.

Despite Cray's admonitions, there is every reason to believe that the Contra Costa system will continue to survive in its political vacuum. For even though occasional questioning of the process may obtain, several positive organizational goals are well served by this decentralized secretive type of review model. As "boundary spanning" devices,<sup>36</sup> such internal processes serve as excellent buffers between police organizations and their external environments. The process lessens the environmental uncertainty within which the organization operates by "buffering" the organization's contacts with its environment. The system "handles" complainants by giving them lip service while stifling complaints. It seeks to assure that no unusual pressures are exerted which might violate the integrity of the organization (by, for example, the institution of external review).

Besides "handling" irate citizens, the process also seeks to avoid civil litigation relating to abuses. In Contra Costa County, few formalized investigations are prepared. Those which are prepared are totally confidential. They are kept from the view of the complainant, the community, and the press. In this way, no "ammunition" for litigative purposes is made available to anyone. Almost all of the police organizations studied by our project maintained policies which called for this sort

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<sup>36</sup> See James D. Thompson, *Organizations in Action* (McGraw Hill; New York, 1967), especially ch. 6, p. 66-82.

of absolute confidentiality.<sup>37</sup>

Regarding community legitimacy then, Contra Costa offers an interesting lesson. Its processes are analytically the less open, objective, and thorough of any other type of system. It would therefore, appear to be the least legitimate of review systems. Paradoxically, this decentralized complaint system has not generated significant community pressures toward centralization or civilianization of police review. Systems which appear analytically to be more legitimate have been the focus of much more political attention.

Thus, as students of administrative systems, we must understand the non-transferrable nature of such processes. The entire question of community legitimacy may be moot to review processes where, as is apparent in Contra Costa, no definable "Community" exists which is interested in police abuses.

#### D. Counterproductivity

One very important counterproductive effect develops from the Contra Costa decentralized system. Because the system protects errant policemen, the truly vindictive policeman is left virtually unchecked to abuse the public. While we made this point in the Behavior Control Section, it properly belongs here too. The quality of policing on the street, the way in which citizens are treated by the most visible symbols of their government, is directly affected by such a protective system.

Most of our later discussions of counterproductivity center upon the notion that review systems can be too rigorous. They

may deter policemen from aggressively serving the public. Here, the opposite is the case. Abusive policemen are free to be overly aggressive, nasty, and brutal within an organization which does not effectively check their abusive conduct. The consequences for the delivery of police services generally are most deleterious.

Other counterproductive effects of this system are more potential than they are real. For example, the Contra Costa system involves no centralized monitoring process within the administrative hierarchy of the police department. This does not allow the organization to concentrate upon potentially volatile issues which may result in high degrees of publicity and/or political interference. Having handled a grievance in an informal manner, the police department may be embarrassed when a complaint generates publicity or political pressures.

In reality, however, we have seen that such political pressures are not generated as a rule. Thus, this potential drawback (which might manifest itself were the same system to be employed within other political environments) is not a real problem for the Sheriff's Department.

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<sup>37</sup> Only one police organization treated by our study (Kansas City P.D.) allows complainants to view the results of internal investigations. In Kansas City, this policy is only followed because the State of Missouri allows the police department sovereign immunity from civil litigation. However, Missouri's public organizations will lose this immunity on September 1, 1978. Even in Kansas City, however, no one other than the complainant may have such access. In all other jurisdictions studied, the internal review process is kept completely "confidential" for the avowed purpose of avoiding civil litigation.

Another potential problem is that of abusive use of the review system itself. We shall see in chapter 9 that Centralized Internal Affairs organizations can be overly tenacious if not tyrannical in their pursuit of police malpractice. The same community based pressures which produce these results in urban departments, are not operative upon Contra Costa. However, because of its non-centralized nature, this system may be capriciously applied by unmonitored supervisors. Morale problems (an consequently poor police/community relations) may eventuate from such arbitrary application.

In fact, Contra Costa supervisors tend to abuse the system in the opposite fashion. Street sergeants tend to be so over protective of their policemen that morale relative to citizen complaints is good. Supervisors do not tend to create problems for themselves by developing disgruntled police attitudes. Tyranny in the investigation of citizen complaints is not a realistic problem at Contra Costa.<sup>38</sup>

The counterproductive affects of this system then are very few. It lacks rigor. So much so that it cannot be effective enough to generate counterproductive tendencies such as low morale or slack productivity. Some potential does exist for

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<sup>38</sup>The same cannot be said for investigations handled by I. and C. instead of by supervisors. The differential application of disciplinary sanctions for internal departmental rule violations especially is a source of constant irritation to Contra Costa policemen. The counterproductive effects upon morale of this problem are obvious to the most casual observer. A majority of officers interviewed complained of the caprice of high level administrative disciplinary decisions.

counterproductivity. But, the political environment about the Sheriff's Department and the nepotistic tendencies of supervisors effectively negate such potentialities.

#### V. Conclusion

Contra Costa exhibits a most fascinating system for our study. Much of the Sheriff's Office process is informally handled at a local level. This type of a non-judicialized civilian complaint system has a great deal of potential for any organization.

Unlike our other large police organizations, the Sheriff's Department does not expend significant amounts of manpower and money in dealing with civilian complaints. The localized process of complaint investigation frees administrative staff for other purposes. In addition, the Sheriff's Department requires no budget in terms of office space, clerical personnel, and materials for the operation of its civilian complaint process. One administrator stated that he felt the creation of an Internal Affairs organization in Contra Costa County would be a "waste of taxpayers money". The Contra Costa system might make administrators who operate within more volatile political milieus envious of its simplicity.

Street policemen like the system because, in point of fact, it protects them from any sort of rigorous review. After all, immediate supervisors tend to handle complaint investigations in the best interests of the street cop. The system can therefore, generate positive feelings among policemen toward

the administration of the department.

Then too, officers at Contra Costa County are not forced to work in Internal Affairs. Such duty is often considered in a negative light by policemen. Since there is no centralized investigative process at the Sheriff's Office, no street policeman has ever had to integrate into (or out of) such an investigative organization. This system therefore, generates less negative feelings toward the department than are generated in more formalized systems.

The Huberman Plan appears to be of great potential for administrative use in many types of organizations. However, its application in Contra Costa County must be monitored closely and over a more extended period of time. Negative potentialities are apparent in the Plan at Contra Costa. But they may relate more to the lack of any systematically centralized disciplinary system than to flaws in the theory of the Plan.

The Contra Costa system, however, is far from a perfect one. It is replete with legitimacy problems vis-a-vis the community. The process is so secretive that the public does not know and cannot know what the overall impact of the system is upon police abuses. It is unclear what sort of complaints are thwarted by its localized processes. Though no "crisis" in community legitimacy has ever hit the Department, it is only because of its position within a political vacuum that the review system can operate as it does.

We see then in Contra Costa County at once the best and the worst in police review systems. The process satisfies citizens when it deals with many complaints. Yet, it does not curb genuinely abusive police behavior. Because of its legitimacy problems, Contra Costa's system is a good jumping off point from which to begin our consideration of centralized, Internal Affairs mechanisms.

The problems which we have outlined here as existant with- in Contra Costa's system are only analytically manifested. In other areas, however, the community legitimacy concerns which we have here considered have generated powerful political pressures. These pressures have lead to the creation of other forms of review. Specifically, let us turn to consider the In-ternal Affairs model.

## Chapter 9 INTERNAL AFFAIRS

### I. Introduction

In this chapter, we will discuss centralized internal police departmental review systems. First, we shall begin by considering the sort of external pressures which fathered centralized review. Why were modern Internal Affairs systems developed out of the non-centralized systems considered in chapter eight? Over 80% of modern day departments have moved to the Internal Affairs model of complaint investigation.<sup>1</sup> Yet, as we have seen in the previous chapter, non-centralized systems are very effective at protecting policemen and police organizations from external pressures. Why have so many departments aschewed the freedom which such processes traditionally allowed them?

In the second section, as will be the case with all of our "systems" chapters, we will relate the specific operations of the system studied. In the third section, we will apply our four questions of analysis to the internal model. We shall find that the Internal Affairs process is lacking in legitimacy from almost every non police perspective. However, its influence upon police behavior is tremendous and may outweigh many of its drawbacks.

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<sup>1</sup>Cancilla, Robert A., "Handling Citizen Complaints at the San Mateo County Sheriff's Office: A Manual of Policy Procedures", unpublished Master's Thesis, Department of Administration of Justice, San Jose State University, December, 1977, p. 56.

#### A. Pressure for Internal Review

We have already considered the problem of police malpractice from a historical perspective. Police departments traditionally dealt with civilian complaints against officers in an informal manner. The local precinct Captain or Lieutenant would attempt to pacify indignant citizens and investigate misconduct as his time permitted. As in Contra Costa, no centralized system for complaint reception and the adjudication of abuses was developed. Citizens were influenced, cajoled, and even threatened out of making complaints against the police. Unofficial norms within police organizations restricted the reception of complaints. Sometimes these norms actually manifested themselves in official and quasi-official rules and policies.<sup>2</sup>

Such policies, while common place, were not the subject of controversy until the tumultuous period of the late 50's and 60's. Urban riots, mass demonstrations, and what were late described as "police riots" illustrated for many previously disinterested citizens the problems of police misconduct. Academicians and politicians alike traced unrest among blacks and reactionary violence among middle class white students to such police abuses as the excessive use of force, verbal abuse, and discrimination in law enforcement.

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<sup>2</sup>See Chapter 8, pg. 178-179.

Citizen complaint processes within police organizations received much scrutiny from several of the commissions which populated the 60's. The McCone Commission, looking into the causes of the Watts riot in Los Angeles, called for Internal Investigative units to be set up within police organizations to handle complaints.<sup>3</sup> Academicians such as Edwin Schur echoed this appeal for "strong internal investigative units to insure... fair and effective means of handling citizen complaints."<sup>4</sup>

In 1967, the Task Force on the Police of the President's Commission of Law Enforcement and the Administration of Justice declared that "without question the best means for ensuring that police personnel are complying with departmental policies and general notions of fairness is through effective internal police procedures. Internal discipline can be swifter and, because imposed by the officer's own superiors, more effective."<sup>5</sup> Supported by social scientists such as George Berkley and Herman Golstein,<sup>6</sup> this idea has been utilized by police administrators to defend their internalized processes and to attack the logic of external review systems.

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<sup>3</sup>Governor's Commission on the Los Angeles Riots, "Violence in the City: An End or a Beginning" (Report to the Governor, Dec. 2, 1965), pp. 31-34.

<sup>4</sup>Edwin M. Schur, Our Criminal Society, (Prentice-Hall; Englewood Cliffs, N.J., 1969), p. 142.

<sup>5</sup>Task Force Report: The Police, (U.S. Government Printing Office, Washington, 1967), p. 19

Most large police organizations now have Internal Affairs (I.A.) units which are charged with the responsibility of receiving, investigating, and adjudicating citizen complaints against policemen. These units are either formally attached to the Office of the Chief of Police or maintain a close informal relationship with the top man himself. Some large police organizations resist forming such centralized internal investigative units (we have already discussed the Contra Costa County Sheriff's Department). However, it is increasingly difficult for large police departments to do without such mechanisms.

The problem of police misconduct was not, of course, newly outlined for police administrators during the 50's and 60's. Indeed, they were aware of abuses long before the issues involved became salient to most citizens. What the political pressures of the 60's brought forth within police circles was a fear that control of police organizations would be lost to external sources.<sup>7</sup> In Chapter 10, we shall further consider the many calls for civilian review which were heard at the time. Former United

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<sup>6</sup>See George E. Berkeley, The Democratic Policeman, (Beacon Press; Boston, 1969), pp. 135-142; Herman Goldstein, "Administrative Problems in Controlling the Exercise of Police Authority", The Journal of Criminal Law, Criminology, and Police Science, June, 1967.

<sup>7</sup>In Chapter 10, we shall further consider the many calls for civilian review which were heard at the time.

States Attorney General Ramsey Clark is illustrative on the subject:

Police review boards in which citizen panels finally determine allegations of police misconduct and appropriate penalties---are desirable to most cities. Some civilian review of police conduct, whatever the form, is always essential. Ultimately, the police are responsible to the public, not to the Chief of Police. 8

The political potential of civilian review ideas was not lost upon police administrators. The formation of rigorous, tenacious, and at times even tyrannical internal investigative units was seen as one method of forstalling the formation of such external review bodies. As put by O.W. Wilson, the foremost police administrative expert of the times:

It is clearly apparent that if the police do not take a vigorous stand on the matter of internal investigation, outside groups--such as review boards consisting of laymen and other persons outside the police service ---will step into the void. 9

It is not unusual then that Buckner noted in his 1967 study of "Westville" that the police department's internal investigative mechanisms were maintained "largely to ward off pressure for a Civilian Review Board."<sup>10</sup>

The concern which police administrators held for civilian review movements has not waned with the passage of time. While

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<sup>8</sup>Ramsey Clark, Crime In America (Simon & Schuster, N.Y., 1971), p. 143.

<sup>9</sup>O.W. Wilson, Police Administration 2nd Ed. (McGraw-Hill; N.Y. 1963), p. 208.

<sup>10</sup>Hubbard T. Buckner, "The Police: The Culture of a Social Control Agency", (Unpublished Ph.D. Thesis, Univ. Calif. Berkeley, Sociology, 1967), p. 258.

political pressures for external review may have lessened, present day administrators often echo the concerns of their 60's predecessors. In essence, most street policemen and police administrators feel that the internal investigative process is a necessary evil. Speaking to a class of recruits, a supervisor at Oakland P.D.'s Internal Affairs unit stated, "we have to do it (investigate complaints) or its going to be done for us."<sup>11</sup>

Thus, there has developed, over time, a conscious pressure within police organizations to avert external review by utilizing rigorous internal processes. Such "in-house" mechanisms may not explain the lack of external review mechanisms in operation today. But the police at all levels believe they do. This belief combines with a general fear of civilian review on the part of policemen<sup>12</sup> to obtain an interesting dynamic: while most cops do not like Internal Affairs, they nevertheless accept it's operations as necessary and better than civilian review.

Aside from the tactical, political importance of escaping external review, it is illuminating to consider the organizational dynamics of the creation of centralized investigative bodies. Let us discuss the inter-organizational logic of the formation of these organs.

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<sup>11</sup>From field notes, 9/19/77.

<sup>12</sup>We shall consider in Chapter 10 this fear of civilian review.

## B. Why the Centralized Internal Affairs Model?

That abuses of police power occur is not doubted by anyone. Even police administrators and street patrolmen no longer argue that malpractice is imagined. There is an awareness throughout the police subculture that pressure must somehow be created which will suppress abuses. However, the informal development of such anti-abuse pressures has been a slow, incremental process.

One must first realize that the solidarity of the police subculture (noted in Chapter 5) resists the maintenance of formal anti-abuse pressure. Police officers are reluctant to question "officially" the behavior of fellow policemen unless that behavior is grossly offensive. For the individual officer to unilaterally break traditions of secrecy and solidarity by questioning the competence of another is to take a tremendously dangerous step as an individual. It is a significant wager in terms of potentially lost status, friendship, and psychic protection for the individual. The goals of an officer making such accusations may be important and of the highest personal significance. They may include the desire to elevate the job to the status of a "professional", a concern for competence within the organization, or a basic human response to the abused citizen. But these concerns are nebulous at best. They are balanced against a potential ostracism that is of weighty significance.

Concomitantly, the officer knows that his individual actions may not make any difference whatever in the professionalization of police work or in the improvement of the quality of

services delivered to the public. Should he then choose to pay a heavy personal price and challenge peer competence? Will the collective 'goods' of competence and accountability be obtained? Probably not. As Olsen tells us:

In a large group in which no single individual's contribution makes a perceptible difference to the group as a whole, or the burden or benefit of any single member of the group, it is certain that a collective good will not be provided unless there is coercion or some outside inducements that will lead members of the large group to act in their common interest. <sup>13</sup>

Thus, it may be in the best interest of the individual cop and policeman as group, that anti-abuse pressure be exerted from within the subculture. Yet, it is apparent that such pressure will not come unilaterally from individual policemen. <sup>14</sup>

Similarly, police professional organizations have failed to develop standards of conduct or to monitor police behavior. As Reiss notes, "faced with either administrative or external review of police practice and lacking the protection of collegial forms of review, police officers increasingly opt for union rather than professional ways to handle complaints about police practice." <sup>15</sup>

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<sup>13</sup> Mancus Olsen, The Logic of Collective Action (Harvard Univ. Cambridge, 1965), p. 44.

<sup>14</sup> Of course, Olsen's position also suggests that policemen might effectively be coerced or induced through rewards into challenging peer competence. Coercion is already attempted by most modern police organizations by "requiring" officers to report known malpractice. Its shortcomings are already manifest. Individual inducements would have to be very great it seems (in a financial sense) to affect the type of solidarity which exists within the subculture.

Thus, police professional organizations are often involved in defending officers accused of misconduct. They lobby for legislation which will expand accused officer's rights. It is a laudible goal to insure that policemen are not subject to capricious administrative action. However, the inability of employee organizations to take the lead in the area of professional ethics and standards leaves police departments no other choice than to set up their own "official" internal system.

Centralized control mechanisms are also products of the self-defensive dynamics which Reiss and Bordua note are endemic to police organizations. I.A. organizations protect the department generally and the Police Chief in particular from political uncertainty.<sup>16</sup> Therefore, the centralizing of the Internal Affairs function is a response to several sets of stimulæ. Dynamics evidenced in most complex organizations, combine with pressure uniquely applicable to police systems to require such centralization.

Let us proceed to consider the specific systemization of the citizen complaint review process at the Oakland Police Department. At Oakland P.D., internal investigative mechanisms constitute the only regularized form of police review.

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<sup>15</sup>Albert J. Reiss, Jr., The Police and the Public (Yale Univ. Press; New Haven, 1971), p. 128.

<sup>16</sup>See chapter 3.

## II. Internal Investigative Procedures

The Oakland Police Department is an organization of 650 sworn officers which boasts a Patrol Division of 350 men and women. These people police a largely urban population of 340,000. The City of Oakland has a large Black community, constituting 40% of the total population. The crime rate in Oakland is very high, with the city having actually lead the nation in major crimes per inhabitant at times in recent years.

The police organization in Oakland is known for its efficiency (in a military sense) and for its professionalism (in a legalistic sense). Its officers are well educated and are put through a training academy which is the best of its kind. Instruction at the academy is not limited to traditional 'police science' courses, but includes ethnic studies classes and role playing exercises of a diverse nature. In police circles, the Oakland Police Department is considered a model department nationwide. In academic and political circles, it has the respect of local elites. This generates for it a great deal of latitude within which to organize and perpetuate its system relatively unhampered by external intrusions.

The Oakland Police Department's Internal Affairs process provides a good model for our inquiry. It is the "best" that one can expect from closed, internalized processes. Throughout the course of this study, a number of other I.A. processes were monitored.<sup>17</sup> None was observed by the author to be more

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<sup>17</sup>In addition to those systems studied at our six police departments, the Los Angeles P.D. and San Francisco P.D. systems were investigated at some length.

thorough in its investigations. And none was populated by more concerned investigators, genuinely motivated toward objectivity in the pursuit of their charge.

The Internal Affairs Section of the Oakland Police Department works closely with the Chief of Police who sets the tone for the rigorous investigations. I.A. is housed within his office complex. The Chief's "no-nonsense" approach to citizen's complaints directly influences the working style of I.A. investigators. The Chief and the Deputy Chief of Investigations both have daily contact with the supervisor and men of the Section. Specific, problem cases are closely monitored by the top executives.

The Chief is also constantly in contact with local political elites. As do most police executives, he attempts to monitor the feelings of "community" through these leaders. By direct contact with the complaint process and such elites, he requires the I.A. section to maintain a fix upon both police and community perspectives on the problem of abuses. Thus, in Oakland the internal review mechanism does not slip so far into the confines of the organization that it becomes a part of the central organizational core. I.A. is a boundary spanning device, interacting as much with the public as with the police.<sup>18</sup> The Oakland I.A. section is in some senses an example of the optimum internal review system then, in its thoroughness and commitment to objectivity.

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<sup>18</sup>This fact is not lost on policemen and makes for a great deal of "we" and "they" conceptualization between street policemen and I.A. investigators.

The Section handles both civilian complaints against the department and internally initiated complaints against departmental members. It also serves as the investigative arm of the City Attorney's Office for the purposes of civil litigative matters. The staff includes one Sergeant and four investigators. They handle a work load of approximately 340 cases per year.<sup>19</sup>

The staff of I.A. at Oakland P.D. is almost completely made up of "volunteers". These investigators are all of patrolman rank. They are thus peers (or subordinates) of those whom they investigate. They usually seek to work in I.A. in order to gain investigative experience. Then too, these officers wish to get away from the rigors of uniformed patrol work. Sometimes, however, I.A. people are gently "drafted" into service.<sup>20</sup>

I.A. investigators are required to rotate out of Internal Affairs positions after two years. This convention aims at insuring that police officers do not become so firmly implanted in the Internal Affairs disciplinary process that they lose touch with the reality of street work. It also spreads knowledge about the I.A. process throughout the organization (a laudible goal.) More practically, rotation attempts to protect investigators from becoming permanently labeled by line troops

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<sup>19</sup>From Oakland P.D. Internal Affairs Report for 1977 and 1976.

<sup>20</sup>For example, a well respected homicide investigator was "persuaded" to take the very important job of heading the Section. This occurred even though he had some personal misgivings about how enjoyable it would be compared to his previous assignment.

as I.A. "types". This can have a significant negative impact upon the work atmosphere of an officer later in his career. I.A. investigators are viewed by many policemen with skepticism (and seen by some as traitors).

In discussing the complaint investigation process, we shall consider the logical sequence through which an individual complaint investigation usually travels. First, the input mechanisms shall be dealt with. Then investigative procedures themselves must be considered. Finally, we must concern ourselves with the deliberation mechanisms through which the outcomes of individual cases are decided.

Let us turn to input structures.

#### A. Input Structures

The Internal Affairs Section of the Oakland Police Department accepts complaints in person, in writing, or over the phone. The general orders of the organization call for the acceptance of all complaints made by citizens against employees of the department. Anonymous complaints are thus accepted. (The Supervisor of the Section decides the extent to which such anonymous complaints should be investigated).

It is the policy of the department to accept complaints around the clock, seven days a week. During normal working hours, the Internal Affairs Section is open to the public. It is housed on the 8th floor of the Police Administration Building. Individuals wishing to file complaints are referred directly to I.A. At other times, complaints are accepted at the Patrol Division desk. If a complaint is of sufficient gravity, it may

be referred immediately to the commander of the Section, even if he is off duty.

Upon the initial reception of a complaint, there is some latitude as to how the complaint is to be treated. This latitude is important as a control mechanism. It can be seen as a funneling device which eases the workload of the I.A. organization. A complaint needn't be forwarded to I.A. if it is of "such a minor nature that the unit or person first contacted can dispose of the incident to the satisfaction of the complainant without the necessity of a formal investigation."<sup>21</sup> Similarly, the supervisor in charge of the Internal Affairs unit may in 'minor' complaints refer the matter for disposition to the immediate supervisor of the employee involved (as is done in Contra Costa).

This "short circuiting" of the complaint system is important from several perspectives. First, it leaves the departmental process open to criticism. Departmental personnel are allowed to summarily decide that a complaint is "minor". (There are no further guidelines than these). They may also unilaterally decide that a complainant is "satisfied" before an alleged incident is even investigated. One cannot overlook the potential of this convention for exploitation by departmental members who wish to avoid the internal review process.<sup>22</sup>

Second, the process must be considered from an organizational perspective. The Internal Affairs Section receives com-

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<sup>21</sup>Oakland Police Department General Orders, M-3, p. 3.

plaints of a minor nature every day. These complaints may range from an individual who wishes his parking ticket explained, to a citizen who feels a particular policeman should be chastized for taking long coffee breaks. Such complaints are perfectly reasonable calls for service on the part of civilians. However, they are not the sort of problems one would wish to be the subject of full blown "investigations". Clearly, such minor matters could be handled without the official taking of statements, writing of reports, and processing which generally accompanies an investigated complaint.

The ability of supervisors within the department, and the supervisor of Internal Affairs in particular, to handle such complaints informally serves several functions. It saves the department time and money in the way of investigative dollars. It handles a complaint to the "satisfaction of the complainant", perhaps better than a formal investigation. And citizen satisfaction is, after all, one of the important goals of the organization. In addition, this informal short-circuiting allows for some feedback to be obtained without the formal accusation of fault that accompanies an investigated case. Thus, from the department's perspective, informal processes may be the most significant of learning devices.

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<sup>22</sup>It should be noted that this leeway is seldom if ever abused. This deduction stems from the fact that citizens rarely complain that their complaints were ignored at lower levels of the department. Of course, the argument can be made that this is so because they are thoroughly intimidated out of complaining at that level.

Upon reception of a complaint, the civilian complainant is asked to give a statement to the I.A. Section. This statement is normally given orally to an investigator. The investigator takes such statements in the offices of the Internal Affairs Section. While departmental policy allows investigators to go out into the community to take statements, this is seldom done. Critics of police complaint handling processes have asserted that the taking of statements in police buildings tends to chill the civilian's desire to make a complaint. The police building and the atmosphere of the office are said to be "oppressive" in nature. While the officers who work in Internal Affairs are not in uniform, their "police carriage" is (badges and guns) often visible to visitors and complainants. They are police officials, and therefore are intimidating to some.<sup>23</sup>

The initial reception by the officer involves a "briefing" of the complaint. The complaining party's name, the type of complaint, the time and location, and the officers involved are all logged. The receiving officer paraphrases the complainant's statement and makes a handwritten copy. This copy is shown and/or read to the complainant. Then, the complainant is requested to sign the statement or make any changes that he/she deems appropriate.

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<sup>23</sup> 65.2% of our survey respondents indicate that they would rather talk to civilians than to police investigators about their complaints.

The reason given by police officials for such paraphrasing is that statements written by complainants are often illegible or lack the appropriate format to indicate departmental regulations or statute law allegedly violated. The paraphrasing process nevertheless, leaves the department open to charges that statements are "doctors" upon reception. On occasion, written or typed statements which have been prepared by complainants are accepted.

It is important to note that (as a rule) the first inclination of departmental investigators is to offer a "defensive" explanation of the actions of offending officers. Thus, some effort is always made to pacify complaints prior to the acceptance of a complaint. The I.A. investigator will often take a great deal of time to do this. He may even, in the presence of the complaining civilian, contact the street officer involved by phone and seek an informal settlement of the issue through direct explanation. This technique of short-circuiting the complaint process is often very effective. Some I.A. personnel guesstimate that as many as to<sup>24</sup> of those citizens who come in with complaints are thus satisfied.

Again, we see a practice which is potentially open to abuse. This latitude can be used to save the taxpayers time and money. However, it can also be used to dissuade the filing of bona fide, reasonable complaints. While it is the author's experience that such abuse does not occur, the potential exists.

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<sup>24</sup>From field notes, 3/22/77.

This potential has to be considered as an important threat to the perceived legitimacy of the process.

#### B. Investigative Procedure

Cases are assigned within the Internal Affairs organization on the basis of the "case load" carried by individual investigators. The investigator who initially briefs a complainant will not necessarily handle the complainant investigation. The investigation of a complaint generally follows the lines of any criminal investigation. Appropriate documentary evidence is checked by the investigator. This may entail reviewing arrest reports, crime reports, property tags, evidence slips, or photographs. Witnesses are contacted who have either been identified by the complaining citizen or developed through the investigation. Witness officers are contacted and their statements taken. Officers involved in a complaint investigation also have their statements paraphrased by investigators. Officers are then required to sign their statements.

The officer charged with an alleged offense is normally contacted last. He is required by departmental procedures to give a statement. He may be orally interrogated by several investigators. The accused officer has the right to have present a representative during his interrogation. This person may be an attorney or a Police Officer's Association representative. Unless he has been charged or is likely to be charged with a criminal offense, he may not however exercise his fifth amendment rights against self incrimination regarding his statement.

If an officer were to refuse to cooperate in an investigation by making a statement, he could be disciplined and even fired.<sup>25</sup>

When all of the relevant information has been obtained, in the form of statements, documents, and physical evidence, the officer in charge of an investigation makes a summary report of the information. In this report, he states whether he feels the charges against the accused officer should be sustained or not. Actually, there are four possible findings possible. In the first three, the allegations of misconduct are not sustained. Quoting directly from the Oakland P.D. General Order, M-3, at p. 4., the specific findings are:

- 1) Unfounded: The investigation conclusively proved that the act or acts complained of did not occur (This finding also applies when the individual employee(s) named were not involved in the act or acts which may have occurred.)
- 2) Exonerated: The acts which provided the basis for the complaint or allegation occurred; however, investigation revealed that they were justified, lawful and proper.
- 3) Not Sustained: Investigation failed to disclose sufficient evidence to clearly prove the allegation made in the complaint or to conclusively disprove such allegation.
- 4) Sustained: The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.

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<sup>25</sup>As noted briefly in Chapter 6, the U.S. Supreme Court has affirmed the right of police departments to discipline officers on these grounds in Garrity v. New Jersey, 385 U.S. 493 (1967).

As a matter of policy, the Oakland Police Department does not normally ask complainants if they would take a polygraph (or liedector) test during a complaint investigation. However, sometimes the investigation will reveal conflicting stories on the part of civilians and police persone. If no corroborative evidence is available for either side of the disagreement, such a request may be made. Since no officer may be required to take a polygraph examination<sup>26</sup> the same "request" is then made of the involved officers. Neither side may wish to take an examination. In internal investigations, the use of a polygraph can weigh heavily in the outcome of a complaint.<sup>27</sup> Such evidence is not acceptable in a criminal court to prove guilt. For administrative purposes though, polygraph examinations may be relied upon to prove or disprove allegations of police misconduct.<sup>28</sup>

An investigation thus completed is delivered to the supervisor of the I.A. Section. He then reviews the investigation.

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<sup>26</sup>This is forbidden under California Government Code Section 3307. Also, under the same section an officer's refusal to take a "requested" polygraph examination may not be noted in an investigation summary, nor may it be utilized against him to indicate a presumption of culpability.

<sup>27</sup>It can, for example, change a not-sustained finding into an unfounded one if a citizen "flunks" the test. Similarly, it can change a not-sustained into a sustained outcome if an officer fails.

<sup>28</sup>See Chapter 6.

The supervisor may send the report back to the police investigator for further work if he sees deficiencies. After the approval of the Internal Affairs investigation, the report is sent directly to the Chief of Police for review. The Chief, of course, also has the prerogative to send a report back to the investigator for further work. When he decides that the report has been thoroughly completed, the investigative stage of the process is complete.

#### C. Deliberations

An investigation completed by the Internal Affairs Section and submitted to the Chief of Police is routinely forwarded to the immediate supervisor of the departmental employee concerned. At this time, the employee is confronted with the findings of the investigation. He is not allowed to review all of the file. Only the summary of the report and the recommended findings are made available to the officer. The immediate supervisor discusses the case with the accused employee and makes recommendations as to the outcome, further investigations, or (in the event of a sustained finding) disciplinary action to be taken.

If the investigation indicates that the officer was not in error (i.e., a finding of not-sustained, exonerated, or unfounded) the matter is filed and closed. If the officer was found to be guilty of some breach of the law or regulations, the supervisor recommends a disciplinary finding. This convention follows the dictates of the classic police administrative text by O.W. Wilson: "the first recommendation for action should come from the

lowest command level, so that...the...officer...will not feel that he has been given a summary sentence."<sup>29</sup>

At this point, the case is referred up the chain-of-command for review by each supervisor above the officer involved. Thus, the patrolman accused of misconduct will have his case read and commented upon by his Sergeant, Lieutenant, Captain and Deputy Chief of Police. The report and all attending comments are then forwarded to the Chief of Police for final review.

In consultation with the I.A. supervisor and Deputy Chief of Investigations, the Chief of Police decides if the charges are to be sustained. If they are to be sustained, he also decides upon a course of action in terms of discipline. These three men are the only individuals in the police department with a feeling for the overall picture of organizational disciplinary problems. They are the only people who see all complaints.

Quite often, there is a discrepancy between the disciplinary actions recommended by the accused officer's commanders and the Chief.<sup>30</sup> This is because the immediate supervisor tends to identify with and protect the accused employee. The immediate supervisor is almost always a street Sergeant. He is himself subject to the types of psychological pressures which at times manifest themselves in police misconduct. Thus, not only does the supervisor tend to empathize with the employee vis-a-vis the

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<sup>29</sup>O.W. Wilson and Roy C. McLaren, Police Administration, op. cit., p. 211.

<sup>30</sup>The commander of I.A. estimates that 50% of the time such a disparity exists. However, the gravity of the difference is usually slight (i.e., the Chief prescribes a written reprimand versus an oral reprimand recommendation).

actions taken in a given situation, but he tends to protect him as a brother cop. The supervisors (who are part of the chain of command) above the sergeant also tend to follow this pattern of supervisor/employee loyalty. They go along with the Sergeant's recommendations most of the time. These command officers (Lieutenant, Captain, and Deputy Chief of Police) feel that the street supervisor knows what is best for the individual officer involved. The Sergeant best understands the particular complaint situation.

Thus, the Chief of Police must often increase the type of punishment recommended for 'sustained' misconduct findings. Again, he does have an organization wide perspective on the problem of discipline which is lacking in other subordinate commanders. Like the Internal Affairs supervisor, the Chief knows what is the usual sanction applied for a particular type of offense.

Within other police departments, the Chief of Police is almost always the final complaint arbiter. There are, however, police organizations wherein various other administrators have subsequent input. In San Francisco, a report having been handled by the internal investigative mechanism is forwarded from the Chief's office to the Police Commission. These civilian commissioners then review the findings and accept or reject them.<sup>31</sup>

In many cities the findings of the Chief must be reviewed by the City Manager who is the official who finally hands out

disciplinary findings. Usually, however, this is merely a formality. The wisdom and jurisdiction of the local police Chief is normally respected, and his recommendations are carried out.

In Oakland, for most purposes, the Chief of Police has the "final" decision making powers with respect to the civilian complaint investigation process. However, there does exist a further civilian source of review. This review, in the form of the Civil Service Commission, comes into play whenever an officer appeals a "sustained" finding. Civil Service regulations allow an appeal to the Commission when such a sustained findings results in more than a one day suspension.

Most sustained findings do not result in such review. This is either because reprimands are given as punishment, or because officers accept their penalties without protest.

The Civil Service Commission makes its own finding which may it turn be appealed to Superior Court. This, however, rarely happens. An appeal to Superior Court may be made only upon grounds of legal error. Determinations of fact are left to the Civil Service Commission and their findings are accepted as controlling. Thus, only administrative due process grounds

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<sup>31</sup>San Francisco Police Commissioners have the option to call for further investigations, accept the Chief's decisions (almost always the case), and/or call for a hearing on the matter. The Police Commission must have a hearing whenever more than 10 days of suspension is suggested by the Chief. The hearings are very judicialized with attorneys available for both the Police Department and the accused officer. Cross examination and evidentiary rules apply. The standard of proof before this Commission is a preponderance of evidence, as in civil trials.

form the basis for appeals to the courts.

It is interesting to note that Civil Service Commissions are available for the appellate review of departmental disciplinary actions in most modern jurisdictions. "Civilian review", as we shall see later, is regarded as an illegitimate form of review in most police circles. In fact, a great deal of police paranoia accompanies the civilian review concept. However, as Chief of Police Joseph D. McNamara of San Jose P.D. states, "policemen already have civilian review and they love it! It's called the Civil Service Commission."<sup>33</sup> Indeed, policemen have a great deal of faith in the Civil Service appellate process. They often feel that such an organization, being external to the Police Department disciplinary structure and political milieu, gives a more objective consideration to cases of alleged malpractice than does the I.A. Section.<sup>34</sup> The fact that Civil Service often overturns departmental decisions (and that officers consider it a friendly sanctuary of last resort) shall be important in our later discussions of the concept of civilian review.

#### D. Confidentiality

The entire complaint review process here outlined is considered confidential by the Department. No information regarding complaints is made available to complainants, the press,

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<sup>33</sup>From an interview with Chief McNamara on 7/5/77.

<sup>34</sup>From interviews with policemen in Oakland, San Jose, and Berkeley.

or other arms of government. Investigative reports are not even accessible to police departmental personnel outside of I.A.<sup>35</sup> This confidentiality might be initially perceived as a codification of the informal secrecy norms noted earlier. Indeed, the policy smacks of nepotism. It directly affects the externally perceived legitimacy of the internal review system.

However, there are several defensible goals of the confidentiality policy. First, it avoids publicity which might reflect negatively upon the citizen complainant. After all, the citizen who is in good faith asks the Police Department to investigate an allegation should not be held up to public ridicule or made to suffer in any way for exercising a constitutional right to petition for redress of grievances. Some citizens fear police retaliation for filing grievances.

It can be argued that citizen complainants welcome publicity, that secrecy is the furthest thing from their minds when they file a grievance. It is, however, the conclusion of this study that the opposite is the case. Usually, civilians who complain about the police wish their grievances to be kept within the confines of the police organization. This confidentiality code then, while protecting the department from adverse publicity, does the same for the citizen complainant.<sup>36</sup>

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<sup>35</sup> See Chapter 6 regarding the Pitchess v. Superior Court decision for exceptions to the access policy.

Second, the policy allows officers to come forward without fear of retribution and freely indicate when other policemen have erred in their presence.<sup>37</sup> We have often referred to the code of secrecy within the police subculture. The maintenance of a confidentiality between internal investigator and witness police officers seeks to lessen the effects which this secrecy has upon the thoroughness of complaint systems.

It may be unreasonable to expect the breakdown of secrecy norms so firmly ensconced in individual behavior patterns. Nevertheless, some officers interviewed felt that a certain lessening of the strength of such norms has occurred over time. As one officer confided, "now-a-days, if somebody were to really do a number on a guy, you know, I mean really beat him up, the guy on the street just wouldn't stand for it." In fact, several officers have been fired from the Berkeley Police Department in recent years due to brutality charges initially filed internally by other police officers.

The intuitive feeling that secrecy norms are changing cannot be confirmed statistically. In some police departments,

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<sup>36</sup> Because of the Pitchess decision outlined in Chapter 6, O.P.D. now makes available to complainants a form requesting confidentiality in individual investigations. These forms are then used by the department to defend against discovery motions. Now citizens sign this form without question.

<sup>37</sup> Both as complainants and as witnesses in investigations stemming from civilian complaints.

internally generated complaints have risen over time.<sup>38</sup> While in others they have fallen.<sup>39</sup> But there is an analytical problem with internal complaint data. It does not tell us where those internal complaints were generated. Did they originate from command personnel, or are they truly the product of patrolmen attempting to hold their brother officers accountable? We do not know. Nevertheless, the fact that some officers feel they are free to initiate such investigations is very interesting. It indicates that it is not at all naive to utilize self-sanctioning, socialization processes for behavior control. We shall deal with this idea in much greater detail in Part IV.

The I.A. policy of confidentiality does, of course, create problems. One is in the area of complainant feedback. At the end of an investigation, the citizen complainant receives a form letter with four boxes on it. Each box stands for one of the possible findings noted on page 215. This is all of the information about a specific case which the Department makes available to the citizen. If the complainant takes issue with or does not understand the outcome of the investigation, he is asked to call the supervisor in charge of I.A. Our complainant attitude survey indicates that complainants are not satis-

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<sup>38</sup> e.g. Los Angeles P.D. where such complaints have risen from 33.3% of I.A. complaints handled to 38.4% over the past 3 years.

<sup>39</sup> e.g. Oakland P.D. where the decline over 5 years from 12% to 8% of I.A. cases handled.

fied by such limited feedback. Yet, at this writing the current supervisor of the unit (who has held his post for ten (10) months) has heard from only one complainant after the departmental resolution of a complaint.

Adherents to the theoretical utility of the adversary system will point out an additional difficulty with confidentiality. By keeping the process closed to the complainant (save for his or her initial statement) all of the 'facts' may not emerge in an investigation as they would with complete participation by the complainant. Perhaps with the ongoing input of the complainant and his counsel, points made by police personnel may be refuted. Additional leads may be developed in investigations. While the process would definitely be more elongated and complex, the truth may be better determined without this confidentiality policy.<sup>40</sup>

Summaries of complaint statistics are prepared monthly and circulated throughout the Oakland Police Department. These statistics indicate trends in complaints. They show complaints by platoon, complaint rates compare with those of previous years, and internal versus external complaint statistics. At the end of this summary is a training bulletin which uses a factual example to illustrate a procedure or discretionary decision which caused an otherwise preventable complaint. This bulletin

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<sup>40</sup>There are also many limitations to the adversary system as a fact developer. See Jerome Frank, Courts on Trial (N.Y., Atheneum, 1963), Ch. III, "Facts are Guesses".

is the only feedback mechanism designed to provide the Department with information from the potential pool of knowledge that is available in I.A.

Having briefly considered the I.A. process of this police department, let us proceed to analyze its strengths and weaknesses by applying our indexes. First, we must discuss the integrity of the Internal Affairs process.

### III. Evaluation

#### A. Systemic Integrity

As with Contra Costa's decentralized system, Oakland's I.A. process illustrates some of the best and some of the most problematic dynamics operative in police review systems. Its investigations are thorough and competent.<sup>41</sup> It has the confidence of most police officers. And too, the Oakland I.A. system is actually more tenacious than are external review mechanisms.

