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Message from the Chair

By James F. Horan

As I begin my term as Chair of the Committee on Attorneys in the Public Service (CAPS), I'll devote my first Chair's Message to discussing: this *Journal*, some changes in the CAPS membership and plans for CAPS events at the NYSBA Annual Meeting. First, though, I would like to thank everyone involved in my appointment as Chair for the confidence they have shown that I can continue the fine work of distinguished prior Chairs and Vice-Chairs such as Tricia Troy Alden, Henry Greenberg, Patricia Bucklin, Barbara Smith and Tyrone Butler.



This issue of the *Government, Law and Policy Journal* focuses on citizen police review boards. In the Editor's Foreword, Professor Vin Bonventre will summarize the articles. Once again, CAPS wishes to thank Professor Bonventre and his students for their work in assembling and editing the *GLP Journal*. We also wish to thank Dean Patricia Salkin and her staff at the Government Law Center at Albany Law School for their work in producing the *Journal*.

With this *Journal* also, Barbara Smith offers her farewell message as she steps down after two years as the CAPS Chair. During Barbara's term, CAPS continued to offer fine continuing education programs at the NYSBA Annual Meeting and to produce this first-class *Journal*. We also saw the publication of the first book from CAPS: *Ethics in Government, The Public Trust: A Two-Way Street*. We thank Barbara for her leadership and excellent work. We are fortunate that Barbara will remain a CAPS member.

Tyrone Butler has also stepped down as the CAPS Vice-Chair. In June, Tyrone resigned from his position as Chief Administrative Law Judge (ALJ) at the New York State Department of Health, to become the Chief ALJ at the Office of Administrative Hearings for the District of Columbia. The District created the Office as the "central panel" for all ALJs who work in the District and hired Tyrone as Chief ALJ after a national search. A majority of the states now operate their administrative proceedings through such central panels, as do the cities of New York and Chicago. Tyrone was instrumen-

tal in creating the ALJ Sub-Committee within CAPS, and he wrote the chapter on Administrative Law that appears in *Ethics in Government*. Tyrone will also remain on CAPS, although he will serve via long distance.

As usual each year, several people left or joined CAPS as members. I will take special note of one leaving, one returning and one remaining. Mike Moran, from the New York State Law Reporting Bureau, left the Committee after several years' service. Mike established and maintained the CAPS pages on the NYSBA Web site. We thank Mike for the countless hours he worked on that project. We are pleased to welcome back to CAPS Rachel Kretser, one of our founding members, who rejoins us as our liaison to the NYSBA Executive Committee. We also appreciate that Tom Levin remains an active CAPS member, even now that he has commenced his term as the NYSBA President.

As this issue of the *GLP Journal* goes to print, we are planning the CAPS Program for the NYSBA Annual Meeting on Tuesday, January 27, 2004. Once again, Program Chair Marge McCoy has arranged for Professors Erwin Chemerinsky and Susan Herman to deliver their highly acclaimed critique of the most recent U.S. Supreme Court term. Both professors will also participate in a separate and larger panel on civil liberties and the response to terrorism.

On the evening of January 27th, CAPS will hold our annual reception, at which we will present the 2004 Award for Excellence in Public Service. The Award recognizes "excellence by a member of the legal profession in the commitment to and performance of public service." The Award has gone previously to: The New York State Office of the Attorney General (2003), Patricia Salkin and Archibald Murray (2002), District Attorney Robert Morgenthau (2001) and Judge Joseph Bellacosa (2000). As in the past, CAPS considered nominations of attorneys deemed especially deserving of recognition for devotion to serving the public.

Hon. James F. Horan, Chair of the NYSBA Committee on Attorneys in Public Service, serves as an Administrative Law Judge with the New York State Department of Health. He is the immediate past President of the New York State Administrative Law Judges Association.

A Farewell

By Barbara F. Smith

In my columns as Chair of CAPS, I have taken the occasion to comment on the satisfaction of public service work as an attorney. In this, my last column, I will take the opportunity to discuss an initiative of the court system to improve the business and personal lives of certain members of the legal profession.



In 1999, Chief Judge Judith S. Kaye created the Commission on Alcohol and Drug Abuse in the Profession to study and address the problem of alcohol and substance dependency in the legal profession in New York. Its yearlong study resulted in an Action Plan, which included the recommendation that the Lawyer Assistance Trust be created. The Trust—established in late 2001 and financed through a portion of the attorney registration fees—provides statewide leadership and financial assistance to programs for the treatment and prevention of alcohol and substance dependency in the legal community. Its goals are to encourage the development of new lawyer assistance programs, to educate about alcoholism and substance abuse and their impact on the profession, and to sponsor and promote research in the field.

“Denial of the problem by affected individuals and inaction by colleagues and family members are the biggest problems to be overcome,” stated Trust Chair James C. Moore, of Rochester, in the Trust’s first Annual Report. Reports estimate that about 15-18% of all attorneys have a problem with alcohol or drug use.

Judges, attorneys, law students and faculty with alcohol or substance abuse problems may receive free, confidential help from the lawyer assistance programs (LAPs) managed by Ray Lopez, Director of the New York State Bar Association’s Lawyer Assistance Program; Eileen Travis, LAP Director of the Association of the Bar of the City of New York; and the ten county bar associations throughout the state which have active, volunteer lawyer-helping-lawyer committees. (Disclosures made to a member of a lawyer assistance program are deemed privileged by section 499 of the Judiciary Law.) This service is not limited to members of the State Bar Association.

In addition, the Trust provides financial support to bar associations and law schools through a grant program for lawyer assistance related activities, and it has worked to bring about changes in court rules that

encourage diversion of attorneys with alcohol and drug problems to treatment, as an alternative to discipline. Some outreach activities of the Trust include providing information on available resources through the attorney registration mailing, and publishing a quarterly newsletter distributed to a wide audience. In June 2003, the Trust hosted a widely attended daylong conference addressing the topic of alcohol and substance abuse at law schools.

By taking this occasion to briefly describe the Trust and lawyer assistance programs, I hope that I have provided some new information on the topic of substance abuse in the legal profession—and better yet, on the response by the organized bar and the court system to address the problem. While many government attorneys have the option of taking advantage of employee assistance programs, which provide valuable resources, it is useful to know that other options also exist. The good news is that treatment works, and education and early intervention are key components to averting future problems. I would urge anyone who has an attorney friend or colleague with a drug or alcohol problem to seek the help of a Lawyer Assistance Program. The State Bar’s Lawyer Assistance contact number is (800) 255-0569; the Association of the Bar’s Lawyer Assistance contact number is (212) 302-5787. More information on the topic may be found at the Trust’s Web site: <http://www.nylat.org>.

Finally, in my work I have come upon two books that I would recommend: *The Lawyer’s Guide to Balancing Life and Work* by George W. Kaufman, and *Transforming Practices* by Steven Keeva (both published by the American Bar Association). At their best, they provoke readers to evaluate their circumstances and to make necessary changes to reach desired goals and renewed pleasure in the practice of law.

In closing, let me say that it has been a wonderful opportunity to serve as the Chair of the NYSBA Committee on Attorneys in Public Service for the past two years. A great group of attorneys are involved in the work of the Committee. My special thanks to the Vice-Chair during my tenure, Tyrone Butler, and to the NYSBA staff liaison, Patricia Wood, both of whom worked tirelessly, and most often behind the scenes, to make the Committee’s projects a success.

May you all find meaning and satisfaction in your careers.

Barbara F. Smith, the immediate past Chair of the NYSBA Committee on Attorneys in Public Service, is the Executive Director of the New York State Lawyer Assistance Trust.

Editor's Foreword

By Vincent Martin Bonventre

Fraught with risks, controversy, and promise, civilian review of police conduct is an idea whose time has indeed arrived. No longer a theory in search of a practical—and permanent—home, citizen oversight has been implemented in virtually all of the nation's largest cities and in a fast-growing number of smaller municipalities.



The nation's very largest metropolis boldly created this state's first citizen oversight agency in 1953, abolished the "radical and dangerous" idea in 1966, and reinstated civilian review in 1993. By that time, the climate in New York City and the nation was more receptive to the idea of oversight and to the creation of formal mechanisms to carry it out. Today, external review of police conduct by governmentally created organs staffed with laypersons is approaching the conventional. What remains, however, is more than the expansion of the idea to ever more municipalities. Lingered—and equally crucial—questions about models and methods and modifications are generating debate and demanding resolution.

This issue of the *GLP Journal* examines some of those questions. With an eye toward future possibilities, but mindful of past developments and current controversies, the articles in this issue provide a primer on citizen oversight, from both New York and national perspectives. Moreover, they explore some of the most salient questions about the value of oversight and about the values that are implicated and affected.

In the opening article, Samuel Walker outlines the growth of civilian review and the two basic models and their respective objectives; he then examines fundamental questions about the effectiveness of oversight and offers recommendations. Next, Justina Cintrón surveys the various forms that civilian oversight has actually taken throughout New York State; each of Samuel Walker's models and a variety of hybrids are represented. Debra Livingston then reviews New York City's experience with police oversight and draws lessons from the successes and difficulties.

The four articles that follow turn the focus on specific aspects of civilian review. Todd Samolis examines the application of mediation to police-citizen disputes and he identifies both the challenges and benefits. Iris Jones discusses the implementation of programs for the collection of data on racial profiling in traffic stops; she delineates the difficulties of obtaining reliable data and the pros and cons of different data-analysis methods. Elayne Gold and Robert Smith explore the ramifications of collective bargaining for civilian review boards in New York; public sector labor law and

labor-management relations are critical considerations in insuring the cooperation of police personnel and their unions. Bob Freeman tackles the tension between the dictates of open government and the privacy interests of police in their personnel files; he suggests a resolution for New York that harmonizes the goals of the state's Freedom of Information Law and its Civil Rights Law.



Finally, Albany Law student Kyle Rose McCauley reports on her interview with Michael Whiteman, one of the state's most prominent attorneys, both in public and private practice, who has served as a member of Albany's review board. McCauley recaps Whiteman's experiences, observations and recommendations.

This issue of the *GLP Journal* is the product of the labors of many individuals. There are the authors, of course. Additionally, Patricia Salkin and Justina Cintrón—respectively the Director and Staff Attorney of Albany Law School's Government Law Center—were largely responsible for the issue's character and content. They identified potential topics and contributors and solicited the manuscripts. James Horan, the new Chair of CAPS, together with the *GLP Journal's* Board of Editors, reviewed the submissions and offered suggestions. Next, the members of the Student Editorial Board, overseen by this academic year's Executive Editor, Ilana Eck, did their law review-type formatting, subediting and tech-checking. Lastly, after my own final read-throughs, the Bar Association's publication staff, especially Wendy Pike, took the resulting pile of hard copy and electronic transmissions and—as it always does—transformed them into a beautiful, professional-looking package. Throughout the process, Pat Wood at membership was a source of guidance and support—as she is for every issue.

I am indebted to all these individuals for their assistance and for making me look good. I am confident that our readers—the intended beneficiaries of all these dedicated efforts—will find this issue of the *GLP Journal* both interesting and illuminating.

Vincent Martin Bonventre, J.D., Ph.D., is the Editor-in-Chief of the *GLP Journal* and Professor of Law at Albany Law School. He is also the Editor of the annual *State Constitutional Commentary* and the Director of the Center for Judicial Process.

Ilana A. Eck, the Executive Editor of the *GLP Journal*, is a member of the Albany Law School class of 2004 and an Associate Editor of the *Albany Law Review*.

Citizen Oversight, 2003: Developments and Prospects

By Samuel Walker

I. Introduction

Citizen oversight of the police has enjoyed substantial growth over the past twenty years. Oversight agencies now cover the police departments in almost 90% of the 50 largest cities in the country, and there are an increasing number of agencies in medium-sized cities and counties.¹ Meanwhile, external citizen oversight of the police is virtually universal in the rest of the English-speaking world and is spreading in Latin America, Asia and continental Europe.²



The present situation brings to a close the first chapter in the history of the movement for citizen oversight of the police. This chapter involved the emergence of oversight as an idea and the establishment of oversight agencies as a permanent feature of the landscape of American law enforcement. The second chapter confronts the oversight movement with new challenges, including the need to document the effectiveness of oversight in agencies and the need to develop minimum professional standards for the field.

This article discusses four aspects of the current status of citizen oversight of the police. First, it seeks to explain the growth and current prevalence of oversight. Second, it examines the different forms that oversight currently takes. Third, it discusses issues surrounding the effectiveness of oversight. Finally, it offers a set of recommendations for policy and research in the years ahead.

II. A Definition of Citizen Oversight

Citizen oversight of the police is defined here as a procedure that includes participation by persons who are not sworn officers (“citizens”) in the investigation of citizen complaints against the police and/or other allegations of misconduct by police officers. This narrow definition of oversight is necessary because, in one fundamental respect, all law enforcement agencies in the United States are subject to control and direction by citizens through their elected representatives. This represents the very essence of policing in a democratic society. Mayors, governors, and presidents appoint law enforcement chief executives and have a large say in directing law enforcement agencies under their control

through the appointment of agency chief executives and the setting of basic policy. City councils, county boards, state legislatures, and Congress exercise control through the budgetary process. In addition, a number of American cities—notably Los Angeles, San Francisco, Detroit, St. Louis, and Kansas City—are governed by police commissions. These are specialized government bodies whose sole function is to govern the law enforcement agency. In the context of the long-standing controversy over police misconduct, however, these agencies do not meet the definition used in this article. While they have general responsibility for the police department, they have not (with the exception of Detroit) taken on a direct role with regard to citizen complaints against police officers.³

The core assumption underlying citizen oversight of the police is that elected officials, police commissions, and police departments have failed to address adequately the problem of police misconduct and the resulting citizen complaints. Consequently, advocates of oversight argue that it is necessary to create specialized agencies or procedures to handle citizen complaints.

III. The Growth of Citizen Oversight

The idea of citizen oversight of the police arose in the 1930s and became a reality in the 1950s as part of the civil rights movement.⁴ Incidents of excessive use of force—or at least those that became newsworthy incidents—typically involved an African-American citizen and a white police officer. In 1968, the Kerner Commission found police misconduct and the failure of police departments to adequately investigate citizen complaints to be one of the major causes of the riots of the 1960s.⁵ The 1981 U.S. Civil Rights Commission report, *Who is Guarding the Guardians?*, found similar problems more than a decade later.⁶ The movement for police accountability, consequently, has been one part of the larger civil rights movement. Pioneering citizen review agencies were created in Philadelphia (1958) and New York City (1966), but both had been abolished by the end of the 1960s as a result of political pressure from local police unions.⁷

Citizen oversight quietly revived in the 1970s and spread slowly. By 1980 there were an estimated thirteen agencies in the country, and by 2002 more than one hundred.⁸ The coming of age of the oversight movement was marked by the creation of professional associations, first the International Association of Citizen Oversight of Law Enforcement (IACOLE) in 1985 and,

later, the National Association for Citizen Oversight of Law Enforcement (NACOLE).⁹

Several factors explain the growth of oversight. Incidents of serious police misconduct continued to occur in virtually every American city despite a wide range of police reforms since the 1960s.¹⁰ Although there have been no systematic studies of public opinion on this subject, it appears that an increasing number of Americans believe a serious problem of police misconduct does exist and the traditional mechanisms for investigating citizen complaints are not adequate. Whereas in the 1960s police unions were able to successfully play the “crime card,” arguing that oversight would cripple crime-fighting efforts,¹¹ by the 1980s, such appeals were increasingly trumped by concerns about police accountability.