Yet, the system has significant drawbacks. Because of its rigor and lack of due process restrictions, it can be tyrannical and unfair toward policemen. And too, being manned by the police and located in police headquarters, it may stifle the complainant's ability to file grievances and get an impartial hearing.

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<sup>41</sup>The Hell's Angels example above is testimony to the thoroughness of I.A.'s processes.

As we have noted, policemen are perceived as powerful individuals. It is in the interest of society and of the individual complainant that civilian complaint mechanisms consider grievances in a thorough, competent manner. Therefore, perhaps the internalized process's primary strength is that of its professional investigative competence. Those doing the investigating of civilian complaints in Internal Affairs organizations are professional investigators. These men understand the investigative process from their criminal investigative experience. They have developed a type of expertise which laymen lack.

What sort of expertise will police personnel develop that would be unavailable to civilian investigators doing the same job? It is often argued that I.A. investigators will have in depth knowledge of interview techniques, evidentiary law, police jargon, and so forth. These particularized pieces of information, are not easily available to those outside the police experience. However, most of this knowledge could be developed by civilians. There are, though, significant areas of understanding which would probably never open to the civilian investigator.

Policemen have a knowledge of and a feeling for the norms of the police subculture. This is not an unimportant insight. Such knowledge can be of great significance in understanding situations as they present themselves in the form of complaints.

It can facilitate the development of information from policemen who are reluctant to cooperate with the investigative process. Furthermore, the opposite phenomenon will obtain. Policemen will tend to be more open and cooperative with other policemen when confronted with the oft times distasteful investigatory process.<sup>42</sup>

Besides a general feeling for the subculture and its norms, officers involved in Internal Affairs also have a particularized understanding of the specific police organization. This will give investigators a feeling for the ethos and problems of the troops whom they seek to monitor. It will allow them to relate to particular beat problems and circumstances which mitigate or modify complaint incidents. Such a knowledge of the beat and populace policed can help the investigator in several ways.

First, this knowledge will help in obtaining cooperation from police officers. Second, it will greatly facilitate the internal review officer's ability to short circuit complaints through a simple explanatory process. That is, the Internal Affairs investigator will be able to easily explain to complaining citizens the actions of street policemen. This can be beneficial both to citizens and to the police department. It can often satisfy citizens without utilizing time and money for formal investigations. I.A. investigators have the intimate

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<sup>42</sup>Many of the policemen interviewed made this point.

knowledge of crime problems, geographic locations, and departmental procedures necessary to do such short circuiting.

Finally, the internal investigator will be privy to an even more particularized knowledge. He knows the individual officers involved in complaints and the command structure which will institute potential disciplinary measures. This can, of course, lead to difficulties in terms of the objective enforcement of law and departmental procedures. However, it can also have positive effects. This knowledge makes the investigator aware of the shortcomings and methods of policing utilized by the accused street cop.

We have very briefly noted that I.A. investigators will receive a significant amount of cooperation from accused policemen because they are brother police officers. This point should be expanded upon.

Save in the very largest of police organizations, policemen investigated by I.A. personally know the investigators involved. This makes most patrolmen feel that irrespective of their knowledge of abusive I.A. practices, they will get a more fair hearing from I.A. investigators than from non-police personnel. Everyone in our Oakland P.D. sample indicated that they felt this to be true!

Of course, officer attitudes toward I.A. relate to the officer's propensity to be called before it. Those officers with little or no contact with the I.A. process feel that it is a fair system. They perceive it as far superior to any

potential external mechanism. Those officers who have had a great deal of contact with the internal investigative body can be very cynical about its processes. As we shall note shortly, these cynical officers can have a devastating effect upon departmental morale. Nevertheless, personal relationships developed in the field are the source of some positive attitudes toward I.A. among street troops.

Aside from particular interpersonal relationships, patrolmen feel a general kinship with I.A. people. "They are, after all, cops like us!" I.A. investigators understand the difficulties of the job. They have been on the street in uniform and have had to deal with the cross pressures of the policeman's role. They have that particularized "expertise" which civilians lack; an orientation toward the realities of life in the "bag" (uniform) which makes all policemen brothers. They will not persecute their fellow officers knowingly. They are part of the "closed fraternity."<sup>43</sup>

Yet we have stated that I.A. systems (and particularly Oakland's) are quite rigorous in their pursuit of malpractice. How can this be? First, it must be noted that Oakland has a strong Chief, genuinely interested in thorough I.A. investigations and community faith in the legitimacy of the system. His personal philosophy fixes the "nonsense" ethos of the I.A.

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<sup>43</sup>A phrase coined by James F. Ahern in Police in Trouble (Hawthorne; N.Y., 1972), p. 2.

system. (As noted above, his disciplining of officers is often over turned by the civilian Civil Service Commission as being too stringent).

Second, it should be noted that traditionally, external review systems have granted more due process, procedural rights to policemen than have internalized processes. The Berkeley Police Review Commission allows officers to refuse to give statements or to testify at its hearings if they so desire. It also allows officers representation by counsel and cross examination privileges. Proposed civilian review processes in San Francisco<sup>44</sup> and Chicago<sup>45</sup> have also allowed similar procedural rights to accused policemen. Police administrators thus argue with some persuasiveness that their internalized processes are more effective at disciplining errant policemen. Such systems are not "shackled" by requirements of procedural fairness which impede "thorough" investigations.

Because they are not so shackled, internal processes are subject to becoming abusive of policemen's rights. This is the other side of the police cooperation point. I.A. is a known quantity, populated by familiar people. Thus, it is defended by most policemen. However, it can become abusive of policemen in a way that no external mechanism could.

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<sup>44</sup>San Francisco Bar Proposal, March 17, 1976.

<sup>45</sup>Wayne A. Kerstetter, "Citizen Review of Police Misconduct", an unpublished report to the Police-Community Relations Subcommittee of the Chicago Bar Association, no date.

William K. Muir Jr., is illustrative here. He discusses one Chief of Police's "reign of terror" wherein I.A. was used so ruthlessly and tyrannically that it violated "every assumption of due process". This I.A. system was as unfair as it was one sided (slanted against policeman). Consequently, as Muir notes:

The policemen came to treat Internal Affairs as an unscrupulous enemy. The lack of dispassionate neutrality entitled good men to lie to it and deceive it and try to beat it...By abjuring the limits of judicial inquiry, Internal Affairs lost its moral entitlement to be treated fairly in return. Men who would not have felt right about lying in a courtroom found themselves justifying purposeful deception in defiance of the naked force of Internal Affairs. 46

This tyranny can develop poor morale and all sorts of counterproductive tendencies (which we will discuss in section D below.) Yet, this morale argument should not be taken too far. Any effective system will turn off some policemen and may affect the morale of many officers.

Important to our integrity discussion is the legalistic nature of the police experience. The men who are affected by such tyranny are not so much depressed over the existence of the Internal Affairs unit as they are over its tactics. The officers which were studied were concerned day to day with the

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<sup>46</sup>William Muir Jr's The Police: Street Corner Politicians, (Univ. Chicago Press; Chicago, 1977), pp. 248-252.

due process notions of the Anglo-American legal system. These patrolmen were the products of twenty years worth of effort in police education and training. They had purposefully been given a feeling for procedural safeguards which are central to the concept of limited government; safeguards which were foreign to earlier generations of patrolmen. When the internal investigative system ignores those safeguards, as well as normal concepts of fair play, the legitimacy of that organization can suffer in the perceptions of the troops. Its ability to function then can be severely limited by the secrecy and solidarity norms which we discussed in earlier chapters.

Any complaint process which seeks to benefit both police departmental organizations and the community must be open to the public. It must be available to any and every citizen who feels aggrieved by the activities of policemen or police departments. Complaint investigative procedures must "make every effort to insure that no adverse consequences will result to any person or witness as a result of having brought a complaint or having provided information in any investigation of a complaint."<sup>47</sup> We have, however, already seen that common police practice used to include the frustration of complainant's attempts to register grievances.

Various sources have argued that the very location of I.A. investigators stifles complaint filing. Investigators are

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<sup>47</sup> S.F. Bar Association's proposed citizen complaint procedures for the S.F. Police Commission - March 17, 1976.

part of the police departmental structure and subculture. They are physically located within police facilities. This will, it is argued, deter many citizens from making complaints. The "oppressiveness" of the police building and its accompanying atmosphere are said to dissuade those who have bona fide grievances from filing their protests. Testimony before the San Francisco Police Commission (regarding a proposal for civilian staffing in its review organization) indicated that there exists a real concern (at least within some communities) about the physical location of complaint reception facilities.

Police officials and police officer organizations have responded to these allegations by indicating that the oppressive nature of the police environment is easily averted by a complainant. All individuals, need do is call or write the police department and his/her complaint will be handled. This argument does have some intuitive persuasiveness. Even the anonymous phone call generates a complaint at the Oakland Police Department and at many other modern police organizations. However, it should be underlined that standard operating procedure still dictates that complainants come to the police facility to make written statements. This procedure can be viewed as intimidating from the perspective of the truly timid citizen, fearful of police retribution.

Besides the facilities themselves, some of the procedures accompanying the complaint receiving process have traditionally been coercive and intimidating in nature. For example, many police organizations run warrant checks on complainants (no

longer done in Oakland). Some always ask complainants if they would be willing to take a lie detector test as part of the complaint process. While the police department has not the power to require such an examination, the inference that the citizen may be lying is clear enough. From experience in dealing with complainants, it is clear to the author that many of the stories told to internal investigators are indeed fabrications. But to institutionalize processes which imply that such is generally the case, is to indicate a lack of trust in the public which can indeed be intimidating.

It is also argued that requiring the citizen to sign his statement is an intimidating process. It is important to note that in some jurisdictions, complaints will not be investigated without the complainant's signature.<sup>48</sup> In addition, complaining citizens are still advised by many I.A. organizations of penal statutes which relate to the filing of false police reports. For the somewhat confused or illiterate complainant, this convention certainly can be threatening. It may easily coerce the withdrawal of an allegation.

This is not to say that citizens should be encouraged to make false reports, or that lying to police investigators should be taken lightly. However, there are many difficulties encountered by police officials in attempting to create and maintain civilian perceptions of legitimacy for their internal in-

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<sup>48</sup>This is not true in Oakland.

vestigative organizations. These difficulties can only be exacerbated by procedures which threaten complainants with criminal prosecution.

The integrity of the Oakland I.A. system is very good taken as a whole. Its investigations are thorough and genuinely dedicated toward objectivity. The system is usually fair toward policeman and complainant alike. If any argument can be made against the system's objectivity, it is that a sort of two tiered approach which can affect investigative outcomes. A great deal of time is often taken to satisfy complainants short of generating formal investigations. This may be seen as abusive of citizen rights. Yet, when an officer is apparently guilty of misconduct, the system treats him sternly.<sup>48A</sup> (In some police organizations, this "sterness" can develop into abusiveness.) The system can in such instances change its focus and develop a dynamic wherein, as one street officer lamented, "you've gotta prove to I.A. that you're innocent, instead of the other way around."

#### B. Behavior Control

In Chapter seven we noted that curbing abuses should be of the highest priority to any police review system. In this vein, we must here acknowledge the ability of the internal investigative model to effectively "clean house" within police

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<sup>48A</sup> Again, the Hell's Angels case evidences this sternness.

organizations. The system is tenacious, even tyrannical in its pursuit of police malpractice. It is extremely effective in influencing police behavior. In fact, as we shall shortly discuss, its rigorous enforcement can generate the most deleterious of counterproductive effects for the organization. That is, the most critical problem with internal review may be that it is too tough, too unforgiving, and not that it is too easy on policemen.

The internal review process is effective in controlling police behavior for several reasons. First, the policemen who populate the operation take their investigations seriously. They are chosen for their integrity and abilities at unbiased reporting. After a preliminary period of acclimation, I.A. investigators attack the job with the same rigor as do police investigators in other bureaus. In fact, many street policemen point out that I.A. investigators become over zealous in the pursuit of their charge. This may be because, as one investigator stated, "cops are held to a higher standard of conduct. They should be."

Second, there is little check upon the activities of I.A. save the very remote potential of Civil Service review (in the case of sustained investigations of sufficient gravity). There are, in short, few mechanisms which police those who police the police. I.A. investigators tend to employ some of the same semi-legal, non-legal, and illegal tactics which policemen employ in criminal investigations. So many internal investi-

gative units have abused policeman's rights, in fact, that several police associations have secured the passage of a "Policeman's Bill of Rights." (See chapter six). These bills protect the cop from over zealous, abusive I.A. processes.

Such legislation gives to policemen some procedural rights heretofore unheard of. However, the due process requirements which constrain internal investigators still remain less confining than are those which impede criminal investigators.<sup>49</sup>

Among review systems, Internal Affairs is as effective a deterrent as exists with respect to the control of police malpractice. Policemen fear I.A. as Gene Radano illustrates:

The mere mention of PCCIU (Internal Affairs for New York P.D.) is enough to get the immediate attention of all cops. No cop ignores talk to this unit. Its members are feared and despised with an intensity second only to the feeling German Jews must have had for the Gestapo. The slightest rumor that a PCCIU shoofly is around is enough to clear a coop of cops as quickly and with as much panic as a bird flies aloft at the sight of an approaching cat. 50

These observations are confirmed by our interviews with officers in various jurisdictions. Some officers maintained that they would not be deterred by any system from handling situations with their own common sense, "given the circumstances of the particular situation." But, those who did sense some

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<sup>49</sup>We have already noted above, for example, that accused police officers must give written statement to I.A. investigators or lose their jobs.

<sup>50</sup>Gene Radano, Walking the Beat (The World Publishing Co., Cleveland, 1968), p. 124.

influence of regulatory systems upon their own behavior referred to I.A. as the source of that influence. None felt that civilian systems (i.e., the P.R.C.) affected their behavior at all.

Internal Affairs organizations (though at times not respected) are never ignored, and never taken lightly. More than any other control system studied, they force the street policeman to consider prospectively the consequences of his actions. The policeman's locker room fixations with I.A. indicate that it is ever present in the minds of street cops.

It comes as no news to students of the police that police work is an occupation attempting to achieve status as a bona fide "profession." This drive is not only an effort to secure prestige and financial benefits, but an attempt to rid the occupation of its corrupt image. Since the Knapp Commission<sup>51</sup>, this effort has become almost a fixation within the subculture.<sup>52</sup> While most authors agree that the professionalization of the police has not been achieved<sup>53</sup> they have not dampened the ardor of policemen and police administrators.

Most authors feel that a crucial element of professionalism is the self-application of collegial codes of ethics.<sup>54</sup>

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<sup>51</sup>Whitman Knapp, The Knapp Commission Report on Police Corruption, (New York; George Braziller, 1972).

<sup>52</sup>See James Q. Wilson, Varieties of Police Behavior (Atheneum, N.Y., 1972), p. 187.

<sup>53</sup>See Michael Banton, The Policeman in the Community (Tavistock Publications, London, 1964), p. 108; or James W. Wilson, op. cit., pp. 29-30.

Policemen and police administrators voice the opinion that internal review systems aid in the professionalization of police work. One administrator notes that policemen "can earn professional status through public recognition. Police administrators, by providing effective internal controls, can hasten the day when that recognition is finally granted."<sup>55</sup> Thus, Internal Affairs is a vigorously defended entity in police administrative circles. Its ability to be tenacious in the pursuit of police misconduct is jealously protected.

Both the tenacity of I.A. and its perceived potential for professionalization are important to the individual street cop. Most seek the social status, financial income and political influence of the true professional. Most feel that a tenacious, unforgiving I.A. will directly "clean-up" the corps of street troops while it indirectly helps achieve the much coveted professional status.

The internal review process attempts to do several things at once in its pursuit of professionalism. Of course, it "primary" goal is to hold policemen to answer for previous abuses. But its prospective effect upon police behavior can

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<sup>54</sup> See Edward Comber in Richard H. Blum, Police Selection (Charles C. Thomas; Springfield, Ill., 1964), Ch. IX; or Dietrich Rueschmeyer, "Doctors and Lawyers: A Comment on the Theory of the Professions", Canadian Review of Sociology and Anthropology, 1964, pp. 17-30; or James Q. Wilson, op. cit., pp. 29-30.

<sup>55</sup> Billy Ralph Goforth, "The Professionalization and Internal Controls", The Police Chief, July 1978, p. 65

be seen as having two important elements. First, the process is so notorious within police organizations, that it affects police behavior by deterring future malpractice.

Second, the I.A. process should be most effective at generating individual learning among errant policemen. Street cops and their supervisors must accept as reasonable the feedback which they receive from a complaint mechanism. When the source of that feedback is an internal body, populated with the officer's peers, such acceptance seems more likely. Indeed, the overwhelming majority of street policemen believe that other policemen will bring an expertise to a review mechanism which is lacking in non-police people.

I.A. complaint processes should be viewed by the organization as a source of direct feedback from the community. Complaints are measures of how the citizenry perceives the department is doing its job. Many complaints are, of course, merely misunderstandings on the part of citizens. Some are even the product of irrational and deranged minds. However, to disregard all complaints as sources of information because some (or even most) are not of sufficient gravity, is short sighted at best. Citizen complaints can be the source of significant organizational and individual learning.

Unfortunately, they are almost never seen in this light by police administrators. The single exception encountered by the present study was the once-a-month "training tip" which Oakland P.D. makes available to its commanders (and presumably

therefore to patrolmen). This however, a rather paltry effort at constructing positive knowledge out of I.A.'s information store.

As police organizations seek to improve their performances, to "relate" to their communities in more meaningful ways, such feedback should be utilized. Complaints indicate how and when the populace is unsatisfied with procedures and individual police contacts. This information can be invaluable. When this feedback comes directly to the Internal Affairs unit, it should be effectively utilized by training and planning bureaus. What could be more important, in terms of community relations programs, than such direct feedback? It advises the organization when it charges are incurring the wrath of the citizenry.

It is not exactly clear why so little has been done with this data. One explanation comes immediately to mind. To admit patterns of abuse on the part of policemen would be to open the organization up for criticism. Treating each case independently, as an error of the individual officer (and not an organizational "problem") seeks to avoid policy criticism which may make the organization itself appear inept. Thus, organizational learning takes a back seat to the buffering of administrative systems from external criticism.

In this brief section, we have seen than while garnering limited "knowledge" out of the complaint process, internalized

review processes are nevertheless very effective at influencing the behavior of policemen. They are a more immediate source of concern to street cops than any other form of review.

Yet, there are significant drawbacks to internalized processes. It is toward the consideration of these drawbacks which we now turn. In discussing community perceived legitimacy (and later, counterproductivity) we shall begin to understand how arguments over internal review are couched. Policemen and police administrators know the effectiveness of internal review systems in a way no "outsiders" do. The community does not believe in the rigorousness of such systems, and cannot realistically be expected to do so.

#### C. Community Perceived Legitimacy

It is in the best interests of the police organization that the citizenry perceive police review systems to be beyond reproach. Civilian perceptions of widespread police abuses interfere with the professionalization drive of police work. They create in some circles animosity and scepticism about policemen and police departments. These negative feelings can manifest themselves in various ways. Such emotions can cause anything from political opposition, to physical attacks upon police officers, identified as the embodiment of the corrupt, self-serving bureaucracy.

Of course, the crisis in legitimacy which modern police organizations face is not wholly a product of the secretive nature of internal investigations. Indeed, it may be the least

important of many complex causes which form such societal skepticism. (Some other causes were briefly discussed in Part I of the work). But dissatisfaction with internal review mechanisms is not at all irrelevant to such citizen attitudes. In a strange way, the attempt of the police organizations to appear legitimate by "cleaning their own houses", adds to the very problems which they seek to alleviate. For the internalized methods chosen, shrouded in secrecy, have not silenced critics of modern police organizations. Such processes have indeed generated even more distrust and cynacism within the community.

In Chapter 8, we discussed the assertions of several authors that secretive, in-house review processes are less than acceptable to the community. With respect to centralized Internal Affairs systems, similar credibility problems exist.

Several studies of citizen attitudes indicate that, particularly among minority groups, centralizing and "professionalizing" internal review processes has not developed community-wide faith in the legitimacy of internal review processes. A Michigan State study found a "widespread distrust of the internal police trial procedures by the major minority groups around the country."<sup>56</sup>

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<sup>56</sup>Raymond Galvin and Louis Radelet, "A National Survey of Police and Community Relations" (Michigan State University: East Lansing, 1967), p. 223.

A University of California study found similar problems in Philadelphia and San Diego.<sup>57</sup> Bayley and Mendolsohn found the same in Denver.<sup>58</sup>

Our complainant attitude study in Oakland confirms these findings. 69.2% of respondents feel Oakland's Internal Affairs process is unfair. 53.8% feel its investigations are less than thorough and 85.7% feel its outcome decisions favor the police. 79.1% are dissatisfied overall with the system's operation.

The Riot Commission has concisely put the problem:

We believe that an internal review board--in which the police department itself receives and acts on complaints--regardless of its efficiency and fairness, can rarely generate the necessary community confidence, or protect the police against unfounded charges. 59

Such generalized feelings that the police organization cannot police itself are crucial. The Riot Commission's comment is particularly important. It underlines one of the basis themes of our discussion; review systems must balance a variety of interest, they must be concerned with several sets of issues. Even though Internal Affairs organizations may be thorough, objective, and tenacious in their pursuit of abuses, they still

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<sup>57</sup> Joseph D. Lohman and Gordon E. Misner, "The Police and the Community", (U.C. School of Criminology, Berkeley, 1966) vol. I., pp. 57-58-89, 172-173; Vol. II at p. 100.

<sup>58</sup> David H. Bailey and Harold Mendelsohn, Minorities and the Police (MacMillan; N.Y., 1968), pp. 132-134.

<sup>59</sup> Report of the National Advisory Commission on Civil Disorders (New York Times; N.Y., 1968), p. 311.

may not be able to generate enough credibility within the community to be considered legitimate systems.

Several indices seem to illustrate to the community that internal investigations are less than rigorous. Statistical reports of Internal Affairs organizations themselves seem to indicate a bias. In Oakland, for example, 334 complaints were received by the Internal Affairs Section in 1976. Only 62 resulted in "sustained" findings.<sup>60</sup> This represents only 18.6% of investigated complaints. That is, in only 18.6% of its cases, the organization admits that its officers are wrong. In Berkeley, 78 sustained findings developed from the investigation of 290 allegations in 1975.<sup>61</sup> But this sustained complaint percentage (about 27%) includes internally initiated complaints. (Figures for civilian complaints only were not available). And even 27% seems suspect to those who believe that the complaint investigation process systematically favors the accused officer. Of course, these statistics don't necessarily say anything about the substantive integrity of a system. They nevertheless seem to indicate that the internal investigative process is less than objective.

A second phenomenon appears to indicate less than thoroughness in internal processes. Besides being closed to public

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<sup>60</sup>O.P.D. complaint stats., 1976.

<sup>61</sup>Berkeley P.D. complaint stats. 1975.

scrutiny in general, it is difficult for individual complainants to obtain feedback from police internal bodies. In most jurisdictions, civilians who have complained have very limited and at times confusing contact with the police department. The scenario normally goes as follows. First, the complainant contacts the Internal Affairs organization and makes a statement to an investigator. Then, within a few days he receives a form letter advising that the complaint has been duly logged and being pursued by an investigator. Finally, some weeks later, the citizen-complainant receives another form letter. It states the finding of the investigation in the vaguest of terms. In this letter, the four possible outcomes of the investigation are outlined. A box is checked beside the appropriate finding.

A police department thus gives the citizen complainant no feedback relating specifically to the allegation charged. The form letter relates none of the findings of the investigation, statements made by witnesses, statements made by officers, physical evidence, or the logic behind the departmental decision. If the complainant wishes to do so, he may again contact the department and ask for further clarifications as to the outcome of the investigation. But normally there is no personal contact between complainant, and investigator after the initial interview.

As Chevigny notes, the amorphous final letter is not specific enough to satisfy the individual complainant nor to legitimize the process in the eyes of other external sources. "The report which is sent to the complainant should instead evaluate the evidence and show how the (internal police) Board's conclusion was reached."<sup>62</sup>

As with Contra Costa, we must ask why the police organization maintains such a system. As noted earlier, the centralized system was formed specifically to avoid external review. How then, if it is still considered less than legitimate by external community sources, can the Oakland system survive?

First, the I.A. bureau protects the organization by pacifying irrate citizens. The majority of those who come to the Police Department with complaints do not pursue their grievances elsewhere, even if they are unsatisfied by the departmental process. The City Council, City Manager, Mayor, Human Rights Commission, Public Safety Committee, A.C.L.U., and other bodies might potentially be approached for redress of police oriented grievances. Because citizens are allowed to vent their spleens at I.A., these other bodies are rarely contacted.

Second, the Oakland I.A. Section is known by the City Manager and City Council to be quite rigorous in the pursuit of its charge. The fact that Civil Service often overturns the Chief's disciplinary sentences, (in favor of more lenient

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<sup>62</sup>Paul Chevigny, op. cit., p. 261.

treatment of erring policemen) is not lost on these local political actors. The vigor of the internal investigatory process therefore serves to detract from political calls for external review of police functions. By inhibiting calls for civilian review, City Hall's faith in the tenacity of the police organization. Politically then, the I.A. system may not develop general community based perceptions of legitimacy, but it does significantly undercut the ability of civilian review movements to develop or exert pressure upon the organization.

From the perspective of external observers, a lack of community based legitimacy is perhaps the most crucial of problems associated with the I.A. review system. However, the counterproductive tendencies of such systems may indeed be of equal weight both for the public and for the organization. Since the internal process can be the most tenacious and rigorous of review systems, it can also become the most oppressive of street cops and the most diversive for police departmental morale. Therefore, internalized systems are most fascinating subjects of study for analyzing the balance which any review system must strike between rigorously enforcing rules and allowing discretionary latitude.

#### D. Counterproductivity

In Part B of this section, we noted the effectiveness of I.A. systems at deterring police abuses. In order to be ever present in the minds of street cops, I.A. systems must be

tenacious in their pursuit of malpractice. They must be as thorough as are police investigative systems which attempt to root out criminal behavior generally. In attempting to be this rigorous, and thorough, however, I.A. systems can be guilty of over zealousness. By labeling I.A. processes "over zealous" we mean to say that they are so effective that they produce counterproductive results. Several of our Oakland P.D. officers outlined examples of I.A. investigative zeal which they felt were illegal or semi-legal. Officers at Berkeley and San Jose also alluded to I.A. procedures which they felt were violative of officer due process rights and/or unfair to policemen.<sup>62a</sup>

In some police departments over-zealous, unreasonable, and even illegal I.A. investigative techniques are the rule and not the exception. Examples of such excesses become common knowledge among the street troops. They can generate poor morale among patrol officers. "The administration" and "the system" become unfair, tyrannical enemies. Productivity can drop off as a result of such investigative excesses. Arrests can diminish. Citations may not be issued as rigorously. Policemen can begin to lack the "aggressiveness" which is necessary for the civilian populace to receive the police service it requires. As one policeman put it, "why bother with people's problems if the administration is just gonna hassle with you when you do get involved."

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<sup>62a</sup> Examples are 'wiring' police officers with taping devices, following policemen around off duty, and attempting to cajole policemen's wives into allowing searches of officer's residences by representing such practices as "standard procedure."

Policemen must be interested in the problems of civilians. They must want to help find the solutions to those problems. Policemen on the street must be the very antitheses of the "anonymous citizen". Yet, during periods of poor morale, that is exactly what police officers can become.

William Muir noted several counterproductive tendencies of tyrannical internal review in his study of Laconia.<sup>63</sup> The dynamics which accompanied the Chief's (and I.A.'s) "reign of terror" there are indicative of problems evidenced in many modern police organizations.

First, good, honest policemen can rationalize lying to I.A. as the proper response to an "unscrupulous enemy."<sup>64</sup> This only tends to exacerbate malpractice problems generally. It creates within individual policemen the acceptance of lying as a sensible tactic to employ against deceitful adversaries. Such adversaries may include, of course, superiors, attorneys, judges, and criminal defendants.

Second, policemen on the street can become overcautious. They may shy away from troublesome situations. They may stop experimenting with different methods of interpersonal problem solving and instead "play it by the book." This tendency was particularly important in the rookie cops studied by Muir:

The reign of terror appeared to inhibit "taking a chance", the trial and error necessary to a young

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<sup>63</sup>William Ker Muir Jr., op. cit.

<sup>64</sup>ibid., p. 250.

policeman's development. It made the young officer too responsible too quickly, forcing him to adhere to a proclaimed way of doing things rather than encouraging him to discover an appropriate way for himself. 65

Overly tenacious internal review in Laconia thus tend to create rigid, rule oriented police officers. Many arrests ensued in situations where the interests of justice might have eschewed official intervention. Then too, laws were not enforced when common sense or compassion might dictate otherwise. The citizenry suffered directly from these dynamics. Policemen became less and less willing to solve disputes and maintain order.

In Muir's Laconia, as morale slipped, the status of the Department's worst cynics were elevated by the actions of internal investigators.<sup>66</sup> Their recusant explanations of I.A. activities found support in the actions of investigators. Worse still, the process fed upon itself over time. As the cynics gained a larger audience, they became louder, and more in evidence. They played upon their new found status. Every action of the internal investigative team became suspect. Soon, each administrative policy statement issued received comment from the cynics. They were tireless in indicating the potentially negative repercussions of any policy.

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<sup>65</sup> *ibid.*, p. 251

<sup>66</sup> This phenomon noted by Muir at p. 251, *ibid*, has also been observed by Arthur Niederhoffer, Behind the Shield, (Anchor Books; N.Y., 1969), p. 189.

The cynic's explanations, were more often than not accepted by street troops. Exhortations that morale would worsen due to 'such-and-such' a policy change became self-fulfilling prophecies. We have already noted the cynicism endemic to police work. When this general negative propensity is magnified by such cynic dissidents, the policeman's individual experience, the police organization's operations, and the general public all suffer. While in Oakland such cynics are not as evident as are those of Muir's Laconia, they are present and do effect the morale of street troops.

A most important effect of the Laconia I.A.'s "tyranny", was a combination of other counterproductive tendencies. The previously mentioned deleterious effects taken together produced a profound indignation toward the brass of the Department, toward internal investigators, and even toward the judicial system. The judicial system of course provided no defense to the street cops who faced an oppressive, unaccountable regime. Policemen saw that the legal system shrouded "factually" guilty criminals in cloaks of protective procedures, while it denied the same to their "honest", "hard working" brother officers. While the legal analogy is not technically correct, this apparent disparity of treatment deeply offended the officer's senses of justice.

Thus, the tendency for policemen to suffer from anomie was exacerbated. Due process procedures had been defined for these policemen by the institutionalized processes, of American Legal

structures. These procedures were aimed at the realization of the more general goals of fairness and objectivity in the criminal accountability system. The "reign of terror" indicated to policemen that the institutionalized means of attaining those goals were not at their disposal. What is more, such means were at the disposal of "murders, muggers, and thieves." The counterproductive effects of this crisis not only affected the immediate lives and careers of Laconia policemen. The affects of the "reign of terror" were felt within that department for some time to come. The reverberations of I.A.'s tyranny were manifested in the form of residual resentment and cynacism, so easily passed from one generation of patrolmen to the next.

The counterproductive tendencies outlined here are latent in any I.A. organization. To one extent or another, all were evident in the several police organizations studied which maintained centralized I.A. systems. Besides these dynamics, apparent in individual officer morale and productivity, several more counterproductive tendencies develop for the police organization as a result of maintaining an I.A. bureau.

Within any organization, those who are responsible for quality control can be the subject of ridicule and ostracism. This is particularly true of police internal review mechanism. Those who, by working in I.A., transgress subcultural norms of solidarity can be viewed as "traitors" by some of the police populace. This makes for interesting dynamics within police

organizations.

First, it can be difficult to get officers to volunteer for the I.A. job. When men are forced to manage this task, their (the investigator's) morale can indeed suffer. The consequent credibility problems of the I.A. organization are obvious.

Second, there can be significant problems for the former I.A. officer who has been re-assigned to regular duties elsewhere in the department. Sometimes these officers suffer social ostracism from the troops whom they used to monitor.<sup>67</sup> On occasion, open hostility towards former I.A. officers makes it unwise for the organization to assign them to normal duties after their investigative time is served.<sup>68</sup> It can, of course, be argued that the absence of such assignments might lessen tension within the police agency.

More generally, there is little positive feedback in I.A. Both policemen and citizens tend to vent their spleens in the direction of I.A. investigators. Not even the comraderie of the locker room is available to the internal investigator. He

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<sup>67</sup>Though this is by no means always the case, according to officers interviewed who are so situated.

<sup>68</sup>In one department studied, the officers who did internal investigations during a particularly emotional crisis period were not sent back to the Patrol Division when their normal assignment periods were up. These men were transferred within several investigatory bureaus and kept away from the rank and file street troops for several years. This was done even though departmental policy specifically required otherwise. That the departmental hierarchy actually feared for the safety of these men, was not at all unlikely

cannot utilize this catharsis to alleviate the negative effects of his police experience. Some I.A. people feel that street policemen do not understand what the unit does for them. It is no wonder then, that these investigators become self-righteously indignant toward their "ungrateful" fellow officers. It is logical that they might feel persecuted by the troops whom they monitor. We can therefore, easily understand the development of a tyrannical, over zealous enforcement ethos within I.A. As noted above, this produces perhaps the greatest potential problem for the internal review mechanism.

#### IV. Summary

"To suggest that (Internal Affairs) units can operate as the world's greatest washing machine--everything that goes in dirty comes out clean! is understandable. It is obvious to many people that such units fail to vigorously pursue abuses of authority, abuses of power, and arrogant bullying." \_\_A.C. Germann 69

Germann's statement is indicative of a legitimacy problem critical to our police review study. It is also indicative of a lack of practical knowledge of the operations of police internal investigative units. It is therefore a good pushing off point for the next chapter. Therein, we shall consider review processes which may appear more legitimate, but which are substantively less effective than are internal investigations at deterring police malpractice.

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<sup>69</sup>A.C. Germann, "Changing the Police\_The Impossible Dream?", The Journal of Law, Criminology and Police Science, Vol. LXII, No. 1 (1971), p. 420.

As evidenced by the Oakland Police Department, the classic Internal Affairs model of police review is not at all as sinister as has been ascertained by external observers. The deterrent effects of internal investigative mechanisms are significant. Policemen on the street, are constantly cognizant of the existence and effectiveness of internal control systems. They often consider the ramifications of their actions with respect to those organizations.

Any analysis of accountability systems should therefore consider the dynamics of police review by Internal Affairs organizations. There is much to be learned from the "professionalism" and genuine dedication of police investigators as they seek to clean their own house and further subcultural goals. The furtherance of such goals is not necessarily at odds with society's interests in holding police officers accountable for their actions.

There are however significant problems in legitimizing such potentially nepotistic processes as internal review. The perceived legitimacy with which the community considers police review systems is of critical significance to our enterprise. Despite its pluses, the I.A. system faces tremendous problems vis-a-vis the community's acceptance of its legitimacy. The credibility gap in community based legitimacy speaks to the overall credibility of police institutions. It is therefore a problem of such weighty significance that it cannot be ignored even in the face of the behavior control effectiveness of I.A. systems.

Then too, it must be remembered that Oakland's is an exemplary system. It represents the best that can be expected of internal review. It is manned by dedicated, competent people who treat the public's problems seriously. It is supported by a Chief who is unswerving in his efforts to protect (and require) its objectivity. It is supported by a political elite which has allowed it significant latitude within which to operate. Thus, the problems which are endemic to Oakland's system are the very least that one can expect such a process to develop.

Let us turn to the consideration of another monitoring system: civilian review. We shall see that the theoretical legitimacy of such external monitoring devices does not necessarily make them preferable to internally organized and professionally run self regulatory mechanism.

## Chapter 10 CIVILIAN REVIEW

### I. Introduction

No single subject has generated more controversy over the relationship between the police and the community than that of a civilian review of police abuses. For some time calls for such review have emanated from politicians and academicians of a variety of political persuasions.<sup>1</sup> A concomitant concern over the "threat" of civilian review is almost ubiquitous in police circles. From police executives to patrolmen, the notion that civilians might review alleged police misconduct is a source of great apprehension.

It is important to realize that civilian review of police conduct is indeed a revolutionary idea. There have been very few experiments in the field. Those systems which have been set up have seldom lasted longer than four or five years. Thus, civilian review boards have not been "institutionalized" sufficiently to tell us much about the dynamics which they develop over time. In short, for all the theoretical rhetoric about the idea, no one really knows much about civilian review in action.

The politics which accompany the formation of civilian review boards have traditionally caused vehement reactions on the part of local policemen and police organizations. Civilian

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<sup>1</sup>See Zecharial Chafee, Preface to E.J. Hopkins, Our Lawless Police (Viking Press; New York, 1931).

Review is seldom debated in a rational and logical fashion. It is much more than just an alternative method of personnel management. Usually, calls for civilian review occur during crisis periods wherein law enforcement personnel have clashed with citizens in violent situations. Thus, civilian review is inexorable linked to emotional political issues.

A 1935 riot in Harlem was cause for the creation of a blue ribbon commission to investigate a variety of race related problems. As a consequence of hearings held regarding that riot, the Commission indicated as one of its' recommendations that "the commissioner of police arrange for the appointment of a committee of from five to seven Harlem citizens of both races to whom people may make complaint if mistreated by the police."<sup>1a</sup> Thirty years later the McCone Commission looking into the 1965 Los Angeles riots indicated a similar recommendation. "Investigations of all citizens complaints should be conducted by an independent inspector general under the authority of the Chief of Police..."<sup>2</sup>

Riots are of course unusual circumstances. Police misconduct does not normally manifest itself in the types of abuses considered by riot commissions. Given the emotional implications involved in riots, commission recommendations suggesting

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<sup>1a</sup>Anthony Platte, The Politics of Riot Commissions (MacMillan; New York, 1971), p. 181

<sup>2</sup>Tony Platte, *ibid.*, p. 279.

civilian review are taken by policemen as illegitimate. Officers instead view such recommendations as attempts to develop policy out of unusual (rather than commonplace) practices.

Then too, civilian review board politics usually involve racial issues. Proponents of civilian review often represent minority communities of one sort or another. As noted in Chapter 9, blacks in particular have very little confidence in most internal police complaint investigatory procedures. The same holds true for Chicano citizens.<sup>3</sup> Charges of racism, brutality and large scale corruption normally accompany calls for civilian review boards. The Police reaction to such rhetoric is understandably vehement. Witness the statement of patrolman John J. Cassese, the President of the Patrolman's Benevolent Association of Philadelphia, when referring to the call for a civilian review board in that city; "I'm sick and tired of giving in to minority groups. Racial minorities will not be satisfied until you get all Negroes and Puerto Ricans on the board and every policeman who goes in front of it is found guilty."<sup>4</sup>

As if the racial implications and political arguments surrounding civilian review board discussions are not enough,

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<sup>3</sup> See U.S. Commission on Civil Rights (Washington D.C.; U.S. Government Printing Office, 1966) Newark Hearings, p. 455; Detroit Hearings, p. 305; Cleveland Hearings, p. 514; also Lohman and Misner, The Police in the Community, (Univ. California, Berkeley, 1966), Vol. I, p. 92.

<sup>4</sup> New York Times, May 29, 1966, p. 42.

it has often been alleged by law enforcement spokesmen that Communism is involved in civilian review politics. J. Edgar Hoover, former head of the Federal Bureau of Investigation, stated openly and frequently that he thought "communists" were behind civilian review boards. As Hoover put it, "their altruistic mouthings are a front and a sham for they have already prejudged law enforcement as an enemy to their nihilistic cause. Their real objective is to intimidate and harass police."<sup>5</sup> There is no doubt that the hysteria which surrounds these types of assertions has lessened in the recent past. However, there are circles wherein such admonitions are still taken seriously. Over time the defeat or disbanding of several civilian review boards has been aided significantly by such publicity.<sup>5a</sup>

Organizations which have called themselves "civilian review boards" have been created in several jurisdictions in the past twenty years. Such boards were established in Washington, D.C., (1948), Philadelphia (1958), Minneapolis and Pennsylvania (1960), Rochester (1963), New York City (1966), Kansas City (1969)<sup>6</sup>, and Berkeley (1972). While each of these civilian re-

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<sup>5</sup> See June, 1970 ed. of the FBI Law Enforcement Bulletins; also see a set of articles compiled by the National Fraternal Order of Police, Committee on Human Rights and Law Enforcement, entitled "Police Review Boards," unpublished Cinn., Ohio, no dates; or Walter Gellhorn's When Americans Complain (Harvard Univ. Press; Cambridge, 1966), p. 17.

<sup>6</sup> The Kansas City system is still in operation. It is considered in Chapter 6 as one of our "hybrid" systems.

view systems was different in its formulation, all save Berkeley have been advisory to the Chief of Police. The Berkeley board has the authority to recommend disciplinary action and policy changes to city administrators higher than the Chief of Police. The Berkeley review organization in this sense is the only completely civilian, completely external review board to have ever existed in the United States. The Berkeley Police Review Commission (civilian review board) reports directly to the City Manager's Office with its disciplinary recommendations and policy recommendations.

The Berkeley civilian review board was created by a vote of the people of Berkeley on April 17, 1973. This referendum<sup>7</sup> was passed after a tumultuous political struggle. We have briefly alluded to the types of political arguments which surround civilian review board campaigns. The Berkeley experience was nothing unusual in its rhetoric or emotional content. "Radical" politicians favoring the formation of the board argued that Berkeley policemen were systematically racist and brutal in their application of the law. The predictable police reaction was to decry the referendum as a "political" attempt to control the police department.<sup>8</sup>

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<sup>7</sup>Berkeley City Ordinance #4644.

<sup>8</sup>For some background into the particulars of the struggle, see "Coalition 'Statement of Unity'", Berkeley Daily Gazette, 8 Jan 73, pg. 1; "Heated Ballot Measures," Berkeley Daily Gazette, 16 Apr 73, p. 2; and "Police Association Moves to Halt Review Body", Berkeley Daily Gazette, 19 Apr 73, p. 1.

The polarization which was created by this political struggle is normal to civilian review struggles. Skolnick remarks in his study of the politics of protest:

"At the outset, it was the distrust by minority group members of internal police review procedures which caused the demands for civilian review boards; the militant opposition of the police has only brightened this distrust. Thus, as might be anticipated, a cycle of greater and greater polarization has been set in motion." <sup>9</sup>

Thus, Policemen in Berkeley already maintained a healthy mistrust of the Police Review Commission when it was formed. To complicate the problem, some of the individuals who were appointed to the board were known for their vehemently anti-police politics. <sup>10</sup>

Initially, the Berkeley PRC expected little cooperation from the police department (and perhaps did not desire any). Rather than being populated by civilians interested in doing an "objective" job of evaluating complaints against the police department, those populating the board were outspoken critics of the Berkeley Police Department.

The expected conflicts between Police Department and PRC in Berkeley did, in fact, eventuate. As this writing (Spring, 1978),

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<sup>9</sup> From Skolnick's discussions of the New York City civilian review board, in Jerome Skolnick, The Politics of Protest, (Simon and Schuster, New York, 1969), p. 280.

<sup>10</sup> This analysis of the nature of the political stands of commissioners is not the author's own extrapolation. It is a consensus of opinion among Commissioners who sat on that initial board, Commissioners who sat on subsequent boards, individuals involved in the Ombudsman's Office in the City of Berkeley, people working for the City Manager's Office of Berkeley, street police officers, and police administrators. All agree that those taking office initially as commissioners included within their ranks a majority of "anti-police" people.

tensions between the two organizations have only slightly lessened in five years of PRC operation. A variety of lawsuits have been filed over time by the Berkeley Police Officers Association, the Berkeley Police Department, and the Police Review Commission questioning the practices and authority of both the PRC and of the police departmental Internal Affairs bureau. The PRC has had great difficulty in attempting to have an impact upon the police department. Although recently the Commission has been more moderate politically, the difficulties initially encountered by the Police Review Commission have continued. The current Commission is more interested in obtaining cooperation from the police department. However, that cooperation is understandably difficult to attain, given the history of conflict between the two organizations.

Let us now turn to consider the specific operations of the Berkeley Police Review Commission.

## II. Police Review Commission Procedures.

The Police Department monitored by the P.R.C. is an unusual one. Its patrol division of approximately 100 uniformed officers polices a city of 210,000 residents. The department is largely made up of college graduates. At least two years of college are required for all officers. A number of street policemen have advanced degrees in criminal justice or in the social sciences.

The Police organization consciously avoids the types of militaristic trappings emblematic of so many police departments. Officers wear uniforms, but grooming standards and military type inspections are eschewed. Many officers sport full beards, and several men even have 'pony-tail' length hair. Because of their educational level, Berkeley officers enjoy a great deal of latitude in working criminal investigations. Street officers follow-up all felonies (even homicides) with the help of a small support staff of detectives. This felony follow-up responsibility is unparalleled in any other large police organizations.

The City of Berkeley is divided into three fairly distinctive communities. In the west and along the edge of the San Francisco bay lie the 'flatlands'. This high crime area is largely Black in its ethnic makeup. The south and east sides of town compose the University of California community. Many thousands of students and professors live there, and the policing of this area is partly done by a separate University Police Department. Finally, the north side of town is a high rent area of large hillside homes with breathtaking views of San Francisco bay and of the Golden Gate.

Crime in the city is high, and citizen complaints are (per policeman and per citizen) highest of any department studied. Though the police department is well educated and known for its restraint under trying circumstances, it seems that the large

minority populations and intellectual/academic communities generate a great number of grievances. The Berkeley Police Department has traditionally been acclaimed as a pacesetter among police agencies, both by policemen and by external analysts alike.

In Berkeley, two separate organizations exist which receive an investigative citizen complaints about police officers. The Police Review Commission is completely external to the police department. It receives, investigates, deliberates, and makes decisions upon citizen complaints. However, within the police departmental structure, an Internal Affairs organization also exists. This body is similar to Oakland's outlined in Chapter nine.<sup>11</sup>

Therefore, any civilian wishing to complain about police procedures or a specific abusive act can grieve either to the Internal Affairs organization or to the Police Review Commission. Approximately one-fourth as many citizens take advantage of the Police Review Commission's processes as take advantage of the Internal Affairs system.<sup>12</sup>

#### A. Input Structures

The Berkeley Police Review Commission is housed in a city office building in downtown Berkeley. This building is separate

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<sup>11</sup>Having discussed internal review in chapters 6 and 7, we shall herein focus upon the PRC only.

<sup>12</sup>This fact, however, is not reflected in the current statistics for investigations at each organization. Because the PRC investigates all complaints (and I.A. shorts circuits many) formal investigations the 1977 statistics indicate 58 formal investigations for I.A. and 62 for the PRC. Historically, however, I.A. has handled approximately 220 complaints per year.

from the police department edifice. All walk-in complaints are interviewed by the PRC's civilian investigator. This individual controls the day-to-day operations of the office.<sup>13</sup> In addition to phone complaints, written complaints, and "walk-ins", the P.R.C. receives notification from the police department of every complaint filed with Internal Affairs. Complaints who have filed grievances with Internal Affairs receive (from the P.R.C.) a form letter advising them of their option to file their grievance with the P.R.C. Because of case load pressures, the P.R.C. only investigates complaints it receives directly from citizens.<sup>14</sup>

Very little short circuiting of complaints occurs in the P.C.R system. There is a feeling on the part of the P.R.C. investigator that significant legitimacy problems exist in treating complaints informally. Thus, every P.R.C. complainant has the right to a full investigation and a formal hearing relative to his or her complaint. There are, therefore, times when official hearings of the P.R.C. concern themselves with complaints which would be handled informally elsewhere.

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<sup>13</sup> While receiving an honorary stipend, Police Review Commissioners in Berkeley are not full time personnel. The Investigator is a fulltime employee.

<sup>14</sup> Internal Affairs is advised of every complaint received by the P.R.C. I.A. then investigates both the complaints it receives and those the P.R.C. receives.

It should be noted that other "civilian review boards" have historically allowed a great deal of latitude for short-circuiting complaints. In Philadelphia, for example, a conciliatory process existed which many felt was an important plus in that system.<sup>15</sup> Such a short-circuiting mechanism also operated in the ill-fated New York City Civilian Review Board. It was recognized by Algernon D. Black (a review board member) as a progressive step on the road to improved community relations.<sup>16</sup> The Berkeley System, however, very strictly applies a policy which requires the full investigation of all complaints.

As alluded to above, the police department and the P.R.C. are both required by city ordinance to advise each other of complaints received. There have been problems with compliance with this directive. Even after five years of parallel operation, there is still some suspicion on the part of P.R.C. employees that the police department does not make available all of the complaints which it receives.<sup>17</sup> This suspicion is indicative of the generally poor working relationship between the two organizations.

The initial statement of a P.R.C. complainant is outlined by the investigator who will do the actual investigation. This process is similar to that followed in I.A. organizations. He then initiates a formal investigation in every case.

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<sup>15</sup> See Robert J. Bray Jr., "Philadelphia's P.A.B. - A New Concept in Community Relations", 7 Villanova L. Rev. 656, Summer 1962; or Spencer Coxe "Police Advisory Board", 35 Conn. L. Rev. 138, 1961.

## B. Investigations

The civilian who investigates cases for the Police Review Commission is a lawyer. He has had no formal investigative training or experience prior to his P.R.C. appointment. P.R.C. investigations reflect the legal background of the investigator. Case citations and legal dicta are often included as part of P.R.C. investigative summaries. In addition, these summaries go into great detail about codified law and police departmental rules and regulations relevant to individual cases. Such case citations, dicta, and rule explanations are absent from most I.A. investigations.

Over time there have been a variety of problems generated by the hostility endemic to the P.C.R./police department relationship. P.R.C. access to statements, reports, and other police departmental information has been problematic. Several suits have been filed by the police to thwart P.R.C. access to police departmental information. However, the P.R.C. is now generally able to achieve access to that information which is required for its investigations.

The P.R.C. investigator takes statements from witness officers, accused officers, and civilians. Accused officers and civilians are admonished of their "constitutional rights"

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<sup>16</sup>Algernon D. Black, The People and the Police (McGraw-Hill; N.Y., 1967), p. 113.

<sup>17</sup>From field notes, interviews with Police Review Commission clerical employees on 1/30/78, and 6/29/77.

to remain silent or to have an attorney present while giving such statements. This convention is required by the P.R.C.'s written procedures for investigation.<sup>18</sup> This procedure has been established in the interest of fairness to all concerned parties. P.R.C. investigations are not, of course, criminal investigations. Therefore, the "constitutional" protections allowed under the Miranda decision are really unnecessary.<sup>19</sup> Citizens do not "have" to be admonished. Accused policemen, as in I.A. investigations, could be required to answer the P.R.C. investigation questions. In fact, because of this convention, they are not.

Witness police officers however, are required to give statements to the P.R.C. Investigator. These officers are also required to testify at "Boards of Inquiry" (the formal hearings of the P.R.C.) Accused officers, however, are not required to testify. Since they are not required to do so, officers accused of abuses rarely appear at hearings.

Generally, 4 to 6 months are required to complete a P.R.C. investigation. This is significantly longer than the time required by any internal affairs organization.<sup>20</sup>

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<sup>18</sup> "Regulations for Handling Complaints Against Members of the Police Department", adopted May 13, 1975, amended Jan. 21, 1976, Berkeley Police Review Commission document, I.10.c., p. 3.

<sup>19</sup> Miranda vs. Arizona, 384 U.S. 436, 865 S.Ct. 1602, 16 L. Ed. 2nd 694 (1966).

<sup>20</sup> Most I.A. cases take 3 to 5 weeks to prepare.

### C. Deliberations and Output Utilization

The P.R.C. process is much more formalized and judicialized than is the Internal Affairs process considered in chapter nine. All investigations result in formal, public hearings before three P.R.C. Commissioners. The nine Commissioners rotate through Board of Inquiry duties. Each serves on approximately one third of those held. Since Boards of Inquiry must be held after investigations have been completed, they are delayed more than 6 months from the time of the occurrence of the alleged misconduct.

The standard of proof for Boards of Inquiry is one of "clear, convincing evidence."<sup>21</sup> That is, when all evidence is considered, clear and convincing proof of an officer's misconduct must be proven for the Board to find an allegation "sustained."<sup>22</sup>

While this standard is used for proof, the standard which is used to determine the admissibility of evidence is very different. Much evidence (usually in the form of testimony) is accepted at hearings which would not be accepted by courts in legal actions. This is done so that citizens will have a great deal of latitude within which to attempt to prove allegations.<sup>23</sup> Commissioners feel that this is important to the fairness of the process.

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<sup>21</sup>See Regulations, op. cit., III. 19 (p. 5).

<sup>22</sup>Boards of Inquiry only make "sustained" or "not-sustained" findings. They do not use the four common I.A. findings outlined in chapter nine.

<sup>23</sup>Because of this loose standard, a great deal of hearsay is often accepted at hearings.

The P.R.C. Investigator sits on all Boards of Inquiry in an advisory capacity. He participates at every point of the P.R.C. hearing process; in interrogating officers, in cross-examining witnesses, and in advising the Board as to the admissibility of evidence. Civilians may be represented by counsel before the Board (they normally are not however). Civilians can call any witnesses and cross-examine all who testify. Witness officers are normally called by the Investigator. As noted above, accused officers almost never attend Boards of Inquiry. Nor do they often testify.<sup>24</sup>

Normally the complaining citizen gives his or her testimony and is in turn questioned by each Commissioner. Then the investigator is allowed to question the citizen. Finally, the accused officer may do so. Then the citizen may bring any witnesses to testify in his or her favor. The cross-examination pattern repeats. It is at this time the accused officer may testify. (Of course, they never do.) Witness officers are then called by the Investigator. They too are subject to cross-examination by Commissioners. Investigator, and citizen complainant alike.

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<sup>24</sup>In approximately one year and a half of viewing Boards of Inquiries, the author never saw an accused officer testify. The law firm which represents the Berkeley Police Officers Association has advised its client officers not to testify at hearings. It is apparent that almost 100% compliance with this advise has been obtained. The advise stems from the legal doctrine that admonishments made in such open hearings may be used against officers in civil legal actions.

After testimony has been heard and evidence accepted, the Board of Inquiry closes the evidentiary portion of the hearing. Discussion then begins. The discussion is done in public. Only the three commissioners are supposed to participate herein. It should be noted, however, that even at this point, the Investigator is quite liberally used as a resource and as an advisor. After discussions, the commissioners vote on suggested outcomes for each allegation involved in the complaint. Formal notice of findings is then sent from the Commission to the accused police officer and to the citizen complainant.

The P.R.C. is advisory to the Berkeley City Manager. A copy of it's findings and of the investigative report is sent to the City Manager for every complaint which it investigates. If an officer has been disciplined by the police department with three days or more of suspension, the City Manager will also receive an Internal Affairs investigative report. When the Chief of Police wishes to assign a suspension in excess of three days, the City Manager does the actual suspending. The City Manager normally goes along with the police department's recommendations. However, at times the P.R.C.'s finding and the police department's finding are at odds. When this happens the P.R.C.'s recommendations are frequently adhered to by the City Manager. No official statistics have been kept as to how often the police departmental and P.R.C. findings conflict.

However, no one on either side of the question estimates that such differences occur in more than 15 or 20% of the cases heard.

The P.R.C. also monitors police departmental policy. The P.R.C. discusses not only policy related citizen complaints, but also general policy questions of all sorts. Sometimes the Commission will hold public hearings on questions of police policy. The same people then consider specific citizen complaints and general police policy issues. P.R.C. recommendations regarding policy are also sent to the City Manager.

The Police Review Commission in Berkeley then is completely independent of the Police Department. Civilians outline, investigate, and hear complaints. The deliberations of specific complaints and of policy issues are all forwarded to the City Manager's Office. The City Manager then deals with the police department directly. Over time these official channels have begun to break down. A "tolerance" between the police department and the P.R.C. has very slowly begun to develop. However, tensions resulting from the initial political fight over the organization's formation are apparent even five years later. Cooperation is still limited and relations between the two organizations are guarded at best.

So much has been said about civilian review boards that it is difficult in our present analysis to thoroughly treat all relevant perspectives. Let us turn, however, to consider the potential of the civilian review system.

### III. Evaluation

#### A. Systemic Integrity

Intuitively there is every reason to believe that investigators who are removed from the police department and are not members of the police subculture would be more rigorous in their pursuit of police malpractice. We have noted in chapter nine that few problems exist regarding the rigorousness of modern day Internal Affairs investigations. In fact, the most prevalent problem with I.A. investigators is one of over zealousness in the performance of their charge. Nevertheless, the tendency for investigators to denigrate complainants stories and side with "their own" is historically well documented. It is understandable that citizen confidence in internal investigative processes is lacking.

Aside from investigative integrity, the question of outcome deliberation is important. As Lord Campbell wrote in 1852: "It is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to confined to a cause in which he is a party, but applies to a cause in which he has an interest."<sup>25</sup> Unlike the internal

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<sup>25</sup>The reluctance of the New York Police Department (at a variety of organizational levels and over a several year period) to initiate investigations into its own corruption has been duly illustrated for us by Peter Maas in his book Serpico. (Bantam Books; N.Y., 1973). While this sort of corruption is not the business of our review systems, the New York example indicates the historical reluctance of police departments to question their own integrity. Also, see The Knapp Commission Report on Police Corruption (George Braziller; N.Y., 1972).

processes of chapters eight and nine, P.R.C. decisions regarding case outcomes are made by community 'representatives' of a sort. They are not, in theory, subject to hidden assumptions productive of the police experience.

Then too, P.R.C. hearings are adversarial and open to the public. This speaks to several problems inherent in secretive police departmental systems. First, of all the openness of such hearings underwrites the legitimacy of the entire disciplinary process. Whatever prejudices or assumptions are subsumed into the process are open to public scrutiny. (see Kerstetter quote, page. 108).

Second, the open hearing method allows both sides of a complaint investigation their fair hearing. The civilian may perceive that he or she is given a more fair hearing because of the openness of this adversary system. On the other hand, we have noted in chapter nine the tendency for internal review processes to abuse the rights of policemen. Many policemen bemoan the lack of confrontation in I.A. systems. Thus, both the policeman and the citizen may benefit from such an open adversarial type of "contest."

Third, open hearings provide a variety of due process protections for the individual police officer. The judicialization of complaint handling in this fashion can be seen as allowing positive protections for police officers and for police organizations. An offshoot of allowing these types of due process protections might be a lessening of internal departmental tensions caused by over zealotness in Internal Affairs investigations.

Many complainants who have actually gone through civilian review hearing processes are favorably impressed with the treatment they received. Our survey indicates that many P.R.C. complainants have faith in the "fairness", "thoroughness", and "objectivity" of the system. A University of California study of the Philadelphia Civilian Review Board confirms this positive citizen evaluation dynamic. That study concluded that the Philadelphia Board had worked as an effective avenue of redress for civilian grievances.<sup>26</sup>

Policemen on the other hand consistently fear civilian review of alleged misconduct. Sample policemen from all of our organizations, exhibited marked tendencies to be against civilian review even when they have no experience with it and knew nothing about it.

As Niederhoffer points out in his study of New York policemen, there was a "conviction that if a civilian review board were to sit in judgement it would automatically side against the police officer."<sup>27</sup> In its successful campaign to fight that board, the New York Patrolman's Benevolent Association asserted flatly that "civilians were likely to be biased against the police. Only the police are in position to understand the

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<sup>26</sup> Lohman and Misner op. cit., vol. 2., p. 100-111, 217, 249, 253-254. As cited in Task Force Report: The Police, The Presidents Commission on Law Enforcement and the Administration of Justice (U.S. Government Printing Office, Washington, D.C., 1967), p. 202.

<sup>27</sup> Arthur Niederhoffer, Behind the Shield (Doubleday; N.Y., 1967), p. 189.

police problem (sic) and review civilian complaints."<sup>28</sup> Police fear of civilian review ran so high in Philadelphia before the institution of that board, that the president of the Fraternal Order of Police stated, "there'll be a revolt in the Department if this new board idea goes through."<sup>29</sup>

The evidence is, however, that civilian review boards are anything but abusive of policemen. First, one can point to the due process rights which they allow to street cops. These are expansive rather than restrictive of those allowed by internal mechanisms.

Second, statistics indicate that civilian review boards are much less prone to suggest termination of officers than are internal bodies. In Philadelphia, the internal board recommended dismissal in 14% of its cases, while the civilian board did so in only 1%.<sup>30</sup>

Generally, Civilian Review Boards do not find policemen guilty of misconduct most of the time, or even much of the time. For example, of the 530 cases decided by the Philadelphia Civilian Review Board, between October 1958 and December 1965, only 38 cases resulted in recommendations of disciplinary actions against police officers.<sup>31</sup>

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<sup>28</sup>As quoted in Algernon D. Black, op. cit., p. 209.

<sup>29</sup>James P. Lonhran, The Evening Bulletin, Philadelphia, January 17, 19

<sup>30</sup>James R. Hudson, "Organizational Aspects of Internal and External Review of the Police", Journal of Criminal Law, Criminology, and Police Science, September 1972, Vol. 63 #3, p. 425.

Similarly in New York City, of the 135 cases disposed of by its civilian review board, only 5 eventuated in recommendations that disciplinary actions or reprimands be issued to police officers.<sup>32</sup> And an unofficial study of our Berkeley system found that "the Berkeley Police Review Commission has assigned blame in a far lower percentage of citizen charges against the police than has the Berkeley Police Department's internal complaint mechanism."<sup>33</sup>

While all of this points out how civilian review is not abusive of policemen, one point must be made. If such systems are this lenient towards officers, maybe they aren't doing their jobs as they should. Perhaps police administrators are correct in stating that I.A. systems are more rigorous, thorough, and generally "tough" on cops than are external mechanism.

There are several reasons why civilian review processes might be less effective than internalized systems. First, of all there are problems with access in terms of obtaining information. Throughout the history of the Berkeley P.R.C., a variety of struggles have ensued over the ability of the P.R.C. to obtain access to police officers, to their statements, and to departmental records of different types. These legal hassles

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<sup>31</sup>Philadelphia Police Advisory Board, "7th Annual Report", Dec. 31, 1965, as cited in Task Force Report, The Police, op. cit., p. 201.

<sup>32</sup>"Few Complaints Against Police Result in Charges, or Fines", New York Times, March 4, 1967, p. 24 col. one.

<sup>33</sup>Berkeley Review Board Clears More Cops than Departmental Internal Affairs Bureau", March 1978, California Peace Officer's Association News, p. 25.

can be (and have been) solved in court or in negotiations between P.R.C. and departmental personnel. But they do take time. And because the P.R.C.'s civilianized investigations often take as long as six months, such problems definitely limit its efficiency. Of course these access problems are emblematic of the difficulty any external system would have in attempting to break police solidarity. Achieving cooperation from street policemen with regard to the potential abuses of their brother officers is indeed problematic. Obtaining general cooperation of policemen regarding all sorts of issues and specific complaint investigations is much more difficult for an external, civilian organization than it is for an internal affairs system.

Second, the civilian review system may be less rigorous because of the judicial guarantees which it allows police officers. We've noted that judicializing the review process can have positive ramifications for policemen's attitudes. However, on the other side of the coin, allowing police officers to refrain from giving statements, to refrain from giving testimony, and to have the right to counsel at open hearings can inhibit the ability of the process to be tenacious in its pursuit of police abuses. In any system of review, there will be a balance struck between the need to observe the rights of investigated police officers and the need of the community to make sure that policemen are not abusive. Procedural guarantees

can significantly hamper the ability of the process to ferret out substantive malpractice. Over formalization of a review process can effectively create a situation wherein the system loses sight of the goal of monitoring police behavior. It becomes simply another judicialized forum wherein substantive culpability is secondary to procedural concerns.

Third, civilian investigators may lack an understanding of police subcultural norms and police processes. Therefore, their investigations may not be as thorough as are those of Internal Affairs investigators. If civilian generated investigations can suffer from this type of lack of specific knowledge, then so too can decision making processes which depend greatly upon those investigations. The P.R.C.'s lack of understanding of subcultural norms and jargon can create confusion. It can lead to unfair and at times even silly decisions and policy recommendations.

Taken together, the pluses and minuses of the P.R.C. system present an interesting picture. The procedural due process rights of policemen and citizens are more thoroughly observed by this system than by any other observed. Fairness in a procedural sense is achieved by the system. Yet, the ability of the system to get at substantive culpability may be limited by the rights it allows policemen. Also, the thoroughness of P.R.C. investigations can obviously be problematic given the consistent exclusion of accused officer statements.

Let us turn to the issue of behavior control in order to consider the significant limitations of this system.

#### B. Behavior Control

One sociological dynamic which creates police citizen conflict is the gap between policemen and citizens due to the unique subcultural perspective of the street cop. In theory, the operation of civilian review boards will lessen this gap. Civilian participation will tend to expose policemen to the uneducated, unconditioned outlook which the average citizen has toward the law and policework. Concomitantly, civilians will be educated to police problems, regulations, policies, and standards. Especially if the review board is representative of minority communities, positive police/community relations should be generated from such a process.<sup>34</sup>

While this mutual education idea is intuitively persuasive, in Berkeley such education has not developed. Because policemen have eschewed participation in the process, the ability of commissioners to learn about the police perspective is very limited. Perhaps more important, the police have not learned about the Commission and its procedures. While policemen harbor some negative feelings towards the P.R.C., they do

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<sup>34</sup>See Algernon D. Black, *op. cit.*, p. 222, for a discussion of the progress in community relations made by the New York civilian review board because of this mutual education.

not have experiential knowledge upon which to base their evaluations of it. Still, the potential for a civilian body to bridge this police/citizen gap is great.

In chapter 9 we discussed how police behavior can be positively influenced by the institutionalization of organizational learning devices and procedures which utilize complaints as data. The Berkeley Police Review Commission fills several voids in the learning structure of the police departmental organization. First of all it can be argued that more complaints are filed because of the non-police departmental location of the Police Review Commission. Complaints are a form of feedback from the community. The existence of more complaints means that a greater pool of information is potentially available to be utilized by the police organization.

More important than the addition of a number of specific grievances is the P.R.C. policy formulation function. The P.R.C. reviews complaints and complaint trends with an eye towards changing or formulating police departmental policy. None of the police organizations contacted throughout our study attempts in a systematic fashion to use the community feedback which is available in the form of complaints. It is thus a distinctly positive form of information which the P.R.C. provides. The development of more intelligent and responsive policies can help the police department deliver services and professionalize its personnel.

Civilian review boards hold another potential for positive change in police behavior through attitude modification. The formalized hearing process of the P.R.C. may generate a sense of respect for due process norms which has not developed relative to the criminal justice system. By occasionally having themselves and other officers placed on the "other side" of the due process norms, police officers may obtain an individualized understanding of the importance of due process protections. It is no secret that policemen are frustrated with the criminal justice system because of its focus upon procedural rather than substantive guilt.<sup>35</sup> The P.R.C.'s formalized hearing processes can impact positively upon such attitudes.

But due process protections have their darker side. In terms of the entire criminal justice system, such protections for the accused citizen mean that factually guilty criminals will go free. In a police review system, due process protections mean that abusive policemen will "go unpunished". If Berkeley's I.A. system were dismantled, and the P.R.C. were the only organization systematically monitoring police abuses, the street policeman would actually be more free to engage in malpractice.

Our Berkeley P.D. officers consistently indicate that they are unworried about the P.R.C. as a potential sanctioning

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<sup>35</sup>See chapter 3.

mechanism. This assertion is somewhat suspect save for two factors. First, these same officers do indicate a concern over Internal Affairs operations. That is, they do worry at times about I.A. cases and the way in which their record at I.A. is developing. This indicates that these men are not simply indifferent toward any disciplinary system. Their lack of concern is selective.

Second, these same officers have almost unanimously indicated a respect for the "concept" of civilian review. Therefore, they do not reject the P.R.C. in a blindly irrational manner as some policemen have rejected other civilian review boards. It would seem then that their evaluations of the review board's impact should be considered important.

In the long run, the citizenry loses from the inability of civilian review processes to be as rigorous as internal affairs processes. The less rigorous a system is, the more freedom individual police officers will have to misbehave. A system may be less rigorous due to a lack of understanding of subcultural norms or due to the expansion of due process rights through judicialization. Whatever the reason, such a lack of rigor expands the ability of street policemen to "get away" with abusive behavior.

Of crucial significance to police officers is how the P.R.C. "wastes time" when dealing with frivolous or minor complaints. Of course, no grievance is frivolous from the per-

spective of the aggrieved citizen. However, a large number of "procedural" or "minor" allegations are handled by other systems in a less than formal way. When a police review system conducts investigations and formal hearings upon the most trivial of matters, this can elevate the status of police departmental cynics.

If the review system is considered silly, then all of its outcomes may indeed be suspect. They will be subject to attack from many within the police organization. And criticism will not be limited to those few who would opt for no control system whatever. The general departmental population at Berkeley P.D. is critical of the P.R.C. as being preoccupied with trivial matters. A consequent distain for disciplinary processes in general can inhibit the ability of professional norms of police conduct to develop.

The idea of developing professional norms of conduct brings up the issue of laymen controlling expert professionals. As we have noted, many external to the police are unwilling to give the "professional" label to law enforcement. Nevertheless, policemen are experts at their trade (to say the very least) and have begun to consistently demand the difference given to other professionals in controlling their own operations. As the president of the Buffalo Policeman's Benevolent Association stated:

I would oppose civilian review as an unpractical thing. Would the medicine or law profession want a review board of non-professionals? With civilian review

boards you take people who haven't the slightest idea of what the problems are, of what the law is, and have them run the police department. 36

Many policemen hold this idea about laymen reviewing police conduct. The overwhelming majority of our interviews spontaneously named this lack of lay knowledge as the most important limitation upon civilian review.

If the professionalization of police work is to occur, norm changes must obtain through various socialization processes. Peer review must be taken seriously by policemen and civilians alike. The imposition of civilian review structures lessens the potential for legitimate peer review (which is over time growing and expanding in police work).

Albert J. Reiss, Jr., sums up several of these concerns succinctly:

Apart from the question of how external review effects administrative authority, any such procedure makes problematic the professional control of professional practice...any external review board imposes a barrier to professional control by attenuating the latitude, an occupation or an organization based on an occupation has to police itself. 37

Civilian review systems involve totally external "regulation" of police conduct. Such systems do not foster nor respect the ability of "socialization" to change behavior among

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<sup>36</sup>As quoted by Stephen C. Halpern in "Police Employee Organizations and Accountability Procedures in Three Cities", *Law & Society Review*, Summer 1974, p. 568.

<sup>37</sup>Albert J. Reiss, Jr., The Police and the Public, (Yale Univ. Press, New Haven, 1971), p. 127-128.

policemen. Socialization processes are much more effective than are regulatory schemes in controlling behavior. And in police work the solidarity of one's peers is more crucial to individual workers than in any other professional.<sup>38</sup> Therefore, any regulatory system must necessarily take note of the tremendous potential for behavior control and attitudinal change which socialization holds in the area of police malpractice.

Perhpas the most important criticism then of civilian review processes (and of the Berkeley P.R.C.) is that they do not take note of the potential for socialization. Nor do they give a great deal of deference to the intelligence, experience, and integrity of police officers. They deny the ability of police organizational systems to deal with malpractice.

While this may threaten the police administrator, it may affect his behavior in an interesting way. Civilian review processes can take away a certain amount of the responsibility for police behavior which usually rests squarely upon the shoulders of police administrators. If, the investigation of complaints and the disciplining of officers were taken completely out of the hands of police administrators, those administrators might utilize the civilian review process as a shield behind which they may "hide" from criticism. Transferr-

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<sup>38</sup>See chapter five.

ing responsibility in this way is not at all an unusual dynamic in administrative circles. It has already been pointed out that rules can be used as shields to rationalize an actor's inability to take action. Similarly, such a loss of jurisdiction over disciplinary decisions might allow police administrators to rationalization not being held accountable for the actions of street officers.

Indeed, the management of the Berkeley Police Department sometimes bemoans the problems of retaining control of their organization in the face of external political pressures from the City Manager, P.R.C., City Council, and general populace. And this complaint is by no means limited to police departmental personnel. Administrators and politicians elsewhere in the Berkeley political milieu also point out this great amount of outside interference in police department processes. Some are as eager, it seems, as are police administrators to label the Department's shortcomings as being products of such interference. With some political power sources holding such attitudes, it is not difficult to envision the citizenry and city hall having problems holding departmental brass accountable for police misconduct.

A completely internalized disciplinary process, isolated from outside pressures, will alleviate this problem. In Oakland, by leaving the disciplinary process entirely in the hands of police departmental management, the citizen populace

and the city's political power structure can without question hold departmental brass accountable for all actions of the department. No outside interferences with disciplinary processes can be used to excuse police misbehavior. No inability to maintain proper control over subordinates can be claimed by police administrators. Internal investigations give the police departmental hierarchy a more unobstructed, clearly defined control of their troops. Thus, the department's hierarchy is held strictly responsible for every action of its subordinates.

The civilian review system then does not fare well when it is viewed with respect to its ability to control abusive behavior. Berkeley policemen effectively ignore it. What potential it does have to generate organizational and individual learning has been negated in Berkeley due to the lack of cooperation with which policemen and police administrators approach it.

While it may be very limited in its effect upon police behavior, the civilian review system does have its distinct advantages. We will now turn to the strong suit of the civilian review type of system: community perceived legitimacy.

### C. Community Perceived Legitimacy

As noted above, a variety of authors have argued that police buildings and police personnel inhibit the filing of grievances. Ostensively, they are oppressive and frightening to complaining citizens. Largely intuitive arguments are made that non-police departmental types of input systems would

facilitate the filing of more complaints. As Bayley and Mendelsohn note "it seems that the creation of a civilian review board would probably result in the registering of a larger number of complains".<sup>39</sup> Indeed the creation of the civilian review board in New York City in 1966 did increase the number of complaints filed against police officers in that city. In 1964, a total of 231 complaints had been filed using police departmental internal processes. During the first four months of its operation in 1965, the civilian review board received 440 complaints.<sup>40</sup>

Since a number of Berkeley complaints are received at the P.R.C. offices and not at Internal Affairs, it must be assumed that some of these complainants would not have found their way to the I.A. body if the P.R.C. did not exist.<sup>41</sup> However, it is interesting that when San Jose P.D. removed their Internal Affairs organization to a store front location it actually resulted in a slight decrease in the number of complaints filed.<sup>42</sup>

However, complaint numbers do not have to increase for the increased community legitimacy inherent in a civilian review process to be apparent. As Bayley and Mendelsohn note again, "even if the volume of complaints does not rise with the creation

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<sup>39</sup>David H. Bayley and Harold Mendelsohn, Minorities and the Police (The Free Press, New York City, 1968), p. 134.

<sup>40</sup>See Algernon D. Black, The Police and the People, op. cit., p. 94.

<sup>41</sup>Berkeley statistics cannot confirm any real increase because of the existence of the P.R.C.

of an independent complaint receiving agency, one can argue that it would still serve a useful purpose by demonstrating that the police force is not a closed corporation immune from examination."<sup>43</sup> Indeed from the perspective of the community, one of the most convincing arguments in favor of civilian review is that its openness will convince civilians that the review process is legitimate and that their grievances are being fairly and impartially considered.

In Philadelphia, for example, the civilian review board received significantly fewer complaints than did the old police departmental system.<sup>44</sup> Yet the executive secretary of the local N.A.A.C.P. was moved to note about the Board that "the only other possible relief was little short of laughable. And that was the old Police Trial Board. For there it was certain that the police officer, tried by police officers, would not be found guilty, no matter how strong the evidence."<sup>45</sup> Bayley and Mendelsohn found in Denver that "minority people...are indeed suspicious of the police to a much larger extent than the majority population. Furthermore they tend to look upon a civilian review board much more favorably than dominants.

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<sup>42</sup>From an interview with the Commander of the Internal Affairs Division, San Jose Police Department, 7/6/77.

<sup>43</sup>Bayley and Mendelsohn, op. cit., p. 134.

<sup>44</sup>See Spencer Coxe, "Police Advisory Board: The Philadelphia Story", 35 Conn. Law Journal 138 (1961).

<sup>45</sup>James K. Baker Esquire, Philadelphia N.A.A.C.P., Letter to the Editor, Philadelphia Courier, Oct. 13, 1960.

Whereas 47% of the dominants were favorably disposed toward the creation of a civilian review board, 73% of negroes and 71% of Spanish named were favorably disposed."<sup>46</sup> Civilian review boards may indeed make significant inroads into the suspicions, anti-police feelings of minority groups.

While policemen, police departments, and police employee organizations usually resist civilian review vehemently, the institution of civilian review processes can have positive ramifications for the police. The civilian review system can act as a positive public relations mechanism, answering the detractors of police organizations. When civilian review systems find policemen exonerated of alleged misconduct, the legitimacy of the department can increase greatly in the eyes of the public. The civilian mechanism can thus be seen as legitimizing, boundary spanning devices just as is Internal Affairs. It can buffer criticism that would be otherwise aimed at internal police investigative processes.

While the Berkeley Police Review Commission does not expend effort to short circuit complaints, the potential for civilian review boards to do so is great. The process could be similar to that utilized by the Oakland Police Department's Internal Affairs organization. Indeed the civilian review board in Philadelphia spent a great deal of time in its

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<sup>46</sup> Bayley and Mendelsohn, op. cit., p. 134, also see Robert M. Fogelson, Violence as Protest (Anchor Books, N.Y. City, 1971), p. 66.

"conciliatory", informal processes.<sup>47</sup> In the eyes of the community, when civilians furnish informal explanations of police conduct, such explanations are more likely to be believed than those given by police departmental personnel. A significant number of citizens can be satisfied by a quick and concise response to their grievance. Many would be more receptive to this than to an open hearing held months after the fact.

However, the civilian review board is not a panacea which solves all police community legitimacy problems. A 1966 study by the University of California's criminology school indicated that the Philadelphia review board did not, in 7 years of operation, dispell the ghetto's resentment toward the police. Nor did it restore confidence in complaint procedures.<sup>48</sup> Gellhorn asserts that "even a sympathizer may doubt...whether creating a review board will achieve the desired results. It seems likely to soothe, but not to give lasting relief."<sup>49</sup>

One reason that civilian review boards may fall short of their potential is that participants may be "captured" by those whom they ostensibly regulate. The capture theory of administrative regulation "asserts that agencies become the captives

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<sup>47</sup> See Spencer Coxe, op. cit., p. 148.

<sup>48</sup> Lohman and Misner, The Police and the Community, op. cit., II, 83-85, 105-7, 121-30, 164-65 as cited in Robert Fogelson's Violence as Protest (Anchor Books; N.Y., 1971), p. 69.

<sup>49</sup> Walter Gellhorn, When Americans Complain (Harvard Univ. Press; Cambridge, 1966), p. 181.

of industries which they are charged to regulate."<sup>50</sup> By spending much time with policemen, learning their problems and perspectives, the citizens who populate such a board may begin to take the policeman's part in the same way that I.A. investigators supposedly do. Indeed, the experiences which many of our police organizations have had with Civil Service Commissions indicates that civilians may be too lenient (and not too strict) with erring policemen.

Then too, a review agency may be captured by people other than the police. There is a danger that civilian systems may be captured by vociferous, radical elements of the community. Indeed, over time some individuals in the Berkeley community have utilized Board of Inquiry hearings and policy hearings as platforms to expose political rhetoric aimed at the police department. It is apparent from monitoring such hearings that a very small, vocal segment of the Berkeley community is interested and involved in the "open" and "public" processes of the Commission. The danger that the P.R.C. may be captured by such vociferous minorities is even greater given the Commission's often utilized procedure of taking interested citizen "volunteers" from the audience when formulating panels to look into police procedures.

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<sup>50</sup> Louis L. Jaffee, "The Illusion of the Ideal Administration", 86 Harvard Law Review (1973), 1183, 1187.

<sup>51</sup> Berkeley P.D., it should be noted, has always been considered in police circles an exemplary department. Long before it became fashionable, this organization required intensive training and college study of its recruits.

The P.R.C. then is open to the charge that it does not represent the measured opinion of the entire Berkeley community. Policy input from such a body is hardly likely to generate credibility either in police circles or within city administrative hierarchies. Aside from political grounds, there are more practical reasons to question the P.R.C.'s policy development. The Berkeley Police Department is filled with men and women who spend their careers working in policy work. They become experts at problem solving in their field.<sup>51</sup> Not only does the Police Review Commission question policy developed by such "professionals" in the name of representative government, but it has developed operating conventions which slant its perceptions of the citizenry's concerns (e.g., the volunteer example above). Logical, intelligent, and educated policy decisions formulated by police professionals can therefore be negated by the intuitive notions of amateurish (if not anti-police) elements of the community.

Community based perceptions of legitimacy theoretically are the strong suit of the civilian review concept. In Berkeley, the political makeup and environment of the P.R.C. may inhibit the realization of the type of support for civilian review which could develop in other, more politically moderate and conventional settings. Indeed, indications from Philadelphia's 8 year experience with civilian review (the longest on record) are that a great deal of potential does exist for the idea.

Too many protests have been made for too long about police departmental review systems for the detractors of civilian review to succeed in their attacks upon its conceptual legitimacy.

While the civilian review process may speak well to the community's interests, it can have its negative effects upon the police mission. Let us consider these drawbacks.

#### D. Counterproductivity

In the course of fighting civilian review, policemen and police organizations have developed several standard lines of argument against such review. In this section, we shall meet those arguments and consider whether or not the experience of Berkeley P.D. in dealing with the P.R.C. beats them out. Some arguments are more persuasive than others. It must be remembered that civilian review is a highly emotional issue. Just as a lawyer defends his client in a criminal case, so have the police thrown up a multiplicity of arguments against civilian review. Such a shotgun technique is bound to include some rather simplistic assertions.

Policemen and police organizations often argue that civilian review boards may negatively affect the morale of police officers on the street.<sup>52</sup> Subjecting "professionals" to the

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<sup>52</sup>See Algernon D. Black, *op. cit.*, p. 209; or Arthur Niederhoffer, *op. cit.*, p. 184.

"Monday morning quarterbacking" of civilians will result in a significant demoralization of policemen going about their day-to-day charge. This very amorphous idea that "morale" will suffer from civilian review is linked to more specific concerns on the part of policemen and police administrators.

To begin with, there is the fear in police circles that civilian review organizations will be abusive toward policemen. We have seen that in terms of due process rights and findings of fault, this abuse does not actually materialize. However, there are tales told at Berkeley P.D. of the rude treatment of officers by the P.R.C.'s investigator, of shouting and yelling by commissioners, and of endless Board meetings with no discernable direction. Some officers call the P.R.C. a "kangaroo court" in which cops are treated as if they were subject to the Spanish Inquisition.