“Although there have been no systematic studies of public opinion on this subject, it appears that an increasing number of Americans believe a serious problem of police misconduct does exist and the traditional mechanisms for investigating citizen complaints are not adequate.”

The shift in public attitudes about oversight from the 1960s to the present owes much to the various revelations about official misconduct associated with the Watergate scandal. Americans were sensitized to the need for effective controls over the behavior of these agencies. A series of federal laws since the Watergate era indicates the growing public concern about the need for oversight of government agencies. The 1978 Inspector General Act, for example, created oversight procedures for a number of federal agencies.¹² Federal law also requires ombudsmen for nursing homes to ensure quality care for patients.¹³ Meanwhile, the 1974 Privacy Act and the pre-Watergate Freedom of Information Act (1966) represent efforts to hold government agencies accountable by controlling how they use information and giving citizens greater information about their activities.

Finally, the fact that a movement for citizen oversight of the police arose in other English-speaking countries in the 1970s and has since spread to other parts of the world suggests that the demand for oversight is not a unique American phenomenon, but rather a common concern in all urban industrial societies.¹⁴

IV. The Different Forms of Oversight

Existing citizen oversight agencies take several different forms.¹⁵ To the non-specialist, the variety of different structures, powers, and procedures is bewildering. It is possible to make sense out of this by identifying two basic categories. The first category, in what might be called the traditional *citizen review board* model, consists of an external and independent agency that has the authority to receive and investigate citizen complaints against police officers. Agencies within this category are authorized to reach a decision about the merits of each complaint and forward a recommendation to the police chief, but not to impose discipline on officers themselves. The New York City Civilian Complaint Review Board (CCRB)¹⁶ and the San Francisco Office of Citizen Complaints (OCC)¹⁷ are examples of this model.

A number of oversight agencies are labeled review boards but lack the crucial power to independently investigate complaints. The Kansas City Office of Citizen Complaints (OCC), for example, reviews investigative files that are conducted by police internal affairs units. These agencies are authorized to make a recommendation based on the material presented to them. Lacking authority to investigate complaints independently, these review boards provide only very limited citizen input into the complaint process.

A second category of oversight agencies employs the *auditor* model.¹⁸ In these agencies, police departments retain responsibility for receiving and investigating citizen complaints, while auditors have responsibility for auditing departmental complaint processes for purposes of quality control. Auditors are able to request additional investigation in cases where they find the police investigation inadequate and they can recommend changes in police department policies and procedures. The San Jose Independent Police Auditor (IPA) is one of about eight auditor-model oversight agencies.¹⁹

A crucial distinction between the review board and auditor models of oversight involves their respective goals and their relationship to the larger issue of police accountability. The review board model focuses on individual citizen complaints and is analogous to the criminal trial process: a fact-finding process, governed by strict rules of evidence, designed to determine guilt or innocence.²⁰ The key assumption is that review of complaints by persons who are not sworn officers will result in more independent investigations, more sustained complaints, more disciplinary actions against officers, and greater deterrence of future misconduct (see the discussion of this issue below).

The auditor model, on the other hand, focuses on the police organization and organizational procedures. In a process known as policy review, the auditor model

seeks to identify problems in the complaint process or other police policies and recommend corrective action to the chief executive. The San Jose IPA, for example, made a total of forty-eight recommendations between 1993 and 2000, virtually all of which were adopted by the San Jose Police Department.²¹ The underlying assumption is that these recommendations will have a preventive effect, reducing the likelihood of certain forms of misconduct occurring in the future.

In one of the most important examples of the auditor model's focus on organizational change, the Special Counsel to the Los Angeles Sheriff's Department (LASD) investigated the department's troubled Century Station, where there had been a large number of officer-involved shooting incidents. The investigation found that the problem was not simply a few troublesome officers. Instead, it identified a set of management practices that resulted in lax supervision, supervision by inexperienced sergeants, and a bad reputation for the station that affected officer morale, on-the-street performance, and community perceptions of it.²² The review board approach of responding only to citizen complaints on a case-by-case basis was not an effective way to address the underlying management problems at the root of the Century Station's problems.

There are a number of variations within the auditor model. The most comprehensive approach is the Special Counsel to the Los Angeles County Sheriff's Department. Originally created to help reduce the cost of civil litigation arising from police misconduct, the Special Counsel has examined virtually every issue within the LASD that might have some impact on officer conduct on the street (e.g., the canine unit, racial and gender issues within the department, including sexual harassment, information management systems, the promotional process, and so on). The investigation of the Century Station described above is a good example of the focus on management issues rather than individual officer misconduct. The Seattle Office of Police Accountability (OPA), meanwhile, is directed by a non-sworn person who is a high-ranking employee of the police department; hence, that official has a somewhat awkward dual status as both an "outsider" and an "insider."²³

Adding to the complexity of oversight models, the functions of the review board and auditor models are not entirely mutually exclusive. The San Francisco OCC, a review board, also engages in auditor-style policy review and has made a number of policy recommendations over the years, including a total of twelve in 1999.²⁴ The Pittsburgh Citizen Police Review Board (CPRB) is also specifically authorized to review police department policies.²⁵

Advocates of the auditor model argue that the review board approach is unlikely to bring about last-

ing change and improvement. By focusing on individual complaints, it tends to make scapegoats of individual officers, deflecting attention away from management problems that tolerate or even encourage officer misconduct. Additionally, there is no evidence that disciplinary action against guilty officers is likely to deter future misconduct by other officers.

Critics of the auditor model argue that auditors have no power to compel changes in the management of police departments. In some jurisdictions the chief executive is required to respond in writing, but not compelled to accept recommendations. In reply, advocates of the auditor model point out that the power of review boards is also limited to making recommendations and that they cannot impose discipline on officers found guilty of misconduct.²⁶ Also, they argue that the policy review process opens up historically closed police organizations and provides the public with valuable information about policies and procedures—adding an important element of transparency. Finally, the policy recommendation process, even where recommendations are rejected, represents a structured and orderly means of addressing police policy issues.²⁷

In short, there are two basic models of citizen oversight of the police (with a number of variations on each model). The two models have very different goals with respect to their role in curbing police misconduct and enhancing police accountability. As the next section argues, however, there is a dearth of evidence regarding the effectiveness of any form of oversight.

V. The Effectiveness of Oversight

The central policy question with regard to citizen oversight is whether it is more effective than traditional internal review of citizen complaints. A related question is whether one form of oversight is more effective than other alternative forms. Unfortunately, there is little, if any, researched evidence on these questions. There have been few studies that meet the criteria of scientific research: conducted by independent researchers, guided by a clearly articulated theory, with controls for relevant variables, and publication in a peer-reviewed scholarly journal.²⁸ The public debate over oversight has been waged largely on the basis of political convictions. Advocates of oversight believe that it is better than the traditional internal review of complaints, but have little evidence to support that belief. By the same token, opponents of oversight believe that it undermines effective police management and policing on the street, but have no evidence to support their view. Even worse, the debate has focused on one particular aspect of the review of citizen complaints, not only on the basis of highly unreliable data, but also to the exclusion of other aspects of citizen oversight.

There is legitimate cause for concern about the effectiveness of citizen oversight as a remedy for police misconduct. While there are several decades of investigative reports indicating that internal police complaint review procedures are inadequate or in some cases even abusive,²⁹ there is also evidence that some oversight agencies have failed to function effectively. In 2001, the U.S. District Court ended a Justice Department consent decree against the Pittsburgh Police Department, but not against the Office of Municipal Investigations (OMI), which was beset by serious problems in handling citizen complaints.³⁰ A task force report on the New Orleans Office of Municipal Investigations in 2001 was highly critical of the agency and recommended its replacement by a different form of oversight.³¹ Over the years, the New York City Civilian Complaint Review Board (CCRB) has been the subject of critical reports by the New York Civil Liberties Union (NYCLU), the leading advocate of citizen oversight in the city.³²

Moreover, public discussions of the effectiveness of oversight generally fail to take into account the different goals of oversight. Citizen oversight has six different goals.³³ These goals are: (1) providing more independent and fair investigations of citizen complaints; (2) sustaining a higher rate of complaints in favor of complainants; (3) producing more discipline of officers found guilty of misconduct; (4) more effectively deterring future misconduct; (5) providing a more satisfactory experience for complainants; and (6) as a consequence of one or more of the above items, enhancing the overall professionalism of the police. The review board and auditor models address these goals in different ways.

With respect to the first goal, there has been very little discussion of what “independent” means.³⁴ There are three different dimensions of independence.³⁵ Structural independence means that the unit investigating citizen complaints is organizationally separate from the police department. Procedural independence means that the unit investigating complaints acts in a way that is independent of the police department. Perceived independence means that the public views it as being independent of the police department. Thus, it is possible to have a structurally independent oversight agency that, for one reason or another, is the captive of the police department it nominally oversees. Similarly, it is possible to have an oversight agency that does function independently but is not perceived as such, with the result that it does little to improve police-community relations. More research is needed to disentangle and evaluate the various aspects of independence in the context of citizen oversight of the police.

The debate over oversight has focused almost exclusively on the sustain rate, defined as the percentage of complaints sustained in favor of the complainant. Although advocates of oversight point out

that internal complaint procedures sustain only about ten to thirteen percent of complaints, the evidence indicates that oversight agencies have roughly similar sustain rates. A number of experts on policing, including this author, argue that citizen complaints are inherently difficult to sustain. There are generally neither independent witnesses nor objective forensic evidence (e.g., medical records) that would facilitate a clear resolution. Consequently, most complaints are the proverbial “swearing contests,” with each side making allegations that are not supported by independent evidence. The lack of evidence affects the investigation of complaints by internal police investigators and external citizen review investigators alike. Because sustain rates are inherently low, it is pointless to use them as the sole measure of performance.

In addition to problems with the sustain rate, there are serious problems with the underlying official data on citizen complaints. It would seem that the data cannot be used either to evaluate the performance of a police department over time, or to compare police departments in different cities.³⁶ The number of complaints may rise or fall for one of two completely opposite reasons. Complaints may rise because police conduct is deteriorating or because citizens have greater confidence in the complaint system. In fact, there is some evidence that the more open and accessible a complaint system is perceived to be, the more likely it is that complaints will be filed. By the same token, the number of complaints may fall because officer conduct is improving or because citizens have lost confidence in the complaint process. Attempts to compare different cities are hindered by the fact that there are no uniform standards for receiving and classifying citizen complaints.

There has been no research on the question of whether citizen oversight deters future police misconduct. The review of complaints is only one of many factors that influence police officer behavior on the street and it would be extremely difficult to design a study that could successfully isolate the independent effect of a particular form of citizen complaint review.

Some of the auditor model oversight agencies have generated and published data related to their effectiveness. Particularly notable in this regard is the Special Counsel to the Los Angeles Sheriff’s Department. It has documented, for example, a decline in civil litigation and payments arising from police misconduct claims. The total docket of excessive force lawsuits declined from an annual average of 300 cases in fiscal years 1992-93 and 1993-94 to slightly under 100 in fiscal years 1999-2000 and 2000-01.³⁷ It has also documented a decline in the number of deployments of the department canine unit and a consequent decline in the number of citizens bitten by the unit’s dogs—from an average of slightly more than 50 in 1991 and 1992 to about 20 per year in

2000 and 2001.³⁸ To be sure, this evidence is self-generated by the oversight agency and does not meet the standards of independent scientific research. Nonetheless, it does represent some tangible and persuasive evidence of achievement (and is particularly notable when compared with the lack of such evidence from other oversight agencies), and provides a starting point for independent research.

With respect to the capacity of review boards to provide a satisfactory experience for complainants, the (now abolished) Minneapolis Civilian Review Authority (CRA) instituted a regular client survey procedure whereby both complainants and police officers subject to investigations could submit anonymous evaluations of how they felt they were treated. The surveys consistently found that both complainants and officers gave the CRA very high marks.³⁹ Customer surveys of this sort are relatively easy to design and implement, can be done at low cost, and potentially yield useful information for policy makers.

In the end, there is very little research on the basic questions related to the goals of oversight—e.g., deterring officer misconduct and providing a satisfactory experience for complainants. Some of the data published by the Special Counsel to the Los Angeles Sheriff's Department indicates success in curbing officer misconduct. For the most part, however, we are unable to provide evidence-based answers for the basic question of whether citizen oversight is an effective mechanism for enhancing police accountability.

VI. Professional Standards for Oversight

The citizen oversight community has not developed professional standards for agencies. It is impossible to provide meaningful answers, for example, even to some basic questions. What size staff is necessary for an effective agency?⁴⁰ How many investigators are needed, given the size of a police department? What criteria should be used for receiving and classifying complaints? What are the proper procedures for investigating individual complaints? What criteria should be used in evaluating testimony and evidence, and determining the proper disposition of complaints?

In fairness, it needs to be pointed out that the law enforcement profession has been derelict in developing professional standards for internal complaint review procedures. The CALEA accreditation standards, which are entirely voluntary in any event, require only that a law enforcement agency have a procedure for handling complaints, but are silent on the details (e.g., number of investigators, proper length of assignment to the unit, etc.).⁴¹ There are no national standards related to such questions as the optimum number of investigators, training for internal affairs investigators, or the length of time an officer should be assigned to internal affairs.

A number of oversight agencies have developed their own procedures that address these questions. The Berkeley (CA) Police Review Commission (PRC), for example, requires that all investigations be completed within seventy-five days.⁴² This is an extremely important issue because failure to complete investigations in a timely manner is a pervasive problem with both police internal complaint procedures and citizen oversight agencies. The PRC also requires that all interviews with complainants, officers, and witnesses be tape-recorded.⁴³ By the same token, the Boise, Idaho, Community Ombudsman has a detailed policy and procedure manual that includes a lengthy policy on the classification of complaints, a clear policy regarding officer cooperation with investigations, the criterion for evaluating evidence and disposing of a complaint, and many other issues.⁴⁴

Nonetheless, many oversight agencies are operating without a comprehensive set of policies and procedures that reflect recognized best practices. There are, however, no commonly accepted standards that would guide either a mayor or city council member considering the creation of an oversight agency, or an agency administrator seeking to do the best possible job. The failure of law enforcement agencies to adopt standards for internal affairs units is equally alarming.