These observations are more than self-serving rhetoric. Policemen, police administrators, civil servants from other organizations, and even P.R.C. commissioners themselves have stated that in its first four years the Board was controlled by a vociferous, anti-police block of commissioners. The P.R.C. at times attacked the police department and even individual officers. Usually, this occurred at general P.R.C. meetings and not Boards of Inquiry. However, this propensity indicated to the policemen of Berkeley that the P.R.C. was not interested in objectively dealing with civilian complaints.

It implied that the P.R.C. wanted to persecute police officers.

One would expect, then, a generally poor morale to have developed at Berkeley P.D. as a result of the P.R.C.'s operations. This is not, however, the case. Within the patrol population, a healthy cynacism does exist toward the P.R.C. However, morale has not suffered. Generally, policemen find the P.R.C. a source of some amusement. It even serves to bolster solidarity within the Department. But its affect has not made for intolerable working conditions. Nor has any 'revolt' threatened to develop.

In fact, the same conclusion was reached by the University of California Study of review boards. Lohman and Misner concluded that while rank and file patrolmen generally opposed the Board of Philadelphia, morale had not been significantly impaired.<sup>53</sup>

The generalized argument that civilian review will impair morale is linked, of course, to the more specific assertion that policemen will not feel free to aggressively protect lives and property. If a civilian review system does indeed abuse the police (and consequently morale suffers), in the long run, the citizenry will suffer equally with the police officer. "Productivity" will diminish. Just as with I.A. organizations, civilian review can inhibit the pro-active work

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<sup>53</sup> See Lohman and Misner, *op. cit.*, Vol. II, pp. 258-260.

of policemen.<sup>54</sup>

In fact, the existence of civilian review boards has been used on occasion as an "excuse" for a lack of police action. In August, 1963, a riot took place in Philadelphia.<sup>55</sup> Regarding police action at this riot, the president of the local policeman's association stated that "if it hadn't been for the P.A.B. (civilian review board) we would have grabbed them (the rioters) and if they resisted hit them, with our black jacks."<sup>56</sup> Another leader of the Fraternal Order of Police echoed that the rioting persisted for four days "only because Philadelphia policemen were reluctant to adequate force for fear of being brought before the (civilian board)."<sup>57</sup> Whether policemen involved in the middle of an emotional experience such as a full fledged riot actually stop to consider the existence of civilian review mechanisms is a matter of debate. However, it is significant that in police circles, this explanation was given for a lack of police aggressiveness.

Again, the New York Patrolman's Benevolent Association's fight to kill that Board provides an interesting (and extreme)

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<sup>54</sup>See Chapter 9.

<sup>55</sup>See Lohman and Misner, op. cit., p. 14.

<sup>56</sup>William Turner, The Police Establishment. (Putman; N.Y., 1968), p. 214.

<sup>57</sup>Stephen C. Halpern, "Police Employee Organizations and Accountability in Three Cities", Law and Society Review, Vol. 8, No. 4 Summer 1974, p. 564.

illustration of this argument. Black notes:

Press advertisements and T.V. commercials pictured the police with their hands tied or handcuffed while a white girl walked down a dark street in a setting which suggested that she might be assaulted at any moment...(in another advertisement). A policeman was pictured as saying, "Next time I turn my back!"-- implying that the way to avoid civilian complaints was by inaction. 58

In Berkeley, the P.R.C. has not so inhibited policemen that they are reluctant to do their jobs. None of our sample officers felt they were in any way hampered by its operations. Again, though they were very cynical towards the P.R.C., they felt its impact was minimal. Thus, the New York P.B.A.'s worries seem to be unfounded when viewing our west coast department. Of course, finding such straw dogs is to be expected in the area of civilian review. It must be reemphasized that for all the rhetoric which has developed around the issue, we really know very little about civilian review in practice.

Administrative control within the police organization is another area of concern. The loss of control over disciplinary decision making which could result from a logical extension of the Berkeley P.R.C. system can have the most deleterious of effects upon the ability of professional police administrators to control police organizations. To be sure, modern police administrators are not perfect. Their responsiveness to com-

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<sup>58</sup>Algernon D. Black, op. cit., p. 209.

munity interests is wanting in some jurisdictions. However, the ability of an organization to function consistently and orderly over time can be significantly effected by the infusion into its disciplinary making process of non-expert politics.

From an administrator's perspective, it is crucial to organizational efficiency that the disciplinary process remain within the control of managerial personnel. To confer authority without responsibility is antithetical to accepted principles of public administration. As stated by Edward M. Davis, Chief of Police for Los Angeles:

The right to discipline carries with it the power to control the conduct, action and attitudes of the employee of an organization. When the right to discipline is vested with management, management has the essential tool with which to attain the desired behavior from employees...when employees are subject to disciplinary action from outside the organization, a fundamental rule of organization had been breached and the employee becomes confused, diffident and inefficient. 59

Of course, Chief Davis has here assumed the existence of a knowable, agreed upon system of priorities and "desired behavior." If (as in Oakland) a strict accountability to defined priorities exists, maintaining the internal integrity of the organization might indeed make for the most efficient form of review. 60

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<sup>59</sup>George F. Berkeley, The Democratic Policeman, op. cit., p. 146.

<sup>60</sup>This assumes, of course that those priorities are thoughtfully and rationally defined by the organization in furtherance of the police mission. It is often assumed by the P.R.C. that departmental regulations are self-serving for the police organization and not rationally aimed at societal goals.

The definition of acceptable police behavior is an interesting point of contention between the P.R.C. and the Berkeley Police Department. The P.R.C. attempts to influence police departmental policy as well as specific disciplinary decisions. This brings up the problem of expert-professional versus representative-dilettante control of policy. In none of our other chapters will this issue be treated. This is because in all of our other organizations, policy is defined solely by the police departmental administrative hierarchy.

A recurring theme in big city reform politics has always been the depolitization of police organizations. Western cities in particular are concerned with removing police departments from political spheres of influence. In Western police departments, such political isolation has become largely realized over time. Because of concern in many circles that police organizations will become corrupt ("like back east") the police are relatively free from having to answer to local political machines. "Competence" and "professionalism" are used as shields with which west coast police administrators may avoid political conflict.<sup>61</sup>

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<sup>61</sup>There are exceptions to this political isolation. But as a rule, the western policeman is not pressured by local political struggles. See William K. Muir, Jr., Police: Streetcorner Politicians (Univ. Chicago Press; Chicago, 1977), pp. 5-7; Jerome H. Skolnick, Justice Without Trial (John Wiley & Sons; N.Y., 1966), pp. 257-258; or James Q. Wilson, Varieties of Police Behavior (Atheneum; N.Y., 1972), pp. 257-259, 263-266.

Police administrators jealously guard this political isolation. Developing the police into a legalistic' rather than a 'political' type of governmental agency has been a long time goal of California politicians and of law enforcement elites. Now a new breed of educated, enlightened, community responsive, and professional administrators are in control of police organizations. In Berkeley, their genuine expertise is challenged by the P.R.C.'s policy formulation function.

Over the course of its five year history, the P.R.C. has held hearings and attempted to influence police policy in a variety of areas. For political reasons, they have sought to deny Berkeley P.D. officers access to riot training, the use of police dogs, the use of police helicopters, support from other law enforcement agencies in the event of major riot, and a multiplicity of other types of training and equipment. Sometimes, through the City Manager, they have succeeded in affecting policies (e.g., by denying the use of dogs or helicopters to the police). The intelligence of these decisions, from an educated professional's point of view, is highly suspect. But 'the people' do have influence over police policies in Berkeley through the P.R.C.

And it is this power which worries police administrators in Berkeley most. While line troops are not concerned about the P.R.C., police executives are vehemently opposed to the whole civilian review concept. Much of the inter-organizational conflict alive in Berkeley stems from this rejection by top police

administrators of the legitimacy of P.R.C. involvement in policy questions. The expertise and competence of the administrator is, after all, challenged by this policy making process. That of the street cop is not.

Control over police policies is an important question for students of the police. It is only, of course, tangential to our concerns. Yet, it should be noted that a basic, crucial flaw in the P.R.C. system is its confusion of policy development and complaint adjudicative functions. That politics is involved in the former is axiomatic. That it should be irrelevant to the latter is critical by anyone's standards of fairness.

The P.R.C. seeks at once to do two things. First, it acts as a "civilian review board", investigating specific allegations of police abuse and adjudicating between policeman and citizen. If its policy development functions related only to trends in complaints, the P.R.C. would be a positive step toward organizational learning.

However, the P.R.C. does not stop there. Its second function, policy development, takes the form of generalized investigations into all levels of operation of the police department. The P.R.C. thus couches itself as a Police Commission along the lines of such commissions in San Francisco, Los Angeles, Chicago, Kansas City, and many other jurisdictions. Police commissions are meant to be political bodies in the sense that they infuse public opinion into the police policy formulating process. Police review mechanisms, on the other

hand, must couch themselves as objective evaluators of evidence and law. When, as in Berkeley, the two functions are confused, the deleterious consequences are several. They can include police distrust of the P.R.C. and its motives, political abuse of the P.R.C.'s complaint adjudication function by anti-police citizens, and even interdepartmental conflict.<sup>62</sup>

Evaluating the counterproductive effects of the P.R.C. then, is an interesting endeavor. The classic 'morale' and 'productivity' arguments used by the police to fight civilian review elsewhere are not born out by the Berkeley experience. Yet, the P.R.C. has generated a significant amount of conflict between itself and the police department. This conflict has developed through the exercise of its policy development function. The confusion of this function with its complaint adjudicative one has retarded the P.R.C.'s ability to be taken seriously by rank-and-file policemen. The political aspirations of commissioners being naturally suspect, the esteem of the P.R.C. within police circles is very low.

#### IV. Conclusion

The consideration of civilian review processes is a particularly fascinating enterprise because so many people from different perspectives are emotionally involved in the issue. Yet

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<sup>62</sup>Witness the oriental officer who, after having been found guilty of misconduct by the police department's system, filed a 'complaint' with the P.R.C. charging the P.D. with racism. This complaint generated a series of open hearings, which often degenerated into rhetorical lambastings of the police department by radical commission members.

there is very little experience in America with civilian control of police disciplinary practices. Our only real understanding of the operations of civilian review boards is either dated (as in the examples of New York City, Philadelphia and Rochester) or related to the highly unusual political situation in the City of Berkeley. In Berkeley, the norms of community participation and of governmental responsiveness held by most citizens are probably not representative of most American cities. The political aspirations and genuinely anti-police sentiments of some commissioners might also be much different than these or citizens assigned such a function in other cities. Thus, the strengths and weaknesses which we may learn by studying the Berkeley Police Review System may not be applicable to other political and social milieus.

The civilian review concept has great potential for maintaining legitimacy from the perspective of the community-at-large. Its openness and "control" (however theoretical and limited it might be) of police discipline (and policy) can perhaps have a quieting effect upon police community relations. However, the over formalization which has obtained within the Berkeley P.R.C. system can be seen as problematic for a variety of reasons. The process wastes time. It wastes money. And it may have significant drawbacks due to its inability to develop legitimacy in the eyes of policemen.

The effect of civilian review upon police behavior may be indirect at best. However, we must remember that a conscious lack of cooperation by policemen has limited the effects of

this system. Were they to cooperate, by giving statements and attending hearings, accused policemen might find that the P.R.C. is anything but abusive of their interests. The due process protections which it affords policemen are considerable compared with those allowed by internal police systems.

On balance, the civilian review idea has great potential. If populated by thoughtful, responsible members of the community, it can act both as a monitoring device and as a protection mechanism. It can assure the community that genuinely abusive behavior is being dealt with openly. Concomitantly, it can in the vast majority of cases exonerate policemen and the police department of wrong doing in a way that no internal mechanism can. The Berkeley Police Review Commission's political and functional problems aside, civilian review can be a workable, legitimate alternative to more traditional systems.

We shall turn in the next chapter to consider "hybrid" systems of review wherein civilians are subsumed into police organizational disciplinary processes. Our treatment of both the Internal Affairs and civilian review processes will be of great utility in considering the Kansas City Office of Citizen Complaints and the Chicago Office of Professional Standards.

## Chapter 11 HYBRID REVIEW SYSTEMS

This chapter shall concern itself with review systems in operation in the cities of Chicago and Kansas City. Both of these systems are "hybrid" systems of review in that they involve both police and civilian personnel. In each city a relatively small civilian organization<sup>1</sup> is entrusted with part of the responsibility for review of civilian complaints directed at sworn police departmental personnel. The civilians involved in these systems are autonomous to different degrees. They answer to political elites and to police organizations in different ways.

However, the civilian organizations are each advisory to the Chief of Police. Neither hybrid organization is a "civilian review board" in a classic sense.<sup>2</sup> The Chief in each city has the final disciplinary decision making authority regarding complaint outcomes. Each system then, while involving civilians, is nevertheless housed within the direct sphere of influence of the police organization.

### I. Introduction

Both of the review systems which we shall herein discuss are compromise systems. Each eventuated from the attempts of

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<sup>1</sup>In Chicago fifty (50) people to monitor fourteen thousand (14,000) policemen and in Kansas City three (3) people to monitor twelve hundred (1200) policemen.

<sup>2</sup>Refer Chapter 10.

various groups in Chicago and Kansas City to implement external systems of review. Each system attempts to balance concerns of community groups against those of police organizations. For our comparative study, it will be particularly interesting to see how such interests have been integrated into hybrid forms. A base line for our discussion has been the need for a compromise between community interests and police interests. Analyzing the success or failure of these systems would seem crucial to our endeavor.

Pressure for civilian review of police abuses was generated in Kansas City out of the April, 1968 riots which accompanied the assassination of Martin Luther King Jr. At that time, significant tensions existed between the police department and the community (particularly the black community). With the support of several community groups, a local attorney, Sydney Willens, proposed a complaint review board system to the then Chief of Police, Clarence Kelley.<sup>3</sup>

The Chief simply forwarded the proposal to the Board of Police Commissioners. No action was taken for six months on these suggested procedures. During that period of time, the ACLU, Mexican/American groups, and local black community organizations began to criticize the Police Board for lack of

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<sup>3</sup>Kelley, of course, later went on to become J. Edgar Hoover's successor as the head of the F.B.I.

action. Kansas City's major newspapers, the Star, the Call, and the Times, strongly supported the proposal.<sup>4</sup> Concern about the progress of the proposal grew in a variety of political quarters.<sup>5</sup>

The Kansas City Police Department then made a counter-proposal. Their suggestion was to involve civilians in the complaint process, but to retain the strict confidentiality of the existing system. This counter-proposal was met with still other counter-proposals. Eventually, agreement was reached between the involved community groups, the police department, and the Board of Police Commissioners. The agreed upon plan was the subject of public hearings in September of 1969. Subsequently passed by the Board of Police Commissioners, it went into operation on September 25th of that year.

At the time of its inception then, the Office of Citizens Complaints in Kansas City had the (guarded) support of the administration of the police department, the backing of the Police Board, and the acceptance of local community groups. This is not to say that the organization has grassroots support in the community or within the ranks of street policemen. As we shall see, such support was a long time in developing. It may indeed have never been obtained in some circles.

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<sup>4</sup>See Kansas City Star editorial page, July 11, 1969; Aug. 30, 1969; Sept. 20, 1969--Kansas City Call editorial page, July 12, 1969; August 8, 1969; Sept. 19, 1969--Kansas City Times editorial page, July 22, 1969; also see Kansas City Jewish Chronicle editorial page, August 18, 1969; August 22, 1969.

It is interesting to note that the Chicago "compromise" system steered a similar course through community and police organizational interests during its formulation period in 1972. Since the Democratic National Convention of 1968, the issue of police abuses, and particularly "police brutality", had been a hotly contested one in the City of Chicago. In 1972, members of the "conservative bar", the "black bar", and the "liberal establishment bar" were all able to come together and agree upon a proposal for a unique organization to monitor police brutality.<sup>6</sup> The proposal for the creation of a civilian control system was presented to the police department and to the Police Board.

As in Kansas City, negotiations ensued between the members of these community groups and the police. Counter-proposals were put forth by the police department. After several compromises, the police department and the coalition of lawyers were almost in agreement on a process when the Superintendent (Chief) of Police resigned. The new Superintendent of Police then created a new departmental organ to deal with police abuse. It was called the Office of Professional Standards. He did so without consulting those coalition organizations involved in the ongoing negotiations.

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<sup>5</sup>Support came from the Minister's Alliance, the New Democratic Coalition, the Catholic Diocese of Kansas City-St. Joseph, and the Council on Religion and Race.

<sup>6</sup>The proposal was actually put together by lawyers from the Chicago ACLU. This "Joint Statement of the Chicago Bar Association, Chicago, Council of Lawyers and Cook County Bar Association", November 27, 1973, is unpublished.

At the outset then, similar political issues eventuated in the formulation of the Kansas City and Chicago hybrid systems. However, in Chicago, the process eventually instituted was one which did not have the whole hearted support of relevant, interested community groups. There was (and is to this day) a feeling on the part of coalition members that the police department did not act in good faith when it disregarded the ongoing negotiation process and created its own organization. This initial feeling may relate to the fact that academicians and community interest lawyers in Chicago hold the hybrid system in less esteem than do similar actors in Kansas City.<sup>7</sup>

There are reasons for considering these two systems within the framework of one chapter. Second, many of the procedures utilized within these two systems are the same as those utilized in Internal Affairs organizations. Since we have already dealt at some length with Internal Affairs organizations, part of this chapter will necessarily refer to chapter nine. It would be a redundant exercise to outline these procedures again in two additional chapters on hybrid organizations.

Third, it is important to note that the difference in these two systems are differences in types of emphasis. Each

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<sup>7</sup>This somewhat subjective assertion is gleaned from numerous interviews undertaken in these respective cities.

civilian organization exists in conjunction with an Internal Affairs organization similar to the one in Oakland. However, the functional relationships between civilian organizations and Internal Affairs organizations in Chicago and Kansas City are different. In Kansas City, the Office of Citizen Complaints is entrusted with an input and output responsibility vis-a-vis the Internal Affairs organization. Thus, I.A. and O.C.C. organizations are functionally differentiated along vertical lines. In Chicago, on the other hand, the existence side-by-side of Internal Affairs and civilian investigatory bodies leaves each more independent of the other.

Finally, both of these organizations are indicative of new, evolving tendencies toward involving citizens in the process of evaluating police misconduct. While the individual processes may differ in analytical terms, the political effect of each is similar. Both in terms of perceived legitimacy within the community, and acceptance within police circles, the Chicago and Kansas City "experiments" are similar in impact.

First, we shall consider the organization and operation of the Office of Citizens Complaints at Kansas City P.D. We shall discuss how it relates to other organs within the police department's organizational environment. We will also therefore discuss the functions of the Board of Police Commissioners, the Chief of Police, and the Internal Affairs Bureau of Kansas City P.D.

In the next section we shall concern ourselves with the Chicago Police Department and the Office of Professional Standards. Again, it will be important to relate Internal Affairs organizational structures to the civilian investigative function of O.P.S. In addition, the function of the Superintendent of Police and the internal departmental appeals process will be apposite.

Finally, the chapter's analytical section will deal with the strengths and weaknesses of these systems together. It will be important to see how, over time, these compromise organizations have created and maintained (or lost) legitimacy in the eyes of the community and of the police. Given the intuitive persuasiveness of the Chicago and Kansas City systems, it will be interesting to see how such hybrid forms become institutionalized.

## II. THE KANSAS CITY OFFICE OF CITIZEN COMPLAINTS

Besides police Internal Affairs organizations, our study concerns itself with several different types of "revolutionary" or "experimental" methods of reviewing police abuses. Whether it be the San Jose Ombudsman's Office, the Berkeley Police Review Commission, the Chicago Office of Professional Standards, or the Kansas City Office of Citizen Complaints, a key element in all of these organizations is the inclusion of civilians in the police review system. The Office of Citizen Complaints in Kansas City is the oldest of these "new" review systems.

Having been established in 1969, it has had at this writing a nine (9) year growing period within which to develop procedures and community commitment as well as to ingratiate itself to police administrators and policemen. Being nearly twice as old as the other "new" systems, it should be the most highly institutionalized.

Kansas City is a sprawling municipality of 3,300 square miles. The Kansas City Police Department maintains a patrol division of about 600 men and women to police this large geographic area. Yet, the population of Kansas City is only 507,000. Thus, much of the policing done by these policemen is rural.

Five substations are scattered throughout the city. The southernmost of these precincts polices an essentially suburban community. The northernmost police district is located in farm country. The other three districts are urban areas similar to downtown Oakland. These areas possess significant Black populations which total 23.5% of the city's population. The contracts between the working environments of policemen at these various locations is often dramatic. Very few police complaints are ever generated from the northern district for example.

The Kansas City Police Department runs its own modern police academy. Its stations and equipment are in the process of being upgraded to a level of sophistication that will make

this department comparable to the finest in the country. As with our other urban departments, the median seniority for patrolmen is low (about 6 years) and the average educational level of the department is rising. The number of complaints received in Kansas City is not inordinantly high or low, but comparable to that level received in Oakland.

Let us look specifically at the day-to-day process of the system.

A. Input Structures

In Kansas City, a citizen may make a complaint against the police department or against police departmental employees at any one of the five (5) police substations located throughout the city. In addition to the five local precinct houses, the downtown Police Administration Building is covered by the same general orders requiring the acceptance of civilian complaints.

However, the central clearing house for citizens grievances is the civilian manned Office of Citizen Complaints. Citizens may file complaints directly with O.C.C. Its office is located several blocks from the Police Administration Building in a business office in downtown Kansas City. All complaints, no matter how received, are forwarded to the O.C.C. for numerical control and routing.

The O.C.C. initially reviews a complaint and then forwards it to the Internal Affairs organization of the Police Department.<sup>8</sup> The initial outlining of the complainant's grievance

is simply a paraphrasing by the Office of Citizen Complaints. It does not serve as a permanent part of the official complaint investigation.

As is the case in most Internal Affairs organizations, the Analysts working at the Office of Citizen Complaints attempt to get citizens to make complaints in person at the Office's headquarters. Analysts state that a person telephoning in a grievance is normally required to go the downtown office building. This is done in order to "screen out" a significant number of "frivolous" complaints.<sup>9</sup> The O.C.C. feels that anyone with a 'bona fide' complaint will be willing to take the time and effort to contact the complaint system in person. Analysts state that complainants who actually refuse to come downtown in order to file complaints are on occasion ignored by the Office.

The Office of Citizen Complaints at Kansas City P.D. spends some time and effort in short-circuiting complaints. The O.C.C. informally handles a significant number of complaints at the input level.<sup>10</sup> There is also some short-circuiting at the precinct level. In general, the system expends significant effort toward the informal adjudication of procedural or "minor" citizen complaints.

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<sup>8</sup> It should be noted that the very brief outline which is generated at the input stage does not serve as the complainant's official statement for the purposes of investigation. The citizen who files a complaint is recontacted by the Internal Affairs investigator and an "official" statement is obtained.

<sup>9</sup> From field notes, interview with O.C.C. Analyst, 12/14/77.

The Office of Citizen Complaints labels complaints either as category I or category II complaints. Category I complaints include all complaints of unnecessary or excessive force, the abuse of authority, discourtesy or abusive language, and ethnic slurs. All other complaints are category II complaints.

B. Investigations

The Internal Affairs organization in the Kansas City Police Department is required to investigate all category I complaints received from the Office of Citizen Complaints. There is latitude within the system to allow the delegation of category II complaint investigations to local precinct commanders. This option is quite often exercised and opens up a less formal investigatory process. The investigation of category II complaints by police departmental supervisors is accompanied by a significant emphasis upon complaint conciliation.

The investigative processes of the Kansas City Police Department's Internal Affairs organization are similar to those of the Oakland Police Department as outlined in chapter nine. Investigators are all sworn police officers. Like O.C.C., Internal Affairs is physically removed from police headquarters. It is located in the same office building as is the Office of

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<sup>10</sup>Two Hundred and Fifty-four (254) cases were informally handled by O.C.C. in 1976. This compares with an official investigation caseload of 623 for the same period.

Citizen Complaints, albeit on a different floor. The process of compiling statements and physical evidence is similar to that operational in any investigative organization.

A tremendous amount of time is spent at the Kansas City Police Department in creating investigative files which are complete and thorough. Every witness statement taken by an Internal Affairs investigator is typed into a transcript. Thus, investigative files at Kansas City P.D. are normally more voluminous than those of other Internal Affairs organizations.

"Thoroughness" and "quality" in investigative reporting are indeed amorphous concepts to attempt to evaluate. However, compared with police investigations done by most Internal Affairs organizations, those of Kansas City must be considered superior in their completeness and competence.<sup>11</sup> The thoroughness of Kansas City's Internal Affairs files seems to relate to the fact that an external organization reviews each investigation.<sup>12</sup>

Internal Affairs in Kansas City does not recommend possible investigation outcomes (or possible disciplinary actions) as is done in many other police organizations. Only evidence, statements, and investigation summaries are included in I.A.

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<sup>11</sup> An obviously subjective appraisal based upon the author's experience reviewing complaint investigation files in all organizations included in the study (and some not included).

<sup>12</sup> The Office of Citizen Complaints indicates that they are very happy with the completeness of Internal Affairs investigations and rarely find any statement or summaries lacking in clarity or in thoroughness.

files. The completed investigation is reviewed by the Internal Affairs chain-of-command, and then forwarded directly to the Office of Citizen Complaints.

One additional difference between the Kansas City system and those of the California departments considered by our study, relates to the use of lie detectors in investigations. In Missouri it is still legal for an internal investigator to require that an officer take a lie detector test. The policeman's Bill of Rights (explained briefly in chapter 6) specifically prohibits California Police Departments from exercising this option. Kansas City Internal Affairs investigators state that they do not like to use the lie detector often. However, street policemen in Kansas City indicate that a significant number of complaint investigations involve placing accused and witness officers on lie detectors.

It is also important to note that the Training Division of the Kansas City Police Department receives a copy of each complaint investigation done by Internal Affairs. This type of systematic feedback from the complaint adjudicative mechanism to the police department's training organization is absent in every other system considered by the study. Its potential for organizational learning can be great.

### C. Review

Each case referred to the Office of Citizen Complaints from the Internal Affairs investigative staff is assigned to one of the two permanent Analysts. These Analysts review in-

vestigations for thoroughness, clarity and objectivity. This review is similar to that exercised by supervisors in most Internal Affairs organizations. O.C.C. Analysts may require additional work of Internal Affairs investigators. They may require that additional witnesses be contacted, that additional evidence be gathered, or that specific questions be asked of witnesses previously contacted. While the O.C.C. does not have the power to require a lie detector test, it may direct Internal Affairs to ask specific questions of officers taking such a test. In actuality, the O.C.C. seldom contacts the Internal Affairs organization to initiate further work on complaints.

After the assigned Analyst approves a complaint investigation, he or she formulates a suggested outcome regarding the case. The Analyst writes a summary of his or her reasons for the suggested outcome. These suggested outcomes summaries are directed to the Chief of Police.

The investigation and suggested outcomes are then passed on to the other Analyst for review. When both Analysts agree upon the suggested findings the case is brought before the Director of O.C.C. In a joint meeting, all three individuals review the case. When agreement is reached, the O.C.C. process is complete and the investigation is referred to the Chief of Police.<sup>13</sup>

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<sup>13</sup>Indications from interviews with these three individuals are that clashes of opinion within O.C.C. are rare.

It is important to note that the Office of Citizen Complaints policy allows any complainant and/or his attorney access to the investigative file. There are some circumstances under which the Chief of Police has the right to withhold specific statements of pieces of evidence when a file is being so reviewed.<sup>13a</sup> Generally, however, complainants are allowed to view the entire investigative file.

The ability of this system to be so open with its information relates directly to the fact that Missouri law allows the Kansas City Police Department sovereign immunity from litigation. This liberal access policy was part of the initial compromise system engineered in 1969.<sup>14</sup>

Once a complaint has been forwarded to the desk of the Chief of Police, he makes the final complaint finding. It is agreed by a variety of actors, that the Chief of Police in Kansas City almost always agrees with the recommendations of O.C.C. When the Chief disagrees with the O.C.C. recommendation, a meeting between the Chief of Police and the Director of O.C.C. ensues. These meetings have been very rare.<sup>15</sup> Both the Chief

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<sup>13a</sup>These exceptions relate to the potential implications that such access may have upon criminal or civil trails.

<sup>14</sup>However, sovereign immunity in the State of Missouri will be eliminated in the fall of 1978. It is the opinion of the police departmental attorney, that such a change will have no significant impact upon this liberal access policy. However, the increase in police directed civil litigation in California (outlined in chapter 4) indicates that such a belief may in fact be intuitively persuasive, but practically misguided.

<sup>15</sup>Less than one such occurrence eventuates per year.

of Police and the O.C.C. Director indicate that on the rare occasion that such meetings occur, agreement is normally reached after some brief discussion.

As in Oakland, the Chief of Police requests that line supervisors make recommendations as to disciplinary actions when a complaint results in a sustained finding. Thus, if O.C.C. recommends a "sustained" outcome and the Chief accepts that recommendation, the complaint report is forwarded down the chain-of-command to the immediate supervisor of the accused employee. The initial recommendation for discipline is made by the immediate supervisor. That recommendation is forwarded up the chain-of-command. The Chief of Police then has the final determination to make with respect to disciplinary actions taken.<sup>16</sup>

#### D. Appeals

If on a sustained complaint an officer is suspended for fourteen days or more, state statutes allow an automatic right of appeal. The officer takes his or her appeal to the Board of Police Commissioners. An open public hearing is then held. It is the feeling of most actors in the system that these hearings are nothing but "rubber-stamps" for the Chief's decisions.

It is possible in the Kansas City system for the civilian Board of Police Commissioners to review any complaint or any disciplinary action taken by the Chief of Police. The four

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<sup>16</sup>This again is analogous to the Oakland P.D. system outlined in chapter nine.

member Board (made up of gubernatorial appointees) exercises this option so seldom as to make it almost a non-existent one. The Chief of Police thus is allowed a great deal of latitude within which to deal with the suspension of officers.

From the citizen's perspective, no realistic potential for appeal exists within the Kansas City system. (This is of course, not at all unique in police review systems). The citizen whose complaint is unfounded by the O.C.C. and then by the Chief of Police may seek reconsideration by the Board of Police Commissioners. Such a request, however, is rarely successful.

The uniqueness of the Kansas City system lies in the influence that three civilians have upon the review structure. As an input screening mechanism and concomitantly as an output review mechanism, these three can impact significantly upon the I.A. process. The completeness and thoroughness of I.A. investigations may not be caused by O.C.C. However, absent of such civilian review, many I.A. systems construct investigations of lesser quality. Of course, O.C.C.'s impact is limited by its dependence upon I.A. for investigations and the final review of the Chief.

Let us consider the Chicago method of institutionalizing "other than police" input into the civilian complaint review system.

### III. THE CHICAGO OFFICE OF PROFESSIONAL STANDARDS

The City of Chicago's Police Department is by far the largest treated in our study. Its 14,000 sworn members police a city of 3,500,000 million people, about six times the size of Kansas City. The organization is divided into 17 sub-units each larger than the entire Oakland Police Department. The city is so ethnically diverse, that a picture of its many neighborhoods and policed populations cannot be simply drawn. Suffice it to say that the diversity of policing problems faced by patrolmen throughout Chicago is tremendous.

The gravity of some misconduct also, as with all huge metropolises tends to be of a greater scale than that found elsewhere. For example, a police complaint charging an officer with rape or armed robbery is not unusual in Chicago. Such occurrences are so rare in our other organizations, that they would be great cause for alarm. They would perhaps cause divergence from standard investigative procedures.

Even the Chicago citizen complaint, disciplinary, and anti-corruption systems are complex. Our consideration of them here will be a simplistic distillation. These facts about the gravity of the department's problems should be remembered by the reader when we consider how complaints of lesser import are handled by O.P.C. The gravity of some of Chicago's caseload is such that differences between it and our other systems may not be fairly interpreted as relating to systemic differentiation.

In 1972, the Office of Professional Standards was incorporated into the organizational structure of the Chicago Police Department. This organization is responsible for investigating all "force" complaints by citizens against police officers. This entails more than the "excessive force" or "police brutality" type of complaint common in most police jurisdictions. The O.P.S. deals with any complaint wherein physical force was used by an officer. Thus, an O.P.S. investigator may investigate an alleged rape by a police officer.

The O.P.S. is required to investigate every shooting of a citizen by a Chicago police officer. These shooting cases duplicate investigations done by the State Attorney's Office and by the Homicide Division of the police department. The Office of Professional Standards is careful not to interfere with these more detailed investigations. O.P.S. does however, receive reports from all of the other organs involved in shooting cases. It puts together its own report, addressed to the Superintendent of Police.

O.P.S. investigators are hired by the Director of the Office of Professional Standards. The Director answers only to the Board of Police Commissioners. In practice, the position brings the Director in to constant contact with the Office of the Superintendent of Police. A close relationship exists between these two offices since O.P.S. is (as in Kansas City) advisory to the police executive.

While we will concern ourselves in this section with the Office of Professional Standards, it is important to note that an Internal Affairs organization, similar to that outlined in chapter 9, also operates in Chicago. The Internal Affairs organization of the police department is in fact larger than is the Office of Professional Standards. However, the Internal Affairs in Chicago investigates every civilian complaint and every internally generated complaint that does not relate to the use of force by police officers. Thus, complaints of harassment, illegal arrest, ethnic slurs, dereliction of duty, conduct unbecoming an officer, and so forth are all handled by Internal Affairs.

For our discussion, the importance of the Chicago P.D. system lies in its use of civilians as investigators within the police review system. Therefore, the O.P.S., wherein those civilians are housed, will be the focal point of this section. We shall not treat Chicago's I.A.

A. Input

The Office of Professional Standards is open twenty-four (24) hours a day to receive complaints from citizens. This is unusual. No other complaint investigatory organization, be it internal or external in nature, is so accessible to the public.<sup>17</sup> Civilian clerks are always at the front of O.P.S.

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<sup>17</sup>Of course, no other organization studied is as large as the O.P.S. Size allows for such round the clock accessibility.

to take complaints from civilians coming in off the street. These clerks also take telephone complaints.

O.P.S. is located on the first floor of the main Police Administration Building in downtown Chicago. Having initially been located on the eighth floor of that building, the office was moved downstairs so that it would be "more convenient" to walk-in traffic. The O.P.S. was housed within the police department in order to lessen the physical distance between its investigators and policemen. This was done so that obtaining statements and police records would be as easy as possible. Also, it was important for the civilian office to gain the confidence of police officers. By locating the organization within the Police Administration Building it was felt that the organization would be less threatening to street policemen.<sup>18</sup>

Complaints which are initially perceived by the O.P.S. organization as "unimportant" are "shelved". That is, the organization does not normally spend a great deal of time on complaints that appear "minor" in nature. Such cases are investigated. But given the case load burden at O.P.S., such complaints are assigned a very low priority.<sup>19</sup> Investigations which appear to be of potential political volatility, or which relate to the ability of officers to perform their immediate duties, will be handled quickly.<sup>19a</sup> Because of their apparently

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<sup>18</sup>These explanations come from field interviews with the Director of O.P.S.

minor important other investigations will be handled as late as six months after their initial outlining.

This dynamic obtains for several reasons. First, since case loads are very heavy, there must be a priority system for complaint investigations. Second, and perhaps more important, investigators are more interested in "heavy" complaints. It is not enjoyable to handle trivial complaints. They are therefore, willingly shuffled to the bottom of the unwritten priority list.

The Office of Professional Standards spends very little time in short circuiting complaints. The Director of the office feels that the legitimacy problems of doing so are too great. Therefore, the O.P.S.'s official policy is that every complaint be investigated no matter how frivolous it appears to be. Thus, while the apparently frivolous complaint may not be handled for some time, it does generate an official investigation. No significant amount of time is spent at the input level in attempting to explain to citizens what would be labeled "procedural" complaints in other organizations.

The people who operate as clerks at the input level receive no formal training whatsoever. They are given a brief,

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<sup>19</sup>For example, a "handcuffs too tight" investigation is considered of little import. After having been outlined initially the investigation into such an allegation may not even be begun for several months if the assigned investigator has "more important", "heavy" investigations to handle.

<sup>19a</sup>For example, shooting cases are completed in a matter of hours.

on-the-job explanation of how to fill out complaint forms. Complaints at Chicago P.D. can be received at any one of the precinct houses as well as at the Office of Professional Standards. As in Kansas City, every complaint is logged at the central civilian organization. At O.P.S., the complaint is given a complaint register number. The nature of the complaint is then considered by the O.P.S. supervisor and the complaint is assigned. All excessive force complaints are kept for the O.P.S. office to investigate. Everything else is sent to Internal Affairs.

What seems particularly unusual about the Chicago system, is that the civilian Office of Professional Standards also serves as a clearing house for internally generated complaints. For example, if a supervisor wishes to discipline an officer for sleeping on the job, he must call the Office of Professional Standards to initiate a formal complaint. Having been given a register number, the complaint is then forwarded to Internal Affairs. It would subsequently be assigned back to the line supervisor, who writes the disciplinary report.

#### B. Investigations

Investigators at the Office of Professional Standards are civilians, who are paid a police investigator's salary by the police department. The office consists of fifty (50) investigators, several supervisors, and one chief administrator.

No one is hired by O.P.S. who has past work experience with Chicago P.D. itself. However, several police officers from other jurisdictions have worked in the office.<sup>20</sup>

Almost all of the civilian investigators at O.P.S. have four year college degrees. A majority of those degrees are in the criminal justice field. A significant number of investigators are receiving law school training. Still others have been hired for reasons of their expertise in relating to ethnic minority populations.

It is interesting to note that the rotational policies effective in most Internal Affairs organizations have analogies in O.P.S. In most police departments, officers are required to rotate out of Internal Affairs positions after two or three years. This process aims at insuring that police officers do not become firmly implanted in the Internal Affairs disciplinary process and lose touch with the reality of street work. At O.P.S., most of the people who have served as civilian investigators have remained in the position less than two (2) years. The Director of O.P.S. feels that this effectively fights the tendency for civilian investigators to be cooped by police perspectives.

Investigations done by O.P.S. investigators are similar to those put together by sworn police officers. Policemen

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<sup>20</sup> There have also been cases wherein investigators have gone on to become police officers with Chicago P.D.

are required by general orders of the Chicago Police Department to cooperate with O.P.S. investigators. If policemen do not so cooperate, they are disciplined as if they did not cooperate with sworn Internal Affairs investigators.<sup>21</sup>

O.P.S. investigations do not significantly differ from those of any investigative organization studied. One police officer, a sworn sergeant with twenty (20) years experience, maintains a permanent assignment within the Office of Professional Standards. He acts as a liaison between that office and the police department. This officer, when interviewed, confided that he felt the civilian investigators for O.P.S. did a competent job in their investigations. He felt that, with time on the job, civilian investigators become just as effective at their job as do police I.A. investigators.

O.P.S. civilian investigator training is uniquely suited to the organization. These civilians are required to attend police academy classes dealing with subjects applicable to their new job. They must take classes in case law, codified law, report writing, and inter-departmental disciplinary processes. Each investigator is required to spend a forty-hour week riding on the street with police officers. Following this practical

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<sup>21</sup> Generally, if an officer refuses to give a statement to an O.P.S. investigator, his immediate street supervisor is called into the office to order him to give a statement. If the officer still refuses to cooperate he is disciplined for refusing a superior's order.

experience, the new O.P.S. investigator is assigned a partner with investigative experience. The two work together as a team for approximately four months. At that point, after approximately six months of working for O.P.S. the investigator normally is "cut loose" and given his or her own case load to investigate.

Police officers are required to take polygraphs when either I.A. or O.P.S. directs that they do so. An individual investigator must go to the Director of O.P.S. before he may require the use of a polygraph.<sup>22</sup> O.P.S. investigators state that the polygraph is seldom used. (however, as in Kansas City, policemen on the street in Chicago were of the opinion that the polygraph was administered quite often.)

When witness statements have been obtained, and physical evidence has been collected, the O.P.S. investigator forwards his or her investigative report to a civilian supervisor. The supervisor reviews the case. (he may here ask for the expert assistance of the liaison sergeant.) After the supervisor has approved the investigation, the case is forwarded

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<sup>22</sup>However, at Chicago P.S., the polygraph is very limited in its usefulness. Regulations state that the polygraph cannot be used to determine the outcome of a complaint when it is of a "one-on-one" nature. That is, when an officer's statement conflicts with a citizen's statement, and no other information is available, the polygraph may not be used to "break-a-tie". It may only be used in such cases as an "administrative aid". Further internal regulations state that results of a polygraph examination cannot be introduced as evidence at a Police Board hearing. Therefore, since the polygraph is neither acceptable before the police board, nor acceptable in a court of law, it is not a significant investigative tool.

to the Director. As in Internal Affairs organizations, the Director may require further investigation. When he feels that an investigation has been thoroughly and objectively completed, it is forwarded to the Office of the Superintendent of Police. Thus, at Chicago P.D. no sworn police personnel are systematically involved in the investigation of force complaints.

Because of an overwhelming case load, O.P.S. complaints take between four and six months for processing. (This is similar to the time table required for civilian investigations at the Berkeley Police Review Commission.) This is a significantly longer period of time than is required for Internal Affairs investigations. Such a disparity may be strictly a function of different case loads in O.P.S. and I.A.<sup>23</sup> It may also, however, relate to the lack of experience in the civilian investigative staff at O.P.S.<sup>24</sup>

### C. Review

In their reports, O.P.S. investigators suggest findings to the Superintendent of Police. This convention is analogous to that operating in most Internal Affairs organizations. In

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<sup>23</sup>No data is available to effectively compare these case loads.