VII. Conclusion

Citizen oversight of the police has reached a new chapter in its development. The first chapter involved a long and bitter fight to establish the legitimacy of oversight as an idea and to create permanent oversight agencies. That battle has largely been won. The new and second chapter involves putting oversight on more solid footing by addressing two important issues. First, the oversight community and the academic research community need to address the question of the effectiveness of oversight. Performance measures need to be developed and research efforts meeting the highest standards of scientific research need to be undertaken. Second, oversight agencies need to develop a set of professional standards for handling complaints and other activities they engage in.

Citizen oversight is a major innovation in American law enforcement. The growth of oversight agencies has transformed the institutional landscape of policing, requiring historically closed police departments to deal with external, citizen-run agencies on a routine basis. Given recent trends, it is reasonable to conclude that oversight is a permanent feature of the criminal justice system. The issues for the future involve the impact of oversight on policing, in particular taking steps to ensure that it achieves its goal of reducing police misconduct and developing procedures to document its impact.

Endnotes

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2. Andrew Goldsmith & Colleen Lewis, eds., *Civilian Oversight of Policing: Governance, Democracy and Human Rights* (2000). See, e.g., the Canadian Association for Citizen Oversight of Law Enforcement (CACOLE) at www.cacole.org.
3. The Los Angeles Board of Police Commissioners has been criticized for years for being too deferential to the Los Angeles Police Department. Joe Domanick, *LAPD: To Protect and to Serve: The LAPD's Century of War in the City of Dreams* 151–53 (1995). The Detroit Board of Police Commissioners does maintain a civilian-run complaints investigation office, but the commission and the police department have been heavily criticized for failing to address police misconduct. Edward Littlejohn, *The Civilian Police Commission: A Deterrent of Police Misconduct*, 59 U. Detroit J. Urban L. 5 (Fall 1981).
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5. National Advisory Comm'n on Civil Disorders (Kerner Commission) Report (1968).
6. U.S. Comm'n on Civil Rights, *Who is Guarding the Guardians? A Report on Police Practices* (1981).
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8. *Id.* at 6. Links to oversight agencies can be found at <http://www.nacole.org> and <http://www.policeaccountability.org>.
9. IACOLE has been only minimally functional in recent years. It has been largely supplanted by the National Association for Citizen Oversight of Law Enforcement (NACOLE). <http://www.nacole.org>.
10. These reforms include improvements in recruitment and training standards, administrative rulemaking, the employment of racial and ethnic minorities and women, team policing, community policing, problem-oriented policing, and a willingness to base reforms on academic research. They are described in David Bayley, *Police For The Future* (1994) and Samuel Walker & Charles M. Katz, *The Police in America: An Introduction* (4th ed., 2002).
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12. Paul C. Light, *Monitoring Government: Inspectors General and the Search for Accountability* (1993).
13. Jo Harris-Wehling, Jill C. Feasley, & Carroll L. Estes, *Real People Real Problems: An Evaluation of the Long-term Care Ombudsman Programs of the Older Americans Act* (1995).
14. Goldsmith & Lewis, *supra* note 2.
15. The categories used in this analysis are explained in greater detail in Walker, *supra* note 1.
16. Available at http://www.ci.nyc.ny.us/portal/index.jsp?pageID=nyc_home.
17. Available at http://www.sfgov.org/site/occ_index.asp.
18. Samuel Walker, *New Directions in Citizen Oversight*, in *Problem-Oriented Policing* (Tara O'Connor Shelley & Anne C. Grant eds., 1998).
19. The auditor model is discussed at <http://www.policeaccountability.org/>.
20. Samuel Walker & Betsy W. Kreisel, *Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures For Accountability of the Police*, 15 Am. J. Police 65 (1996).
21. San Jose Independent Police Auditor, 2001 Year End Report at 66–71 (2002).
22. Special Counsel Merrick Bobb, 9th Semiannual Report at 7 (Jun. 1998). Special Counsel Merrick Bobb, 15th Semiannual Report at 9 (Jul. 2002).
23. Available at <http://www.ci.seattle.wa.us/police/opa/>.
24. Available at http://www.sfgov.org/site/occ_index.asp.
25. Available at <http://www.city.pittsburgh.pa.us/cprb>.
26. Community advocates of review boards often demand that a board be given the power to discipline officers. Such proposals, however, generally conflict with local and/or state laws specifying that law enforcement chief executives have the ultimate authority to discipline officers under their command.
27. Walker, *supra* note 1, at 93–104, 149–57.
28. The best discussion of what would be required for thorough research on the effectiveness of oversight is David Brereton, *Evaluating the Performance of External Oversight Agencies* in Goldsmith & Lewis, *supra* note 2, at 105.
29. Kerner Commission, *supra* note 5; U.S. Comm'n on Civil Rights, *supra* note 6.
30. The court's judgment was based on the report of the court-appointed auditor: Pittsburgh, Auditor's Eighteenth Quarterly Report: Quarter Ending Feb. 16, 2002 (2002).
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32. New York Civil Liberties Union, *Five Years of Civilian Review: A Mandate Unfulfilled* (1998); New York Civil Liberties Union, *A Seventh Anniversary Overview of the Civilian Complaint Review Board* (2000).
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35. This analysis is developed at greater length in Walker, *supra* note 1, at 121–42.
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40. Redesign team, "Minneapolis Civilian Police Review Authority," November 1997.
41. Commission on Accreditation for Law Enforcement Agencies, *Standards for Law Enforcement Agencies*, ch. 52 (4th ed. 1999).
42. Berkeley Police Review Commission, *Regulations For Handling Complaints Against Members of the Police Department*, <http://www.ci.berkeley.ca.us>.
43. *Id.*
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The New York Experience: Existing Models of Citizen Oversight

By Justina R. Cintrón

I. Background and Introduction

Citizen oversight of law enforcement is not a novel concept. In fact, the notion that citizens should have some level of involvement and input into the process through which complaints of police misconduct are received, handled, investigated and disposed of “first emerged as a radical idea” in the late 1920s.¹ Between the late 1920s and the mid 1950s, the idea of citizen involvement in the complaint process slowly spread; following World War II, citizen oversight “was eventually embodied in a few experimental agencies.”²



Beginning in the late 1950s through the 1960s, citizen oversight of the police was “a highly controversial idea, dismissed as radical and dangerous.”³ While it drew its primary support from the civil rights and civil liberties communities, the post-civil rights movement coupled with the community-police relations crisis of the 1960s “thrust the issue of citizen oversight of the police into national prominence.”⁴ Bitter conflicts erupted over this issue and ultimately led to the dissolution of the citizen review boards in New York City and Philadelphia. By the end of the 1960s, the citizen oversight movement appeared to be dead.⁵

The creation of the Kansas City Office of Citizen Complaints in 1969 marked the revival of the oversight movement in the United States.⁶ With little publicity, the oversight movement quietly grew in the 1970s, picked up momentum in the early 1980s, and became “a full-fledged national movement” by the mid-1980s through the 1990s.⁷

Today, there are more than one hundred oversight agencies in the United States.⁸ These agencies cover over eighty percent of the largest U.S. cities and “serve nearly one-third of the American population.”⁹ Citizen oversight is also part of the international landscape. There are citizen agencies that oversee police departments in the United Kingdom, Australia, New Zealand, Canada, Ireland, Scotland and Hong Kong.

By the end of 2002, eleven citizen oversight bodies had been established in the state of New York. These

agencies include: the Albany Citizens’ Police Review Board; the Binghamton Police/Community Relations Advisory Board; the Buffalo Commission on Citizens’ Rights and Community Relations; the town of Clarkstown Civilian Complaint Review Board; the Ithaca Community Police Board; the village of Ossining Civilian Police Complaint Review Board; the New York City Civilian Complaint Review Board; the Rochester Civilian Review Board; the Schenectady Civilian Police Review Board; the Syracuse Citizen Review Board; and the Yonkers Police Professional Standards Review Committee. Although more than half of these agencies cover New York’s largest cities, citizen oversight is now emerging in villages and towns across the state.

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II. Models of Citizen Oversight

Citizen oversight is defined as “a procedure through which the investigation and disposition of citizen complaints against police officers involves some input from individuals who are not themselves sworn officers.”¹⁰ According to Professor Samuel Walker, the leading expert in the field, there are several different models of citizen oversight that currently exist.

Class I Agencies are oversight entities responsible for receiving and investigating citizen complaints.¹¹ These agencies are separate and external to the police department, and are staffed by non-sworn persons who conduct the initial fact-finding investigation of individual complaints.¹² The New York City Civilian Complaint Review Board, town of Clarkstown Civilian Complaint Review Board, and the Ithaca Community Police Board are examples of *Class I Agencies*.

Class II Agencies review complaint investigations conducted by the police department.¹³ While there is citizen input in the review of investigative reports, these agencies rely upon the investigations conducted by the police.¹⁴ The Albany Citizens’ Police Review Board, the Ossining Civilian Police Complaint Review Board, the Rochester Civilian Review Board, Schenectady Civilian Police Review Board, the Syracuse Citizen Review Board, and the Yonkers Police Professional

Standards Review Commission are examples of *Class II Agencies*.

Class III Agencies provide appellate review.¹⁵ While “police departments remain responsible for receiving, investigating, and disposing of complaints,”¹⁶ these agencies hear appeals of complaint investigations and dispositions made by the police department.¹⁷ *Class III Agencies* generally have “the least independen[ce] and the lowest level of citizen involvement.”¹⁸ The Binghamton Police/Community Relations Advisory Board is an example of a *Class III Agency*.

Class IV Agencies “review, monitor, or audit the police department’s complaint process.”¹⁹ These agencies “do not investigate individual complaints.”²⁰ However, they often “play a larger role in reviewing police department policies and procedures and making recommendations for change.”²¹ Most citizen police oversight entities in New York possess *Class IV Agency* powers.

Finally, *Class V Agencies*, the newest model of oversight, involve “non-sworn persons who are employed by the police department and who have some input or control over the complaint process.”²² These agencies are considered hybrids, representing an “insider/outsider” approach to citizen oversight.²³ This model of citizen oversight does not yet exist in New York.

Although an agency may be classified as one model of oversight versus another, many citizen oversight agencies that exist both in New York and around the country incorporate aspects of more than one model.

III. Citizen Oversight in New York

A. Citizens’ Police Review Board (Albany, New York)

A creature of local law enacted in July 2000, the city of Albany Citizens’ Police Review Board (CPRB) was established for the purpose of providing “an independent mechanism to fairly review the conduct of law enforcement officials” in the city of Albany.²⁴ In creating the Albany CPRB, the Albany Common Council sought “to improve communication between the Police Department and the community, to increase accountability and credibility with the public, and to create a complaint review process that is free from bias and informed of actual police practices.”²⁵ The Council found that “an effective program to improve the relationship between the community and the Albany Police Department require[d] certain independent authority and power to review the handling of citizen complaints of police misconduct.”²⁶

The Albany CPRB is a nine-member independent body comprised of five members appointed by the city’s Common Council and four members appointed by the Mayor.²⁷ Members serve three-year staggered

terms,²⁸ and serve without compensation. Unlike other citizen oversight bodies in New York that are required to have members representative of certain designated community interests or constituencies to ensure diversity, the only requirements of the members of the Albany CPRB are that they reside in the city of Albany; possess a reputation for fairness, integrity and responsibility; have a demonstrated and active interest in public affairs and service; and not be an officer, employee or relative of an officer or employee of the city.²⁹ However, in appointing members to the Board, the legislation directs that the Common Council and Mayor “endeavor to reflect community diversity in their appointments, including income level, race, ethnicity, age, gender, sexual orientation, and experience, and . . . solicit recommendations from the community.”³⁰

Outside of the enabling legislation, the Albany CPRB operates under self-created procedures and bylaws, which govern the transaction of Board business.³¹ Seven members of the CPRB constitute a quorum for the purpose of conducting public business, and five votes are required for the Board to take any action.³² A member of the Board may not participate as a voting member until he or she has completed an orientation program and has graduated from the Albany Police Department’s Citizen’s Police Academy within six months of the start of the member’s term.³³ CPRB members are required to continuously participate in training,³⁴ and maintain “an ongoing program for the education of the public as to the mission and purposes of the CPRB process and the law.”³⁵

The Albany CPRB is a *Class II Agency*. Under the enabling legislation, the Albany CPRB is empowered to review and comment upon completed investigations of complaints made by citizens against members of the Albany Police Department for alleged misconduct. While investigations of citizen complaints are conducted by the police department’s Office of Professional Standards (OPS), the Board has the authority, after review and deliberation of the department’s preliminary report of its findings, to: 1) render a finding on the complaint; 2) request that OPS conduct further investigation of the complaint; 3) obtain further case-specific information from the Chief, including written materials, audio or video tapes, and related documents; or 4) refer the complaint to mediation.³⁶

In addition to its complaint review authority, the CPRB maintains the power to “conduct public and closed meetings”³⁷ for the review of complaints, and “may make recommendations to the Common Council and to the Mayor regarding police policies and practices relevant to the goals of community policing and the exercise of discretionary authority by police officers.”³⁸

Like many oversight agencies in New York and across the country, the scope of the CPRB's authority does not include the power to subpoena testimony or the production of evidence. Under the legislation, the CPRB may seek authorization from the Common Council to conduct an independent investigation on the Council's behalf, and may request that the Common Council use its subpoena power to call witnesses and require the production of documents.³⁹ However, the exercise of this expanded authority is limited to those complaints alleging use of excessive force or a violation of civil rights, and may only be invoked in cases where the Board has returned the complaint to OPS for further investigation; is dissatisfied with the outcome of the additional investigation; has forwarded the complaint to the Mayor and the Police Chief for review of the investigation; and is dissatisfied with the extent and/or quality of the Mayor's and the Chief's review.⁴⁰

Unique to the Albany CPRB is its power to appoint individuals to observe and monitor OPS's investigation of those complaints that allege the use of excessive force or a violation of civil rights.⁴¹ Although "monitors" maintain no independent investigative powers, their presence during the investigation of a complaint serves to ensure that the Board has some level of oversight and input during the investigation of those complaints alleging more serious incidents of misconduct.

Also unique to the Albany CPRB is the relationship it shares with the Government Law Center of Albany Law School (GLC). When the Board was created, the GLC was retained by the city of Albany to provide, among other things, substantial administrative support services to assist the Board in fulfilling its duties and responsibilities under the law. These services include: training board members; assisting with the coordination of the Board's ongoing program of public education; preparing quarterly and annual reports; assisting with drafting the Board's bylaws and procedures; compiling and retaining a list of independent investigators for assignment to cases alleging excessive use of force; coordinating the Board's mediation program; and overseeing all aspects of the CPRB's day-to-day operations. The unique partnership between the GLC and the Albany CPRB is the only one of its kind in the country.⁴²

B. Police/Community Relations Advisory Board (Binghamton, New York)

In February 1990, the Binghamton City Council enacted a local ordinance recognizing and acknowledging the establishment of the Police/Community Relations Advisory Board (PCRAB).⁴³ According to the ordinance, the Binghamton PCRAB was created for the "purpose of working with the police and the community."⁴⁴ Its mission, in part, is to "help the police depart-

ment meet the needs of the community and to help the community meet the needs of the police department."

The Binghamton PCRAB, like the Albany CPRB, is in an "independent, autonomous body," which operates under self-created bylaws.⁴⁵ It is comprised of nineteen members, all of whom are appointed by the Mayor and serve three-year staggered terms.⁴⁶ Of the nineteen PCRAB members, fifteen are classified as voting members and four are classified as non-voting members. In addition to the requirement that voting members reside in the city of Binghamton,⁴⁷ the bylaws provide that voting members be represented as follows: four members-at-large; one businessperson; one clergy member; two high school students; one Police Benevolent Association (PBA) member; the Chief of Police; two school district administrators; one senior citizen; one tenant representative; and one Urban League representative.⁴⁸ Representation of non-voting members, pursuant to the bylaws, consists of: the Mayor of the city of Binghamton; two members of the steering committee of the Sky Lake Retreats; and the President of the Urban League.⁴⁹ According to the bylaws, two-thirds of the regular voting Board members constitute a quorum for the purpose of transacting the business of the Board.⁵⁰

While the ordinance establishing the Binghamton PCRAB does not specifically enumerate the power and authority of the Board, its bylaws provide that the PCRAB shall focus its efforts in five major areas: 1) personal interaction; 2) education; 3) advocacy; 4) conflict resolution; and 5) monitoring of the Action Plan.⁵¹ According to the Mission Statement contained within the Board's bylaws, the PCRAB is empowered to serve as "an advocate for improved cooperation and communication between police officers and members of the community by welcoming any grievances or complaints from the police department or members of the community," and "shall strive to be a conciliatory and healing influence should conflict and crisis arise."⁵²

Although the Binghamton PCRAB possesses the review authority traditionally held by a *Class II Agency*, the Board primarily functions as a *Class III Agency*. Like the Albany CPRB, the Binghamton PCRAB has the authority to review and comment upon completed investigations conducted by the police department's Internal Affairs Division. However, it is *only* when a complainant is unsatisfied with the outcome of the Internal Affairs investigation that the PCRAB is empowered, through an appointed committee from its membership, to review the investigation and report of Internal Affairs, and determine if proper procedures and laws were followed.⁵³ At the completion of its review, the committee is authorized to make a recommendation to the Mayor, the Chief of Police and the Board,⁵⁴ and the complainant is advised of the finding.⁵⁵

In addition to its review and advisory authority, the Binghamton PCRAB may hold public meetings and refer complainants to mediation if the complainant wishes to resolve his or her complaint through a less formal process.⁵⁶ The Binghamton PCRAB is also authorized, through its bylaws, to suggest, welcome and assist in implementing programs to: achieve personal interaction, achieve the exchange of basic information, and maintain a mutual understanding of the needs, feelings and aspirations among the police department, city administration and members of the community, particularly members of the minority community.⁵⁷

C. Commission on Citizens' Rights and Community Relations (Buffalo, New York)

The Buffalo Commission on Citizens' Rights and Community Relations (CCRCR) was created in 1999 as part of a revision to the city's charter, replacing the then existing Commission on Human Relations.⁵⁸ The Commission "was established to research, investigate and facilitate the filing of complaints; review police investigations of police misconduct; and report and make recommendations to the Mayor and the Common Council."⁵⁹ According to the city charter, the mission of the CCRCR is three-fold: 1) "to eliminate prejudice, intolerance, bigotry and discrimination"; 2) "to encourage equality of treatment and prevent discrimination against persons based upon race, ethnic background, cultural background, language, religion, gender, sexual orientation, disability, nationality and age"; and 3) "to assure respect for the civil liberties of all citizens."⁶⁰

The Buffalo CCRCR is comprised of eleven members, appointed by the Mayor and confirmed by the Common Council, who serve four-year staggered terms and serve without compensation.⁶¹ Other than the requirement that one member of the CCRCR have law enforcement experience,⁶² the city charter provisions governing the Buffalo CCRCR do not require that Commission members be representative of certain designated groups or constituencies. The charter does, however, impose residency⁶³ and age⁶⁴ requirements on all members of appointed boards, commissions, committees, councils and other like bodies of the city of Buffalo.

Under the city charter, a quorum of the CCRCR is required to conduct business and hearings, and all matters before the Commission shall only be decided by a majority vote of the members present.⁶⁵ Like many oversight agencies that operate under self-created rules and guidelines, official business of the CCRCR is conducted according to its Protocols for Conduct, adopted and enacted in April 2002.⁶⁶

Unlike its predecessor, the Buffalo CCRCR has the power to appoint an executive director, a field representative (or community relations advocate) and a secretary to assist in administering the Commission's busi-

ness and carrying out its day-to-day responsibilities and duties.⁶⁷ In addition, the CCRCR may "expend, contract for, or direct the expenditure" of sums "appropriated by the common council or otherwise made available by grants" for facilities, supplies, materials and personnel.⁶⁸

The Buffalo CCRCR is a hybrid model of citizen oversight, incorporating aspects of *Class I*, *Class II*, and *Class IV Agencies*. Under the city's charter, the CCRCR is empowered to "hold public and private hearings and take testimony under oath, and to issue subpoenas requiring attendance of persons [at hearings] and the production of books, papers and other things."⁶⁹ The Commission may "request the cooperation of other agencies of city government,"⁷⁰ and has the authority to "investigate . . . incidents, patterns and causes of discrimination on grounds of race, ethnic background, cultural background, language, religion, gender, sexual orientation, disability, nationality and age."⁷¹ In these respects, the Buffalo CCRCR functions as a *Class I Agency*.

The charter, however, also authorizes the Buffalo CCRCR to review the police department's completed investigation of a complaint of police misconduct, and "review, monitor, report on, and recommend action . . . concerning the police department's (I) initial and continuing training program in community relations and respect for citizens' rights; and (II) standards and procedures for investigating, acting upon, and resolving complaints of police misconduct."⁷² In these respects, the Commission functions as both a *Class II Agency* and *Class IV Agency*.

Outside of its investigatory, review and monitoring functions, the Buffalo CCRCR also maintains the power to "assist citizens with filing and pursuing complaints of police misconduct;"⁷³ to "develop programs in cooperation with civic, community and civil rights organizations and state and federal agencies to improve relations among [the] city's racial, religious, ethnic, and other communities and build an inclusive sense of community throughout the city;"⁷⁴ and to "examine, assess and recommend action on issues of equal opportunity and respect for cultural diversity within city government and its services and programs."⁷⁵

Unique to the Buffalo model of citizen oversight is its highly organized committee structure. In addition to its Executive Committee, which is comprised of the Commission's Chairperson, Vice-Chairperson and Subcommittee Chairpersons, the Buffalo CCRCR is organized into seven committees that carry out the mission, duties and powers of the Commission as set forth in the city charter.⁷⁶ The committee structure consists of: The Citizens' Rights Committee, The Community Relations Committee, The Budget Committee, The Communications Committee, The Police Oversight Committee, The

Personnel Committee, and The Special Ad-Hoc Committee.⁷⁷

Two of the seven committees focus in areas directly related to citizen oversight of police. The Citizens' Rights Committee reviews citizen complaints, initiates investigations and makes recommendations regarding findings and patterns, while the Police Oversight Committee reviews police training and policy for all local law enforcement, researches training and policy in other like cities, and makes recommendations.⁷⁸ The Community Relations Committee, while not directly engaged in activities related to the process of oversight, develops strategies and activities, improves awareness and communication, and makes recommendations that increase the quality of life for citizens of the city of Buffalo.⁷⁹

The Buffalo CCRB, unlike any other police oversight agency in New York, is not limited to oversight of the city's police department. Through its Special Ad Hoc Committee, the Commission also oversees the fire department.

D. Civilian Complaint Review Board (Town of Clarkstown, New York)

Established by the town police department in October 1989, the town of Clarkstown Civilian Complaint Review Board (CCRB)⁸⁰ was created "in order to assure swift and fair review of complaints against police officers."⁸¹

The Clarkstown CCRB is a nine-member body comprised of six civilian members and three police administrators, or alternates of the rank of lieutenant or higher, all appointed by the police commission.⁸² Members sit in panels of three for the purpose of conducting Board business.⁸³ The Board is composed of three panels,⁸⁴ and each panel is comprised of two (2) civilian panelists and one (1) police administrator or alternate person of the rank of lieutenant or higher.⁸⁵ Members are authorized to vote,⁸⁶ serve two-year terms,⁸⁷ and serve without compensation.⁸⁸

To be eligible to serve as a civilian member of the Clarkstown CCRB, members must: 1) be citizens of the United States; 2) reside in the town of Clarkstown; 3) be 18 years of age or older; 4) be neither former members of the Clarkstown Police Department nor present members of a police or law enforcement agency; 5) have no professional, business or financial relationship with any member of the Clarkstown Police Department or with the Clarkstown Police Department as a whole; and 6) have not been convicted of any offense where such conviction would prohibit them from holding public office.⁸⁹ In addition, members of the Clarkstown CCRB are required to undergo appropriate training prior to assuming their responsibilities on the Board.⁹⁰

The Clarkstown CCRB is a *Class I Agency*. Under the enabling order, the Clarkstown CCRB is empowered to "act as an investigative body."⁹¹ In this capacity, the CCRB is authorized "to investigate and make recommendations . . . with regard to complaints . . . [filed] by individuals against a member or members of the Clarkstown Police Department."⁹² The CCRB's role, however, is limited to the investigation of those complaints "defined as an allegation of police harassment, [a] violation of law which would not constitute a crime and the use of language likely to demean the inherent dignity of any person to whom it was directed and tending to incur disrespect for law enforcement officers."⁹³ Complaints that allege "excessive use of force or an act or acts which would constitute a crime or crimes" fall outside of the jurisdiction of the Board, are investigated by the police department's Internal Affairs Division, and are subsequently turned over to the Police Chief and Police Commission.⁹⁴ The Chief of Police reviews complaints and thereafter, refers the appropriate complaints to the CCRB for review.⁹⁵

In addition to the duties and responsibilities specified in the enabling order, the Clarkstown CCRB is governed by self-created rules and regulations.⁹⁶ As part of its investigative authority, the Clarkstown CCRB has power under those rules and regulations to conduct informal hearings in order to review completed investigative reports pertaining to complaints.⁹⁷ While the CCRB is required to hold these hearings in "Executive Session," the complainant and investigating officer are charged with providing statements and pertinent information concerning the events that gave rise to the complaint. In addition, members of the Board may ask questions of the complainant, the investigating officer and the member or members of the police department who are the subject of the complaint.⁹⁸

While the Clarkstown CCRB maintains significant authority as an investigative body, it does not maintain true subpoena power. Statements made during a hearing are not required to be given under oath,⁹⁹ and there is nothing in the enabling order or the rules and regulations granting the Board the power to request the production of documents or other types of evidence relating to a complaint. In addition, the Clarkstown CCRB, like most oversight agencies in New York, does not have the authority to make any recommendations for discipline or sanctions against officers who are the subject of substantiated complaints.¹⁰⁰ The Police Commission maintains this authority.¹⁰¹

A significant and important provision of the Board's rules and regulations is the police union's agreement to "waive the contractual and/or statutory time limits for the commencement of disciplinary charges by the police department when the charges are based on an act . . . which is the subject of a civilian

complaint and the CCRB determines that the complaint is substantiated.¹⁰² This waiver is *only* effective, however, when the officer(s) and the union have been timely served with a copy of the complaint in accordance with the CCRB's rules and regulations.¹⁰³

E. Community Police Board (Ithaca, New York)

Established by local law subsequently incorporated into the city's charter,¹⁰⁴ the Ithaca Community Police Board (CPB) was created for the purpose of serving "as [a] community liaison to the Police Department, actively fostering positive communication between the police and all segments of the community."¹⁰⁵

The Ithaca CPB is comprised of nine Commissioners appointed by the Mayor with the approval of the Common Council.¹⁰⁶ Commissioners must "be chosen from a range of culturally and economically diverse community groups with consideration given to the effect each appointment will have on the diversity of representation, including geographic representation on the Board."¹⁰⁷ They serve three-year terms and cannot receive a salary for their service on the Board.¹⁰⁸ In addition to the requirement that the CPB be composed of eight Adult Commissioners and one Youth Commissioner,¹⁰⁹ members of the Ithaca CPB are required to be residents of the city of Ithaca for at least two years immediately preceding their appointments and cannot be elected city officials.¹¹⁰

Although the Ithaca CPB functions primarily as a *Class I Agency*, it maintains powers often exercised by a *Class IV Agency*. Under the city charter, the Ithaca CPB is empowered to "make provisions for resolving complaints by citizenry related to the delivery of police services."¹¹¹ These provisions are embodied in the Board's complaint procedures,¹¹² which authorize the CPB to investigate formal complaints filed by citizens against members of the Ithaca Police Department "for work and actions performed in the line of duty."¹¹³ Such investigations include an interview with the complainant, witnesses and the officer(s) involved.¹¹⁴ At the conclusion of its investigation, the CPB "forwards its findings and recommendations to the Chief of Police" with the expectation "that appropriate action(s) [will] be taken to resolve the complaint to the mutual satisfaction of all parties."¹¹⁵ In these respects, the Ithaca CPB functions as a *Class I Agency*.

The Ithaca CPB, however, "may recommend rules, bylaws and regulations for the government of the Police Department of the city, not inconsistent with the laws of th[e] state"¹¹⁶ and is required to "recommend, on its own initiative or at the request of the Mayor, the Common Council or the Police Chief, on any matter affecting the policy or performance of the Police Department."¹¹⁷ The CPB maintains the power to "recommend action against any member of the Police Department"¹¹⁸

and "may also "recommend that certain steps be taken to prevent recurrences of similar complaints."¹¹⁹ In these respects, the CPB functions as a *Class IV Agency*.