<sup>24</sup>However, at the time of our study, the office was expanding from thirty-five (35) investigators to fifty (50). Those fifty investigators would take four to six months to integrate themselves into the O.P.S. system. When that happens, it is assumed that case load pressures will significantly lessen.

most cases, the Superintendent of Police agrees with O.P.S.'s recommendation. This agreement is understandable. The rate at which O.P.S. sustains excessive force complaints is less than 8%.<sup>25</sup> Given that so few cases are sustained, it would be unusual to find the Superintendent in disagreement with the findings of O.P.S. The sustained rate of O.P.S. complaints is comparable to sustained rates of excessive force complaints in most police departmental internal organizations.<sup>26</sup>

If the Superintendent agrees with a not-sustained finding by O.P.S., the not-sustained complaint is then forwarded to the individual officer. A letter is prepared and sent to the citizen complainant. This is a form letter advising very little in the way of specifics about the grievance or its investigation.

If however, an officer is found to be guilty of some infraction, then a different process ensues. The O.P.S. investigation, having been accepted by the Superintendent of Police, enters the police department's internal review process wherein several dynamics may obtain.

Under certain circumstances the officer has a right to review by a "Complaint Review Panel."<sup>26a</sup> The Complaint Review

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<sup>25</sup>For the year of 1977, through November, 7.5% of O.P.S. investigations were sustained. From Report of the Office of Professional Standards to the Chicago Police Board, Dec. 8, 1977.

<sup>26</sup>Oakland P.D. in 1976, for example, sustained 5.9% of "unnecessary force" complaints while Los Angeles P.D. sustained 11.9% of "excessive force" cases.

Panel is an informal, in-house process. A Complaint Review Panel consist of three police officers. The accused officer, may have an advisor present, but this person must be a sworn policeman. Normally, the Complaint Review Panel consists of one officer of the same rank as is the accused and two officers of higher rank. No officer may be involved in a Complaint Review Panel if he is from the same patrol unit as the accused officer, has been part of the review process, or has been privy to the complaint occurrence itself. Lieutenants and higher ranking officers chosen for review panels are chosen at random from the departmental roster. Sergeants and patrolmen are assigned by local division commanders for their "maturity and competence".

Thus, this panel creates a sort of peer review of the complaint process. The hearing itself is not adversarial in nature. It is suppose to proceed on an informal basis. Procedures in such hearings are left up to the members of the panel.

The accused police officer may bring up any mitigating circumstances or challenge the investigative material of a case. Most of the time, the discussion of the panel is based solely upon the investigative record collected by O.P.S. (or Internal Affairs if a non-force complaint is considered).

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26a This applies when the Superintendent's penalty is less than thirty (30) days off.

The hearing panel may ask for further information. It may even call witnesses. However, this rarely occurs. The accused officer may not call his own witnesses. No one from Internal Affairs or from the O.P.S. ever takes part in a hearing.

The panel itself, then makes a recommendation to the Superintendent. The panel may find the officer guilty or not guilty. The panel may raise, lower, or maintain the disciplinary recommendations.

Statistics relating to Complaint Review Panels, indicate that these panels are more lenient in their recommendations than is O.P.S. or the Superintendent.<sup>27</sup> Of course, the findings of panels are only advisory to the Superintendent and may therefore be ignored. The departmental attorney, however, advises that the Superintendent quite often does take a panel's recommendation into account.<sup>28</sup>

A separate appeal channel is sometimes open to the accused officer. The Police Board, a civilian body of mayoral appointees, can at its discretion hold an official hearing regarding any complaint investigation. This occurrence is very

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<sup>27</sup>In 1976, over 600 panels were held at Chicago P.D. In 12 of the panels, the accused was found guilty and his recommended penalty was increased by his peers. In approximately 300 cases, the officer's penalty was kept the same as that suggested by the Superintendent. In approximately 180 hearings, the suggested penalty was reduced. Finally, in over a hundred cases, panels recommended dismissal of charges.

<sup>28</sup>No statistics are available as to how often a hearing changes the Superintendent's decision.

rare. The Board normally leaves all disciplinary decisions to the Superintendent.

While hearings before the Board are usually for suspensions of between six (6) and thirty (30) days, an officer has a statutory right to a hearing before the Police Board if more than thirty (30) days suspension is given out. Under the charter of the Police Board, this right is automatic.<sup>29</sup>

The Police Board hearing is an administrative hearing before a hearing officer. The hearing is adversarial and open to the public. At the hearing, the Corporate Council (City Attorney) with the assistance of the police departmental attorney acts as a prosecutor. Accused police officers are allowed the representation of council. The standard of proof in these hearings is a preponderance of evidence. The hearing officer rules on the acceptability of evidence and puts together a record of the hearing. The written record of the hearing then is reviewed by the Police Board. No direct evidence or testimony is heard. The Board's decision is final and may not be changed by the Superintendent of Police.<sup>30</sup>

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<sup>29</sup>In practice, the Superintendent never suspends for more than 30 days. In the eyes of the Superintendent, giving an officer more than 30 working days off without pay is illogical. In the words of the Director of O.P.S., "a man who deserves more than 30 days off without pay, doesn't deserve to be a policeman." Therefore, as a matter of convention, the Police Board only hears separation cases.

<sup>30</sup>Several people in O.P.S. and in Internal Affairs observed that the "overwhelming majority" of hearings resulted in the termination of officers. No data was available relating the propensity of the Police Board to accept or reject termination recommendation of the Superintendent.

Operating parallel to an Internal Affairs organization then, the Office of Professional Standards has a type of investigative responsibility not given to civilians in any other police organization. Once O.P.S. files its report, a completely internalized review process is activated. There is no review process available to a complaining citizen. In a significant number of cases the police departmental appeals process overturns findings recommended through the O.P.S. civilian monitoring process.

Let us turn to consideration of the ramifications involving civilians in police departmental review systems.

#### IV. Evaluation

##### A. Systemic Integrity

In discussing the systemic integrity of these two processes, it will obviously be necessary to discuss Chicago more closely than Kansas City. While each process involved civilians in police departmental disciplinary systems, the degree of impact which civilians have upon integrity in each system varies greatly.

In Kansas City, the civilians of O.C.C. are only involved in the input and decision making phases of the system. These civilians do not investigate complaints. While they have developed a good reputation for objectivity among policemen, they do not regularly interact with patrolmen. The positive evaluations which policemen hold toward O.C.C. then are probably

productive of the sustained rates which O.C.C. recommends. Since the sustained complaint rate for O.C.C. is approximately 13%, a great degree of acceptance of these civilians by police personnel is not hard to understand.

While the O.C.C. is well accepted by policemen, our Kansas City complaint survey indicates the same sorts of integrity problems in the minds of complainants which we found in Oakland. A majority of Kansas City respondents believe that the fairness, thoroughness, and objectivity with which that system treats complaints is suspect. Open-ended question responses indicate that most citizens do not differentiate O.C.C. from the police department's structure. Thus, Kansas City complainants do not feel that the civilians of O.C.C. bring a different perspective to the review system.<sup>30a</sup>

One more point about Kansas City should be made. The system is successful in handling a number of complaints informally. By thus satisfying citizens, the civilians of O.C.C. perform a legitimizing function which may be very positively evaluated by potential complainants with which our survey was not in touch. Remember our assertion in chapter 10 that civilian short-circuiting is (theoretically) preferable to police departmental short-circuiting.

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<sup>30a</sup> We must remember the significant correlation between outcome and satisfaction noted in chapter seven. Since only 13% of all Kansas City complaints are sustained, this negative evaluation is to be expected.

The Chicago system is unique in its employment of civilians as in-house investigators. Such a system is analogous to the internal investigative system used by the French police. Officers who work for the Inspection Generale, stay in this office for their entire careers (as long as their performance is good). These officers are disliked by the street troops, as are quality control people everywhere, but their recruitment system insulates them from that dislike. As Sherman notes, "none of them have been patrol officers and only a few have been regular detectives. Thus, they have not been socialized into police solidarity norms...their identification and friendship network is totally with top management."<sup>30b</sup>

In theory, the civilians of O.P.S. will not be engulfed by the police subcultural experience. Not being policemen, owing their allegences to an administrative bureaucracy, and being ostracized by policemen, they should remain aloof from dynamics which make I.A. investigators protective of brother policemen. This is at least the theory behind the use of civilian investigators.

In Chicago, Internal Affairs and the Office of Professional Standards function side-by-side. Street policemen may easily compare them. Many policemen have been the subject of

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<sup>30b</sup> Lawrence W. Sherman, "Police Corruption Control: New York, London, Paris", Lawrence W. Sherman ed., Police Corruption (Double-day; N.Y., 1974), p. 213, p. 228.

investigations at both Internal Affairs and the Office of Professional Standards. It is particularly interesting that officers subject to both systems have more confidence in the civilian office. O.P.S.'s objectivity and fairness are respected among street policemen. Policemen often indicate that Internal Affairs organizations develop "head-hunting" work personalities. That is, internal bodies always seek to find an officer guilty of misconduct. In Chicago, there is a confidence in the dual role of O.P.S. civilian investigators; they will exonerate as well as "convict" policemen accused of malpractice.

Chicago P.D. officers point out that personalities are less important with respect to civilian O.P.S. investigators. Policemen who work together sometimes develop individualized conflicts and animosities. Some friction exists simply due to conflict in working styles. A man assigned to Internal Affairs may eventually be responsible for investigating a complaint relative to an officer toward whom he is negatively predisposed. Civilian investigators at O.P.S. rarely develop close relationships with individual policemen. Over time then, civilian investigators do not tend to develop personality conflicts with specific officers. Thus absent, according to Chicago street policemen, is the type of animosity which may be natural to evaluation by Internal Affairs organizations.

As policemen often argue, civilians may not be able to "understand" the policemen's role on the street. Having no feeling for the reality of police work, the civilian investigator or citizen reviewer may not give deference to police officers when deference is due. Policemen in Chicago, however, do not argue that this is the case. This hybrid system has not generated hostile feelings among street troops.<sup>31</sup>

Perhaps most important to street policemen is the argument that civilians will not recognize frivolous complaints. In Kansas City, the Office of Citizen Complaints takes a significant amount of time to handle procedural and "minor" complaints without initiating formal investigatory procedures. In Chicago, however, the opposite is the case. The civilians who are involved in the input phase of O.P.S. are specifically instructed not to attempt to short circuit complaints. Therefore, a significant number of genuinely trivial complaints are placed into the Chicago P.D. system. When these complaints are formally investigated, they generate a significant amount of hostility on the part of street policemen.

Aside from these problems, we must discuss the ethos which often develops among policemen that, as the Royal Canadian Mounties, "we always get our man". In Internal Affairs, this

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<sup>31</sup>Nevertheless, this intuitive argument is often heard in police organizations which have had no experience with civilian involvement in review processes.

type of exuberance (which policemen develop on the street in the pursuit of crime) is used to rationalize a variety of illegal and semi-legal practices. Street policemen are guilty at times of harassment, illegal arrest, illegal searches and seizures, and even brutality in the name of persecuting "criminals". So too, Internal Affairs investigators can be guilty of excesses in the name of "cleaning up" the police profession (see chapter 9).

One of the strengths of the hybrid systems considered here is that the type of tyrannical, over-zealousness generated in some Internal Affairs organizations has not obtained in Chicago. This is so even though civilians are involved in disciplinary processes. What has developed is interesting to behold. The civilian investigators of O.P.S. identify directly with the police organization. They are defensive of policemen and the organization in a way that I.A. people never are. O.P.S. civilians give great deference to police officers and are extremely cynical about complainants.

Thus, the opposite of what one might expect has developed. In Chicago, I.A. people are tough on cops and policemen know this. They thus do not like the I.A. system. On the other hand, O.P.S. is lenient with policemen (with a sustained rate of 7.5%) and policemen know this too. Most policemen interviewed have more trust in O.P.S. than in I.A.

The peer review panel in Chicago is highly regarded by policemen in that city. The fact that other street policemen

may pass judgement upon an officer is perceived as an important avenue of appeal. For policemen, such a panel may serve an important legitimizing function for the disciplinary process. (It can of course create a credibility gap elsewhere however; especially since no such appeal avenue is open to citizen complainants).<sup>31a</sup>

The O.P.S. system is hard to evaluate with respect to our systemic integrity issue. Policemen have confidence in it, but that may be productive of its bias in favor of street cops. (This is, at least, what some community leaders charge.) Without the evaluations of complainants, we can only say that civilian investigators do not generate the kind of police hostility that some might expect.

With respect to Kansas City, the integrity of the system appears sound, but lacking in complainant acceptance. Investigations are thorough and very well put together. The somewhat removed perspective of O.C.C. allows an additional claim to objectivity not available to normal I.A. systems.

#### B. Behavior Control

In terms of their impacts upon police behavior, the two hybrid systems here studied offer very different pictures. In Kansas City, the O.C.C. allows the internal investigative organization to maintain its operations unfettered by any additional encumbrances. The I.A. system there operates essentially as Oakland's does with perhaps two differences.

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<sup>31a</sup>Regrettably, our study of Chicago P.D. is a bit one sided. Without the cooperation of a new Superintendent of Police, I was unable to extend my survey of complainant's attitudes to Chicago.

First, the Kansas City I.A. organization develops investigative reports which are even more thorough than those constructed in Oakland. This is done in anticipation of convincing the analysts of O.C.C. that a thorough and objective investigation was conducted. It also is necessary so that the analysts may make their outcome suggestions having considered the full, non-paraphrased statements of all involved in the incident.

Second, the Kansas City system has shown officers that civilians can evaluate citizen complaints in a thoughtful and reasonable manner. The consequences of this for lessening police/citizen tensions are unclear. But, it can certainly be argued that such knowledge will lessen the distance between policeman and civilian.

One comment is in order regarding the necessity for O.C.C. to make its outcome determinations on the basis of written records. Without seeing testimony taken, it can be argued, one cannot develop the feeling for the truthfulness of a witness that one can develop in person. (This, of course, is a criticism which can be made of the European civil law system.)<sup>32</sup> In response, it may be pointed out that the judgements of O.C.C. are made on the basis of more objective, codified data

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<sup>32</sup>In the civil legal tradition, much weight is given to written dispositions with very little reliance upon live testimony, so crucial to the common law system. See John Merryman, The Civil Law Tradition (Stanford Univ., Palo Alto, 1969).

(written statements and other documents) rather than upon the intuitive notions of the investigator. The substantive correctness of decisions based upon written evidence may, however, be suspect.

The Chicago system appears to be completely different in its behavioral impact. First, taking a cynical perspective, O.P.S. civilian investigators may be more easily conned by 'guilty' police officers than are I.A. investigators. Some police administrators point out that civilian investigators will not be able to see through police screens and "con jobs" as easily as do street wise policemen. One must assume that some policemen are interested in a review system being ineffective. To these patrolmen, the O.P.S. system might have a great deal to offer. For the deterrent effects of a system wherein investigators may be fooled is certainly slight.

A second, less pragmatic problem with the system is related to the first. Civilian investigators may not be as rigorous as police investigators because they care less about the image of police professionalism. While observing investigators operate in Chicago, the author noted a significant identification with the problem of policemen. This identification is, of course, parallel to that operative within police investigators. But this empathy for policemen was not accompanied by a concern for tenaciously monitoring errant officers. O.P.S. investigators seemed satisfied to "do their jobs" in a bureaucratically acceptable manner. They put together cases

with little regard for the substantive guilt of officers. As one investigator states, "if a guy's dirty and I can't prove it, it's no big deal. I'll get him next time."

I.A. investigators, seem to have an extra impetus to prove culpability for the substantively guilty cop. They care less for the procedural niceties of investigation. Police investigators see errant cops as bad representatives of the police in general. They seem to take that extra effort to prove guilt when they feel it exists. As strange as it may sound, police investigators are more genuinely interested in rigorous review than are civilian investigators.

Policemen in Chicago noted this difference when interviewed. One stated, "guys from Internal Affairs are chicken shit. They want to fry everybody. They never quit 'til they've got something on everybody. The O.P.S. guys play the game fair. If they can't get ya, they drop it."

The effects upon behavior of 'soldering' by civilian investigators can be varied. For some policemen, the lack of O.P.S. rigor may mean that they are free to be abusive. For others, the O.P.S. focus upon procedural correctness may instill a sense of confidence in due process norms. It is the author's opinion that, the effects of O.P.S. upon Chicago police behavior is slight. Policemen interviewed consistently stated that O.P.S. had no influence upon their working styles. These same men, however, often were preoccupied with the Internal Affairs monitoring system. This pattern is similar to that observed in Berkeley and (as we shall see) also analogous to the

differentiation made by San Jose P.D. officers between I.S. and the Ombudsman's office there.

A system such as Kansas City's then, seems to maintain if not increase the rigor of police internal investigative systems. A totally civilian process may, on the other hand, have a significantly less direct and substantial impact upon police behavior.

### C. Community Perceived Legitimacy

The legitimacy with which any review system is viewed by the community-at-large is critical to the effectiveness of that system. A hybrid review system has tremendous potential for creating public support.

Whether civilians are involved in the investigatory process or only in input and output functions, the inclusion of civilians within police departmental disciplinary systems can indicate to the public an important openness. This openness, of course, may only be perceptual. That is, no more access may in reality exist. In the Chicago P.D. system, for example, O.P.S. is as closed to public scrutiny as is Internal Affairs. However, involving "other than police" personnel may lessen the gap between citizen perceptions of police disciplinary process and their actual effectiveness.

We have noted in chapter 9, that one of the problems with Internal Affairs organizations is the intuitive feeling in the community that they cover up police abuses. Whether or not, O.P.S. investigators are as rigorous and tenacious in their pursuit of corrupt policemen as are Internal Affairs in-

investigators may be quite beside the point. The civilian organization may "appear" to be more rigorous from the perspective of removed citizens. While we are concerned here with a more cosmetized look at the system, perceived legitimacy is crucial to the effective functioning of a police organization and a disciplinary process.

Generally, the involvement of civilians in police review processes can be viewed as a check upon the "police perspective". Policemen consider the inclusion of this policeman's perspective crucial in review processes. Officers interviewed in all of our departments indicate that one of the problems they see with civilian review is that civilians will not "understand" the policeman's job and perspective. The importance of this perspective thus being outlined by street policemen, it is intuitively obvious that such a police perspective is at work in most Internal Affairs review processes. The involvement of civilians in a disciplinary process can be an important guarantee for the community that the police perspective is not totally controlling of disciplinary outcomes. It can assure citizens that abuses by street policemen are not being rationalized as "standard police procedure."

Bringing a civilian perspective into a system which reviews alleged police misconduct can have a variety of positive effects upon the perceived legitimacy of that system. However, the Kansas City and Chicago processes have both tended over time to lose the political legitimacy which they initially enjoyed. The civilian investigators and analysts involved in

these experimental review mechanisms have become "cooptated" by the police environment.<sup>33</sup>

The civilian elements of each of these organizations have become somewhat absorbed into the structure of the police organization. For the police, this is a logical means of stabilizing the organization's relationships to the community. In Chicago, the placement of the Office of Professional Standards in the Police Administration Building is one indication that this organization is not divorced from the police department itself. There are other indications that the O.P.S. identifies very closely with the police organization. Inspectors at O.P.S. carry badges and police departmental identification cards. They introduce themselves to civilians as "police department investigators."<sup>34</sup> In Kansas City, the Office of Citizen Complaints identifies with the police department less strongly. It is nevertheless apparent that the members of O.C.C. also normalize certain sets of behavioral patterns and attitudes endemic to the police subculture.

The cooptation of civilians in both Kansas City and Chicago systems has been noted by a variety of academicians and politicians in those cities. There is some debate over the extent of this cooptation. But, it is important that the influence of citizen involvement diminishes over time. The

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<sup>33</sup>See Selznick's classic definition of cooptation in TVA and the Grassroots, Philip Selznick (Harper & Row, New York, 1966), p. 13.

<sup>34</sup>From the authors field notes, 12/06/77.

police subculture is an absorbing, powerful phenomenon.

A second, problem is unique to the Kansas City system. In Kansas City, the Office of Citizen Complaints depends upon police departmental investigations for its evaluations of police misconduct. The Office of Citizen Complaints has no direct contact with accused officers, witness officers, or witness citizens. O.C.C. has only a written record of testimony and statements. Therefore, police "cover-ups" are still eminently possible in Kansas City.

Tangential to this concern is the ability of police administrators to override civilian input in each of our hybrid systems. In Chicago, in particular, the internal departmental appeals process can completely circumvent the decision making capabilities of O.P.S. Aside from this appeals process, both of our hybrid systems allow final decision making authority to the police executive. There exists herein a potential for abuse on the part of the police chief.

Leaving this final decision in the Chief's hands allows him the tools with which to control his charges. As noted by Davis earlier in our discussion, it is contrary to the basic principles of management that one be held accountable for organizational activities when one does not have the tools to maintain organizational control. If the Chief of Police is to be held accountable for the actions of street policemen, he must be allowed the authority to control their behavior.<sup>35</sup> The hybrid review system does this. And we have already noted that

in Kansas City and Chicago police executives almost always accept civilian recommendations as to complaint outcomes. Thus, in practice, the chief's power has not been used to thwart the influence of civilian involvement in these disciplinary systems. Nevertheless, the potential for such abuse does exist.

Some will therefore contend that the ability of the police to override civilian input, defeats the purpose of that input. This dilemma is essentially irreconcilable. On one hand, allowing the Chief the final decision making power is necessary in order to hold him accountable for the operations of his organization. On the other hand, if the final decision making power is allowed to rest with the chief administrator, the effect of "external" review will be limited.

#### D. Counterproductivity

Our hybrid review systems (particularly Kansas City) hold much the same potential for inhibiting police productivity as do Internal Affairs organizations. Over zelousness, consequent morale problems, disdain for due process norms, and slack productivity might all obtain from hybrid systems operations.

Then too, the involvement of civilians might create counterproductive tendencies analogous to those operative in Berkeley's

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<sup>35</sup> Behavior control of anyone, especially policemen, is of course problematic. The Chief must at least, however, be in a position to attempt such control.

entirely civilian review system. Many of the arguments used by police to fight civilian review (e.g., that morale and productivity will suffer) were in fact offered as evidence against the initial formulation of these hybrid systems.

Also, the hybrid system of review potentially violates the confidentiality of internal review systems. Policemen may open themselves up to civil suit if they cooperate with hybrid systems which are more "open" to public scrutiny than are Internal Affairs processes. Legal and political representatives of police professional organizations are very concerned over the lack of confidentiality which can accompany civilian involvement in systems of review.<sup>36</sup>

Given the dynamics of cooptation, the hybrid review system can offer the worst of all possible worlds. The system may not buy more political legitimacy for the police department and at the same time may loosen internal control over discipline.

Both street policemen and police administrators in our hybrid systems felt that a period of "growing pains" did accompany the initial formation of these systems. The fear which the police initially held toward any civilian involvement in discipline had to be gradually overcome. Fears which have been deeply felt tend to die hard. Civilian review is such an

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<sup>36</sup> Kansas City's open access policy is particularly disturbing to police administrators elsewhere. They see in such a policy the end to officer cooperation with investigations due to fear of civil suit.

emotional issue that, as we discussed in chapter ten, some rather irrational notions about its effects were harbored by policemen.

However, each of our hybrid systems has matured into a mechanism which is as acceptable to policemen as are Internal Affairs systems. In Chicago, O.P.S. has ingratiated itself so much that policemen prefer it to I.A. As one street cop stated, "I wish O.P.S. would take over all the investigations. They're more fair than those I.A. cut throats." The counterproductive effects upon street policemen are thus very limited.

Then too, the hybrid systems seem to have been kind to police administrators. They allow final disciplinary control to be maintained by the Chief of Police. Such a process maintains the integrity of the organization. Such final controls being "in-house", the police administrator is protected by the hybrid system. More so than with Internal Affairs organizations, a hybrid review system can be used by a police organization as a boundary spanning device. The degree of uncertainty which the police department faces from its external environment is lessened. Cooptation aside, the hybrid system lends at least some extra degree of legitimacy and external credibility to the system.

An additional value of such a system is illustrated by the Office of Professional Standards. Such a civilian system can free the department from one type of internal conflict. A

stigma is attached to officers who are transferred into an out of Internal Affairs organizations. In some cases, the stigma of having worked in Internal Affairs can follow an officer for years. Social isolation is a phenomena encountered by most policemen. It can be of tremendous psychological significance. The additional ostracism by their own peers encountered by Internal Affairs investigators can almost be overwhelming for the individual.

An organizational dilemma exists when choosing officers for the internal investigative function. In many departments it is difficult to find officers who are interested in performing this function. Sometimes those officers who do volunteer for the internal investigative function may not be the types of individuals who would make good, objective investigators. That is, those who may wish to monitor their colleagues may not be the best persons to perform the task.

In an O.P.S. type of system, both of these problems are averted. A civilian inspector will be hired for the specific job of dealing with complaints of police abuse. He or she will spend a career entirely focusing upon that function. From the outset then the civilian investigator has nowhere else to go within the organization. Intradepartmental tension from transfer problems will not obtain within the police organization.<sup>37</sup>

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<sup>37</sup> It should be noted of course, that initial socialization problems will exist for anyone entering such a civilian investigator's position. Indeed, such is the case for a person entering any complex organization.

On balance then, these hybrid systems have become institutionalized sufficiently into the Kansas City P.D. and Chicago P.D. environments so that they do not inhibit police operations any more than do most Internal Affairs systems. We must favorably evaluate them in terms of their potentials for counterproductivity.

## VI. Summary

Hybrid review systems can offer the best police review mechanism. The types of balanced concerns which we have focused upon throughout our study may all be obtained through a hybrid review system. Such a process can be fair in adjudicating specific complaints or police abuses, can be effective in generally deterring police malpractice, and can be perceived as more open and legitimate to political elites and electorates alike.

However, the opposite is also possible with hybrid review. We have noted that over time, the initial political legitimacy which might greet such a system can evaporate when the process of cooptation occurs. In addition, we have seen that civilian investigators may be less rigorous and less effective than are sworn police investigators. Thus, hybrid review systems may lessen the external perceived legitimacy of police disciplinary process (by appearing to be a sham or a "con job" and at the same time weaken the review system's ability to adjudicate specific complaints and deter malpractice.

Having discussed the potentials of hybrid review systems, let us turn to still another way of dealing with civilian complaints. Academicians, politicians, and presidential commissions have called for the institutionalization in America of Scandinavian type ombudsman offices for dealing with civilian complaints about police misconduct. There has been, however, very little experience in the United States with Ombudsman systems. One such system exists in the City of San Jose. It forms an important part of our comparative study.

Chapter 12  
THE OMBUDSMAN

I. Introduction

The Scandinavian Ombudsman's method of reviewing civilian grievances directed toward governmental agents has been quite topical in the field of public administration for some time.<sup>1</sup> Indeed, over the past few years Ombudsman type systems have developed throughout the world.<sup>2</sup> Such systems have been instituted at local, national, and state or provincial levels of government. Ombudsmen have also been suggested "for a variety of institutional settings: campuses, boards of education, corporations, religious orders, and the armed forces, including the United Nations peacekeeping force."<sup>3</sup>

Because of its potential for mediating between aggrieved citizens and governmental officials, the Office of Ombudsman has tremendous potential for dealing with the complex problem of police review. The present chapter shall consider one such office in operation in San Jose, California.

The term "Ombudsman" has been loosely translated from German to mean "referee" and from Swedish to mean "representative."

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<sup>1</sup>For an excellent bibliography on the Ombudsman see Manuel Torres Tapia, El Ombudsman: Ensayo Bibliografico (Sociedad de Bibliotecarios de Puerto Rico; San Juan, 1977).

<sup>2</sup>Ombudsman systems currently operational in Sweden, Finland, Denmark, Northern Ireland, Israel, Mauritius, France, Fiji, Canada, the Soviet Union, and Puerto Rico. At the state/province level, Hawaii, Nebraska, Iowa, Alaska, and Nova Scotia have similar systems. See Tapia, *ibid.*

Ombudsman's offices function as generalized complaint bureaus, available to the public for redress of governmental grievances. At little or no expense to the citizen, he or she may complain to the Ombudsman about the specific actions of governmental agents or about the failures of administrators to act.

In order to pursue their charge, most Ombudsmen have almost unlimited access to governmental agents, and official documents. Ombudsmen are allowed to express "an ex officio expert's opinion about almost anything that governors do and that the governed do not like."<sup>4</sup> Essentially Ombudsmen are general 'critics-at-large'. They not only look into specific grievances but also consider the policy implications thereof.

Ombudsmen generally (and in San Jose in particular) do not have the "power" to order any administrator to act. The weight of the Ombudsman's findings lies only in his or her logic. They use personal persuasion to generate compliance with their policy recommendations or acceptance of their specific investigative findings. When cooperation does not develop, they sometimes attempt to obtain support from administrators elsewhere in the governmental milieu.

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<sup>3</sup> Stanley V. Anderson, Ombudsman Papers: American Experience and Proposals (Institute of Governmental Studies; Berkeley, 1969), p. 1.

<sup>4</sup> Walter Gellhorn, When Americans Complain (Harvard University Press, Cambridge, Mass., 1966), p. 10.

It is important to emphasize the nature of the Ombudsman's "power" over police Internal Affairs organizations or over police executives. The power of exhortation "only", is at the Ombudsman's command. It is not true, of course, that the Ombudsman has no power. Effectively, the power the Ombudsman develops through publicity, argument, coercion, and persuasion is great.

When one considers the actual as opposed to the enumerated powers of the Ombudsman's office, one is reminded of Hamilton's argument in Federalist 78 as to the powers of the Supreme Court.<sup>5</sup> Because the Supreme Court was given neither the power of the purse nor of the sword, Hamilton argued that the Court had "no direction either of the strengths or of the wealth of the society and can take no active resolution whatever. It may truly be said to have neither Force nor Will but merely judgement."<sup>6</sup>

It has become quite clear throughout the history of the American Federal system that this "power of judgement" is a tremendous power indeed. Similarly, over time the power of persuasion and of logic available to the Ombudsman has been found to be significant. In Sweden the Ombudsman's office has existed for over 150 years. The ability of that office to have effect

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<sup>5</sup>Hamilton, Madison, and Jay, The Federalist Papers (Mentor Books, N.Y., 1961), #78.

<sup>6</sup>Ibid., p. 465.

<sup>7</sup>See Gellhorn, Ombudsman and Others (Harvard Univ. Press; Cambridge, Mass., 1966), chapter 3.

over policies throughout the government's administration is tremendous.<sup>7</sup> As with the U.S. Supreme Court, the "lack" of specified powers enjoyed by the Ombudsman places him in a political position wherein a great deal of actual power may accrue to his office. The theoretical "independence" of the Ombudsman is a shield which he can use to isolate himself from political attack and to develop legitimacy for his role.

The Ombudsman has only the power of persuasion at his disposal. He deals with complex, emotional interactions between citizen and administrator, which tug at the very root of the individual versus collective rights question that is fundamental to social life. Therefore, the personality and the individual ability of the Ombudsman to get along with people is crucial to the institution. As Fitzharris notes in his study of the correctional Ombudsman:

The institution here discussed will only be as good as the individual's staffing it. The success or failure of the correctional Ombudsman would depend on the character of the Ombudsman--his integrity, his aggressiveness, his ability---and on the availability of genuine support and good faith on the part of those who deal with him. 8

With respect to the review of American police abuses, the Ombudsman is one of the alternatives to civilian review first

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<sup>8</sup>From Timothy L. Fitzharris, "The Desirability of a Correctional Ombudsman", Institute for Governmental Studies, Univ. California, Berkeley, 1973, p. 70. Note: The analogies between a correctional Ombudsman's job and that of an Ombudsman dealing with police directed complaints are many.

considered seriously in the '60's. We have seen in the Introduction that the tumult of the '60's introduced the issue of police abuse to center stage on the American political scene. However, the abuse of governmental authority in general also became a topic of concern in the late 60's. With the advent of the Watergate scandal in 1972, concern about abuses throughout government escalated. Ombudsman offices have recently been instituted in many American cities and states.<sup>9</sup> Because such offices deal with many administrators, they are increasing in their significance to students of public administration.

In 1967, the report of the President's Commission on Law Enforcement and the Administration of Justice tackled the issue of civilian grievances against the police.<sup>10</sup> The commission's conclusion regarding grievance processes reads in part:

"In going beyond the established legal procedures the Commission finds it unreasonable to single out the police as the only agency that should be subject to special scrutiny from the outside. The Commission therefore does not recommend the establishment of civilian review boards, in jurisdictions where they do not exist, solely to review police conduct. The police are only one of a number of official agencies with whom the public has contact and in some cases because they are the most visible

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<sup>9</sup>The states of Hawaii, Illinois, Nebraska, Iowa, and Alaska all have Ombudsman type offices. The cities of Atlanta, Dayton, Ohio, Denver, and Seattle also have such offices. From David L. Tobias, "The Ombudsman: Citizen's Advocate", Policy Issues, Vol. 3 #2, Fall/Winter, 1977.

<sup>10</sup>"The Police", The Challenge of Crime in a Free Society (Washington: U.S. printing office, 1967).

and conspicuous representatives of local government they may be the focus of more attention than they deserve. Incompetence and mistreatment by housing, sanitation, health, and welfare officials can be as injurious to citizens as mistreatment by the police and should be equally subject to public scrutiny." 11

George Berkley reemphasizes the Presidential Commission's point about singling out the police as the subject of review mechanisms. Referring to the isolation of the police sub-culture and the internal solidarity of same, Berkley indicates that civilian review boards can nurnish the formation of pariah complexes among the police. Since the Ombudsman's office is not exclusively aimed at controlling the police, Berkley feels that it does not pick away at their "sensitivities." "As a matter of fact, since it subjects them to the same external control institution as other agencies of government, it (the Ombudsman's office) may tend if anything to bring them closer to their fellow servants."<sup>12</sup>

Berkley is echoed by other authors in speaking to feelings of ostracism held by police officers.<sup>13</sup> Intuitively, the Ombudsman system can deal most effectively with this critical issue.

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<sup>11</sup>Ibid., p. 198

<sup>12</sup>George Berkley, The Democratic Policeman (Beacon Press; Boston, 1969), p. 149.

<sup>13</sup>See Algernon D. Black, The People and the Police (McGraw-Hill; New York, 1967), p. 229; and Walter Gellhorn, op. cit., p. 185.

Academicians from a variety of other perspectives point to the potential of the Ombudsman for dealing effectively with civilian grievances aimed at policemen and police policies. Lon Fuller, for example, concludes that "for an effective control of police lawlessness, much can be said for some over-seeing agency, like the Scandinavian Ombudsman, capable of acting promptly and flexibly on informal complaints."<sup>14</sup> (Fuller's conclusion stems from a discussion of the inadequacies of judicial review of police abuses.)

In still another vein, Paul Chevigny points out that Ombudsman type systems are simply more politically sellable than are civilian review boards, solely for the police. "The public seems to be able to unite on the proposition that 'bureaucrats' make mistakes, but not that the police make mistakes."<sup>15</sup>

Chevigny's point is, well taken. Aside from complainant satisfaction and police acceptability, a review system must necessarily deal with political exigencies native to local systems. Indeed, the experience of civilian review in New York City, Philadelphia, and Buffalo must point to the importance of such political considerations. Civilian review boards in each of these cities fell prey to political attacks from a multiplicity of factions.<sup>16</sup>

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<sup>14</sup> Lon L. Fuller, The Morality of Law (Yale University Press; New Haven, 1964), p. 82.

However, we are getting ahead of ourselves in our treatment of the Ombudsman Office. First, we shall consider the day-to-day operations of the San Jose City Ombudsman as his function relates to the Police Department and police complaints. Then having gone into some background as to the practical operations of an Ombudsman, we shall deal with the positive and negative potential inherent in such processes.

## II. Ombudsman Procedures: The San Jose System

The City of San Jose is located at the southern most tip of the San Francisco Bay area. One of the fastest growing cities in California. The City is policed by 988 sworn police personnel. The police department's Patrol Division is comprised of 450 men and women who police a largely suburban population of 564,000. A large mexican-american population (16% of the city's total) gives San Jose both an ethnic flavor and some racial problems. The creation of the Ombudsman's office in 1971, as with all of our other-than-internal systems, was largely realized through pressures from this Chicano community for civilian review of the police. The Ombudsman operates completely independently of the police department and, as in

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<sup>15</sup> Paul Chevigny, Police Power, (Vintage Books; New York City, 1969), p. 269.

<sup>16</sup> See Stephen C. Halpern, "Police Employee Organizations and Accountability Procedures in Three Cities", Law and Society Review, Vol. 8, N. 4, Summer 1974, p. 561.

the classic scandinavian mold, involves itself in complaints aimed at all levels of municipal government.

A. Input Structures:

The Office of the Ombudsman in the City of San Jose is located in the City Hall Building. The office is removed from the police departmental administrative building. When a complainant comes to the Ombudsman with a grievance regarding the police department, the initial statement of the complainant is taken by a civilian investigator. Under the Ombudsman, four civilian investigators handle approximately three hundred (300) investigations each year involving allegations against the police department and police officers. Approximately 50% of an Ombudsman investigator's time is spent on police departmental grievances.<sup>17</sup>

Civilian investigators at the Ombudsman's Office receive similar training so that of civilian investigators at Chicago Office of Professional Standards. These individuals are hired with college degrees for the most part. They are given training in investigation and report writing at the police academy. They are also allowed to sit in on police departmental physical tactics classes. This supposedly gives the investigator a feeling for the training which policemen receive at the police academy. Ombudsman investigators are also invited by the

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<sup>17</sup>From an interview with the San Jose Ombudsman 6/9/77.

Police Department to ride out on the street with policemen in a civilian, "ride along" capacity. Most investigators take advantage of this offer. On the job instruction makes up the rest of the training process for Ombudsman investigators.

A complaint form is prepared after the civilian's initial statement is outlined. A copy of the initial statement and the complaint form itself are immediately forwarded to the Police Department's Internal Affairs organization. The Internal Affairs organization at San Jose conducts an investigation very similar to that of Oakland P.D.'s Internal Affairs. Unlike the civilian monitoring agency at Kansas City, the Ombudsman does not rely solely upon Internal Affairs to investigate the complaints which it has received. For every complaint filed with the Ombudsman, a full investigation ensues at the Ombudsman's office.

The Ombudsman's office forwards 300 complaints per year to the Police Department for their concurrent investigation. The Police Department's investigatory load for a year is approximately 600 complaints. Thus one-half of the complaints investigated by Internal Affairs in San Jose are investigated by the Ombudsman's office at the same time.<sup>18</sup>

One strength of the Ombudsman type system is that it allows a great deal of latitude for that official to mediate

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<sup>18</sup>The difference of 300 complaints occurs because the police department itself generates some complaints internally and because some complaints are filed by citizens with I.A. initially and not the Ombudsman.

grievances. The ability of the Ombudsman to obtain satisfying explanations for citizens (and thus short circuit complaints) is perhaps the strongest selling point for the process. In San Jose, some short circuiting of complaints is indeed done by Ombudsman investigators. However, the potential for such informal handling of complaints, inherent in the Scandinavian system, has not made itself manifest in San Jose.

Such informal handling has not developed because of a communications bottle neck between the Ombudsman's Office and street policemen. In order to mediate complaints and to satisfy complainants short of formal investigation, it is often necessary that an investigator contact the individual officer or officers involved in a grievance. A quick explanation by an officer of his side of an incident can often negate the need for further action. While good relations ostensibly exists between the Ombudsman and Internal Affairs, informal methods of communication have not developed between investigators and street policemen. The Ombudsman's investigator is forced by convention to go through the Internal Affairs organization of the police department to make such contact. As a practical matter this takes time. It is cumbersome because of reluctance on the part of I.A. staff to cooperate. Thus, the ability of the Ombudsman to quickly deal with complaints to the satisfaction of civilians is severely limited.

An illustration of another Ombudsman system is here opposite. In the City of Berkeley, a single individual is entrusted with the Ombudsman function. This particular individual has developed an open, working relationship with the Police Department. He may directly contact street police officers regarding complaint investigation. He need not clear such contacts with any high ranking administrators or Internal Affairs investigators. It is the experience of policemen at Berkeley P.D. that this system works very well. Several of our randomly selected officers indicate that they have been contacted by the Ombudsman regarding potential complaints. These complaints were handled informally to the satisfaction of the aggrieved citizens. In each case related by an officer, the grievance did not generate an official Internal Affairs investigation. The officers were very satisfied with this system (as were, theoretically, the civilian complainants). However, it is questionable whether such satisfaction can be obtained if the Ombudsman must contact officers through I.A.'s more formal (and somewhat adversarial) channels.

The San Jose Ombudsman nevertheless attempts on his own to short circuit complaints. In practice, however, most complaints which enter the office are subject to formal investigations. Thus, the San Jose Ombudsman system does not make use of one of its greatest potentials; the ability to mediate rather than adjudicate between complainant and policeman.

## B. Investigations

As Chevigny points out, the "investigative techniques of the Ombudsman have traditionally been more restrictive than those of a trial board: he has not usually gathered facts or held hearings himself but has relied instead upon the records of other agencies."<sup>19</sup> Ombudsman systems usually depend upon Internal Affairs generated investigations when they consider police directed grievances. In essence, the Ombudsman is normally an after-the-fact reviewer of the investigations of others.<sup>20</sup>

In San Jose, however, the Ombudsman's office does actually investigate police complaints on its own. Indeed, the Ombudsman role has expanded to include that of obtaining evidence first hand. Every complainant who comes to the Ombudsman (and is not satisfied informally) initiates an investigation conducted by an Ombudsman investigator. During the course of these investigations, civilian Ombudsman investigators will contact witnesses and obtain statements as will Internal Affairs investigators. The Ombudsman has access to a variety of police departmental records. Ombudsman investigators will compile physical evidence and official reports in a manner similar to I.A.'s.