In addition to the city's charter, the Ithaca CPB's own bylaws and procedures dictate its manner of operation. Under the charter, the CPB is required to hold meetings at least once a month.¹²⁰ Meetings may be open to the public or held in executive session.¹²¹ The bylaws, however, provide that a quorum consisting of a majority of the seated CPB members is necessary for the transaction of the Board's business, and decisions of the CPB may only be made by a majority of the quorum.¹²² Under CPB procedures, the CPB may refer complaints to mediation and Commissioners may serve as mediators.¹²³

Unique to the Ithaca CPB is its provision of a procedure for appealing final board determinations.¹²⁴ Under the CPB's procedures for reviewing a final determination, a board finding may be reviewed upon the submission of a written request made by the complainant and a majority vote of the Board. Review may *only* be requested if the complainant can show a clear likelihood of success on the merits based on one of the following grounds: 1) new evidence advanced by the complainant; 2) evidence of prejudicial treatment toward the complainant; or 3) failure by the Board to have observed its procedures.¹²⁵ Any members involved in the original investigation are excluded from voting on the request for review.¹²⁶

F. Civilian Police Complaint Review Board (Village of Ossining, New York)

In 2000, the village of Ossining passed local legislation creating the Civilian Police Complaint Review Board (CPCRB).¹²⁷ In establishing the CPCRB, the village of Ossining sought to "promote public confidence in the ability of the Village . . . to provide a governmental structure to fairly investigate, review and dispose of civilian complaints made against its police officers."¹²⁸ The CPCRB was thus considered "one step in building a partnership between the police and the community based on trust and mutual respect."¹²⁹

The Ossining CPCRB is a seven-member independent body¹³⁰ whose mission "is to conduct a complete review of police department investigations of [every] complaint[] filed against police officers."¹³¹ Of those seven members, three are appointed by the Village Board from a list of nominees selected by the village's Police Community Relations Advisory Council; two are appointed from nominees selected by the Chief of Police; and the Village Board appoints two.¹³² In addition to the seven members, the legislation directs that "an alternate member . . . be appointed from each of the selection categories . . . [to] serve on the CPCRB when a member is unable to participate due to a conflict of

interest.”¹³³ Members of the CPCRB serve two-year staggered terms,¹³⁴ and serve without compensation.¹³⁵

To be eligible to serve as a member or alternate member of the Ossining CPCRB: 1) civilian members must be residents of the village of Ossining; 2) police members must be employed full-time by the village’s police department; 3) members must agree to a fingerprint check for the purpose of determining the existence of any criminal convictions; 4) members must sign an oath of confidentiality; 5) members must comply with all training requirements; and 6) members must be eighteen years of age or older.¹³⁶ Any person who is an elected official of the village or town of Ossining or the Ossining Free School District who is a member of the Police Community Relations Council, or who has any criminal convictions is disqualified from serving as a member of the Board.¹³⁷

The Ossining CPCRB operates in accordance with the policies, procedures, rules and regulations set forth in its enabling legislation. While it is required to hold monthly meetings,¹³⁸ these meetings are held in closed session “in order to protect the privacy rights of both the complainant(s) and the police officer(s) who may be the subject of the complaint or allegation.”¹³⁹ Five of the seven sitting members, with at least one from each selection category, must be in attendance in order for the CPCRB to conduct business. A majority of four votes is required for the Board to render a finding on a complaint.¹⁴⁰

The Ossining CPCRB is a *Class II Agency*. Under the enabling legislation, the Board is empowered to “conduct a complete and independent review of the police department’s investigation of every complaint” filed by citizens against members of the village of Ossining Police Department.¹⁴¹ Following the initial investigation conducted by the Chief and/or the police department investigator, the CPCRB is provided with the completed investigation, which includes the investigator’s recommendations for command discipline, if any, and all supporting documents. In conducting its review, the CPCRB has the authority to determine if the investigation was sufficient and is required to “assess whether the conclusions reached by the investigator are consistent with the information gathered in the course of the investigation and whether the proposed command discipline, if any, is appropriate.”¹⁴²

The Ossining CPCRB, after a complete review of the police department’s investigation, is required to render a finding on the complaint or communicate its recommendations regarding further investigation. Any decisions as to whether to pursue disciplinary charges, however, rest solely with the Village Board.¹⁴³ Under the legislation, the CPCRB’s review does not “impede or otherwise prevent the filing of disciplinary charges within the applicable statute of limitations.”¹⁴⁴

Outside of its review authority, the Ossining CPCRB “may issue reports and recommendations, at its discretion, to the Chief of Police and the Village Board regarding [practices,] policies and procedures of the police department, based on the [Board’s] review of civilian complaints.”¹⁴⁵

Unique to the village of Ossining model of oversight is the broad application of the CPCRB’s enabling legislation. The Ossining CPCRB legislation functions not only to set out the duties and responsibilities of the Board, but it also directs that certain duties and responsibilities be assumed by the Village Board, the Police Department, and the Police Community Relations Advisory Council. For example, under the law the Police Department and the Police Community Relations Advisory Council are charged with conducting an ongoing general training program in the community about the complaint process, the function of the CPCRB, and the investigative role of the police department.¹⁴⁶ Under the legislation, the Village Board determines whether or not to pursue disciplinary charges,¹⁴⁷ and the Police Department, in cooperation with the CPCRB, is required to produce an annual report, summarizing: the number of complaints received; the types of complaints received; the findings made by the Board; the breakdown of the types of complaints resulting in disciplinary or remedial action; the number of times the CPCRB and Police Chief’s recommendations differed; the number of complaints against individual officers; and a comparison of statistics from previous years.¹⁴⁸

G. Civilian Complaint Review Board (New York, New York)

Created in 1953,¹⁴⁹ abolished in 1966¹⁵⁰ and re-established in 1993,¹⁵¹ the New York City Civilian Complaint Review Board (CCRB) is the oldest citizen oversight agency in the state of New York. In creating the CCRB, the New York City Council declared that “[i]t is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial.”¹⁵² The Council found that “[t]hese inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence.”¹⁵³ Thus, the New York City CCRB was “established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct.”¹⁵⁴

The New York City CCRB is an independent, non-police city agency comprised of thirteen members: Five are selected by the City Council as representatives of each of the five boroughs; three are selected by the Police Commissioner and have experience as law enforcement professionals; and five are selected by the

Mayor.¹⁵⁵ All appointments to the New York City CCRB must reflect the diversity of the city's population.¹⁵⁶

Members of the New York City CCRB are appointed for three-year staggered terms,¹⁵⁷ and receive per diem compensation for the time they spend in board meetings and reviewing cases on board panels.¹⁵⁸ To be eligible to serve on the Board, members must "be residents of the [C]ity of New York;"¹⁵⁹ may not hold any other public office or employment; and must not have any experience as a law enforcement professional or be a former employee of the New York City Police Department.¹⁶⁰ Experience as a law enforcement professional does not include experience as an attorney in a prosecutorial agency.¹⁶¹

Outside of the local law creating the Board, the New York City CCRB operates under self-promulgated rules of procedure¹⁶² as directed by the enabling legislation and in accordance with the New York City Administrative Procedure Act.¹⁶³ The CCRB's Rules not only provide methods and procedures for the investigation of complaints, they also contain procedures for filing complaints; guidelines for the Board's review of investigations and recommendations; and rules for the transaction of Board business. The CCRB is required to hold monthly meetings for the purpose of conducting business and reviewing cases that have been referred for consideration.¹⁶⁴ To register their votes, CCRB members must be present at a meeting of the full Board or a panel of the Board.¹⁶⁵

The New York CCRB is a *Class I Agency*. The scope of the New York CCRB's investigatory authority is the most expansive and effective in the state. Under the enabling legislation, the CCRB is empowered to "receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language."¹⁶⁶ The CCRB is authorized to compel the attendance and testimony of witnesses, including police officers who are the subject of a complaint, at interviews and board hearings, and maintains the power to require the production of records, including records from the New York City Police Department, and other materials necessary to the investigation of a complaint.¹⁶⁷ The Board also has the authority to employ civilian investigators to investigate all complaints.¹⁶⁸

In addition to its significant investigatory authority, the New York CCRB is authorized to review completed investigations conducted by CCRB staff investigators and review recommendations made by the Executive Director of the Board.¹⁶⁹ Such completed investigations and recommendations are assigned to a panel consisting of at least three Board members or may be assigned to the full Board for review.¹⁷⁰ The CCRB's Rules

require that either the panels or the Board employ a "preponderance of the evidence standard" in evaluating cases.¹⁷¹

After its review, the panel or Board is required to prepare a report of its findings and recommendations.¹⁷² Such findings and recommendations constitute the findings and recommendations of the Board.¹⁷³ Under appropriate circumstances, "the panel or Board may . . . return the case to investigative staff for further investigation or a panel may, upon approval of the Board, conduct additional fact-finding interviews."¹⁷⁴ A report of the findings and recommendations made with respect to each case reviewed must be prepared and transmitted to the Police Commissioner.¹⁷⁵

The duties and responsibilities of the New York City CCRB extend beyond the investigation and review of complaints of police misconduct. The CCRB maintains a mediation program, required by its enabling statute, where "a complainant may voluntarily choose to resolve his or her complaint by means of informal conciliation."¹⁷⁶ The purpose of the CCRB Mediation Program "is to provide a quick and voluntary resolution of disagreements between the parties."¹⁷⁷ The CCRB also maintains "the responsibility of informing the public about the [B]oard and its duties,"¹⁷⁸ and is charged with developing and administering an ongoing public education program.¹⁷⁹

The New York City CCRB is the only citizen oversight agency in New York with the power to prosecute police officers for misconduct.¹⁸⁰ In January 2003, the Appellate Division held that "expanding the role of the CCRB to prosecute civilian-initiated complaints would not improperly expand the sphere of the Board's influence . . . [or] diminish[] the Police Commissioner's authority to make the final determination as to appropriate disciplinary sanctions."¹⁸¹

H. Civilian Review Board (Rochester, New York)

The Rochester Civilian Review Board (CRB) was created by a resolution of the City Council in 1992 to replace the then existing Complaint Investigation Committee (CIC).¹⁸² The CRB was the city council's response to a "need for changes to the . . . process of reviewing citizen complaints against the police."¹⁸³ This need was suggested following the council's "thorough and analytical evaluation of police/community relations" in the city of Rochester, as well as in a variety of other cities in New York State and other sections of the country.¹⁸⁴

The Rochester CRB, like the Clarkstown CCRB, is comprised of three-member panels. The CRB panels, however, consist of civilian panelists who are selected on a rotating basis "from a pool of qualified individuals who have been trained by the Center for Dispute Settlement, Inc. (CDS) for such services."¹⁸⁵ From the pool of qualified individuals, the Mayor selects a group of ten

individuals to serve as chairs of the CRB.¹⁸⁶ The Resolution creating the Board directs that the pool of eligible panelists and CRB Chairs, “reflect the overall population of Rochester in its ethnic and racial diversity.”¹⁸⁷

To be eligible to serve as a member of the Rochester CRB, panelists must: 1) reside in the city of Rochester; 2) be a United States citizen; 3) be competent to read and write; 4) be at least eighteen years of age; 5) be committed to completing and abiding by all CDS-required trainings, certifications, rules and procedures; and 6) be recommended by the CRB Screening Committee.¹⁸⁸ In addition, panelists cannot be affiliated with any law enforcement agency and cannot be involved in the criminal justice system.¹⁸⁹

The Rochester CRB, like the Albany CPRB and the Ossining CPCRB, is a *Class II Agency*. Under the resolution creating the Board, the CRB is empowered to review completed investigations conducted by the Professional Standards Section (PSS) of the Rochester Police Department “on all cases involving charges of excessive use of force; any conduct which, if proven, would constitute a crime; and any other matter referred by the Chief of Police.”¹⁹⁰ The purpose of the Rochester CRB’s review is fourfold: 1) to determine whether or not the investigation process was timely, thorough and fair; 2) to recommend a finding with respect to the complaint; 3) to identify and present recommended findings as to any satellite issues; and 4) to make recommendations to the Police Chief.¹⁹¹ The Rochester “CRB is authorized to make any appropriate recommendation to the Chief in regard to revisions to police policies and/or procedures;”¹⁹² the thoroughness, timeliness and fairness of an investigation; and case-related remedial training. However, final determinations and decisions to impose discipline or sanctions ultimately rests with the Police Chief.

Although the Rochester CRB has “the power to interview any witness [civilian or police officer] to a particular complaint,”¹⁹³ this power does not have the force and effect of subpoena power held by *Class I Agencies* like the New York City CCRB.¹⁹⁴ The appearance of any witness before the Rochester CRB is strictly voluntary and the Board may draw no negative inference should a witness decline to appear.¹⁹⁵

In order to obtain a full and adequate investigation of a citizen complaint, the Rochester CRB may request that the City Council conduct its own independent investigation, using its “full subpoena authority to call witnesses and require the production of documents.”¹⁹⁶ This authority may only be exercised in those cases where the CRB has returned the complaint to the PSS for further investigation; is dissatisfied with the outcome of the additional investigation; has forwarded the complaint to the Police Chief and the Mayor for review and additional investigation; and is dissatisfied with

the extent and/or quality of the Chief’s and the Mayor’s review and additional investigation.¹⁹⁷ With some variations, this authority is similar to that which is conferred to the Albany CPRB under its enabling legislation.

Mediation is available to resolve those complaints that fall outside of the jurisdiction of the Rochester CRB.¹⁹⁸ Although it is voluntary for the complainant and the officer, it is encouraged by the City Council as an “important process” that “offers the greatest opportunity to resolve misunderstandings and to build trust between citizens and the police.”¹⁹⁹

Unique to the Rochester CRB is the relationship it shares with the Center for Dispute Settlement, Inc. When the CRB was established, the CDS was retained by the city to provide staff support services to aid the Board in fulfilling its duties and responsibilities under the Resolution. These services include training CRB members and mediators; coordinating the CRB’s outreach and public education programs; preparing annual reports; and overseeing the day-to-day operations of the Board.²⁰⁰

I. Schenectady Civilian Police Review Board (Schenectady, New York)

Modeled after the Albany CPRB, the Schenectady Civilian Police Review Board (CPRB) was established by local legislation adopted in June 2002 to replace the then existing Police Objective Review Committee and Police Community Advisory Board.²⁰¹ In creating the CPRB, the Schenectady City Council, like the Albany Common Council, sought “to improve communication between the Police Department and the community, to increase accountability and credibility with the public, and to create a complaint review process that is free from bias and informed of actual police practices.”²⁰²

The Schenectady CPRB is an eleven-member independent review body.²⁰³ Members of the CPRB are appointed by the Mayor and serve two-year staggered terms.²⁰⁴ The legislation creating the Board directs that appointments to the CPRB “be made with regard to composing a body of members who are involved in community activities, represent diverse constituencies and possess a reputation for fairness, integrity and responsibility.”²⁰⁵ It further directs that appointments be made from recommendations submitted by various local organizations including: 1) the NAACP; 2) the Human Rights Commission; 3) the Chamber of Commerce; 4) the AARP; 5) the League of Women Voters; 6) the Municipal Housing Authority; and 7) the City Council.²⁰⁶ The legislation also requires that one member of the general public be appointed upon recommendation of the citizenry,²⁰⁷ and that the Board include two ex-officio, non-voting members.²⁰⁸

To be eligible to serve on the Schenectady CPRB, members must reside in the city of Schenectady and may not be a member of the Schenectady Police Department, an elected official, a city officer, or an employee of the city.²⁰⁹ In addition, no member may serve or remain on the Board if he or she has been convicted of a felony.²¹⁰

The Schenectady CPRB, like the Albany CPRB, operates under its enabling legislation and maintains the authority to establish its own rules and regulations.²¹¹ Six members of the Schenectady CPRB constitute a quorum for the purpose of transacting Board business. The Board is required to hold regular monthly meetings,²¹² and all meetings must be open to the public, unless an Executive Session is warranted under the state's Open Meetings Law.²¹³ Members are required to participate, within the first year of appointment, in a training provided by the Schenectady Police Department, its Office of Professional Standards and the city of Schenectady's Law Department, and may participate in additional training as agreed upon by the Board.²¹⁴ Unlike its predecessor, the Schenectady CPRB exists independent of the city administration and may hire its own Executive Director²¹⁵ and paid staff to oversee its day-to-day operations and its duties and responsibilities under the law.²¹⁶

The Schenectady CPRB is a *Class II Agency*. Under its enabling legislation, the Board is empowered to review investigations of civilian complaints conducted by the Office of Professional Standards (OPS) of the Police Department.²¹⁷ While members of the Schenectady CPRB may not "participate in an internal affairs investigation or issue subpoenas concerning the same," the legislation requires that the Board "be provided with all documents relating to an investigation."²¹⁸ In cases where the complainant has alleged a violation of civil rights or use of excessive force, "the Board may hire an independent investigator to review the Professional Standards investigation."²¹⁹ After review and deliberation of the investigation of a complaint, the Schenectady CPRB has the power to 1) render findings of approved, disapproved, or unable to be determined; 2) return the complaint to OPS for reevaluation; or 3) refer the complaint to the Mayor or the Common Council.²²⁰

Outside of its review authority, the Schenectady CPRB has the power to "recommend changes to the city policy and procedures to the Mayor, City Council and Public Safety Commissioner, and to review the effectiveness of local policies, laws and ordinances concerning police function and recommend changes as it deems fit."²²¹ In addition, the enabling legislation charges the Board with encouraging and facilitating mediation of complaints as a first step. In doing so, the Board is empowered to establish a list of approved mediators,

detailing their qualifications, for approval by a majority of the Board.²²²

Unique to the Schenectady model of oversight is "the [CPRB's] power to independently review complaints made to [the Board] concerning the policies and procedures of the Schenectady Police Department."²²³ In cases where a complaint about a policy or procedure alleges a violation of civil rights or the excessive use of force, the CPRB may hire an independent investigator to not only review, but also to investigate such complaint.²²⁴ In addition, the Board maintains the authority "to make findings . . . concerning policies and procedures in whatever form it deems necessary, including reports and referrals to any other agency or institution of competent jurisdiction."²²⁵

J. Syracuse Citizen Review Board (Syracuse, New York)

The Syracuse Citizen Review Board (CRB) was created by local legislation enacted in 1993 for the purpose of establishing "an open citizen-controlled process for reviewing grievances involving members of the Syracuse Police Department."²²⁶ In creating the CRB, the Syracuse Common Council sought to "insure public accountability over the powers exercised by members of the Syracuse Police Department while preserving the integrity of the agency that employs them."²²⁷ Thus, the CRB was established "independent of the Syracuse Police Department . . . to hear and review complaints and recommend action regarding police misconduct."²²⁸

The Syracuse CRB is an eleven-member independent body comprised of three members appointed by the Mayor and eight members appointed by the Common Council.²²⁹ Members serve three-year staggered terms.²³⁰ Like members of the Clarkstown CCRB and the Rochester CRB, members of the Syracuse CRB sit in panels of three for the purpose of reviewing investigated complaints.²³¹ Panel membership must be representative of the CRB as a whole, and membership on panels rotates every three months.²³² The three mayoral appointments may not serve on the same panel.²³³

In addition to age and residency requirements,²³⁴ to be eligible to serve on the Syracuse CRB, members of the Board, or their immediate family cannot be employed by the Syracuse Police Department or any local, state or federal law enforcement agency.²³⁵ In addition, members of the Board cannot be the immediate family of any incumbent elected official of the city of Syracuse and cannot have any financial ties with either members of the Syracuse Police Department or any elected city official.²³⁶ Members of the Board cannot have a felony conviction.²³⁷ A practicing attorney, or a member of his or her immediate family, who represents a plaintiff or defendant in a police misconduct lawsuit initiated against the Syracuse Police Department, the

Police Chief, or the Syracuse police union, is ineligible to serve on the Board.²³⁸

The Syracuse CRB primarily operates in accordance with its enabling legislation, which sets forth the Board's powers, duties and responsibilities. Under the legislation, the CRB is required to hold monthly meetings and must hold at least one meeting in each common council district each year.²³⁹ Six members of the CRB constitute a quorum for the purpose of conducting board business,²⁴⁰ and a vote of the majority of the entire Board is required to take action.²⁴¹

The legislation directs the CRB to appoint a Board Administrator who is responsible "on a full-time basis, for the daily administrative work of the Board," which includes, among other things, interviewing citizens making complaints or seeking information about the complaint process; making referrals; representing the Board; assisting in interviewing witnesses and taking statements; advising complainants regarding requests for subpoenas from the Board; offering conciliation services to complainants as an alternative to hearings; researching and seeking out ongoing training for the Board; and recommending and designing public education programs.

Although the Syracuse CRB is a *Class II Agency*, it possesses authority traditionally reserved for a *Class I Agency*. Under the enabling legislation, the CRB is empowered to review completed investigations of complaints made by citizens against members of the Syracuse Police Department. The Internal Affairs (IA) division of the police department conducts initial investigations.²⁴² At the conclusion of its investigation, IA forwards its results to the CRB, who secures the records unless the complainant has requested a board hearing or until such time as the complainant requests a board hearing.²⁴³ The CRB may begin its review after receipt of IA's initial investigation or after the statutory time period has elapsed for IA's completion of its investigation.²⁴⁴ In these respects, the Syracuse CRB operates as a *Class II Agency*.

At the complainant's request, the Syracuse CRB has the power to conduct a full fact-finding hearing.²⁴⁵ Hearings are open,²⁴⁶ held before board panels, and include "testimony by the complainant and any witnesses the complainant or police may want to call."²⁴⁷ By majority vote, the Board may exercise subpoena power to "compel the attendance of witnesses and require the production of such records and materials as are necessary for the investigation and hearing of complaints including records of the SPD and other city agencies."²⁴⁸ The substantial evidence standard is applied during hearings and both the complainant and officer have the right to obtain counsel and cross-examine witnesses.²⁴⁹ Decisions of the panel must be made by majority vote,²⁵⁰ and may be appealed to the full

Board.²⁵¹ In these respects, the Syracuse CRB functions as a *Class I Agency*.

In addition to its review and investigatory authority, the Syracuse CRB "may engage in educational programs designed to promote public awareness of the Review Board process, give citizens information about their rights regarding encounters with the police and publicize the procedure for filing complaints with the Board."²⁵²

Unique to the Syracuse model of citizen oversight is the remedial authority granted to the CRB through its enabling legislation. If, during its review, the CRB finds potential criminal charges, it is required to recommend criminal prosecution and turn its findings over to the District Attorney.²⁵³ Additionally, if misconduct is found the Board is permitted to make written recommendations for sanctions by means of reprimands, suspensions or dismissal.²⁵⁴ The Board may also recommend to the Corporation Counsel that restitution be made "for damage caused to real or personal property, or for medical treatment causally related to the incident."²⁵⁵

Also unique to the Syracuse model of oversight is its incorporation of a Youth Advisory Committee (YAC).²⁵⁶ Members of the YAC are residents of the city between the ages of sixteen and eighteen who serve for a one-year term. The YAC participates in the educational aspects of the CRB; advises the CRB "regarding youth perspectives on the Board's policies and on-going activities and initiatives;" and "may be called upon to assist other youth in their interactions with the CRB."²⁵⁷ The YAC may also "be called upon to advise Hearing Panels in cases involving youth[,] but do not have voting power on the Board."²⁵⁸

K. Yonkers Police Professional Standards Review Committee (Yonkers, New York)

In 1993, the city of Yonkers Police Department adopted a department policy and procedure instituting the Police Professional Standards Review Committee (PPSRC).²⁵⁹ In creating the Yonkers PPSRC, the police department "recognize[d] that the general public has a vested interest in its police department" and that the PPSRC "afford[s] the community an opportunity to review internal investigations that significantly impact [its] interests."²⁶⁰ The mission of the PPSRC is two-fold: 1) "to preserve the integrity and reputation of the department against unjust accusations;" and 2) to "maintain[] the public's trust and sense of security by reviewing completed investigations of alleged misconduct involving department members . . . thereby ensuring a fair, thorough and timely process for all parties."²⁶¹

The Yonkers PPSRC is an eight-member body comprised of Yonkers Police Department members of the rank of sergeant or above who are not supervising offi-

cers,²⁶² one Yonkers Police Officer,²⁶³ and four citizens from the Yonkers community who are selected by the Police Commissioner²⁶⁴ and serve two-year terms.²⁶⁵ In making civilian appointments, the policy and procedure provides that the Police Commissioner will consult with various community and civic organizations, including the Task Force on Police-Community Relations.²⁶⁶

To qualify to serve on the Yonkers PPSRC, members must: 1) reside in Yonkers for a continuous period of one year; 2) have no felony or misdemeanor criminal convictions; 3) be willing to sign a confidentiality agreement and maintain the confidentiality of all records reviewed; and 4) within one year of being selected to serve on the PPSRC, attend and successfully complete the Yonkers Civilian Police Academy and a series of workshops on civil rights and civil liberties of civilians during encounters with law enforcement representatives. Members of the PPSRC may not have any prior professional law enforcement experience (not including experience as an attorney in a prosecutorial agency) or be a present holder of any public office.²⁶⁷ Police department members may not serve on the PPSRC if they are otherwise subject to disqualification because of personal bias or prejudice.²⁶⁸

“One common element of these agencies, however, is the overriding purpose and critical role in improving police/community relations.”

The Yonkers PPSRC is a *Class II Agency*. Under the department’s policy and procedure creating the Committee, the Yonkers PPSRC is authorized to “review the fairness, thoroughness, completeness, and timeliness of completed investigations”²⁶⁹ of allegations of police misconduct. While investigations are conducted by the department’s Office of Professional Standards (OPS), the PPSRC maintains the authority, after review and deliberation of a complaint investigation, to: 1) identify other potential areas for further investigation; 2) return any investigation that the committee feels is deficient; and 3) vote as a Committee on conclusions reached by OPS and prepare and submit a report of its findings to the Police Commissioner.²⁷⁰ Additionally, although the policy and procedure limits the PPSRC’s review of completed investigations related to complaints of misconduct that allege: 1) use of excessive force; 2) abuse of authority; 3) discourtesy; and/or 4) use of offensive language, the Committee has the power to “review other selected cases as requested by the Commissioner of Police.”²⁷¹

Outside of its complaint review authority, the Yonkers PPSRC, like most New York oversight entities,

may “recommend changes or review of policy, procedures, or training for forwarding to the Commissioner of Police.”²⁷² The Committee is also required to institute a public education campaign for the purpose of: 1) informing the public of the existence of the PPSRC; 2) educating the community as to their rights in encounters with police officers and procedures for filing complaints; and 3) updating the public regularly about activities of the Board.²⁷³

IV. Conclusion

Models of citizen oversight of law enforcement in New York vary considerably. They differ in a host of basic characteristics, functions, operations, and objectives. One common element of these agencies, however, is the overriding purpose and critical role in improving police/community relations.

Endnotes

1. In 1928, the Los Angeles Bar Association created the Committee on Constitutional Rights, which was staffed by volunteer attorneys who received and investigated complaints of police misconduct, and thereafter referred those complaints to the Los Angeles Police Department for official investigation. Samuel Walker, *Police Accountability: The Role of Citizen Oversight* 19 (2001) [hereinafter “Police Accountability”].
2. The post World War II era changed the political landscape and gave rise to the civil rights and the police-community relations movements. Citizen oversight emerged as part of both movements and was the impetus for the creation of the Complaint Review Board (CRB) in Washington, D.C., the Philadelphia Police Advisory Board (PAB), and review boards in Minneapolis, Rochester and York, Pennsylvania. *See id.* at 20–25.
3. *Id.* at 6.
4. *Id.* at 25.
5. *Id.* at 31.
6. *Id.*
7. *Id.* at 34.
8. *Id.* at 6.
9. *Id.* (citing Samuel Walker, *Citizen Review of the Police-1998 Update* (1998)).
10. Samuel Walker, *Citizen Oversight of Police, Definition of Citizen Oversight*, at <http://www.policeaccountability.org/defoversight.htm> (last visited Aug. 5, 2003); *see also* Police Accountability, *supra* note 1, at 5.
11. Samuel Walker, *Citizen Oversight of Police, Models of Citizen Oversight*, at <http://www.policeaccountability.org/modelsco.htm> (last visited Aug. 5, 2003) [hereinafter “Models of Citizen Oversight”].
12. Police Accountability, *supra* note 1, at 62.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. Models of Citizen Oversight, *supra* note 11.
18. Police Accountability, *supra* note 1, at 62.
19. *Id.*