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<sup>19</sup>op. cit., p. 269.

<sup>20</sup>This process is analogous to that of O.C.C. at Kansas City P.D. Also see Lance Tibbles and John H. Hollands, "Buffalo Citizen Administrative Service: An Ombudsman Demonstration Project", (Institute of Governmental Studies: University Calif., Berkeley, 1970), p. 51

Ombudsman investigators also obtain statements from policemen and witness police officers. When this occurs, the investigator will participate with Internal Affairs in a concurrent interrogation (interview) of such officers. Thus, when an officer from San Jose is called in to make a statement regarding a complaint, he may be faced by two investigators; one civilian and one policeman. General orders and city ordinances within the City of San Jose require police officers to cooperate with Ombudsman investigators.<sup>21</sup>

When an investigation is complete, a summary of investigative activity and findings is written up by the Ombudsman investigator. The investigator suggests an outcome relative to the complaint. This "finding" will either indicate a "sustained" or "not sustained" result. (Ombudsman investigators do not break complaint findings down into the four categories routinely used in police organizations). Summaries and investigations are then reviewed by the Ombudsman himself.

Besides such specific investigations, there are two additional functions of the Ombudsman in San Jose. Each Ombudsman investigator is delegated to monitor ten I.A. investigations per month. Those complaints monitored must be complaints received by the Police Department itself and investigated by

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<sup>21</sup>This form of parallel interrogation is simply a matter of convention so as not to subject an officer to a series of interviews regarding the same complaint.

Internal Affairs only. Since there are four Ombudsman investigators, and each chooses 10 cases per month, over the course of a normal year, 480 I.A. investigations should be so monitored by Ombudsman office staff. However, only 300 investigations per year are done by Internal Affairs which are not also done by the Ombudsman's office. Thus, every I.A. investigation is monitored. Therefore, the Ombudsman in one fashion or another is involved in every complaint of police misconduct in San Jose.

The monitoring by Ombudsman investigators of Internal Affairs investigations is, however, limited. Ombudsman investigators attempt to contact I.A. case complainants. These contacts attempt to measure complainant satisfaction with the I.A. process. Each investigator provides a summary to the Ombudsman of the attitudes of complainants so contacted. These summaries are not formally collated by the Ombudsman office.<sup>22</sup>

The Ombudsman's office retains the discretion to look into a complaint wherein a civilian points out discrepancies or deficiencies in the Internal Affairs investigation. This, however, is rarely done. While complainants may not be satisfied, they very rarely can point out flaws in I.A.'s case.

Thus, within the San Jose system, the Ombudsman's office monitors more thoroughly the police department's investigatory

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<sup>21</sup> However, the summaries are utilized by the Ombudsman in his policy recommendation function. See below.

processes than is the case in most Ombudsman systems. Its parallel investigation system makes the San Jose office an interesting alternative to the traditional Ombudsman, to the I.A. type system, and to the Kansas City O.C.C.

### C. Deliberations and Outcomes

When the Ombudsman's investigator has completed the investigation into a complaint, a conference occurs between that investigator and the relevant Internal Affairs investigator. The two compare notes on their concurrent investigations. They come to an agreement as to the outcome of the case. If there is any disagreement between investigators, an additional conference may obtain between the Chief of Internal Affairs and the Ombudsman himself. These conferences are rare. Both the Internal Affairs staff and the Ombudsman's staff agree that over 95% of the time, the two case investigators reach the same conclusions regarding their parallel investigations.

On occasion however, the Internal Affairs commander confers with the Ombudsman himself and discusses the outcome of a complaint. These conferences almost always obtain agreement between the two parties. On rare occasions, these conferences also cannot achieve unanimity. The Ombudsman may then meet with the Chief of Police to discuss the complaint. This only occurs when the Ombudsman rigorously disagrees with the Internal Affairs finding. This has only happened once in the six year tenure of the office.<sup>23</sup>

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<sup>23</sup>From field notes, interview with the City of San Jose Ombudsman, June 7, 1977

In theory, another avenue exists wherein the Ombudsman may question an Internal Affairs finding. The Ombudsman in fact, answers to the City Manager in the City of San Jose's administrative structure. The Ombudsman may take a specific complaint outcome to the City Manager's office for discussion. This has never happened.<sup>24</sup>

Once an investigation has been concluded and an outcome has been agreed upon, the Ombudsman investigator contacts the complaining citizen. At this meeting (or over the phone) the Ombudsman's investigator will explain the investigation and its conclusions. Besides this personalized explanation, the Ombudsman sends a letter explaining the outcome to the citizen. This explanation is much more specific than the amorphous form letter sent out by most Internal Affairs organizations. It relates the progress of the investigation and the logic behind its findings.

The Ombudsman's office does not have the power to discipline police officers. Ombudsman investigators make this clear to civilians when they initially file their grievances. The Ombudsman feels that "people seem to accept this explanation" (of his powerlessness).<sup>25</sup> This may be, of course, a very prejudiced evaluation.<sup>26</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> From field notes, interview with the San Jose Ombudsman, July 5, 1977.

<sup>26</sup> It would, however, be interesting to know to what extent citizens are interested in retribution or the punishment of offending officers.

Aside from its investigatory and monitoring functions, the Ombudsman's office is charged with developing policy recommendations from complaints. It is clear from contact with both the San Jose Police Department and the Ombudsman's office that recommendations relating to policy are few in number. However, when the Ombudsman does take the time to formulate policy recommendations, the Police Department appears to listen to them. The Ombudsman himself indicates that the few policy changes which have been recommended have almost always been well received. The Chief of Police has had each researched and implemented.

As with specific complaints, a potential second avenue exists within which the Ombudsman may pursue his policy recommendations. Should he strongly disagree with the Chief of Police over policy, the Ombudsman has the option to bring policy recommendations to the City Manager's office. This is almost never done.<sup>27</sup> However, it serves as a potential weapon in the Ombudsman's arsenal. The potential of City Manager review requires a reasonable and thoughtful consideration by the Police Department of any Ombudsman policy recommendations.

Before considering the strengths and weaknesses of the Ombudsman system, it should be noted that relations between the Police Department and the Ombudsman are guarded. The street troops appear quite open to its processes and unafraid of its scrutiny. The administration of the police organization, however, is very restrictive of the access which it "allows"

to the Ombudsman. The City Council has had to generate several sets of directives to the police to command their cooperation with the Ombudsman. I.A. staff have fought the Ombudsman's right to obtain departmental information.<sup>28</sup> Then too, we have already noted the restrictive convention that the Ombudsman cannot contact policemen without going through I.A. to do so.

Thus, an underlying tension on the part of police administrators affects the ability of the Ombudsman to perform his charge. Having seen the basics of the process, let us turn to analyze the Ombudsman system.

### III. Evaluation

#### A. Systemic Integrity

The thoroughness, fairness, and objectivity of San Jose I.A. investigations is generally similar to that of any I.A. system studied by the project. The faith which policemen have in their I.A. is similar to that of patrolmen in Oakland. They have a guarded respect for the I.A. system, and prefer it to civilian review.

The real story of San Jose's system is, of course, the Ombudsman's office itself. For policemen perceive no difference between I.A. with or without the Ombudsman. What makes

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<sup>27</sup> No one can recall this type of action being taken.

<sup>28</sup> From various interviews with San Jose I.A. staff. It is interesting that Ombudsman's staff do not share the feeling of I.A. staff that relations between the two are strained.

the Ombudsman's office able to avoid incurring the wrath of street policemen and yet monitor their behavior?

The Ombudsman's personal style can be all important. He must be the kind of person who can understand police work without having been a policeman. He must understand administrative norms without being involved in police organizational hierarchy. And he must nevertheless remain in touch with the perspectives of citizens on the street. An Ombudsman has to be able to relate to ethnic minorities of a variety of persuasions and to deal with potentially volatile political issues. An effective Ombudsman will therefore be a combination politician, creative writer, political analyst, and con artist.

The fact that all of these traits are required in an Ombudsman is not to say that the office is not a feasible one. It is perhaps the most potentially effective review system which we have heretofore considered. However, the tremendous importance of the individual person to the system makes one realization crucial. An individual Ombudsman can be very ineffective in a situation where someone else would deliver great satisfaction to all.

Potentially, the Ombudsman reaches populations usually disenfranchised by administrative systems. Wyner notes that some executive Ombudsman "attract a significant percentage of their clientele from lower income residents."<sup>29</sup> And as Chief Durate of Honolulu P.D. notes regarding the Ombudsman there:

I would say there has been an increase in the number of complaints. I think people have felt

at ease. Probably they were a little apprehensive to come to the Police Department directly, but with the Ombudsman's Office...I think they feel a little freer..." 29a

Unfortunately, statistics are not available from San Jose which could tell us whether complaints have increased since the establishment of the Ombudsman. But potentially, the system offers more access than traditional, in-house police mechanisms do.

It is important here to note another potential of the Ombudsman type of office. In San Francisco, the Sheriff's Office has instituted an Ombudsman to deal specifically with inmates and correctional officers in the City's jail. An interesting part of this office's function is its policy of taking complaints from policemen (sworn correctional officers). The Ombudsman in that city feels that the ability to take complaints from both "sides" indicates to policemen that the Ombudsman is in fact not the advocate of citizens, but a neutral party.<sup>29b</sup> By convincing policemen that the Ombudsman is in fact interested in looking into all sides of grievances and policy, the office can thwart the natural worries about civilian involvement in disciplinary processes which many policemen harbor.

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<sup>29</sup> Alan J. Wyner, Executive Ombudsman in the United States (Institute of Governmental Studies; Univ. Calif. Berkeley, 1973), p. 13.

<sup>29a</sup> Anderson and Moore, eds., Establishing Ombudsman Offices; Recent Experience in the United States (Institute of Governmental Studies; Univ. Calif. Berkeley, 1971), pp. 212-213.

<sup>29b</sup> From field notes, interview with San Francisco Sheriff's Office Ombudsman, 12/28/77.

The Ombudsman in San Jose, however, does not engage in this type of complaint review. It is nevertheless, an interesting idea for us to consider. In an internal memo to the Sheriff's departmental staff, this unusual function of the Ombudsman office was outlined as follows:

We realize the importance of communication in a large organization. It is even more important in a jail system because the prisoners live there 24 hours a day while the staff does so for 8 hours. Lack of communication breeds rumors. Therefore, the Ombudsman will be able to answer any questions from the staff and the inmates. If he does not know the answer when you ask him, he will be able to research it. He will also be able to explain such things as the rationale behind rules and policies in the department...29c

While it does not concern itself with our specific Ombudsman Office, the potential for this special type of Ombudsman review is fascinating.

Then too, it is important to underline the appeal ability inherent in the dual system. If the complainant is not satisfied with the Internal Affairs response to his grievance, he or she may go directly to the Ombudsman Office and institute a formal investigation. On the other hand, if the processing of complaints by the Ombudsman's Office is not satisfactory, a civilian may go directly to the police and seek redress. The existence of two systems has therefore a positive public relations effect upon aggrieved citizens. Then too, there are

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<sup>29c</sup>San Francisco Sheriff's Office, Inter-Office Correspondence, June 5, 1975, signed by Sheriff Richard D. Hongisto.

times when significant complaints on the surface appear frivolous. The value of redundant administrative systems can be important in assuring that significant grievances do not slip through initial input mechanisms.<sup>29d</sup>

San Jose's street policemen have faith in the Ombudsman's process, though they fear civilian review. Of all civilian systems treated, the Ombudsman has perhaps the most potential for developing police confidence in its monitoring processes without completely sacrificing its external perspective. However, our complainant attitude survey indicates that this system may fall short of developing the same confidence in citizen complainants.

The San Jose respondents to our questionnaire indicate a lack of faith in the thoroughness, objectivity, and fairness of this system.<sup>29e</sup>

In considering the operations of the San Jose Ombudsman system, we must differentiate the Ombudsman in theory from the Ombudsman in practice. In theory, the Ombudsman has a great deal of potential for short circuiting the less than

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<sup>29d</sup> See Martin Landau, "Redudancy, Rationality, and the Problem of Duplication and Overlap", PAR., Vol. XXIX, No. 4. July/Aug. 1969.

<sup>29e</sup> The Police Department in San Jose refused to cooperate with the attitudinal survey...an interesting fact in itself. Unfortunately, we cannot compare these respondent's perceptions with responses from complaints handled by the I.A. system. It would be nice to compare the satisfaction of citizens complaining to each system, in order to develop a more clear understanding of what differences the Ombudsman may really make.

significant complaint. However, in practice (in San Jose), the Ombudsman does not engage in a significant amount of short circuiting. We have pointed out that this is not the fault of the Ombudsman's Office. Because the Internal Affairs organizations has sought to maintain itself as a direct liaison between the Ombudsman and street policeman, the Ombudsman is severely limited in his ability to short circuit complaints. Though this is a weakness in the San Jose system, however, it is not necessarily a weakness in the Ombudsman system generally.

Another potential for the system is not achieved in practice. The San Jose Ombudsman does not monitor the specifics of individual Internal Affairs cases. The monitoring process which the Ombudsman engages in only seeks to ascertain civilian satisfaction with the job of Internal Affairs. Because of the conventions of the San Jose process, Internal Affairs investigators are aware at the outset which complaints are being investigated in a parallel fashion and which are not. Thus, it is not necessarily clear that the Ombudsman system monitors all potential abuses within the police organization. That is, one sort of investigation may happen in monitored cases and another sort of investigation may obtain wherein it is known that no parallel investigation is in progress. There is no evidence to indicate that this is actually the case. Analytically, however, it is a potentiality to be considered.

The San Jose Ombudsman system develops thorough and competent investigations of alleged malpractice. It involves civilians in the process without incurring the hostility of policemen. Most officers either ignore the Ombudsman or are ignorant of his operations. However, complainants who have filed grievances with the office are not particularly enamored with its integrity. While such evaluations may be controlled by outcome, we must note that the theoretical potential the Ombudsman has for satisfying citizens is subject to question in San Jose.

#### B. Behavior Control

The Ombudsman system offers great potential for affecting police behavior in a positive way. To begin with, the system leaves the police departmental Internal Affairs process intact. The potential deterrent effects of rigorous internal review are also therefore operative under San Jose's Ombudsman system.

Then too, the Ombudsman's monitoring may increase rigor and tenacity with I.A. systems. In Finland, police administrators are constantly aware of the Ombudsman's presence and potential review powers. As an official stated, "don't let anyone tell you that police officers don't care about those fellows in Helsinki (Ombudsman's investigators)...we know they can and do concern themselves with us and that makes us careful."<sup>30</sup> Knowing that every complaint handled formally by

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<sup>30</sup> As quoted in Walter Gellhorn, Ombudsman and Others, op. cit. p. 74.

Internal Affairs will be monitored by the Ombudsman's office can have a positive effect upon the thoroughness and objectivity of police department investigations. San Jose's internal system does seem rigorous. It is unknown, however, whether this is due to civilian monitoring or (as in Oakland) the Chief's philosophy.

The Ombudsman type system has some additional advantages not operative in wholly internal systems. The Ombudsman's investigatory process is not as adversarial in its treatment of the accused policeman as is that of I.A. organizations. In terms of obtaining cooperation from individual street policemen, this system thus has a great deal to offer.

This lack of adversariness can allow individual policemen to "own up" to honest mistakes. Policemen who are not initially put in a defensive position by a review mechanism, are allowed to learn and grow through the review process. The Ombudsman holds great promise (as illustrated by the Berkeley Ombudsman's experience) for developing such non-adversarial relationships between investigators and street policemen.

The individual street policeman may develop more confidence in the Ombudsman's process than in those of I.A. Several reasons (other than this lack of adversariness) can cause such confidence to develop. First, the Ombudsman has not the power to directly discipline the accused officer. Second, the Ombudsman is not as interested in individual officers and their careers as he is in patterns of complaints and satisfying

citizens. If an officer cooperates with the Ombudsman so that a citizen is satisfied, the Ombudsman's primary directive is achieved.<sup>31</sup>

However, these are only theoretical potentials existent within the San Jose system. They have not been realized due to the reluctance of the police department's administration to cooperate with the Ombudsman. While policemen in San Jose do not fear the Ombudsman, neither do they know or trust him. The fact that in Berkeley policemen have confidence in the office only indicates that the potential for same exists. San Jose's system shows that such confidence and cooperation will not necessarily develop within all Ombudsman type systems.

A variety of theorists have pointed out the limitations of handling complaints, one at a time. Most important for the professionalization of policework and for the lessening of police malpractice is the development of organizational learning and policy utilizing the potential feedback that exists in civilian grievance mechanisms. As Chevigny points out:

At least in some cases the limitations of review can be alleviated by changing the emphasis of review from punishment of a particular officer to recommendations for changes in procedure and regulations.

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<sup>31</sup>For a discussion of the positive ramifications of the lack of adversariness in the Ombudsman system see Walter Gellhorn, When Americans Complain, op. cit., p. 192.

This has been a traditional function of the Scandinavian Ombudsman and American Review Boards can (and sometimes do) undertake such rule making functions. 32

The Ombudsman extrapolates policy implications from specific complaints. The ability of the Ombudsman to do so in an intelligent manner has been underlined by several scholars. As Berkley points out "the Ombudsman is more likely than the civilian review board to have the depth of knowledge and experience to sort out the frivolous from the well founded complaint, to probe beyond mustard plaster remedies in order to suggest possible panaceas...he is also in a position to relate any police dereliction to larger problems including police relationships with other governmental departments."<sup>33</sup>

Indeed the positive potential for policy formulation within Ombudsman systems can be viewed as a strength of that system from every relevant perspective. The citizenry in general and the individual complainant will both benefit from such policy development. Then too, for the continued growth of knowledge in the field of "police science", for the continued "professionalization" of police work, and for progress toward a more scientific administration of the law, the Ombudsman's policy potential is tremendous.

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<sup>32</sup>Chevigny, op. cit., p. 271

<sup>33</sup>Berkley, op. cit., p. 150.

Deputy Chief Duarte of the Honolulu Police Department notes the pluses of bringing the Ombudsman's perspective to police policy development. When he spoke to an Ombudsmans' workshop in that city, he stated in part:

I can recall one complaint on the towing situation. We'd all go down to the Ombudsman's office and they would have laid out on the blackboard exactly what our procedures were, and then would recommend ways in which we could improve these procedures. It seems that we would be confronted with these things every day, that we would be able to resolve them. But, you know, when you are so close to the thing you can't see it. They were able to do this more objectively, and they really helped us. 34

The Ombudsman does, in fact, amount to a civilian review of police actions and policies. Yet, in San Jose it has not generated friction among street policemen. Perhaps one reason has already been briefly outlined above. The Ombudsman does not discriminate against policemen and police organizations. Individual street policemen are very much concerned with the propensity for policemen and police organizations to be singled out as bodies worth of external review. The Ombudsman has the power and the charge to investigate any administrative actions or lack thereof. The natural feeling of isolation which policemen experience vis-a-vis the citizenry (and even their own organizational hierarchy) can be lessened through the institution of Ombudsman types of review processes.<sup>35</sup>

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<sup>34</sup> Stanley V. Anderson and John E. Moore, Ed., op. cit., p. 211.

<sup>35</sup> A variety of authors have noted this strength of the Ombudsman system. See Algernon D. Black, The People and the Police, op. cit. p. 229; George F. Berkley, op. cit., p. 149; and Walter Gellhorn, When Americans Complain, op. cit., p. 185.

Thus, the Ombudsman holds even more potential for affecting police behavior than does the I.A. type system. It allows the rigor and tenacity of I.A. review to be developed within the police department. And its potential for short-circuiting complaints, satisfying citizens, and developing policy suggestions may allow a more open learning process to develop within the individual policeman who has erred.

Stanley Anderson clearly states the Ombudsman's potential for behavioral influences:

His independence and impartiality are buttressed through experience. His judgement carry increasing weight as his impartiality, independence, and expertise are recognized. Finally, and most importantly, his judgement alter the standards of morality. Over time, increment by increment, the decisions of the Ombudsman can clarify, refine, and humanize the ethos in which he operates. 36

#### C. Community Perceived Legitimacy

The Ombudsman can generate a great deal of faith in the police organization. As Gellhorn points out, "by finding no fault in 90% of the cases about which complaint has been made, he sets at rest what might otherwise be continuing rumors of wrong doing. He may even be a insulator against the heat a hostile press has engendered."<sup>37</sup> Serving in this legitimizing position, the Ombudsman can "buy" a significant amount of political legitimacy for the police organization. And he

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<sup>36</sup> Stanley V. Anderson, op. cit., p. 7.

<sup>37</sup> Gellhorn, Ombudsman and Others, op. cit., p. 250.

can do so without sacrificing the police organization's integrity or the tenacity of its disciplinary processes. Berkley echoes Gellhorn:

The very prestige of the Ombudsman while it makes him a more effective critic of the police also makes him a more effective protector. When he has investigated and found nothing to criticize, public confidence in the police is often strengthened. 38

Of course, Gellhorn and Berkley have assumed that community confidence in the Ombudsman system will develop. The Ombudsman cannot generate positive publicity for the police department unless he himself is perceived as an objective monitor of the police department. Since we have very little experience with the Ombudsman in America, it is not clear that this confidence will necessarily develop. We have pointed out that a variety of authors hold the potential of the Ombudsman to do so as being great. But almost every possible review system has theoretical potential.

In considering the Ombudsman's legitimacy within the community then, we must discuss a major limitation of our study. Other organizations studied have such histories that they have generated much debate over the issue of legitimacy. We have been able to draw upon generalized debates over internal and civilian review for example, in order to help with our evaluations of the Oakland and Berkeley systems. In San Jose, the system holds much potential. It appears to directly

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<sup>38</sup>Berkley, op. cit., p. 150.

answer many of the legitimacy concerns expressed throughout our study. While it is relatively easy to attack other systems, it seems difficult to attack the Ombudsman. We must be reluctant to favor that system with a stamp of approval, however, because of our limited information. More study is needed before it can truly be said that the Ombudsman generates more confidence in the community than does other systems. (Our complainant study, indeed, indicates a lack of faith in the system).

After all, the Ombudsman system is not without its potential problems. The Ombudsman office is a part of "the government". Some therefore will not believe that because it is separated from the police department, it is any more legitimate than internal investigatory processes. It may be argued that these people would never be satisfied by any organized type of review system. However, we must necessarily address ourselves to this problem.

As occurred in the O.P.S. in Chicago, over time the Ombudsman may closely identify with the police organization. It is, after all, another city organ. The appearance of any such identification on the part of the Ombudsman may be detrimental to the perceived ability of that office to "objectively" evaluate complaints of police abuses.

In defense of the Ombudsman, it must be pointed out that any of our systems (including the civilian review board of Berkeley) can be perceived as part of the "establishment".

Any review organization may develop close ties to the police. We have pointed out consistently (when considering our behavior control question) that developing communication and understanding between civilians and policemen can have positive side effects. This cooperation can help to lessen police/community tensions and break police subcultural solidarity. Yet, here we see that such cooperation may be viewed as illegitimate by some. Again, we must ask ourselves how to balance different concerns: if cooperation between reviewer and policemen limits the perceived legitimacy of a review system, which is most important to maintain?

The potential for the Ombudsman to generate perceived community legitimacy is strong. Again, Deputy Chief Duarte:

The police will have to open themselves up to public scrutiny if we expect to get the support, trust and confidence of the public. This has been our difficulty in the past. I think we have been very secretive, very ingrown and this has caused many of our difficulties. The Ombudsman is a step forward, a progressive step forward, I would say. 39

#### D. Counterproductivity

For all of its potential, the Ombudsman system is still a civilian manned process which is external to the police department. It can therefore, generate concern among the police at several different levels.

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<sup>39</sup>Anderson and Moore, op. cit., p. 218

Especially regarding his policy suggestions, the Ombudsman may develop significant credibility problems within police organizations. Many public administrators understand the tremendous potential for change and learning which can develop from submitting day-to-day processes to the analysis of a removed observer. (Chief Duarte noted this above). However, when the extrapolations of the removed dilatant become institutionalized, as are the recommendations of the Ombudsman may indeed have some interesting ideas to offer. But the ability of the Ombudsman to go to the City Manager with such propositions might be deleterious to the integrity and the professionalism of a police department. This point has been made in chapter 10 regarding the P.R.C. While this is not necessarily an insurmountable problem, the issue of the Ombudsman's expertise vis-a-vis policy formulation has generated some problems in San Jose. The "second guessing" of the Ombudsman may be responsible for the friction between that office and the police departmental hierarchy.

Besides these administration level problems, the Ombudsman might generate morale problems at the patrolman level. Policemen are quick to point out the potential for civilian review systems to depress police morale. Indeed, any inclusion into a disciplinary process of external civilian perspectives might do this. While the Ombudsman office has a great deal to offer to the individual street policeman, the potential also exists within this system for poor morale to develop.

Our San Jose policemen do indicate that a growing period occurred immediately after the institution of the office. During this period, street policemen did not trust the Ombudsman. Confidence in the system only followed an educational process wherein policemen found that the feared "civilian review board" was not in fact what the Ombudsman would be. Because the Ombudsman was not abusive of policemen, the morale problems potential in such a system did not develop in San Jose.

Another potential counterproductive problem is the cost of the Ombudsman. In San Jose, Ombudsman investigators and Internal Affairs investigators conduct approximately 300 parallel investigations each year. The system calls for multiple contacts of witness citizens and complaining citizens. In addition, the process requires the duplication of a variety of official reports, memos, and departmental records. In terms of fiscal efficiency then, the Ombudsman system may appear expensive.

However, the Office of the Ombudsman can save the police department significant amounts of time and money too. This is because the existence of the Ombudsman office causes the police department to receive fewer complaints. The Ombudsman process in San Jose short-circuits a number of complaints each year which would otherwise have eventuated in Internal Affairs investigations. And, as noted above, the Ombudsman

office in Berkeley short circuits a tremendously high percentage of the police complaints which it receives each year. Even though the idiosyncracies of the San Jose system do not allow for a similar type of informal handling of complaints, the potential existence in the Berkeley system provides much food for thought.

More important to the police organization is the fact that the Ombudsman system allows the organization to maintain its internal integrity. While the Ombudsman process does parallel investigations and monitors Internal Affairs investigations, it does not directly affect any disciplinary actions of the police department. Thus, the normal police chain of command is not violated. The final power over disciplinary outcomes is retained by police departmental personnel.

It is critical that the integrity of the police organization is maintained under the Ombudsman system. Because the Ombudsman lacks the "power" to control the police department, the ability of this external civilian to abuse his position is limited. His threat to the internal organizational structure should be minimal.

We have noted that in fact the administrative structure of the San Jose Police Department resists cooperating with the Ombudsman. However, while the higher echelon of the police department may be directly effected by the Ombudsman's powers of persuasion, logic and communication; those important line officers, who's cooperation is essential in any disciplinary system, do not perceive the Ombudsman's office as a threatening or powerful one.

Our analysis of the counterproductivity of this system must therefore be ambivalent. It seems to cause a minimum of interference with day-to-day police work and with the disciplinary system. Yet, administrators in the police department's I.A. bureau are in conflict with the Ombudsman. They see it as an external threat, similar to a civilian review board. From their perspective, its interference can cause counterproductive effects.

#### V. Summary

The Ombudsman system for reviewing policemen's conduct holds a tremendous potential. It can obtain considerable external legitimacy for a review system. It can effectively monitor policemen's conduct while allowing a tenacious internal process the ability to remain relatively free from civilian politics. The Ombudsman can serve as a monitor of police policy. Then too, the Ombudsman is not in a position to abuse his policy review function.

The Ombudsman office also contains great potential for handling complaints informally. Perhaps most important, from the perspective of policemen and police organizations, the Ombudsman system does not single out the police as the solitary recipients of external criticism.

However, it should be remembered that the Ombudsman is not a panacea. As Kenneth C. Davis points out:

An Ombudsman system cannot be a substitute for competent administration, for conscientious personnel, for adequate supervision of public employees by

supervisors, for administrative appeals, or for judicial review of administrative actions. An Ombudsman system should be added to such protections and should not be regarded as a substitute for them. 40

The Ombudsman will not serve as a cure-all elixir, somehow bringing together the perspectives of the various actors which we have considered throughout our discussion. He is no magician. The Ombudsman will not resolve what are in some cases irreconcilable differences of perception and belief. As Anderson notes:

Unrealistic expectations must be avoided. It would be grossly overoptimistic, for example, to expect Ombudsman to cure urban crises. Ombudsmen cannot cool the long hot summers of ghetto violence. They cannot create jobs, provide transportation, or build homes. But while basic social issues are more urgent and more important than the Ombudsman, the establishment of Ombudsman offices need not await the resolution of these larger issues. 41

It is clear that the Ombudsman system in operation in San Jose has achieved a degree of effectiveness that cannot be claimed by some of our other types of review systems. It appears that analysts who have called for Ombudsman review of police misconduct have not been far off the mark in their expectations for such systems. The system is accepted by street policemen. It speaks well to most of the relevant perspectives entertained by our study. Yet its failure to satisfy complainants and its conflict with San Jose's I.A. bureau must give us pause lest we go too far in emphasizing its theoretical utility.

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40. Kenneth Cult Davis, Discretionary Justice: A Preliminary Inquiry (Univ. of Illinois Press; Chicago, 1971), p. 15.

#### IV. Implications

Now that we have a firm foundation upon which to build, let us move to analyze police review and administrative accountability generally. Part IV will attempt to extrapolate the important theoretical lessons of our discussion out of more pragmatic comparisons of these types of systems.

First, we will cross reference our five types of systems. The four questions of analysis used throughout Part III will form the basis of our comparisons. Then, in chapter fourteen, we will look at the implications of the study for police review systems generally. Finally, we will discuss how our study of police accountability relates to the greater issues of administrative accountability and the rule of law.

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<sup>41</sup>Anderson, op. cit., p. 72.

### Chapter 13 COMPARATIVE REVIEW SYSTEMS

As noted elsewhere in our discussion, review systems are not interchangeable from political milieu to political milieu. The system in Chicago may not work in Oakland or in Los Angeles. Size of organization, type of population policed and local political structures are only several factors which may influence the ability of a given review system to remain effective and legitimate. In Chicago, for example, the Office of Professional Standards has become perceived by academicians and local political organizations as a part of the police department, not significantly different from Internal Affairs. On the other hand, in the eyes of political elites, the Kansas City Office of Citizen Complaints seems to be able to maintain a significant distance from the police department. It has therefore created a healthy respect for the objectivity and import of its processes. Whether Chicago's system will work in Kansas City, or vice versa is problematic. To infer from this comparison that Chicago's system is not viable, however, would be less than fair to that system.

Jaffee has outlined this problem succinctly:

It should be noted that the political framework in which the agency is situated is the primary, but not the only factor, determining the likelihood and nature of its action. Also relevant are technical elements---the state of information and the maturity of thinking on a given problem, and the rate of change in the area as it bears on the possibility of a stable solution. Finally, the potential for

action may be greater or less, depending on the competence and political character of the agency's leadership, the talent and depth of its staff, and the esprit de corps, as it were, of the entire operation. <sup>1</sup>

Thus, we will not under any circumstances be able to come up with an ideal solution to the problems of police review or with a "perfect" system. Too much is dependent upon each city's population, political elites, policemen, and police organization to generalize across jurisdictions.

However, while being very careful about generalizations, our analysis would be faulty if we did not attempt some direct comparisons of our systems on a theoretical level. This brief chapter will seek to make such cautious parallels. Our method will be to discuss the various systems relative to our four main sets of questions. We begin, of course, by discussing systemic integrity.

#### I. Systemic Integrity

From an observer's perspective, most of our systems appear to do a thorough job of investigating alleged police malpractice. (The lone exception to this generalization is the Contra Costa system wherein the organization makes no pretense about its lack of investigative vigor.) Oakland and Kansas City's Internal Affairs investigations are particularly good for their thoroughness. In the case of Oakland, this is reflective of

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<sup>1</sup>Louis L. Jaffee, "The Illusion of the Ideal Administration", 86 Harvard Law Review (1973), p. 1189.

the personal style of a Chief of Police, who is determined to rigorously pursue abusive behavior. In Kansas City's system, the anticipation of the civilian review of cases may have more to do with investigative thoroughness than does any other factor. It would seem then that the Kansas City system might be considered somehow "better" in that it operates more independent of personal styles of management.

Outcome decisions are "objective" in all systems (save Contra Costa) in a legalistic sense. That is, removed observers would almost always concur with the decisional outcomes developed by each of our processes. Corroboration for this assertion can be gleaned from the consistent agreement as to outcome reached between civilian and police reviewers in Kansas City, San Jose, and Berkeley.

Yet, the limited import of this formal objectivity must be understood. Quite often police organizations develop "not-sustained" outcomes for cases wherein police misconduct might have occurred, but cannot be proven. "Proof" in a legal sense is defined for police review organizations almost universally as a "preponderance of evidence." This civil law standard of proof means that when an officer's statement and a complainant's statement are contradictory, abuse is not 'proven' (absent corroborating evidence.)

Thus, it often happens that no abuse can be proven, even when misconduct might have actually occurred.<sup>2</sup> As objective observer would believe these findings reasonable and proper.

Yet they can be the biggest problem for review systems in terms of citizen satisfaction. Citizens who are victims of procedurally "not-sustained" abuse, will obtain little satisfaction from any of our review systems. Concomitantly, the legalistic proof requirements of these systems are a source of satisfaction in police circles.

The disparity of satisfaction which policemen and citizens obtain from our review systems is quite striking. Policemen tend to support their own review systems, no matter what form they take. Whatever is familiar seems to be preferable to that which is not, from the perspective of the regulated police population. It must be remembered too that 80% of the complaint investigations handled by our systems do not find policemen guilty of misbehavior. Therefore, policemen's evaluations of systems as generally objective and fair are understandable.

Citizen complainants find almost all of our systems lacking in integrity. Except for the Berkeley P.R.C. system a majority of respondents to our attitudinal survey indicated, negative perceptions of the thoroughness, objectivity, and fairness of the systems to which they complained. And too,

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<sup>2</sup>"Not-sustained" complaint outcomes make up a significant percentage of the outcomes at most of our organizations. For example, at Berkeley P.D. 16.4% and at Chicago's O.P.S. 38.4% of investigations are non-sustained.

there is reason to believe that the positive evaluations of the Berkeley system would turn for the worse if officers showed up at hearings to defend themselves. Several P.R.C. commissioners noted that the P.R.C. often must sustain complaints simply because they do not have the policeman's "side" to consider. If this other side were presented, complainants might be less satisfied with the hearing process generally. And if complainants consequently 'lost' more often, their evaluations would undoubtedly be more negative.

We have noted the strong correlation between complaint outcome and complainant evaluations of systemic integrity. This tendency in our survey sample is confirmed by another recent study of citizen attitudes toward complaint mechanisms.<sup>3</sup> Such an evaluative dynamic places severe limitations upon review systems. We have noted that citizens file many complaints which cannot be substantiated. Put bluntly, the police are usually legally and procedurally correct in their actions. A fair and objective system will therefore find "for" the policeman much more often than for the citizen. And it should do so.

As Mayhew points out in his study of the Massachusetts Commission Against Discrimination:

There are many sorts of injustice in the world. Bureaucratic impersonality, personal animosities, the rigid application of rules, and disrupting events can produce injustices in the absence of

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<sup>3</sup>See Patricia Ward Crowe, "Complainant Reactions to the Massachusetts Commission Against Discrimination", Law & Society, Winter, 1978, Vol. 12, No. 2, pp. 237-252.

any racial antipathies. Furthermore, situations often seem unfair to someone who is hurt, where an outside observer, with his detachment, and his broader perspective on the whole situation, would see no injustice. 4

Of course, we are not speaking exclusively of racial discrimination here (though it isn't at all irrelevant to much of our discussion). Mayhew's message is clear nevertheless: as the poet Paul Simon tells us, "a man hears what he wants to hear and disregards the rest."

While most of our systems seem objective and thorough then, two problems have been illustrated which severely limit the acceptance of our systems by complainants. First, legalistic proof requirements are imposed upon review systems through codified law, administrative case law, and convention. These make some outcomes substantively incorrect. They make many others seem arbitrary to citizen complainants.

Second, complainants do not seem to be able to differentiate between outcome and integrity. Since this is so, and since review systems employ adversarial, legalistic processes, the overwhelming majority of complainants will be dissatisfied with their treatment by any review system.

## II. Behavior Control

On balance, internal police systems are the most effective mechanisms for actually influencing the behavior of street

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<sup>4</sup> Leon H. Mayhew, Law and Equal Opportunity (Harvard Univ. Press; Cambridge, 1968), p. 196-197.

policemen in a prospective manner. Our observations and interviews across all organizations studied indicate that police departmental review mechanisms are often in the minds of policemen on the street when they make discretionary judgments. If there is a deterrent effect operative between any police review system and the would-be-errant policeman (and I believe there is), it is most fully realized in the internal system.

This is the case for several reasons. Important are the influences upon career goals which such internal systems may have. By developing a troublemaker image (either in the Chief's eyes, the eyes of one's peers, or with I.A. itself) the beat cop can limit his ability to obtain higher rank, transfers, or specific assignments of his liking. The review of peer professionals is taken seriously by street policemen. And the expertise of professional investigators is productive of thorough investigations and reports. The chances then of a policeman avoiding being disciplined when he is wrong, are slight in the internal system.

Concomitantly, external systems are less rigorous in several ways. Due process rights granted to policemen by the P.R.C., for example, impose limitations upon its rigor. The price paid for procedural fairness is often a lessening of substantive thoroughness. Also the extra impetus which pushes the professional to seek out police malpractice does not drive the civilian investigator to the same lengths. This was

particularly noted to be true of the Chicago O.P.S. system.

The discipline imposed by internal systems too is a factor. Chiefs in San Jose, Berkeley, and Oakland, are consistently more harsh on their men than civil service commissions consider they should be. Despite what policemen think intuitively about civilian review, all of our evidence indicates that such systems are less 'tough' on cops than are policemen themselves.

However, even internal systems have significant limitations imposed upon them by the nature of the task they perform and the norms of the actors they seek to regulate. Of primary import is the police subcultural experience. Secrecy, isolation from the public, and solidarity within the brotherhood all limit the impact of review systems upon police behavior.

Secrecy, of course, restricts the amount of information which any system (even an in-house one) will develop from policemen who do not wish to cooperate. The isolation of policemen from the citizenry is not only productive of complaints but can in some policemen destroy any acceptance of citizen rights to complain. This dynamic, particularly manifested in our Contra Costa policemen, can destroy police faith in the system. The consequent lack of cooperation can seriously reduce the effectiveness of a review process.

In short, policemen's solidarity with one another can severely limit the behavioral impact of a review system. It is difficult enough to regulate the behavior of most workers

without their acceptance of performance standards and quality control systems used.<sup>5</sup> With policemen, this difficulty becomes almost insurmountable. The policeman is largely invisible to his supervisor. If he and his peers have no faith in the legitimacy of a review system, their lack of cooperation can paralyze that process. Though policemen do largely have confidence in their review systems, that faith is problematic. It can be lost (and the effectiveness of the system with it) if review processes and personnel become overzealous in the street policeman's estimation.

Our consideration of the behavioral impact of these review systems has underlined another basic problem with all regulatory mechanisms. With the exception of the P.R.C., each of our systems focuses upon individual complaint adjudication to the exclusion of policy analysis. Thus, the organizational learning of almost all of these systems is very limited. Even the P.R.C. has its problems in this area. For it confuses the two functions so much that individual "cases" can become platforms for political diatribes.

The systematic analysis of trends in complaints, which the author has called for above, is one step forward which should be taken in this area. "No-fault" systems of complaint consideration (as Contra Costa's 'correction without punishment')

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<sup>5</sup>Haynes and Massie treat this problem of control system acceptance by workers in their text on management, Management: Analysis Concepts and Cases (Prentice Hall; Englewood Cliffs, 1961), pp. 185-187.

could be utilized whenever complaints are of a non-serious nature (i.e., those which relate to procedural questions, lack of action, and so forth). This practice could significantly increase police officer cooperation, intelligent policy formulation, and organizational communication. It could in the long run lessen police solidarity, lower numbers of complaints, and increase citizen satisfaction greatly.

Police professional organizations could take a lead in this area, calling for the implementation of such analysis and providing it themselves. Because of the defensiveness which traditional systems generate in policemen, cooperation from professional organizations is wanting. As noted above, they have taken exactly the opposite stance. As Wilson states, professionalism among policemen differs from professionalism in other occupations "in that the primary function of the professional code will be to protect the practitioner from the client rather than the client from the professional."<sup>6</sup> This trend will be difficult to stem. It definitely will not be reversed if review systems continue to focus upon specific complaints and the culpability of individual officers.

In sum, we have seen that internal systems are effective at influencing police behavior, but in a limited way. They must gingerly skirt overzealous tendencies which can severely

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<sup>6</sup>James Q. Wilson, "The Police and Their Problems: A Theory", Public Policy 12, (1963), p. 201

limit such systemic effectiveness as they have developed. Perhaps most important, we have seen that peer acceptance is so important to the policeman, subcultural norms so controlling of his behavior, that any system of formal regulation will be of limited behavioral impact. Compared to the effectiveness of socialization, regulation must be considered a poor second place in its force.