20. *Id.*
21. *Id.*
22. Models of Citizen Oversight, *supra* note 11.
23. Under this approach to citizen oversight, the head of the agency is a police department employee, an “insider,” however; the law creating the oversight agency generally requires this individual to be a non-sworn officer, an “outsider.” *See id.*
24. Albany, N.Y., Code § 42-332(B) (2000).
25. *Id.* at § 42-332(E).
26. *Id.* at § 42-332(D).
27. *Id.* at § 42-334(A).
28. *Id.* at § 42-334(B)(1)-(2).
29. *Id.* at § 42-336.
30. *Id.*
31. *Id.* at § 42-338. The Common Council was required to approve the rules and bylaws adopted by the Board.
32. *Id.* at § 42-337.
33. *Id.* at § 42-339.
34. *Id.*
35. *Id.* at § 42-350.
36. *Id.* at § 42-343(F)(1)-(4).
37. *Id.* at § 42-347(B).
38. *Id.* at § 42-340(A).
39. *Id.* at § 42-343(H).
40. *Id.*
41. *Id.* at § 42-343(B)(1).
42. By 2001, there were more than 100 documented citizen police oversight entities in the United States. Based upon the Government Law Center’s research and clearinghouse of information on these other police oversight entities, we have found that the Albany CPRB is the only citizen oversight entity in the country to be staffed by a law school.
43. Binghamton, N.Y., Ordinance 90-11 (1990).
44. *Id.*
45. Police/Community Relations Advisory Board, Binghamton, N.Y., Bylaws, Mission Statement, 1 (1990).
46. *Id.* at art. IV, §§ 1, 1B & 2. Initial members were appointed for one, two or three year terms.
47. *Id.* at art. IV, § 1A.
48. *Id.* at art. IV, § 2. It is worth noting that the Police Chief is the *only* permanent member of the Board. According to the PCRAB brochure revised Aug. 1995, the membership of the PCRAB consists of: 4 members at large; 1 businessperson; 1 clergy member; 2 school district administrators; 2 high school students; 1 senior citizen; 1 PBA member; 1 tenant representative; 1 Urban League representative; 1 NAACP representative; 2 immigrant/refugee representatives; the Mayor; the Chief of Police; and the President of the Urban League.
49. *Id.*
50. *Id.* at art. VI, § 3.
51. *Supra* note 47. According to the bylaws, the Board is charged with encouraging and monitoring the progress toward full implementation of the Plan of Action resulting from the Sky Lake Retreats between the police department and black members of the community, which laid the foundation for the Board and set the parameters that were to be achieved by the Board. Telephone interview with Richard A. Bucci, Mayor, City of Binghamton, N.Y., June 29, 2003.
52. *Supra* note 47.
53. Police Community Relations Advisory Board, Binghamton, N.Y., Brochure, Ways in Which the Board Functions, subparts 3 & 4 (1995).
54. *Id.* at subpart 5.
55. *Id.* at subpart 6.
56. Telephone interview with Roger Shaller, Captain, Police Department, Binghamton, N.Y. (June 2001). It should be noted that members of the Police Community Relations Advisory Board conduct mediations.
57. Police Community Relations Advisory Board, Binghamton, N.Y., Bylaws, Mission Statement, subparts 1 & 2 (1990).
58. Buffalo, N.Y., Charter, art. 18, §§ 18-20–18-22 (2000).
59. Commission on Citizens’ Rights and Community Relations, Buffalo, N.Y., Annual Report, at 3 (July 2001-May 2003).
60. *Supra* note 58, at § 18-20.
61. *Id.* at § 18-4. Members “may receive reimbursement from the city for reasonable and necessary expenses incurred in the performance of their official duties subject to terms and conditions stipulated by the mayor.”
62. *Id.* at § 18-21.
63. *Id.* at § 18-5(a)(ii). This section provides that “no person shall be eligible for . . . appointment as a member of a . . . commission who is not a resident of the city.”
64. *Id.* at § 18-5(b). This section provides that “no person shall be capable of holding a civil office who shall not, at the time he [or she] shall be chosen thereto, have attained the age of eighteen years.”
65. *Id.* at § 18-21.
66. Commission on Citizens’ Rights and Community Relations, Buffalo, N.Y., Annual Report, at 7.
67. *Supra* note 58, at § 18-21.
68. *Id.* at § 18-22(i). According to a memorandum issued by the City in 1999, one of the reasons the Commission on Human Relations was not effective was that it has lacked staff and budgetary support.
69. *Id.* at § 18-22(g).
70. *Id.* at § 18-22(h).
71. *Id.* at § 18-22(b).
72. *Id.* at § 18-22(e).
73. *Id.* at § 18-22(d).
74. *Id.* at § 18-22(a).
75. *Id.* at § 18-22(c).
76. Commission on Citizens’ Rights and Community Relations, Buffalo, N.Y., Annual Report, at 6.
77. *Id.*
78. *Id.* at 6–7.
79. *Id.* at 6, 12.
80. Clarkstown, N.Y., Police Gen. Order 305 (1989).
81. *Id.* at § I, Policy.
82. *Id.* at § II(A). The six civilian members are appointed by the Police Commission upon the recommendation of each member of the Town Board and the civilian member of the Police Commission. The three Police Administrators or alternates are designated by the Chief of Police and approved by the Police Commission. *Id.* at (1).
83. *Id.* at § II(A).
84. *Id.*

85. *Id.*
86. *Id.* at § II(C)(4).
87. *Id.* at § II(C)(3).
88. *Id.* at § II(C)(2).
89. *Id.* at § II(B)(1)-(6).
90. *Id.* at § II(C)(2).
91. *Id.* at § II(C)(2).
92. *Id.* at § III(A).
93. *Id.* at § III(A)(1).
94. *Id.* at § III(A)(2).
95. *Id.* at § III(B)(1) & (3).
96. Clarkstown, N.Y., Civilian Complaint Review Board Rules and Regulations (adopted Mar. 11, 1996).
97. *Id.* at 1.
98. *Id.* at 3.
99. *Id.*
100. *Supra* note 82 at § III(3)(B)(3)(c).
101. *Id.* at § III(3)(B)(3)(c)(1). It is worth noting that in most jurisdictions in New York, the authority to discipline and sanction an officer is reserved to sworn members of the department and covered by the officers' labor agreement.
102. *Supra* note 96, at 5.
103. *Id.*
104. Ithaca, N.Y., Charter, art. II, § C-16 (1984).
105. *Id.* at (C).
106. *Id.* at (A).
107. *Id.*
108. *Id.*
109. *Id.* The law requires that Adult Commissioners be 18 years of age or older and that Youth Commissioners be between 16 and 17 years of age.
110. *Id.* at (A).
111. *Id.* at (C).
112. Ithaca, N.Y., Complaint Against Police Personnel, 1 (revised August 1998).
113. Community Police Board at http://www.cityofithaca.org/index.asp?Type=B_BASIC&SEC={2EAD3CB7-DA0C-4D24-831A-8894D49863B5}&DE={76CB5B5A-B99B-4853-8EFC-D3B1C3AE8F75} (last visited Aug. 5, 2003).
114. Ithaca, N.Y., Complaint Against Police Personnel, Complaint Forms and Procedures, at subpart 6.
115. *Supra* note 104, at (C).
116. *Id.* at (B).
117. *Id.* at (C).
118. *Id.*
119. *Id.*
120. *Id.* at (D).
121. Telephone interview with Nancy Falconer, Staff Member, Ithaca Community Police Board (July 7, 2000). Meetings are conducted in Executive Session when actual names of the affected parties are used and are open to the public when general issues are discussed. *Id.*
122. Ithaca, N.Y., Ithaca Community Police Board, By-Laws, art. V, §§ (A) & (B).
123. *Supra* note 104, at (C). While mediation is made available to complainants and officers, it is rarely chosen as an alternative to a complaint investigation.
124. Ithaca, N.Y., Procedure for Review of a Final Determination made by the Ithaca City Community Police Board (Aug. 24, 1999).
125. *Id.*
126. *Id.*
127. Ossining, N.Y., Code ch. 8 (2000).
128. *Id.* at § 8-1.
129. *Id.* at § 8-1.
130. *Id.* at § 8-5(A).
131. *Id.* at § 8-3.
132. *Id.* at § 8-5(A). A list of no fewer than seven (7) nominees must be put forward by the Police Community Relations Advisory Council, from which three (3) members will be selected for membership on the Board. Appointments made by the Chief of Police must be made from the personnel of the Village's Police Department and must include one representative that is a line officer and one representative that is a senior officer. The Village Board may consider any resident of the Village meeting the legislation's eligibility criteria for membership on the CPCRB, including, but not limited to those persons whose names have been included on the list of nominees forwarded by the Police Community Relations Advisory Council.
133. *Id.*
134. *Id.* at § 8-5(D)(1).
135. *Id.* at § 8-5(D)(3).
136. *Id.* at § 8-5(C).
137. *Id.*
138. *Id.* at § 8-7.
139. *Id.* at § 8-8(A).
140. *Id.* at § 8-8(B).
141. *Id.* at § 8-3(E).
142. *Id.* at § 8-11(11) & (12).
143. *Id.* at § 8-12(J).
144. *Id.* at § 8-12(L).
145. *Id.* at § 8-3(H).
146. *Id.* at § 8-13(E).
147. *Id.* at § 8-12(J).
148. *Id.* at § 8-14.
149. See Police Accountability, *supra* note 1, at 29 (citing Ronald Kahn, "Urban Reform and Police Accountability in New York City, 1950-1974," in R. Lineberry & L. Masotti, eds., 107-27 (1975) and Cheryl-Ann Beattie Repetti, "The Politics of Civilian Review: Police Accountability in Washington, D.C., and New York City, 1948-1974," unpublished Ph.D. dissertation, George Washington Univ. 1997).
150. See Police Accountability, *supra* note 1, at 30.
151. New York, N.Y., City Charter, ch. 18-A (1993).
152. *Id.* at § 440(a).
153. *Id.*
154. *Id.*
155. *Id.* at § 440(b)(1)(i)-(iii).
156. *Id.* at § 440(b)(1).
157. *Id.* at § 440(b)(3).

158. Telephone interview with Andrew Case, Outreach and Research Staff Member, New York City Civilian Complaint Review Board (July 31, 2003).
159. *Supra* note 151, at § 440(b)(1).
160. *Id.* at § 440(2).
161. *Id.*
162. New York, N.Y., Rules of the Civilian Complaint Review Board, tit. 38A, ch. 1.
163. *Supra* note 151, at § 440(c)(2).
164. *Id.* at subchapter E, § 1-41(a).
165. *Id.* at § 1-41(b).
166. *Id.* at § 440(c)(1).
167. *Id.* at § 440(c)(3).
168. *Id.* at § 440(c)(5); *See also* Rules of the Civilian Complaint Review Board, at § 1-24 & § 1-23.
169. *Supra* note 151, at subchapter D, § 1-31.
170. *Id.* A panel may not “consist exclusively of members designated by the City Council, Police Commissioner, or selected by the Mayor.”
171. *Id.* at § 1-33(b).
172. *Id.* at § 1-32(b) & (c).
173. *Id.* at § 1-32(d). It should be noted that “upon request of a member of the panel or upon the direction of the Chair at the request of a member of the Board, the case [will] be referred to the full Board for action.” *Id.* The Board “may take such action as it deems appropriate, including, but not limited to, making its own findings and recommendations, remanding the case to a referring panel for further consideration or action, and remanding the case for further investigation.” *See id.* at § 1-41(b).
174. *Id.* at 1-32(c).
175. *Id.* at 1-33(c).
176. *Supra* note 151, at § 404(c)(4). Mediation can only take place if the subject officer agrees and the panel or Board has not made a determination that mediation is inappropriate.
177. The City of New York, Civilian Complaint Review Board, “A Guide to Mediation” 1 (revised August 1999).
178. *Supra* note 151, at § 404(c)(7).
179. *Id.*
180. *Lynch v. Giuliani*, 301 A.D.2d 351 (1st Dep’t 2003).
181. *Id.* at 358.
182. Rochester, N.Y., Resolution 92-40, § 1 (1992). Note that the CIC, which was established in 1977 and expanded in 1984, was abolished by this act.
183. *Id.* at 731.
184. *Id.*
185. *Id.* at § 2.
186. *Id.* at § 3.
187. *Id.*
188. Center for Dispute Settlement, Rochester, N.Y., “Overview of the Civilian Review Board,” VI(A) & (B), (D) & (E), (G) & (H).
189. *Id.* at VI(C) & (F).
190. *Supra* note 182, at § 4.
191. *Id.* at 731, VIII(A)-(D).
192. *Id.* at § 5; *see* Center for Dispute Settlement, Rochester, N.Y., “Overview of the Civilian Review Board,” at IV(F).
193. *Supra* note 182, at § 8.
194. Under New York City’s CCRB Rules, an officer’s refusal to testify before the Board will be reported to the Police Commissioner and is grounds for department charges that could result in the officer’s dismissal. New York, N.Y., Rules of the Civilian Complaint Review Board, tit. 38A, ch. 1, subchapter C, § 1-24(d).
195. *Lynch v. Giuliani*, 301 A.D.2d 351, at 16–17 (1st Dep’t 2003).
196. *Supra* note 182, at § 9. Following the CRB’s request, “the City Council may vote to conduct a full review of the extent and quality of the investigation.” The result of the City Council’s review becomes a matter of public record.
197. *Id.*
198. Telephone interview with Todd Samolis, Director of Special Programs, Center for Dispute Resolution, Rochester, N.Y. (July 5, 2000).
199. *Supra* note 182, at 733.
200. *Supra* note 198.
201. Schenectady, N.Y., Code ch. 93 (2002).
202. *Id.* at § 93-2(D).
203. *Id.* at § 93-3(1). (amended by Ordinance 2002-16 (2002)).
204. *Id.*
205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.* at § 93-4. The Schenectady Public Safety Commissioner and a citizen-at-large appointed by the City Council shall serve as the ex-officio members.
209. *Id.* at § 93-5.
210. *Id.*
211. *Id.* at § 93-10.
212. *Id.* at § 93-9.
213. *Id.* at § 93-20.
214. *Id.* at § 93-7.
215. *Id.* at § 93-20.
216. *Id.* at § 93-17.
217. *Id.* at § 93-13(A).
218. *Id.* at § 93-13(B).
219. *Id.*
220. *Id.* at § 93-14.
221. *Id.* at § 93-16.
222. *Id.* at § 93-11.
223. *Id.* at § 93-12.
224. *Id.*
225. *Id.* at § 93-15.
226. Syracuse, N.Y., Local Law 11 (1993).
227. *Id.* at § 1.
228. *Id.* at § 3.
229. *Id.* at § 5(1). Of the eight Common Council appointments, each district councilor nominates one member and the at-large councilors jointly nominate a total of three members.
230. *Id.* at § 5(3).
231. *Id.* at § 6(2).
232. *Id.*
233. *Id.*
234. *Id.* at § 4(1) & (2). Members must be at least eighteen years of age at the time of their appointment and reside in the City of Syracuse.

235. *Id.* at § 4(3).
 236. *Id.* at § 4(4).
 237. *Id.* at § 4(6).
 238. *Id.* at § 4(7).
 239. *Id.* at § 7(1).
 240. *Id.*
 241. *Id.* at § 6(1).
 242. *Id.* at § 7(3)(a)(i). The complainant may opt to cooperate with IA's investigation or seek review directly from the CRB pending completion of IA's investigation of the complaint.
 243. *Id.* at § 7(3)(a)(iii).
 244. *Id.* at § 7(3)(a)(iii) & (iv).
 245. *Id.* at § 7(3)(a)(v).
 246. *Id.* at § 7(4)(a).
 247. *Id.*
 248. *Id.* at § 7(3)(a)(vi).
 249. *Id.* at § 7(4)(a)(i).
 250. *Id.* at § 7(3)(b).
 251. *Id.* at § 7(5). An appeal may be taken upon the written request of any participating member of the Panel, the complainant or the police officer.
 252. *Id.* at § 7(1)(c).
 253. *Id.* at § 7(6).
 254. *Id.* § 7(6)(a).
 255. *Id.*
 256. *Id.* at § 8(1).
 257. *Id.*
 258. *Id.*
 259. Yonkers, N.Y., Police Policy & Procedure 1.06.03 (effective Nov. 4, 1993).
 260. *Id.* at II.
 261. Professional Standards Review Committee, Yonkers, N.Y., Mission Statement.
 262. *Supra* note 259, at 1.06.03, III(A).
 263. *Id.* at III(B).
 264. *Id.* at III(C).
 265. *Id.* at IV(E).
 266. *Id.* at III(C).
 267. *Id.* at IV(A)-(D), (F) & (G).
 268. *Id.* at III (A) & (B).
 269. *Id.* at V(C).
 270. *Id.* at V(C)-(E).
 271. *Id.* at V (A) & (B).
 272. *Id.* at V(F).
 273. *Id.* at VI.