### III. Community Perceived Legitimacy

Internal Affairs organizations fair very well with respect to our first two variables. The externally perceived legitimacy of these systems, however, is perhaps the Waterloo of I.A. For it is the in-house, completely police controlled system which develops the least amount of acceptance in the community. In areas where police/community relations suffer from significant tensions (usually of a racial nature), this community acceptance is especially low.

Unlike in suburban areas such as Contra Costa, inner city police departments have spent great amounts of time and money on I.A. systems in order to develop legitimacy. However, internal review conventions can actually restrict the growth of citizen-based faith in such systems. The secrecy of I.A. processes is particularly troublesome to the development of community faith in internal systems.

We have seen that this secrecy is a natural organizational reaction to externally based pressures for strict police accountability. In J.D. Thompson's words, organizations "seek to

place their boundaries around those activities which if left to the task environment would be crucial contingencies."<sup>7</sup> Since discipline and quality control are the province of management, any organization or professional group will seek to defend itself by creating internal, secretive mechanisms of review.

That such internal mechanisms may be developed for the "wrong" reasons is beside the point when considering their effects upon police behavior. But the basic reasons for the development of such systems are not irrelevant when one is concerned with community legitimacy. For the defensive nature of such processes can develop more than rigorousness in investigation. It can produce a dogged devotion to organizational secrecy which can be counterproductive with respect to community based legitimacy.

As Carlin notes in his study of the disciplinary systems of bar associations, "the organized bar through the operation of its formal disciplinary measures seems to be less concerned with scrutinizing the moral integrity of the profession than with forestalling public criticism and control."<sup>8</sup> While this goal may still develop rigorous review conventions, its legitimacy outside of the organized bar will tend to be limited.

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<sup>7</sup>James D. Thompson, Organizations in Action (McGraw-Hill; N.Y., 1967), p. 39.

<sup>8</sup>Jerome E. Carlin, "Lawyer's Ethnics: Formal Controls", in Johnige and Goldman eds., The Federal Judicial System (Dryden; Hinsdale, Illinois, 1968), pp. 62,65.

For the defensiveness of the system can be perceived easily by observers who expect the worst.

So too, with police review systems have secrecy norms sought to protect the organization from scrutiny. These norms place terrible limits upon the ability of internal systems to convince non-police people of their thoroughness and objectivity. As a further reaction to external legitimacy problems, several of our systems have attempted to establish the legitimacy of their authority to control discipline by the formal cooptation of civilians into their processes. In Kansas City and Chicago particularly, this dynamic can be observed.<sup>9</sup> And the limits of this same formal cooptation are manifest in those systems.

Selznick states that this cooptation process is organizationally sound, and of great potential as a defensive tactic:

It may not be necessary actually to share power: the creation of a "front" or the open incorporation of accepted elements into the structure of the organization may suffice. In this way, an aura of respectability will be gradually transferred from the cooped elements to the organization as a whole, and at the same time a vehicle of administrative accessibility may be established. 10

Thus, Selznick not only argues for the hybrid review mechanism's potential, but for the ability of any external

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<sup>9</sup>Also, the placement of one civilian input person in San Jose P.D.'s I.A. system is an analogous move.

<sup>10</sup>Philip Selznick, TVA and the Grass Roots (Harper Torchbook; N.Y. 1966), p. 260.

type of mechanism to develop two sided, positive police/community interactions. The development of such positive communication and legitimization has been problematic in any of our police review systems. But, the potential outlined by Selznick is viable. In Kansas City, a good rapport has developed between O.C.C. and I.A. And in Berkeley, the recent, joint development of a gun policy, by the P.R.C. and departmental experts, indicates the ability of cooptation to bridge the administrator/clientele gap.<sup>11</sup>

It may seem to the reader that too much is being made here of "potentials" which have not been realized. Indeed, there are critics of civilian involvement in review systems (particularly in Chicago) who feel such experiments have been shams, fooling the public into trusting internal mechanisms. Several points should be made about this.

First, the substantive correctness of the police in the vast majority of cases means that any case-by-case approach to complaints will find the police most often exonerated of wrong doing. This means that for some, no system of any kind will ever be considered legitimate (remember the correlation between outcome and perceived integrity found among complainants).

Second, the institutionalization of such experimental systems takes time. The eventual potential of civilian review

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<sup>11</sup>In educating the P.R.C. the police indicate that they felt much positive potential for future cooperation was evident. P.R.C. commissioners too felt that perhaps the communication gap of 5 years duration may now be lessening.

(for example) to bridge police/community communications gaps may indeed be years from realization. The slight lessening of P.R.C./P.D. friction in the very recent past may be the first inkling of future cooperation.

Third, we should not be too hasty to label Selznick's nation as Machiavelian. After all, our study has shown many distinctive advantages to internal review which are simply not known to (nor believed by) the general public. Though community based legitimacy is very important, it is by no means the only yardstick by which review mechanisms must be graded. One can envision a system of ad hoc, "kangaroo courts" which may seem quite legitimate to some as a method of dealing with police abuses. Yet, such a system could be so unfair to policemen that it could change the entire fabric of the criminal justice system. To be concerned with the symbolic meaning of systems (or Selznick's "front") is not to be unreasonably patronizing of the public. It is a reasonable exercise of political importance to the police and to local political elites. (We will speak more about the symbols of accountability in the next two chapters.)

Community faith in internal systems then, seems to be a problem which is not limited to the police. The openness which civilian involvement in review may generate can perhaps develop faith in police accountability mechanisms not normally existent. If only symbols, civilians may be of considerable utility to police review systems and to police/community re-

lations generally.

#### IV. Counterproductivity

Our interview with police officers throughout the country have found an almost universal feeling among policemen that their professional expertise cannot legitimately be questioned by non-police people. Policemen foresee a multitude of potentially counterproductive effects which might develop from opening up to external scrutiny the police review function.

The experience of Berkeley (and Philadelphia), however, shows that poor morale and low productivity do not develop out of civilian review. Kansas City, Chicago, and San Jose also have failed to develop such problems as a result of civilian involvement in police review.

In point of fact, some officers were cynical about review mechanisms. They felt that they were inhibited on the street by overzealous review. Yet in all of these men, Internal Affairs mechanisms were responsible for their inhibitions. Here we see the obverse of our behavioral impact observations. I.A. systems have the greatest impact upon behavior because of their rigor. But they also can be the most prone to overzealous, tyrannical treatment of policemen. Thus, internal systems are most likely to develop counterproductive tendencies.

We must consider the Contra Costa system here. For all of its shortcomings, this system develops the least amount of counterproductivity relative to its complaint handling system. Policemen are so well protected by the Contra Costa process,

that it does not at all impinge upon their abilities to act aggressively on the street.

The other side of the Contra Costa example is illustrative too. Policemen there feel that discipline is not consistently applied to all. Thus, this process has developed significant organizational problems (relative to communications, and morale especially) which are deleterious to the delivery of police services.

Generally, we have found that none of our systems have developed a deep enough cynacism to affect day-to-day police behavior in a negative way. Policemen who individually are (in their estimation) mistreated by a review process tend to be more prone to "soldiering" than others.<sup>12</sup> But, those who have been so 'mistreated' make up a small percentage of the officers interviewed. Their negative evaluations of Internal Affairs organizations must be balanced against a favorable evaluation of such systems by the vast majority of street cops.

Regarding the issue of counterproductivity then, the import of this study has been to point out that almost any sort of system tends to be accepted over time. Civilian systems may deter malpractice less, but they are also less prone to interfere with aggressive police work.

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<sup>12</sup>Soldiering refers to the common place work related phenomenon of doing as little as is possible in order to "stay out of trouble."

However, there is an almost universal tendency in our systems to treat complaints as individual conflicts between policemen and complainants. The judicialization of complaint handling (normal to every system save Contra Costa's very informal mechanism) has numerous deleterious effects upon police organizations.

Judicialization can limit individual learning and organizational learning. 'Attacked' by the complaining citizen (and perhaps by the review system) the individual policeman is not likely to objectively evaluate his "mistakes" and change his conduct. Because these systems focus upon the individual complaint, the organization also does not tend to learn from complaints. The lone exception is the P.R.C.'s policy development function. Yet, since this process ignores the expertise of the professional, its policy decisions are often suspected by the police as being unrealistic.

From an analytical perspective, these issues of concern are perhaps 'best' spoken to by the Ombudsman type of system. The Ombudsman leaves the internal machinery of the organization free to discipline and to develop policy using the professional expertise available. Those who operate this system will "understand" the policeman's role, but will not be able to rationalize misconduct as acceptable. The Ombudsman system requires the police to explain policies to non-police personnel. This is good for both the police and the public.

Yet, in San Jose's system, there are problems. An enlightened, extremely secretive police administrative hierarchy often has chosen to fight the Ombudsman rather than make use of the tremendous potential which it offers the police. Because these problems have developed in San Jose, two things are clear. First, any system, no matter how theoretically sound, can be thwarted by those it seeks to monitor. Second, the Ombudsman is not a panacea for all the problems of police/citizen relations. It can develop just as many difficulties as can any other system, if actors involved are ignorant of its potentials and jealously defensive of their own power positions. In San Jose, it is police officials who have created problems for the Ombudsman (and for themselves) through such shortsightedness. But in general, the importance of personal characteristics makes the Ombudsman's office itself perhaps even more prone to such problems.

Our counterproductivity question has outlined most persuasively the lack of problems associated with civilian involvement in police review processes. Its second major insight has been to illustrate the limits of judicialization of complaint processes. In this area of concern, only one system distinguishes itself from the rest. Contra Costa's informal, non-judicialized, "police-protective" system has produced less in the way of counterproductive side effects than has any other.

## V. The Best System?

The question begs to be enjoined, the very nature of "comparative" study calls us to ask", which system is best?" We have taken great pains to point out the limited utility of considering police review systems truly "comparable." Far too many intervening variables make comparisons oblique at best.

Yet, two systems should be discussed as particularly effective in their practical operations and theoretical utility. We will very briefly discuss here why the operative utility of the Berkeley system and the theoretical potential of the Ombudsman are so appealing.

When I state that the Berkeley system seems most effective in its operation, this does not mean that the P.R.C. is necessarily better than an I.A. process for example. For by "the Berkeley system", I mean to say the entire Berkeley system; P.R.C., I.A., and Ombudsman all taken together.

The multiple systems of Berkeley offer a sort of "something for everyone" approach to police review. Those with no faith in police departmental systems can go to a completely external, civilian organization to file a complaint. That system (the P.R.C.) offers the complainant an investigation and a formal hearing, no matter what type of complaint is involved. The complainant's "day in court" is perhaps given the greatest deference here than anywhere else.

The I.A. system is available to those who wish the police department to handle their own disciplinary processes.<sup>13</sup> And its system too is well received by those who choose it.

In Berkeley, the Ombudsman also exists as a sort of middle range alternative. Though only a few people each year go to the Ombudsman with police complaints, they usually receive his assistance without utilizing the more formalized systems above. The personal style of the Ombudsman has fostered among policemen an acceptance of his authority and the legitimacy of his office. The consequent cooperation of policemen with the Ombudsman is healthy for all those concerned with police review.

The P.R.C. spends a great deal of time and money on hearings. Yet, the acceptance of the P.R.C.'s processes was high among those complainants contacted through our survey. If indeed, the P.R.C. doesn't find policemen guilty of misconduct more often than does the I.A. system, the legitimacy which the P.R.C. enjoys might be most beneficial for the police department. A better acceptance among the public of the legitimacy of police institutions can be generated out of such a multiple system.

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<sup>13</sup>Our survey results indicate that 19.7% of all respondents prefer to talk to policemen about complaints (at input) and 23.8% prefer that the police investigate complaints.

Berkeley policemen accept the Ombudsman and are not significantly affected by the P.R.C. Thus, their faith in Berkeley P.D.'s I.A. process is indeed an indication that they have trust in the total review "milieu."

In fact, Berkeley's system is just that, it is not one review system, as are our other organizations, but more precisely a group of systems aimed at doing the same thing. It is therefore subject to attack on fiscal grounds. The money utilized to maintain all of these systems, is far greater than that needed for any one. Thus, the taxpayers of Berkeley pay dearly for the privilege of multiple review. The city is small enough, that this amount only means a duplication of several salaries on the city payroll. However, if a system such as Chicago's were to have three such parallel organizations, the costs would skyrocket.

However, it can be argued that this approach is a healthy one (especially given the perceived import of police abuse in many urban areas.) Such systems as Berkeley employs will be able to utilize redundancy in a positive way. They will better insure that no genuine police abuses are ever disregarded. They will grant the citizen a podium from which to exhort his cause. And, they will insure the rights of policemen as well as does any other system.

The fiscal and political realities of Berkeley do not, however, parallel those of many (if any) other American cities. Thus, multiple systems aside, we might ask which single system seems to best speak to all of the concerns which we have dis-

cussed? While San Jose illustrates some of the drawbacks of the Ombudsman type system, it nevertheless should be appreciated at a more theoretical level due to its many advantages over other systems.

Gellhorn sums up many of the strengths of the system. While allowing that police administrators should perform investigations into allegations of malpractice, Gellhorn notes that the:

...discharge of that responsibility in any and all instances must be subject to an outsider's examination--not with the object of deciding particular cases, but with the object of publicly disclosing slipshot administration or adoption of wrong attitudes. That course should be acceptable to the police as well as to the public. It does not single out the police department for special treatment as though it were an especially despicable enemy. It does not remove from police hands the power to direct, judge, and discipline the staff members whose actions have been challenged, but, as in the case of other departments, leaves to the professionals the job of appraising fellow professionals. 15

The Ombudsman type of system fairs well with respect to all or our sets of analytical questions in a way that no other system does.<sup>16</sup> The Ombudsman monitors internal systems so that their thoroughness and objectivity is guaranteed by something other than a desire for organizational defense. The policemen and the complainant should both be appreciative of this.

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<sup>15</sup> Walter Gellhorn, When Americans Complain (Harvard Univ. Press; Cambridge, 1966), p. 193.

<sup>16</sup> Remember, we are here discussing the theoretical potential of the Ombudsman and not necessarily the San Jose system.

The behavioral influence of the I.A. system is operative under the Ombudsman with essentially the same impact as if I.A. were left alone. It might be argued, of course, that some lessening of I.A.'s rigor will naturally follow the monitoring of policemen's rights by an Ombudsman. However, neither the San Jose Ombudsman, Berkeley Ombudsman, or Kansas City "Ombudsman type" review systems seems to have lessened internal rigor. If anything, such external scrutiny bolsters I.A. norms of investigative tenacity. This then impacts eventually upon behavior.

The Ombudsman too can generate great legitimacy within the community. His has a more removed perspective. He is divorced from the police department's mission and culture. And he can appear more legitimate without impinging upon the I.A. or general police departmental functions. His cost to the community, though paralleling that of I.A., is slight.

Analytically, the Ombudsman speaks to a wide variety of interest groups. He answers many of our evaluative questions with positive potential. The Ombudsman monitors investigations in the name of all affected parties, leaves professionals great latitude to evaluate peer behavior, develops legitimacy within the general community, and maintains a potentially non-adversarial input mechanism. It is the type of system which can be added to existing mechanisms in many jurisdictions, without creating major administrative turmoil. While a "revolutionary" idea of sorts, the Ombudsman's office would actually be an

incremental additional to most modern police review systems.  
As such, it is an idea worthy of consideration.

Chapter 14  
WHAT HAVE WE LEARNED ABOUT POLICE ACCOUNTABILITY

We have seen throughout our discussion that tremendous limitations stand in the way of holding abusive police officers accountable for their actions. Most basically, the difficulty of defining goals (and therefore rules) for street policemen is great. As pointed out above, we often can agree after the fact upon what is poor and what is good police behavior. Yet translating those intuitive notions into codifications which will apply to the multiplicity of situations faced by the police is extremely problematic.

The dual nature of police accountability also limits review. Answering both to the law and to their constituencies, the police often receive conflicting signals. Regarding retrospective complaint adjudication, our Oakland P.D. example of officers fired for vandalizing the property of a motorcycle gang is opposite. It indicates that the community may condone (and even demand) illegal police practices. Then too, people constantly request prospective police actions which, if taken, would be illegal.<sup>1</sup>

How then are we to control the abusive tendencies of those policemen who would misbehave? What sort of power can be ex-

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<sup>1</sup>For example, citizens often want policemen to arrest vandals for their malicious deeds, done out of the presence of the police. In California, such a misdemeanor arrest may not be made by an officer responding to the scene after-the-fact.)

exercised to effectively control these powerful individuals?

### I. Three Types of Power

There are three sorts of power with which we might seek to control human behavior. Metaphorically, these are the powers of the pen, purse, and sword. In sophisticated terms, we would subsume them under the rubrics of "reciprocity", "coercion", and "exhortation" respectively.

In exercising reciprocal power, one gives goods, services, or other valued items in exchange for desired behavior. An example might be congressional log rolling, wherein votes are exchanged for committee positions, preferred offices, or reciprocal voting.

Leving suggests the utilization of reciprocity in controlling police behavior. He calls for:

(The) establishment of a substantial contingency fund out of which lucrative bonuses (\$1,000?, \$2,000? \$3,000?) would be granted to those officers who, over a year's time, won the respect of the community...neighborhood-based police advisory committees should be authorized to select or recommend the recipients...members of the citizen committees could rove the streets and be empowered to grant small awards to police who are observed acting in a particularly sensitive or sagacious manner. 2

These are numerous problems with such an approach. Some appear insurmountable. First, this type of 'positive' behavior control can promote the discriminatory application of the law

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<sup>2</sup>James P. Levine, "Implementing Legal Policies Through Operant Conditioning: The Case of Police Practices", paper delivered at the 1970 meeting of the A.P.S.A., Sept. 11, 1970, Los Angeles, pp. 26-27.

to (and in the presence of) "committee" members. Second, restraint is a goal but certainly not the goal of police review mechanisms. Particularly in ghetto areas, the lack of police protection is an even more pressing problem. This type of system might exacerbate the tendency of policemen not to intervene in minority citizen's problems. Third, this process would necessarily promote the political aspects of police work to the detriment of legal considerations. We must remember that being a policeman is not a popularity contest. It should not become one. Policemen answer to the law as well as to their constituency. If they forsake one for the other, all sorts of large scale corruptions may eventuate. Fourth, the selection of committee members themselves would generate political argument and raise issues about the ability of citizens to correctly evaluate the legality of police actions. These concerns would parallel some of those discussed in chapter 10's treatment of civilian review.

While many reservations come to mind, the use of positive inducements to control police misconduct is an intriguing idea.<sup>3</sup> No meaningful example of the use of reciprocal power to affect behavior surfaced during the course of this study. Nevertheless, research and experimentation should be attempted

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<sup>3</sup>In some police departments, informal notice is taken of citizen complaint records when promotions are contemplated. If used prudently, this sort of notice might indeed affect behavior.

toward the goal of developing such positive behavioral control mechanism.

The powers of the sword and pen are two with which our study has made us familiar. The power of the sword is coercive power. Its systemic application has often been labeled in these pages "regulation." The method by which coercive power controls police behavior is through the enforcement of formal organizational codes.

The power of the pen is the power of exhortation. Its systemic application has been labelled "socialization." Through education, the controlled populace internalizes informal codes of conduct. Thus, desired behavior becomes operative through the individual himself. His values and goals have become the organization's values and goals. In the next two sections, we will discuss regulation and socialization and consider the potential which each has for controlling police malpractice.

## II. Regulation

In order to regulate behavior, one seeks to arrange sanctions so that actors must follow a given course of action to avoid punishment.<sup>4</sup> K.C. Davis is particularly enamored with this rule making method of checking administrative discretion.<sup>5</sup> Particularly with reference to the police, Davis suggests that rules be utilized to shave discretion down to allow only the minimum amount of leeway possible for the com-

pletion of specific tasks.<sup>6</sup>

We have seen in chapter five that the first task necessary for such rule making is the definition of goals. We have discussed the difficulty in defining goals for street policemen in even the vaguest of terms. Prioritizing order maintenance and law enforcement, for example, involves political and ethical questions which are not likely to be agreed upon by any group of potential reviewers. Most important, however, are the pragmatic limits which such regulatory schemes confront when they attempt to operationalize their goals.

Levine is again illustrative here. Pointing toward goal and rule definition, Levine decides that "police restraint" is "the goal" of disciplinary systems.<sup>7</sup> Many would argue (and they would not all be policemen) that the opposite is true. Aggressiveness in patrolmen, it can be asserted with some certainty, deters all sorts of street crime. Using this premise, disciplinary systems, should be aimed at allowing the

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<sup>4</sup>For different conceptions of regulation and socialization and their applications to complex organizations, see Leon Mayhew, Law & Equal Opportunity (Harvard Univ. Press; Cambridge, 1968), pp. 276-278; Chester I. Barnard's discussion of formal and informal codes in The Functions of the Executive (Harvard Univ. Press; Cambridge, 1968), pp. 267-272; or Herbert A. Simon's thoughts on behavioral responses to internal psychological sets, as opposed to organizational stimuli, in Administrative Behavior (MacMillian Free Press; N.Y., 1957), chpts. VII and X.

<sup>5</sup>Kenneth Culp Davis, Discretionary Justice (Univ. Illinois Press; Chicago, 1971).

<sup>6</sup>ibid., chpt. III.

<sup>7</sup>Levine, op. cit., p.3.

greatest amount of latitude possible for policemen to proactively deter crime.

In attempting to operationalize this goal, Levine then cites seven basic subgoals. One of these goals states that policemen should "restraint field interrogations to persons likely to be suspects or witnesses of major crimes."<sup>8</sup> To the pragmatic street cop, such utopian notions are patent nonsense. The job of maintaining order often involves intervening in situations (i.e., street parties, or would-be gang fights) before they become explosive. Similarly, systematic harassment of known criminals (i.e., by making technically legal vehicle stops for missing license plate lights) can inhibit criminal activity and literally drive such individuals off of a policeman's beat.<sup>9</sup> The street policeman, and a great many citizens, would be quite rational in deciding that this was an important goal to pursue. Given how little we know about crime control in theory, the cop's expertise can hardly be challenged simply because we do not like the real life exigencies with which he must deal.

Legalizing behavior controls through the development of rules has a number of other distinct disadvantages. We have seen how rules can act as shields. The policeman who learns

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<sup>8</sup> *ibid.*, p. 5.

the workings of the regulatory system can often effectively thwart its processes. He is, after all, an expert at dealing with legal systems and with the technicalities of rule application.

The review systems which we have studied go one step further than legalization. They 'adjudicate' complaints as adversarial conflicts between individual policemen and citizens. Adjudication has its own separate costs.

First, adjudication can stifle the complainant's freedom to file grievances because of the zero-sum nature of the process. He must win or lose in his "fight" against the errant police officer. And too, many police/citizen problems are well suited to mediation or compromise. This potentiality is lost in adjudicative regulatory systems.

Second, the adjudicated decision is not brought to the attention of either policemen or citizens in general. Therefore, this solution is not likely to be productive of in-

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<sup>9</sup>In Contra Costa County, for example, a citizen's committee against crime demanded in 1972 that the Sheriff's Department crack down on crime in the West Pittsburg area. Deputies were advised that they should feel free to make any car stop that was at all legal; that they were to arrest (instead of cite and release) all misdemeanor criminal suspects; that they should aggressively monitor known burglars and thieves day and night. The "sults of this crack down were extremely high arrest rates and a drop in burglaries of over 80%. The area went from being the county's highest burglary rate area to being one of the lowest. Even violent crimes, supposedly not deterrable by police activity, decreased.

dividual behavioral change in any other than those immediately involved.

This leads us to a problem of tremendous significance. The case-by-case adversarial approach to complaint adjudication severely limits the ability for organizational learning, planning, police development, and training to develop out of the process. Policemen are often reluctant to cooperate because of the accusatorial nature of the proceedings. Citizens are often disheartened by the rigidity of the system and the "legalese" of decisional outcomes. Many authors have pointed out this problem and called for less adversarial, more policy oriented complaint handling mechanisms.<sup>10</sup>

As Jowell sums up the problems of regulation:

What is gained in uniformity may be lost in flexibility; rules to prevent the arbitrary may encourage the legalistic; case-by-case adjudication may prevent comprehensive planning; rules that are advantageous to the administrator in shielding him from pressures and allowing the efficient and speedy dispatch of cases may offend the client who desires individually tailored justice. 11

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<sup>10</sup> See Paul Chevigny, Police Power (Vintage Books; N.Y., 1969), pp. 270-271; Walter Gellhorn, When Americans Complain (Harvard Univ. Press; Cambridge, 1967), p. 186-188; James P. Levine, op. cit., p. 10; or President's Commission on Law Enforcement and the Administration of Justice, "The Police", The Challenge of Crime in a Free Society, in Patholm and Morgan eds., Focus on the Police (John Wiley & Sons; N.Y., 1976), p. 357.

<sup>11</sup> Jeffrey Jowell, "The Legal Control of Administrative Discretion," Public Law, Autumn, 1973, pp. 215-216.

If there are so many limitations, so many pragmatic problems with regulation, why is it so often the form taken by administrative accountability mechanisms? First of all, there are sound reasons for police organizations to develop internal regulatory mechanisms. Such systems defend the police department against external attack in several ways. The adjudicated outcome can be legally and procedurally defended by the organization. Concerns for equity are quite beside the point. Policemen are legally "correct" in their actions so often, that this sort of mechanism usually protects them individually and the organization generally.

On the other hand, policemen do act abusively and make mistakes in a significant percentage of complaint cases. When this occurs, the individual policeman is "proven guilty" by the internal system for similarly sound organizational reasons. In an age of increasing 'policeman's rights', the formalized complaint outcome can be readily defended against the attack of the errant policeman. Its investigative thoroughness and adjudicative fairness can be easily scrutinized. The other side of this dynamic is that the organization is protected (by such outcomes) from criticism. The individual complaint focus finds fault with policemen, not with the organization.

The development of individual complaint adjudicative mechanisms flows naturally from the "rotten apple theory of

human nature."<sup>12</sup> This idea is commonly held by policemen (though it is certainly not restricted to the police). It maintains that "crime and disorder are attributable mainly to the intentions of evil individuals; human behavior...should be understood in terms of wrong choices, deliberately made."<sup>13</sup> This idea is applied by police organizations not only to criminals and street crime, but to internal investigative mechanisms.

Thus, an assumption of internal regulatory mechanisms is that police abuses are 'the products of conscious decisions by 'bad' policemen. The review system seeks to rid the profession of these rotten apples. Now there is no doubt that abusive policemen do exist and that review systems should seek them out. But the individual complaint focus obscures organizational conditions which could be productive behavior. Poor police selection procedures, improper police academy training, inadequate in-service training, poor supervision and bad policy might all produce police/citizen conflicts. All of these things are within the power of the police organization to change. Yet, if policies and procedures are at fault (and not 'rotten apple' policemen) the organization, and more specifically its executive hierarchy, might be attacked. Thus, to

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<sup>12</sup> Jerome H. Skolnick, "The Police View of Protest and Protestors", in Platt and Cooper eds., Policing America (Prentice-Hall; Englewood Cliffs, 1974).

<sup>13</sup> *ibid.*, p. 155.

avoid charges of incompetence or short-sightedness, police organizations focus upon complaints as idiosyncratic occurrences between individual citizens and (possibly) errant police officers.

For external review systems too, rule making and adversarial complaint adjudication have their pluses. First, open adjudication (as in P.R.C. hearings) can add an aura of legitimacy and objectivity to the complaint handling system.

Second, and most important for our discussion, is the ubiquitous American syndrome which I shall call "lawyerism" (for lack of a better term). Experimental review systems have almost always been conceptually developed, politically legislated, and operationally implemented by lawyers.<sup>14</sup> The tendency to formalize, legalize, and adjudicate complaints (which we have seen is common in internalized police systems) is even more pronounced with regard to external, lawyer backed systems. Because of a deeply ingrained disdain for the expertise of policemen, reform lawyers have developed (or attempted to develop) most external systems along lines which subject police actions to the scrutiny of the legal subculture.

Reform lawyers have consistently pointed out that the police administer the criminal law and are therefore legal actors. Since lawyers are the supreme authorities on criminal

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<sup>14</sup>Each of our experimental systems was fathered all or in part by lawyers.

law, they assume the ability to pass judgement upon the actions of policemen. There are several notions subsumed into this idea. It is assumed that the application of criminal law is relevant to most citizen complaints. Our study has found this to be false. The opposite is more often the case. Complaints normally relate to the exercise of discretionary order maintenance powers which are non-legal in nature.

It is also assumed that to understand the criminal law and the criminal judicial system is to somehow develop an understanding of what policemen do and the problems which are inherent in their job. This again is absolutely false. Lawyers can no more develop an understanding of the police by knowing the judicial system's operations and principles than one could develop an understanding of the federal government's workings through studying the Constitution. Solving the problems of citizens on the street, is the essence of what policemen do. In order to do so, they utilize behavioral control techniques which are most often dictated by circumstances of time, place, and parties involved. They seldom resort to the codified constructs of the formal legal system (known to lawyers).

These arguments, however, are less than persuasive to legal experts. Their training makes them see the judicialization of individual complaints as a positive, logical part of external review. Thus, all of its drawbacks aside, judi-

cialization of complaint handling systems has become the dominant style of the P.R.C.'s processes.

All of these reasons for formalization and adversariness can be attacked conceptually (as we have done). Yet because they defend police organizations and are overly formalized, we should not reject such conventions altogether. There are several theoretically sound reasons for regulatory schemes which apply to external or internal systems.

First, regulation is cheaper, easier to implement, easier to understand, and politically more viable than are less formal behavioral control techniques. Second, regulatory systems, if fairly run, are morally sound in Fuller's sense. They maintain understandable, obtainable, consistent sets of rules which are not subject to attack on any of Fuller's eight points. Consequently, regulatory schemes are easily subject to review and to the scrutiny of an external or internal sort. Their legal morality then makes regulatory mechanisms theoretically "fair" to policemen and complainants alike.

We have taken a great deal of time to point out the limits of regulation. Yet its positive points, especially from the police organization's perspective, are manifest. And, no matter what the theoretical utility of socialization, regulation of some sort must be part of any accountability system precisely because of the lessons Fuller teaches us.

### III. Socialization

In controlling behavior through socialization, units (or individuals) are taught to seek new goals. When these goals have been successfully sublimated into the individual psyche, the units then sanction themselves. Errant behavior is punished through peer group ostracism and/or individual guilt. The individual acts "correctly" because he wants to; because he feels it is right to do so.

The limits of reciprocal and coercive power having been dealt with at length, the moral power of exhortation must be considered seriously here. The potential for such dynamics to control police behavior in particular is tremendous.

As Muir tells us:

The basic condition of patrol work was that it was lonely, dangerous, and preoccupied with human suffering. It therefore depended on an extraordinarily high degree of personal morale. No policeman worked at his utmost unless he felt that what he was doing was both effective and right. No amount of punitive supervision could compel the kind of boldness which a self-respecting policeman voluntarily displayed in assisting the suffering. No system of economic rewards could compensate for the dangers to which a morally compelled policeman willingly risked sacrificing himself. 15

Muir found paramount to the street policemen then, the moral "duty" to perform his charge. Combining this moral obligation with the isolation from society of the street cop,

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<sup>15</sup>William K. Muir, Jr., Police: Streetcorner Politicians, Univ. Chicago Press; Chicago, 1977), p. 263.

we begin to see the tremendous import which subcultural solidarity has in controlling abusive behavior.

Policemen, more than any other occupational group, require the approbation of their peers. They are isolated from citizens. They are misunderstood by other legal actors. And they often see themselves as assessed by their own organizations. Cleaving to their brother officers, police behavior is largely controlled by peer expectations. Locker room talk is often boisterous and braggardly. Rookies especially can be observed evaluating themselves and others in terms of courage, street savvy, and subcultural "belonging."

The psychological process operative here has been labeled "sounding" by David Matza in his study of delinquent subcultures. "Most sounding is a probing of one's manliness and one's membership."<sup>16</sup> Essentially, this is the probing of peer acceptance which is done by policemen. One's membership in the subcultural "us" is of tremendous significance.

It is very important then that an accountability scheme take note of and attempt to utilize subcultural dynamics. We have seen that regulatory mechanisms can be cheated and avoided. For the street policeman, however, there is no hiding from "peer review." The impact of subcultural behavior expectations can far outweigh the effects of any regula-

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<sup>16</sup> David Matza, Delinquency and Drift (John Wiley & Sons, N.Y., 1964), p. 53.

tory mechanism.

It is important to reemphasize here that norms of behavior among policemen have changed a great deal over time. We have already alluded to the previously unheard of propensity for officers to officially charge other policemen with misconduct. Behind these 'official' actions are many individual instances of policemen chastizing others for what they consider abusive behavior. Though rare, these occurrences are increasing in frequency and significance. When such chastizing occurs, the effect upon an officer's future conduct can be tremendous.

More importantly, in such interactions rookie policemen learn what is considered 'out of bounds'. An interesting illustration of this phenomenon is found in Joseph Wambaugh's novel The New Centurions. Wambaugh, an L.A.P.D. sergeant, writes of a rookie's introduction to the paddy wagon detail. Wambaugh notes how the 'salty' veteran officer makes a point of telling a young rookie never to hit a drunk. This, it is explained, is considered forbidden behavior, "bad form", "unmanly."<sup>17</sup>

The eager rookie cop is quick to pick up and normalize such pieces of subcultural information. He understands that the more he knows, the more he acts like "one of the boys," the quicker he will lose the 'rookie' label. Thus, humanitarian norms of citizen treatment are easily instilled in rookies, once such norms are accepted by veteran policemen.

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<sup>17</sup> Joseph Wambaugh, The New Centurions (Dell Paperbacks; N.Y. 1960), p. 152.

It must be underlined that most policemen do believe in humane treatment of prisoners, courteous deportment toward citizens on the street, and the limited application of force. If this were not the case, police abuse would be much more apparent and widespread than our study has found it to be. Genuinely abusive behavior by policemen is extremely rare, given the nature of their charge and the number of police/citizen contacts which occur in the normal course of daily police work.

The question becomes then; how can such norms be instilled in all policemen (or as many as possible) and thus become controlling of police behavior? Aside from the evolving subcultural trend toward 'professionalism' and restraining (above), several changes in existing conventions are of great potential.

Police education should take a different view toward complaints. Policemen should be taught that the citizen has a constitutionally protected right to file a complaint about police action or inaction. This right should be taken seriously by all police officers. Young cops should be advised that it is in their best interests to attempt to lessen the citizen's unhappiness with police action whenever it is reasonably (and legally) possible to do so.

Here, the major cause of 'minor', 'procedural' complaints must be considered. Policemen tend not to explain their actions to citizens even when a short explanation might thwart

a complaint. This propensity relates to police directed citizen hostility. But there is more to this phenomenon than that. Policemen often feel that a citizen requesting an explanation is "pulling a con job," "acting the fool", or "playing me for a sucker." Thus, the cop doesn't explain his actions because he feels it is a waste of his time at best (and at worst, makes him look foolish). It must be made absolutely clear to young officers that they in fact "owe" and explanation to any citizen with whom they have interacted. Such explanations should be considered part of the policeman's job.

Less adversarial review systems will hopefully generate cooperation among policemen and organizational learning. Policies should be constantly re-evaluated relative to complaint feedback. New policies, trends in types of complaints and information about their causes should then be fed back to street troops at all levels.

Police training systems in general should attempt to integrate I.A. data into their formal teaching curriculum. The entire complaint process should be as deformed as is possible. It should be developed into a teaching and training enterprise (rather than the mini-legal system which it usually is). For police training processes have made monumental strides in recent years in police education. Systems which provide policemen with information about case law, codified law, nar-

cotics, defensive tactics, and so forth have changed for the better the quality of police services delivered to the public. The ability of a non-adversarial, training system to generate individual learning and behavioral change can indeed be great. But, we do not know how great the potential for training is in this area since none of our organizations systematically trains or retrains using I.A. data.

The street sergeant is a critical individual to any police organization. He trains not only the rookie cop, but all of his men. Through his deeds and words he instills a working style in his troops. If he considers citizen complaints "chicken shit" and "a waste of time," so will his troops. Sergeants, therefore, should be instilled with a feeling for the import of complaints.

As often as is possible, sergeants should be assigned the task of handling informal, procedural complaints. They should contact citizen and police officer alike (as do most I.A. investigators). The more complaints which his troops obtain, the more time the sergeant must take to handle them. Theoretically, this convention will develop an anti-complaint pressure (and direct learning process) between sergeant and street policeman.

Of course, this system is similar to the Contra Costa decentralized process with which we have found so many theoretical problems. In order to make sure that this delegative convention is not abused, the sergeant's actions should be monitored (perhaps by I.A. or an Ombudsman type staff). An addi-

tional reason for such monitoring would be to develop organizational learning from even the apparently 'minor' complaint.

We have noted that for all of the draw-backs of regulation, rules must be developed and adjudicative procedures utilized when genuinely abusive behavior manifests itself. (Many legal limitations outlined in Chapter 6 demand such procedures when any disciplinary action is taken). For as much as we would like to develop informal mechanisms, they are of particularly limited utility in "heavy" cases of genuinely brutal or abusive behavior.

In such cases, street policemen themselves should be involved in complaint adjudication. Boards of respected professionals, chosen for their competence and sagacity, might be charged with hearing 'cases' and determining outcomes. (As noted above, formal hearings now occur in many jurisdictions, both they normally do not involve street policemen as participants-only as defendants). These men might be drawn from jurisdictions other than that of the accused officer (thus avoiding many personal prejudices).

Such a convention would, over time, begin to develop a self-regulating conception among police professionals. It would give the accused officer a 'jury' of his peers (a concern often voiced by our police officer interviewees). It would give the public a rigorous review system (witness the unforgiving nature of I.A. review) and still allow outside scrutiny of the process.

This idea is not without its faults of course. It will be challenged by some as being "no different" than I.A. systems. The openness of such a process would hopefully generate more legitimacy than current, secretive systems. Our study of the Berkeley P.R.C. indicates that the chance to tell one's story in public may be productive of significant complainant satisfaction. Given its persuasiveness from various perspectives, such peer review is worth trying given the legitimacy problems we have found common to most of our review systems.

All of these socialization ideas may be challenged on several grounds. First, to entrust the police subculture with monitoring 'its own' requires a leap of faith which many will eschew. Such conventions as I have suggested could only be instituted as part of more all-encompassing accountability mechanisms. Nevertheless, entrusting those who have been abusive with "cleaning up" their own abuses will be suspect to some. This is understandable.

Second, these attempts at inculcating new values and norms in policemen are just that; they are "attempts". It will be charged that we know very little about controlling criminal behavior, other deviant behavior, child behavior, or indeed any form of human behavior. This being the case, our attempts to control police behavior might easily go awry. Worse, they may generate counterproductive effects of untold significance. In defense of these arguments, it must be said that most of the suggestions made above have been tried in one place or

another without significant unintended fallout. The training and decentralized complaint handling ideas are operative in one fashion or another in several departments studied, without meaningful drawbacks developing. (It is hard to imagine any drawbacks evolving from such education anyway). Only the peer review idea is untried. It is indeed a new innovation which should be experimented with cautiously.

Finally, it must be argued that no system will do away completely with the conflicts which American policemen have with many American citizens. Policemen solve disputes. There are often losers in those dispute settlements. Policemen arrest people and put them in jail. Most of us do not wish to go to jail. Policemen maintain order by exercising coercive power over citizens. As a rule, people do not like to be coerced.

For all of their potential, socializing mechanisms will never do away with these genuine conflicts. They will never do away with the citizen's righteous indignation, nor with the policeman's sense or moral correctness. No review system, in short, can satisfy everone prospectively or retrospectively. The nature of what policemen do forbids it.

#### V. The Symbols of Police Review

Unfolding before us has been a paradoxical story. Those systems which most directly influence the behavior of policemen on the street, "appear" the least legitimate to external sources. The police are rarely guilty (in a factual or legalistic sense) of misconduct. Yet police abuse continues to be

a topical issue of concern particularly to minority peoples. Several of the systems we have studied go to a great deal of trouble to give citizens their due consideration. Yet complainants are rarely happy with their treatment unless the police are found to be guilty of misconduct. External, civilian review is the most threatening of systems to street policemen. Yet it is the least abusive of their rights.

One conclusion is inescapable, focusing upon the symbols of accountability mechanisms (the "window dressing") is an altogether suitable enterprise for anyone interested in police review. Students and practitioners alike need not feel reluctant to discuss changes in review systems which, though having no substantive impact upon police behavior or organizational accountability, might increase complainant satisfaction. Labels, procedural conventions, edificial settings, and so forth all may be properly addressed irrespective of their actual impact upon accountability.

Internal review by professionals is rigorous and has impact upon police behavior. Informal methods of dealing with complaints have great potential for generating organizational learning and change. Socialization holds the greatest potential for long term behavioral change and professionalization of the police. What is needed, then, is leeway within which police and civilian administrators can work toward the realization of these potentials. What sort of 'style' might be utilized (projected) by review mechanisms so that rigor-

ousness will not be sacrificed, but externally perceived legitimacy will increase?<sup>18</sup>

In Simon's terms, administrators often seek "satisfying"<sup>19</sup> solutions or explanations for problems because of the complexity of issues, technologies, and people involved. For our purposes, satisfying means short-circuiting minor or procedural complaints by giving satisfactory explanations to citizens. Besides generating complainant satisfaction, this process has the double benefit that it lowers the number of official investigations which a review organization undertakes. It thus saves time and money.

Short-circuiting is subject, of course, to attack on the grounds that it stifles the complainant's right to file a grievance. The Berkeley P.R.C. and Chicago O.P.S. systems, in fact, eschew making any effort to explain police actions or procedures to citizens because of this theoretical problem.

However, mechanisms can be developed which are very effective at short-circuiting complaints without restricting the complainant's right to redress of grievances. Berkeley's ombudsman is a perfect illustration of such a system. Because of his civilian status, non-police office location, reputation

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<sup>18</sup>An interesting analogy here is that of the "home style" of congressmen, pointed out by Richard Fenno. Fenno shows us how legislators may buy themselves leeway-or freedom to act however they see fit, even against the will of their constituencies at times--by carefully maintaining images in their home districts. See Richard Fenno, Congressmen in Committees (Little-Brown, Boston, 1973).

<sup>19</sup>Herbert A. Simon, op. cit., p. XXVI.

for fairness among Berkeley policemen, knowledge of the law (and of police procedures), and personable manner with complainants, the Ombudsman in Berkeley is able to short-circuit a large percentage of his complaints. Yet, the redundancy of the Berkeley system acts as a check upon his discretion to satisfy complainants short of formal investigation.<sup>19a</sup>

One final point should be made about satisficing processes. Organizational learning can still be generated through short-circuiting, provided someone monitors these complaints (and that person is listened to by the organization). The Ombudsman, with his policy development charge, is in a perfect position to do so.

We have seen that informal, short-circuiting mechanisms operate in almost all of our systems. More elaborate, conciliatory conventions, however, might increase citizen satisfaction while decreasing formal investigations in a similar way.

The New York Civilian Review Board developed such procedures, and Black indicates a great deal of faith in them.<sup>20</sup> Conciliation conferences occurred when there was no serious dispute about the facts of a case. Under these circumstances, differences in viewpoint (and perhaps legal or procedural

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<sup>19a</sup> Any complainant who is not satisfied with the Ombudsman's explanation may protest it to Internal Affairs, the P.R.C., the City Manager, or the City Council.

<sup>20</sup> Algernon D. Black, The People and the Police (McGraw-Hill; New York, 1968), pp. 113-115.

expertise) could theoretically be ironed out through a mediated exchange of opinions and perspectives. Black asserts that most often these meetings ended with a greater understanding between parties and lesser levels of hostility.

Secrecy in review organizations is another area wherein more attention should be paid to symbols. The secrecy of most review systems indicates to the public that those systems are at best self-serving and at worst shams to cover up large scale malpractice. Opening up review processes to the public can generate confidence in police review systems and in the police generally. This is because people will find (as this study has found) that policemen act legally and properly in the vast majority of their interactions with citizens and in a majority of alleged cases of abuse.

Of course, there are concerns which must be weighed heavily when considering such policies of openness. Some argue that secrecy allows citizens to grieve in confidence. They argue that it also allows policemen to own up to their mistakes and to the mistakes of their fellow officers without fear of the criminal or civil litigative ramifications of their truthfulness. These issues must be addressed separately.

Citizens may indeed wish their complaints to be kept secret (although we saw in chapter nine that the opposite can be argued). If so, they should (under an open information policy) be given the option to require confidentiality if they so desire. If not, their statements (or paraphrased

summations thereof) should be released to the public. Investigative findings (and grounds for same) should also be released in summary form.

The issue of officer's statement confidentiality is more complex. Statements made by officers, if indicative of misconduct on their parts, can be utilized in civilian litigative action against the officers individually and against the jurisdiction for which they work. Also, officers may indeed be more prone to acknowledge the mistakes of their fellows if they know that they can do so confidentially.

Calling for openness with regard to officer statements then, can bring up some sticky issues. But several points should be made here. First, policemen rarely acknowledge their own misconduct anyway. And this is not likely to change unless non-punative systems of review are developed. Second, those officers who do identify their own and their brother patrolmen's mistakes are not likely to quit such activity because of openness. Their individual truthfulness is not in reality hidden from their peers by policies of secrecy. For one reason or another, statements which indicate police wrongdoing are not secrets to those whom they touch.<sup>21</sup> Third, the Pitchess decision outlined in chapter six may spell the end to review systems confidentiality anyway.

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<sup>21</sup>In other words, a policeman who has been accused of wrongdoing will know which of his peers witnessed any incorrect behavior. He will know which brother officers would have the ability or knowledge to make incriminating statements. This awareness, therefore, is not developed because of the actions of review systems. It is merely a matter of deductive reasoning.

Thus, though there are problems involved, significant arguments can be made in favor of opening individual cases and general procedures to the scrutiny of the public. The symbolic meaning of this openness may make for great gains in perceived legitimacy.

A third area of importance is that of civilian involvement in review. We have seen in various locations that civilians may be utilized at input, in investigations, and even in outcome deciding capacities without doing significant damage to the integrity of the police organization. Police officers on the street too have normalized all types of experimental, civilianized systems. Thus, the counterproductive effects of civilianization are minimal.

On the other hand, the symbolic importance of civilianization can be great. Whether it be a lone input person (as at San Jose P.D.) or an entirely civilianized operation (as at the Berkeley P.R.C.) civilians can add an aura of objectivity and legitimacy to review systems. Of course, in studying the Chicago system, we have seen how this increased legitimacy may not develop. But an important point to make here is that civilianization will not hurt! It can only have positive ramifications. One significant finding of this study is that the intuitive fears which policemen hold toward civilianization are unfounded in operational reality.

The effects of civilianization being variable (in terms of impact upon perceived legitimacy), Kerstetter cautions that civilians involved in review.

"...must be persons with established community reputations for integrity and competence. A method of selection, sufficiently independent from the controlling political structure to gain community confidence among the politically disaffected groups, but yet sufficiently a part of that structure to assure staunch support is necessary." 22

For functionary positions, civil service selection procedures may be adequate. However, some consideration should be given to the representation in such positions of minority group members. Ethnic groups which make up significant percentages of those who have contact with the police should be represented in civilianization schemes. Citizens with minority backgrounds can be important symbols of review system openness and integrity.

If formal hearings (a la P.R.C.) are to be civilianized, perhaps Mayoral or City Managerial appointees should be selected from names submitted by community groups representative of diverse ethnic and economic interests in the community. The symbolic inclusion of such groups can eventuate in the types of communication, learning, and legitimation at which Selznick's formal cooptation aims.<sup>23</sup>

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<sup>22</sup>Wayne Kerstetter, "Citizen Review of Police Conduct", Report to the Police-Community Relations sub-committee of the Chicago Bar Association, unpublished no date, p. 14.

<sup>23</sup>See page (Chapter 13, p. 411 ).

Arguments mounted against civilianization have been duly considered elsewhere in our discussion. Any threat to organizational integrity has been found to be minimal. A totally civilian system will be lacking in expertise, however, and this point should be considered. While the P.R.C.'s operations offer a viable alternative to internal review, we should caution against the total civilianization of accountability mechanisms. Without any police input, the substantive correctness of outcomes may be so suspect that counterproductive tendencies may indeed be generated. Policemen may not cooperate with or pay heed to such a system.

Civilianization is an important symbolic tool with which to buy leeway for the review system. It is not an end in itself. The rigor and behavioral control effectiveness of internal systems is such that they should not be discarded in favor of civilian systems. Their strong points should be 'advertised' and more fully developed through the inclusion of civilians.

Out emphasis here upon 'window dressing', upon the symbols of accountability, will of course be attacked as Machiavellian. It will be argued that such concerns are only ruses, to trick the public into accepting existing processes. It must be admitted that this discussion has focused upon that very goal. However, our study found that many and varied limitations are placed upon review systems. We found that citizens are quite often incorrect in their allegations of abuse. And yet complainants accept nothing short of "victory" over the police

whom they consider guilty of misconduct.

We have found that most operative systems make substantively (and procedurally) correct decisions as to the misconduct of their policemen. We have found too that complainants (and the public in general) often neither understand nor believe this. Given the importance of their support, the public in general and the complainant in particular should be shown the integrity and rigor of existent systems. This section has merely sought to investigate ways in which such education might evolve, without injury to the effectiveness of what are good systems.

It will be argued that such an interest in symbolism will eventually develop into a disregard for genuine abuses. Our study of organizations which utilize a great deal of 'window dressing' has proven this to be false. Symbols directed at community education and complainant satisfaction do not tend to interfere with the rigor and objectivity of review mechanisms.

In fact, the opposite is the case. Civilians do act as an added check upon systemic integrity. Whether it is the parallel operations of the P.R.C., the monitoring of the local Ombudsman, or the review of O.C.C., internal police organizations are more careful, more rigorous, more interested in complainant satisfaction, and more cognizant of community based perceptions of legitimacy because of civilianization. To say that symbols are important, even if they do not make a sub-

stantive difference in accountability, is not to say that they will not make such a difference.

This study should be important to policemen and to police organizations because it has found many "symbols" to be compatible with existing police systems. The counterproductive effects of civilianization in particular are minimal. The potential gains are great.

The study can be important too for complainants and for communities. It has found that contemporary police accountability mechanisms are as effective as cultural, subcultural, and legal limitations will allow. And too, the study indicates that experiments in police review can expand popular support of police systems and the individual citizen's right to redress of his grievances.

## Chapter 15 CONCLUSION

### I.

As administrators, policemen answer to both codified law and to the people whom they police. The street cop straddles a lonely isthmus between the "reality" and the "reason" of human behavioral control. He is asked to deal with the complex reality of social life, solve problems, sooth tensions, protect the helpless, and intimidate the ruthless, with nothing more than "the law" as his tool.

Small wonder it is indeed that policemen become frustrated with this charge and fall short of our expectations. For the mass of human interactions that dominates social life is incredibly complex. Each person is unique; a different combination of experiences, perceptions, education, intellect, and expectations. And each social situation brings together mixtures of people, places, and occurrences which differ from the next. In a sense, nothing in our complex social fabric can be objectively debated or decided. Everyone and every situation must be considered separately. All is subjective.

We feel driven to codify and to therefore simplify our existence. The phenomenon of stereotyping (outlined in chapter three) is a response to our natural psychological need to limit the complexity with which we must deal. Our entire criminal legal system, of course, is an attempt to develop objective, none-discriminatory, "blind" methods of ordering social

life and of solving the myriad of problems which are endemic to mass society.

We thus have developed many notions of "legality" which form the basic principles of the common law system. Fuller's Morality of Law is a statement of some of those principles. More specific ideals (such as the use of adversarial proceedings, formalized standards of proof, and so on) form the basis for volumes of case and codified law which define and interpret the 'rules of the game' by which the criminal justice system plays.

Over time, however, the rules have become an end in themselves. A legal profession has been expanded in import because of its monopolization of these increasingly esoteric rules. The system has become so enamoured with its own logic, so intent upon its own rational consistency, that the substantive ends of the criminal law have become obscured. Due process is king. And society has begun to believe that it is of primary import.

Under such circumstances, men forget that "legality" is but an ideal. It is a goal toward which the criminal law should aim. But the law's basic business is to maintain order in society and to protect those who would be victimized by the naturally powerful. Men have begun to trust too much to "the law". We expect it to work miracles, to solve social problems and conflicts which are so complex that they have baffled mankind for thousands of years.

Enter the American policeman. He is charged with maintaining order in the most ethnically diverse, commercially fluid, and socially complex society the world has ever known. He is charged with deterring crime at a time when there is great question as to whether the entire criminal justice system (devised and maintained by many of the best and brightest minds anywhere) can deter crime. His legal tools are limited, for the common law is generally intent upon preserving the liberty of the individual citizen.

While performing his duties, the street cop learns more than the limits of the rule of law. He sees the worst in human suffering. He experiences the exploitation of the weak. He hears the cry of his own middle class to be free from fear, free from victimization, at the hands of the ruthless. His compassion for human suffering and his devotion to the maintenance of a civilized, orderly society are great. So great, in fact, that the beat cop learns to use the non-legal and even illegal tools of intimidation, harassment, and force in order to obtain what he (and for the most part society) believes to be morally justifiable ends.

When the policeman is observed doing so, however, he is accused of being repressive, unprincipled, and corrupt. He is an agent of the law, it is said, and as such he above all others should respect its dictates. Some argue that for police-

men to consider themselves "above the law" is a blasphemy which affects the respect of all for the criminal law system.

Therefore, mechanisms are developed to control the policeman's behavior in the same way that society attempts to control criminal behavior. Sets of rules are defined and policing institutions are created to apply them. However, when such systems prove themselves to be no more effective at behavior control than is the criminal justice system, society is even more indignant toward its "lawless police."

It is fashionable to call for the police to "change their allegiance from a private code to a publicly recognized rule of law."<sup>1</sup> But such exhortations miss the point. For the dilemmas of police accountability are analogous to (and largely caused by) the dilemmas of the rule of law. This analogy holds true because each suffers from the limits of judicialization and of rule making outlined above. Both policemen and citizens can learn to deal deftly with the rigid constructs of legal systems. Using such constructs as shields, each can avoid being sanctioned by control systems even though guilty of wrongdoing.

In response to such "flaunting" of control systems, we have seen that police Internal Affairs investigators can become

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<sup>1</sup>Paul Chevigny, *Police Power* (Vintage Books; New York, 1969), p. 283.

overly tenacious, tyrannical in their pursuit of policemen not to take their job seriously. This could be disastrous.

Police abuse is thus "caused" by the limits of the rule of law because the policeman is forced to fill in the interstices of the law with "curbside justice." Policemen focus upon substantive guilt when dealing with criminals because they are too close to the plight of the victim not to. Procedural justice is for the protracted deliberations of the serene courtroom. Curbside justice deals with the reality of crime on the street. The street cop knows that he can threaten and coerce conformity to desired behavior patterns on an interpersonal level. He knows that fear of his nightstick can deter crime. While the criminal justice system's sanctions are remote to the would-be criminal, dealing with the personal reality of the street cop (and his wrath) are not.

Policemen then are often "abusive" out of what they perceive to be necessity. They are charged with "picking up the slack" which exists due to the shortcomings of the rule of law. The rule of law is meant to order social behavior in a way that will allow the greatest amount of liberty to the individual. It is meant to fairly guarantee the rights of the weak and the civilized as well as those of the powerful and ruthless. It is meant to be neat and clean and crisp and just. But sets of written rules of conduct can rarely be all of these things.

Put bluntly, the rule of law does not work; not completely. It needs the added touch of humanity which those who administer it on the street are able to add. Without their other-than-legal actions, the criminal law would be totally ineffective. Without their empathy, understanding, and concern for equity, the criminal law can be rigidly abusive of individual liberties. Without police coercion, without the cop's physically commanding presence, the written constructs of the law would fade uselessly into obscurity. Policemen give the law life: they give it meaning. It has great faults, all rigid systems of dealing with social behavior do, but realizing this, street policemen can maintain order by using the law as one of their "tools" of control.

One is tempted, in the light of all this, to develop a theory of the police and of the criminal justice system which will allow policemen 'to come out of their cellars' and openly pursue their craft. Such a theory would realistically set forth the "rule of police" which actually takes place on the streets of America. It would illustrate to all that the repressiveness of the police flows from the repressiveness of the law; that the police are no more brutal and venal than are any other legal actors; and that the rule of law is not and cannot be truly effective in solving conflicts and in deterring criminal behavior without the infusion of the policeman's personal authority.

However, there is a problem with doing this. For the ideals of legality toward which the criminal legal system aims are indeed significant in their import. We trust in the law to do what it cannot really accomplish because our rational minds tell us that its strictness and objectivity are necessary. Such a new theory of the police would rationalize a sort of kahdi justice. It makes no difference that society is "really" ruled by men and not laws. The symbols of certainty and equity and fairness which our criminal law represents are critical to maintaining order in society. To say that these symbols are ineffective by themselves might be interpreted to mean that they are irrelevant completely. The former is definitely true, the latter is not.

## II.

We have so far considered the limitations of the rule of law which can be productive of police abuses. Earlier, we discussed cultural and subcultural dynamics which also can cause abusive behavior on the part of policemen. We must study these dynamics in order to fairly deal with the problem of police misconduct. As with criminal behavior, the causes of abuse must be understood in order to deal properly with the effects.

Our discussion must not be construed to mean that police abuse is not a real problem. What this study has found is that this problem is largely one of our own creation. We

have taken great pains to develop a criminal justice system which appears to be consistent, knowable, rational, and equitable. These are laudible goals. (Fuller tells us, in fact, that they are necessary to the legitimacy of any legal system). Yet human beings and social life are so complex that our codifications fall far short of actually ordering behavior. Men, not laws, must do that.

The men who take up the charge of doing this job must be pragmatists. We require this of them. Yet we also ask that they adhere to a rigid set of legalistic norms. We want to "have our cake and eat it too!" In maintaining order, policemen must cleave to the rule of law (which often does not work well for this purpose) and eschew abusive and coercive tactics (which usually do work well). We create for the policeman a role expectation that is unrealistic. We should not be surprised therefore when he becomes frustrated. We should not react too indignantly when that frustration spills over into abusive behavior.

If the last twenty years of studying the police have taught us anything, it is the powerful significance of the working experience of being a street cop. Through education and re-education, a "new breed" of policeman has been developed. The age of the 'dumb flatfoot' is gone. Yet the problem of abuse is still with us. We must realize that the problem of abuse (and perceived abuse) does not stem from the intellectual or moral failings of "police types." The modern policeman is more intelligent, educated, rational and civilized

than is the average person whom he polices. (Anyone who does not believe this is indeed ignorant of the realities of the contemporary police experience.) Abuse is indeed a natural product of the situation into which we place the street cop.

Of course, all administrators must deal with the limits of the rule of law. The police simply generate more hostility and controversy because they are licensed to take away the personal liberty of citizens. When attempting to regulate administrative behavior, what can we do to improve existing mechanisms?

First, our study has found that the involvement of external dilettantes or community representatives should not significantly hamper the operations of administrative review systems. The inclusion of such perspectives can be useful to all involved. It can allow the administrative professional to obtain feedback from those who are not so close to the problems of administration that they lose sight of the obvious. It can serve to educate the public about both substantive and procedural problems in administration. And the inclusion of non-administrators can require the administrative organization to explain the assumptions which underwrite its review mechanisms.

Second, we have found that the real life exigencies of administration are such that great deference must be given to the professional expertise of the practitioner. Administration must appear to be only a mechanical application of the law.

Yet law has tremendous limitations. Men, and not laws, must do the real work of ordering society. Their personal moralities, competences, and power are determinative of the informal sets of relationships which actually maintain order. Law has a role in this process; a critical role, but a limited role.

### III.

In the long run, no system, no rigid, formalized regulatory scheme will control police abuse, administrative discretion, or criminal behavior. Within the general confines of such systems, men will control each other through action and exhortation. In the end, we must trust to the integrity and competence of men. To depend too much upon systems, to focus upon them as an end, is to be dangerously short-sighted.

Some significant amount of time has been spent arguing the nature of the relationship between mankind and its institutions. Some hold that institutions are merely reflections of man's development; that they are after-the-fact constructs which cleave to man's requirements. Others point out that social institutions can be liberating agents which allow man to develop to his fullest potential; that they can have positive influences upon social progress.

Our study of police accountability mechanisms shows us that both assertions are correct. Systems can be constructed which influence behavior and develop more conscientious, re-

sponsible individuals. Yet, in developing institutions of behavioral control it must be kept uppermost in mind that their rigid conventions are of limited utility. Man, with all of his failings, will populate behavioral control institutions. And he will subject such systems to the same sorts of problems which the systems themselves are designed to monitor.

We must at some point allow that such limitations exist. We must make realistic demands of our accountability mechanisms and place a great deal of trust in the integrity of men. Such systems will always fall short of the expectations of some. For they can only attempt to balance the numerous interests outlined in these pages.

## APPENDIX A METHODOLOGY

### I. Development of the Study

My interest in police accountability stems from four years of experience as a police officer in Contra Costa County. During the period wherein I was involved in police work, I became fascinated with police review because of a series of events which took place within that organization.

In the fall of 1974, a scandal rocked the Sheriff's Department. Several officers were forced to resign (one was fired) because of their involvement in thievery conducted on the job. No centralized review body existed at the Sheriff's Office (indeed, as chapter 8 indicates, none exists to this day), so the investigations conducted into this corrupt activity were handled by an ad hoc group of investigators from the Investigation Division and from the Inspection and Control Division of the S.O.

After the theft scandal subsided, and all of its investigations were complete, this ad hoc group was not immediately disbanded. With "nothing to do", the group began covert operations aimed at monitoring both on-duty and off-duty, activities of Sheriff's deputies. Investigators sought to find out if policemen were sleeping on duty, taking inordinate amounts of time for coffee breaks, or "womanizing." Off-duty activities of concern included drinking to excess, smoking marijuana, and cohabitation.

The organizational dynamics which developed out of these operations were fascinating to behold. When officers had been investigated for theft, the rank and file troops of the Department supported the administration. While such investigations were embarrassment to all, officers nevertheless believed that theft was an unconscionable type of activity for policemen to be involved in.

However, when the administration investigators began to delve into what officers felt were "lifestyle" types of activities (i.e., living with women out of wedlock) the attitudes of the street troops changed. No longer did street policemen support the administration. Morale suffered. Men felt that their home lives were being scrutinized without good reason. Younger officers in particular objected to being held to "archaic" moral codes developed by "old" administrators.

In the midst of all of this, several officers brutally beat an innocent bystander in an arrest. The man had to be hospitalized in Intensive Care due to his wounds. The act had been so violent and unprovoked that several other officers who had been present complained to their superiors. The Department's response was to verbally chastize one officer involved for carrying an unauthorized type of flashlight at the time of the incident. (This particular form of flashlight was made very heavy in order to double as a club.)

These then were the events which kindled my interest in police review. I had seen the worst in police abuses and in administrative review. A major scandal had taken place. Violent police behavior had been ignored (even condoned) by the organization. And the review apparatus which did exist had alienated the street troops and produced all sorts of counterproductive tendencies.

I began to wonder how other organizations sought to curb abuses. And too, I was particularly concerned with the ability of various systems to maintain rigorous review processes without developing problems which would be deleterious for policemen, for complainants, and for society in general.

Following several years in graduate school, I began to form these concerns in a dissertation topic. After preliminary bibliographical research, a comparative study began to intrigue me. I chose four local police review systems as my targets of analysis. They each seemed to offer interesting alternatives.

Oakland P.D. had an Internal Affairs organization which was well respected in police circles. My initial inquiries led me to believe that this reputation was not unwarranted.

As indicated in chapter nine, local political elites as well as policemen and police officials all had great respect for the rigor of this internal review. O.P.D. then would do well as an example of the I.A. type of system. Its short-

comings would be the least that one would expect to develop from such a process.

San Jose had an operative Ombudsman's system which investigated citizens complaints against the police. Even a cursory review of the police accountability literature indicated a broadly based feeling among scholars that this type of office held great potential for dealing adequately with the trade-offs inherent in police review.

In Berkeley was the only operative civilian review board in the country. Given the topical nature of civilian review and the volatility of the idea among the police, its inclusion was basic to the study.

San Francisco was in the process of forming a civilianized review system which would operate within the hierarchy of the police department, answering to the Board of Police Commissioners. It would be an interesting "hybrid" form of review. When political realities killed San Francisco's proposed system, the Chicago and Kansas City systems, upon which it was largely based, were substituted.

Finally, the Contra Costa system, which had initially kindled my interest in the study, would be the closest I could come to a non-system. I thus added my former place of employment to the study's list of organizations.

Through academic and police organizational contacts, I was able to obtain introductions to the Chiefs of Police and

and head administrators of these various systems. Though some reservations were exhibited (particularly by San Jose's police organization) I was able to gain access to each review body (and to its accompanying internal police system where applicable).

Several months were spent in direct observation of each system so that I might intelligently direct my efforts. It was during this phase of research that the study became funded as the Comparative Police Review Systems Project. Chief George Hart of the Oakland Police Department was interested in learning what alternatives were available to his own internal system. Chief Hart believed that change was an inevitable political reality with which his organization would have to deal. The legitimacy problems natural to internal processes were of great concern to him.

Chief Hart's Research and Development Department put together a special project proposal which was funded through the City of Oakland's CETA project fund. I was put on the City's staff as an Administrative Analyst and given a typist, office space, and an allotment for franking, telephone, and xerox costs. (Later, research trips to Kansas City and Chicago were funded out of the Chief's own travel fund.)

I was allowed access to complaint files, to the Patrol Division, and to the I.A. Section. Perhaps most important, I was able to approach other organizations and to secure access to them for research purposes (most notably Kansas

City's, Los Angeles', and Chicago's review systems) as "an Analyst from Oakland P.D.". Obtaining such access would have otherwise been problematic (to say the least).

Chief Hart gave the Project no direction. No specific instructions were issued to me at any time throughout the study's life. The general charge was to observe and analyze as many different systems as was possible. This work is the product which the Chief and Oakland P.D. received from the Project.

## II. The Action Perspective

Because it was at the Oakland Police Department, the work has of course, methodological problems built into it from the outset. The objectivity of its observations and the legitimacy of its assertions should be questioned because of the dual problems of organizational "capture" and police secrecy.<sup>a</sup>

First, the author himself may have become so involved with the personalities and inner workings of the Oakland system, that the Internal Affairs part of the work is suspect. Throughout the course of the work, I have tried to check my findings with individuals removed from the O.P.D. organization. In particular, several academicians at the University of California were consulted because they had previously studied this depart-

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<sup>a</sup>See Jerome Skolnick, Justice Without Trial (John Wiley & Sons, N.Y., 1966), pp. 25-26.

ment in depth (albeit at different levels of the organization). Their assurances that Oakland's was "the best internalized system possible" set my mind at ease considerably.

Other organization theorists, completely removed from the department, have served to caution me at times about the capture problem. Their confidence in the reasonableness of my conclusions about Oakland P.D., has convinced me that my perceptions of its rigor and effects upon police behavior are not productive of "capture" or "cooptation." <sup>b</sup>

Second, my complete access to the Oakland system might very well have influenced my perceptions of other systems (wherein I enjoyed considerably lesser amounts of freedom and information). This is a very real difficulty, given the volatile nature of police review as an issue. Without overdoing my "welcome", I have sought to obtain as much free access as I could at all levels of the organizations studied. Thus, I have everywhere ridden with policemen, read investigation reports (almost everywhere), and interviewed knowledgeable external observers of each system.

These "checks" are however of limited value. It is never clear whether or not such research can be "objective" under any circumstances. This study concludes that the problems of

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b

As outlined in the text, Philip Selznick has aptly developed cooptation as a potential political tactic which can develop perceptual legitimacy (in this case through the author's work) by absorbing external actors into an organization's structure. See Philip Selznick, T.V.A. and the Grass Roots (Harper & Row; New York, 1966), esp. pp. 259-261).

review are political problems which must be solved by balancing the inherently different interests of various groups. If such a conclusion is correct, the "objective" analysis of such systems by anyone will be problematic. The author can only make explicit the ongoing development of the study, and leave conclusions as to credibility to the reader.

One point must be made in defense of accepting Chief Hart's offer and centering the study at Oakland P.D. Police review is a very political issue, with emotionally developed connotations which tug at the deepest feelings of the police. Police review reflects upon the policeman's competence, honesty, and integrity. (The pages of this work should adequately testify to this fact). The secrecy which therefore surrounds review systems can be quite effective at limiting the "outsider's" ability to analyze review processes. By making myself an "insider" for several years, I was able to obtain access to policemen, Internal Affairs systems, and confidential records which could not have ever been obtained otherwise. "Objectivity" concerns aside, such a study would be a practical impossibility without this access. Thus, my "research bargain"<sup>C</sup> necessarily included obtaining access at the potential risk of losing my external perspective.

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<sup>C</sup>See John Van Maanen, "Epilogue on Watching the Watchers", in Policing: A View from the Street, Peter K. Manning and John Van Maanen, eds. (Goodyear Publishing; Santa Monica, 1978), pp. 327-343.

Because of the nature of the problem of police accountability and the methodological difficulties of participant observation discussed above, I sought to obtain information from a variety of sources and in several different ways. Systems were observed in operation, officers were interviewed on the street, administrators were interviewed, and complainants were surveyed through the use of written questionnaires. It is important, because of their diverse nature, that we consider several of these data collection techniques separately.

### III. Review System Observation

#### A. Oakland P.D.

I spent a great deal of time monitoring the Oakland P.D. Internal Affairs system (more than was spent in any other organization). Over 100 hours were spent in preliminary observation and police officer interviews alone. Thus, at Oakland P.D. the role which I chose for myself was different than that which I assumed at other organizations. I had time to develop a rapport and a trust with O.P.D. officers and investigators which could not obtain elsewhere.

Vis-a-vis, the I.A. staff, I made it clear to all that I was obtaining my Ph.D. at Berkeley. At times, I would picture myself answering the stern task masters who would reject to my work if it were not thorough and competent. This aided in obtaining individual cooperation and initial access to records which it was not clear I should be allowed to see.

Then too, I was at times a compassionate outside medium, willing to listen to I.A. investigators and to tell their story to the world. These men, after all, are subject to all sorts of cross pressures due to their constant interactions with antagonistic policemen and citizens alike. A sympathetic ear was at times greatly appreciated.

Since I studied I.A. for approximately 20 months, I was able to observe its operations under two Deputy Chiefs of Police and two I.A. commanders. Then too, I saw the entire investigative staff "turn over" via transfers in and out of the section. I am thus, confident that the dynamics which I observed during this period of time are truly indicative of the system's operations generally.

There were some ethical problems of concern to me which my presence in I.A. created. I was concerned that my presence might affect the lot of complainants who were handled by the system. It seemed, however, that an external observer could only affect the system's operations in a positive way. It was hardly likely that abuses of citizen's rights (if they did go on) would increase because of my study. If anything, my presence should have increased the citizen's ability to have his grievance fairly and thoroughly considered.

Second, citizens might feel that a civilian observer violated the confidence of their complaints. Over time, however, I also came to believe that this concern was unfounded. Citizens almost universally perceived me to be another police officer.

My location, carriage, short hair, and dress (I always worked in a shirt, tie, and slacks) gave them no cause to believe otherwise. I had been a policeman for several years, after all, and "looked like a cop" to most people.

So much did I seem to be a policeman that a small experiment was devised by the Deputy Chief of Police. After I had been around the organization for over a year, he felt that for my own edification (and in order to try out the idea of "civilian" involvement in I.A.) I should handle a few complainants. I thus spent one week interviewing complainants, taking statements, and short-circuiting complaints when possible. This experience was invaluable in enabling me to empathize with the investigator's position. It gave me a closer look at complainants than I had obtained from previous observations.

I am convinced that those few complainants whom I handled were dealt with in a manner consistent with the treatment which they would have received from police investigators. This belief meant two things to me. First, it meant that I had not interfered with the citizens' right to complain. Second, it indicated to me how rigorous O.P.D. investigators were. All of my intuitive notions and theoretically based ideas about investigation had not been productive of any significantly different investigative style (on my part) than that normally pursued in I.A!

Since mine was a "change" oriented project, one final note is in order about O.P.D.'s system. I made some change suggestions throughout the course of the project which were accepted

by the department. Since I thus had some influence upon its operation, I have chosen to portray O.P.D.'s system as I observed it to operate when I first began work in the winter of 1977. Because small changes have occurred since that time, my representations of its operations are thus "dated" in some sense.<sup>d</sup>

#### B. Other Organizations

When studying all of the other organizations here outlined, I was coached (by myself) as an Oakland P.D. Analyst. My project was clearly outlined, as being "housed in the Chief's Offices" and of great interest to him. The Project thus obtained access to people and systems with relative ease. Being labelled a "police type", I was usually able to avoid the type of suspicion (regarding my motives) which a "researcher from Berkeley" would most certainly have encountered.

The effects of this role construction might be two-fold. First, one might argue that taking such a posture would develop a significant trust among policemen and police administrators. Thus, operations would not be likely to change for appearances sake when I was present. As a police person, I could be entrusted with "the real story" of how these systems operated.

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<sup>d</sup>The choice to portray the system as it was is, I believe, important. For my small influence represents a sort of civilian involvement, theretofore unknown at O.P.D.

On the other hand, I was still an "outsider" to all of these other organizations. To the civilianized systems in particular, my identification with Oakland P.D. might create problems.

I, therefore, took a somewhat different approach to these civilian systems. While I did not hide my O.P.D. affiliation, I emphasized (to the P.R.C. especially) that I was a Ph.D. student conducting research. I indicated that O.P.D. was merely a stopping point, an enabling institution within which my "academic" study was financed. Given the response which I enjoyed at these civilian organizations, I feel that I was successful at maintaining a distance from the police image of the Oakland Police Department.

Of course, my interviews with local academicians and with interested politics are the sole sources which I have available to check upon my observations of civilian organizations. Given the limited time which I was able to devote to each system, my lack of complete access (as at Oakland) does leave me with reservations about my analyses. <sup>e</sup>

#### IV. Police Officer Interviews

The text of the work makes it amply clear why street policemen's perceptions of each system were crucial to the study. I therefore will not reiterate the reasons for these interviews.

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<sup>d</sup>This is true of the Chicago and Kansas City systems in particular. They were so far removed geographically that the actual time I spent at each was only 12 days. Though these were busy days, I hesitate to extrapolate too far from the available data.

Only selection techniques and the representativeness of the samples taken are at issue here.

In taking samples of policemen, I restricted myself to uniformed street officers. This is because they, unlike detectives for example, are constantly under scrutiny by the public. They are readily identifiable by their uniforms. Statistics from many departments indicate that patrolmen are the subject of an overwhelming majority of all citizen complaints. Also, my own study of officer complaint patterns indicated that the numbers of complaints which an officer received dramatically decreased over time. Young patrolmen, in short, were the subjects of most complaints. While I did not wish to restrict myself to the "young" policemen, preliminary study indicated that the uniformed officer on the street could give me a good feeling for the policeman's view of complaint systems. All policemen in the organization, from the Chief on down, had been through the patrol experience. It was this experience (and not working in plain clothes for example) which created cynacism, isolation, and anomie in the average policeman. My 8 years of studying and working with the police told me that it was the patrol experience which produced the abusive tendencies which police accountability mechanisms sought to monitor.

Thus, I took a sample of 12 policemen from each of the four departments which I could observe over protracted periods of time (Oakland, Berkeley, San Jose, and Contra Costa).<sup>e</sup>

Lists of patrol division personnel were obtained. I

divided 12 into the number of patrol officers at each department to find out what increment I should use for selection. I asked someone to pick a random number between one and the increment. I then counted down the roster to the random number. I selected that name and proceeded to take names one increment apart. Thus, in Oakland I chose the 5th officer and every 26th man thereafter. In Berkeley, I chose the 2nd officer and every 8th thereafter (and so on).

I wished to control these samples for several demographic variables. Given my initial studies, I felt that race of officer, age, sex, and seniority all might affect a policeman's propensity to generate complaints and to be knowledgeable about review processes. I wished neither a sample which was too prone nor too. Happily, my randomly taken samples were fairly representative all around.

Exception to this statement must be made for San Jose P.D. I was unable to obtain information regarding the racial, sexual, age, and seniority distributions for the patrol division population as a whole at San Jose. I do not know, therefore, if that sample is representative. Since the procedures for selec-

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<sup>e</sup>Kansas City P.D. and Chicago P.D. officers had to be less systematically chosen. There, due to time pressures, I was only able to interview officers working at times when research into the O.C.C. and O.P.S. systems. The representativeness of my Chicago P.D. and Kansas City P.D. samples, then, is unknown.

tion were always the same, and representativeness elsewhere was very good, I have assumed that this sample too is a good one.

Because of transfers (and in one case resignation) my samples did vary in number. A total of 46 officers were interviewed at length, and sent a follow-up questionnaire. This asked the same questions of officers which the written survey asked of complainants. (See Appendix B).

My extended interviews with these officers took place out on their beats in their patrol cars. I was careful to let these men know that I had been a street cop myself. I felt that doing so would break through some barriers which the patrolmen might have had against talking to a 'civilian' about police abuses and about review systems. The frankness of officers, their "salty" language, and at times, their acceptance of civilianization all led me to believe that I was hearing their true feelings come out.

Follow-up questionnaires were sent to officers in order to check against potential interviewing problems. I felt that talking to a policeman (which interviewees usually saw me to be) might make officers less prone to be secretive about their true feelings (toward civilian review, for example). I thus believed that a codified questionnaire might produce more conservative, defensive responses than had personal interviews. Civilianization especially might be less acceptable a concept to those filling out written surveys.

I was surprised to find that questionnaires usually developed the same data as did interviews. Moreover, for some officers, the questionnaire indicated an even more liberal approach to review. Thus, perhaps coaching myself as a policeman had slanted a few interviews. Some men apparently when face to face with an ex-policeman, apparently felt the need to give a 'standard', 'hard line' defense against ideas such as the civilianization of review systems.

Demographic statistics for the three departments wherein I could garner them follow on Table I, Table II, and Table III.

#### V. Complainant Attitudinal Survey

Six organizations participated in the complainant attitudinal survey; Oakland P.D., Berkeley P.D., the Berkeley P.R.C., San Jose's Ombudsman, the Contra Costa S.O., and Kansas City P.D. Where possible, 100 complainants from the 1977 calendar year, were picked for contact. At Contra Costa S.O., Berkeley P.D., and Berkeley P.R.C., less were contacted because less than 100 complainants were received in the entire year.

A total of 465 questionnaires were sent out, and 163 were returned. This 35% return rate is good for such a questionnaire. Particularly considering the mobility of many complainants are minorities, poor, and/or young, this return rate is better than one might expect.

TABLE I

## Berkeley P.D. Comparisons

		<u>PATROL DIVISION</u>	<u>SAMPLE</u>
AGE:	Average	29.4	28.8
SENIORITY:	Average	5.5	4.75
SEX %:	Male	94.5	91.7
	Female	5.5	8.3
RACE %:	White	64.6	66.8
	Black	22.8	16.6
	Spanish Surname	6.3	8.3
	Oriental	6.3	8.3
TOTAL MINORITY		35.4	33.2

TABLE II

## Contra Costa Comparisons

		PATROL DIVISION	SAMPLE
AGE:	Average	32.9	33.5
SENIORITY:	Average	6.2	6.4
RACE:	White %	94.8	91.7
	Black %	2.1	8.3
	Spanish Surname %	1.0	0.0
	Women %	2.1	0.0
TOTAL MINORITY %		5.2	8.3

TABLE III

## Oakland P.D. Comparisons

		PATROL DIVISION	SAMPLE
AGE:	Average	30.8	30.6
SENIORITY:	Average	5.9	5.5
RACE:	White%	63.2	58.3
	Black %	21.9	25.0
	Spanish-Surname %	8.6	8.3
	Other %	6.3	8.3
MARITAL STATUS:	Married %	72.5	83.4
	Single %	16.4	8.3
	Divorced %	11.2	8.3
EDUCATION:	H.S. %	23.1	16.6
	A.A. < %	38.5	50.0
	A.A. > %	21.8	8.3
	B.A. > %	16.6	25.0
MILITARY EXPERIENCE:	%	66.0	58.3

The questionnaire was developed with the help of the Survey Research Center at U.C. Berkeley. Preliminary lists of questions were compiled and refined. A pretest was done using Oakland complainants. Two researchers each contacted five complainants (after great difficulty--indicative of the mobility problem). These randomly sampled complainants were given the proposed questionnaire and asked to fill it out. They were then interviewed regarding the clarity of questions and the ease of filling out the form.

After some minor changes, the survey went out to the randomly drawn samples.

Because complainant confidentiality is of concern to most organizations, checking the representativeness of our samples is highly problematic. First, most of the organizations involved required that they themselves pick samples and address survey envelopes (so that they might protect complainant confidentiality). Thus, our project had no direct knowledge of who made up the complaint sample and who respondents were.

Second, though the questionnaire asked for demographic information, most organizations do not keep racial, age, or sex statistics about complainants. Thus, though the survey did obtain profiles of respondents, we do not know how representative these groups were of complainant populations.

Therefore, the author attempted not to make significant use of the plethora of information accrued by the survey. While

much of it is interesting, the reliability of this data is suspect. I have included in Table II what few statistics I have been able to develop relating the representativeness of respondents to complainant populations. Appendix B shows the specific questions asked by the survey.

#### VI. A Final Note on Comparisons

It must be reemphasized that direct comparisons between our five types of systems are extremely problematic. Development of "the" perfect system out of our study would entail making links between dependent and independent variables which simply cannot be made. In order to do so, the systems studied would have to be considered the independent variables, and police behavior (or numbers of abuses, or citizen satisfaction) the dependent variable.

Yet, as we have discussed, prioritizing dependent variables is essentially impossible. And even if a "picture" of systemic effectiveness could be drawn by doing so, the independent variables (systems) are so greatly affected by exogenous variables that any meaningful, "hard" data would be impossible to obtain.

Educational level, racial compositions, income distributions, ages, and many other demographic variables can affect both police and citizen behavior.

Thus, in Part IV I have tried to mix theoretical arguments with interview and (limited) survey data in order to

attempt some tentative comparisons of systemic effectiveness. Some may feel that so much qualification has been done that this chapter's statements are meaningless. Those who seek hard data upon which to hang their beliefs will feel that this is so.

Yet, Part IV's timit comparisons and conclusions beg to be made. The complexity of the social process cannot be utilized as an 'excuse' to hide from problems as volatile as police accountability. Part IV should be read with a critical eye indeed. But considered in light of the limitations of the social sciences, I hope that it takes a limited step toward understanding the human experience.