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Maximizing the Value of Citizen Review: Lessons from New York City

By Debra Livingston

This is an interesting moment in the history of citizen review. Citizen review—meaning, broadly, the idea that citizens should participate in the administrative review of complaints about police conduct—was a highly controversial idea when the citizen review movement began in earnest in this country, back in the 1960s. The concept was “dismissed as radical and dangerous by virtually everyone outside the civil rights and civil liberties communities.”¹ That has changed. Today, citizen review processes of one type or another can be found in about eighty percent of our largest cities. There are approximately 100 separate oversight agencies in this country and that number has been growing steadily for some time.² Citizen participation in complaint review is becoming the norm in local policing.



However, simultaneously, there are those who are asking, “What can citizen review achieve? Can it accomplish all that reformers hoped it might? Can citizen review of complaints really do much to improve local policing and the relationship between communities and police?” Samuel Walker, the most prominent academic expert on citizen review mechanisms, noted just two years ago that, “there is a serious lack of research on the activities and effectiveness of oversight agencies.”³ “The spread of citizen review,” he said a few years earlier, “has not brought complete joy [to the people who advocated for it]. In fact, there is a pervasive uneasy feeling that citizen review is not the panacea many expected it to be.”⁴

It may be that some reformers entertained unrealistic expectations for citizen review. It is nevertheless important that we consider how to maximize the value to be obtained from citizen participation in complaint review—lest the story of citizen review end in disappointment rather than success. Both as a law professor and as a Commissioner on New York City’s Civilian Complaint Review Board (“CCRB”), I have spent some time thinking about this question. Looking at the issue of maximizing the value of citizen review from the perspective of New York’s CCRB, I think we can identify four ways in which an agency like ours can offer value to the policing project—can contribute to the improvement of policing and to the bettering of relations

between communities and police. The first way of offering value is well recognized. The others however, are sometimes neglected, and to the detriment of our efforts to maximize the gain to be had from involving citizens in the complaint review process.

I. New York City’s Civilian Complaint Review Board

New York City’s Civilian Complaint Review Board is a thirteen-member board, though it presently has only twelve members. Of these, five are appointed directly by the mayor; five are appointed by the mayor, but nominated by New York’s City Council, (one to represent each of New York’s five boroughs); and three Board members are nominated by the Police Commissioner. The three nominated by the Commissioner are the only Board members permitted to have prior law enforcement experience (which, in the statute creating the agency, doesn’t include prior service as a prosecutor, but does include prior service with the NYPD, or any other police agency). The law creating New York’s CCRB specifies that appointments to the Board shall be made “so that the board’s membership reflects the diversity of the city’s population.”

“Today, citizen review processes of one type or another can be found in about eighty percent of our largest cities.”

New York’s CCRB is charged with investigating citizen complaints made against NYPD officers involving one of four things: use of force, discourtesy, offensive language (which is defined to mean some type of racial, ethnic, sexual orientation, or gender-based slur), or abuse of authority. Abuse of authority commonly includes things like improper street stops, retaliatory summonses and unwarranted threats of arrest.

The Board members themselves are part-timers. When the Board receives a complaint, it is investigated by CCRB’s staff, which is composed entirely of civilian employees. As of December 31, 2002, the CCRB had on staff 167 full-time civilian employees. Of these, about 122 were investigators of one type or another. CCRB has eight teams of investigators, each composed of over a dozen people. Each investigative team has supervisors. The lead supervisors for the teams generally have at least fifteen years of law enforcement or other investiga-

tive experience and come from a variety of agencies—like the IRS, the DEA, the INS, or Federal Defenders Service. The line investigators, by contrast, are often recent college graduates and this is sometimes their first job after college. There is relatively high turnover among this second group; many leave after two to four years for graduate education. The staff has a great deal of talent, as well as substantial legal authority. The agency is armed with subpoena power and investigators can and do issue subpoenas in the course of an investigation, as necessary, to obtain documents and secure testimony.

The Board reviews investigative files prepared by the staff and decides cases, generally in panels of three, composed of one mayoral appointee, one City Council representative, and one Police Commissioner designee. Most of the time—the great majority of the time—the panels are unanimous. The Board’s substantiated dispositions are forwarded to the Police Commissioner; usually with a recommendation regarding the level of discipline the Board feels the officer should receive. The Commissioner retains the ultimate authority to impose discipline and to accept or reject Board recommendations.

The agency generally receives about 4,000 to 5,000 complaints each year. About half of these are fully investigated. The rest are closed as “truncated,” typically because a complainant chooses not to pursue the complaint or is unavailable. Since its inception in 1993, the CCRB has substantiated between eight and fourteen percent of its fully investigated cases. The Board reaches an affirmative finding of some sort—substantiated, exonerated, or unfounded—regarding about sixty-five percent of the allegations it fully investigates, with the rest being closed generally as unsubstantiated or officer unidentified. Since 1993, the NYPD has come to accept CCRB substantiated findings and to impose discipline in substantiated cases at ever-increasing rates, but not invariably. The NYPD imposed discipline in over seventy-three percent of the cases that the CCRB substantiated in 2000, the most recent year for which we have fully reliable data.

The foregoing is a brief outline of New York’s CCRB. But what about this question of value? This fiscal year, the CCRB’s budget was just over \$9 million. That is a small fraction of the budget of the NYPD—which stood at \$3.4 billion at the end of this last fiscal year. New York’s ratio of complaint investigators to police personnel is in fact rather daunting. There is approximately one CCRB investigator for every 315 officers. Still, with a budget of over \$9 million, with a staff of dedicated and capable employees, and with an administration that supports citizen review and wants to see good results, it is perfectly proper to ask what the city of New York gets for its money. That brings us to the four dimensions of value that I alluded to at the start.

A. Holding Officers to Account

The first way in which a citizen review agency offers value—helps to improve policing and the relations between police and communities—is by holding officers to account for misconduct. This dimension of value is certainly important if citizen review is considered from an historical perspective. Citizen review was pushed by civil rights leaders in the 1950s and 1960s as one way of dealing with police abuse and the inattention of police departments to charges of abuse, particularly involving minority communities. The early argument for citizen review was thus an argument about police hostility to complaints and police bias in their investigation and disposition. Professor Walker has usefully described the traditional theory for involving individuals who are not sworn officers in the processing of complaints.⁵ Citizen involvement, the theory goes, improves the fairness with which complaints are handled. Fair treatment of complaints in turn leads to more discipline of officers, and to greater deterrence of police misconduct.

It is this aspect of value that New York’s CCRB has seemed to emphasize since 1993. The current and preceding executive director are both former prosecutors—people with experience in holding others to account. Each executive director has focused on assembling a staff of intelligent, capable, and committed investigators—investigators with the experience, drive and analytic capability to really investigate citizen complaints. In the period since 1993, the payoff in investigations is evident. As mentioned before, of the cases the agency investigates fully, over sixty-five percent are closed with an affirmative finding—substantiated, exonerated, or unfounded. In addition, NYPD officials, high-ranking city officials, including the mayor and even media figures on occasion, have publicly recognized that CCRB investigations are thorough and complete—that Board investigations have integrity.

No one could argue that this is not important—that thorough complaint investigation for the purpose of identifying and punishing misconduct is not an important part of the value of citizen review. Indeed, for serious, but comparatively minor abuses of force (like an unnecessary punch leaving no permanent injury), as well as for many unlawful searches (of cars, homes and people on the street), the complaint review process may be the only process to which victims can turn. Prosecutors may not be interested in investigating such cases, and the damages involved may be too small to make resort to civil litigation a realistic option. Establishing high-quality investigative practices was absolutely the first priority for our agency once it came into being, and there was good reason for this. If police are to comply with both law and internal police policies, there must be a way of identifying those occasions when officers fail to do so. There must be accountability, and complaints are

a vital part of the means by which we identify those officers who must be held to account.

At the same time, though, an exclusive focus on this aspect of value would not seem to be the way to *maximize* the value of citizen review—to ensure that the citizen review process is contributing all it can to the improvement of policing and the bettering of relations between communities and police.

Why is this? Well, first, not all complaints are well-suited to the investigative paradigm. Some partake of legitimate misunderstandings, sometimes in ongoing relationships, between an officer and an individual. The question in these cases is not so much misconduct, as getting the parties to work out their problems.

There are also limits on our ability to hold officers accountable. Many cases may involve minor rudeness or discourtesy on the officer's part, but conduct that is not extremely serious and that will in any event be near impossible to prove even assuming the full cooperation of the complainant. As one scholar has observed, "[M]ost police encounters occur under isolated conditions . . . [and] even the giving of a traffic citation on a crowded street is often unobserved."⁶ The facts cannot always be determined in such encounters—whether they are investigated independently, by citizens, or by police. In fact, citizen review agencies have not necessarily substantiated more complaints than the internal police department procedures that preceded them.⁷

Even with top-notch investigation, there are many cases filed at CCRB where the facts cannot be determined. The Board completed 2,210 full investigations in 2002, for instance. In about a third of these cases, the Board came to no affirmative finding on any of the allegations in the complaint. Add to these the large percentage of truncated cases—about half the caseload—where no factual determinations are made at all. If the value of citizen review flows entirely from holding individual officers to account so as to deter misconduct, the high percentage of cases in which the occurrence of misconduct cannot be determined may be a problem. Is there enough accountability? Enough deterrence? These are valid questions, particularly in light of the fact that not every instance of police misconduct will become the subject of a complaint. In some contexts, very serious misconduct (even widespread police corruption) may not be reflected in complaints at all.

All this relates to a broader point. Holding officers to account through the after-the-fact investigation of complaints is only a part of the broader project of police reform. Efforts at improving police and improving the relations between police and communities (in both good departments and bad) ultimately involve change within the police organization. That is what community policing is all about. Numerous scholars have thus recognized that police reform efforts are most effective when

the police organization itself is involved in the process and when change involves not simply adhering to rules in the face of punitive sanctions—not simply deterrence achieved by holding individual officers to account—but a change in the values and systems to which both managers and line officers adhere.⁸

"It is sometimes lawful police practices—not police misconduct—that can set a community or an individual at odds with police."

Does this mean that expectations for citizen review should simply be lowered? Not at all—at least if the aspiration is to get all the value possible out of the complaint review process. The problem with an exclusive focus on holding individual officers to account is not simply that this approach to citizen complaints is not enough, by itself, to deal with issues concerning police performance and the relations between communities and police. The problem with an exclusive focus on holding individual officers to account is that this approach does not maximize the value to be gotten out of *looking at complaints*.

It is sometimes lawful police practices—not police misconduct—that can set a community or an individual at odds with police. Think of those complaints already alluded to, involving legitimate misunderstandings between an officer and an individual in an ongoing relationship. Think about a perfectly proper no-knock warrant, signed by a judge on proper evidence, that happens to be executed at the home of an individual who is not involved in crime. Such police practices can cause problems between communities and police, even in the absence of misconduct by any officer. These problems will likely be reflected in citizen complaints, though not dealt with, if the focus is exclusively on holding individual officers to account. Complaints tell a good deal about problems within the police organization and between that organization and the communities it serves. A complaint agency thus plays a vital role by recording and analyzing the information in complaints, even when no misconduct occurred, or the facts cannot be definitively established in an individual case.

B. Other Dimensions of Value from Citizen Review

This brings us to the remaining three ways in which a complaint review agency can offer value to the policing project. These aspects of value are not as well recognized, and are sometimes even overlooked in the operations of citizen complaint agencies like the CCRB. They are nevertheless vitally important to maximizing the benefits of citizen involvement in complaint review.

1. Keeping a Record

As already noted, all complaint agencies receive a significant number of complaints in which the facts cannot be determined definitively. Perhaps there was misconduct, but at the end of the day, the complaint will be closed as unsubstantiated. One of the ways in which a citizen review agency offers value (even in cases like this) is by keeping a record of this complaint, so that if it becomes one of a pattern of similar complaints, the citizen review agency and the supervisors of involved officers are alerted to a problem. This is simple common sense. The existence of a complaint is an important piece of information, even if the facts of that complaint cannot be determined fully. Generalizing a little from this common sense observation, we can see how “keeping a record” is one way in which we might maximize value from citizen review.

Complaints are a vital source of information about police conduct and the ways in which police and police practices are viewed in the broader community.⁹ This is one proposition on which every scholar of the police—left, right, old, young—agrees. So if a citizen review agency wants to maximize its value to the people it serves, it should treat complaints this way—as a source of vital information. The complaint agency should seek to obtain as much information as possible out of the complaint system. Additionally, it should seek to ensure that the information in complaints is accessible, that it is used fully, to improve policing and to improve the relation between police and communities.

How does it do this? First, a citizen review agency should be visible to the community. People in the community should know how and where to register their complaints. If complaints contain valuable information that can be used to improve policing, a complaint agency should be very interested in making sure that it is easy to make a complaint.

Notice that this helps maximize the agency’s ability to hold officers to account—even before we get to other aspects of value to which a visible complaint process may contribute. Again citing Professor Walker, one clear benefit that can be claimed for citizen review processes, as opposed to internal complaint review processes, is that citizen review boards make the complaint process more visible, often more accessible, and perhaps more legitimate—and so they tend to receive more complaints.¹⁰ So even if the substantiation rate remains the same in a citizen-involved process, the overall discipline rate may well be higher.¹¹

The information in complaints serves other purposes as well. It should become part of early warning systems that use information from complaints, civil actions, stop-and-frisk records, and the like, to try to identify problem officers and problem situations, before clear violations of law or policy have emerged.¹²

Complaints can also signal organizational problems. Think about the complaint of a homeowner whose home police have needlessly invaded and whose belongings have been ransacked pursuant to a warrant based on erroneous informant information. In a case like this, the officers who entered the home may have had probable cause that evidence would be found, but the information on which they relied proved to be in error. Assuming that the officers acted with no unnecessary violence or disrespect, discipline in such a case would be inappropriate: no “rules” were broken and the individual officers acted on the authority of a judge. Repeated complaints of this type, however, could reflect serious managerial problems—like inadequate controls over the use of confidential informants or decisions to seek warrants. By keeping a record, the citizen review agency makes it possible for information like this to come to the surface and be acted upon.

“Complaints are a vital source of information about police conduct and the ways in which police and police practices are viewed in the broader community.”

In New York, complaints against a police officer can be made in the precincts, but also directly to CCRB. The agency has a 24-hour 800 toll-free number for lodging complaints—a number that is periodically featured in public service announcements on radio and television in the city. New York’s CCRB has an active outreach unit, conducts presentations at high schools and places literature in hospitals. Since September 11th, the unit has focused particular attention on the Islamic, Arabic, and South Asian populations in New York. The executive director has appeared on the Arabic Channel. Staff members have visited local mosques and Hindu temples.

There is, perhaps, a natural tendency to view all of this as “window dressing”—as some other stuff the agency needs to do in addition to its core task of investigating complaints. Once complaints are viewed as sources of vital information, however, it becomes clear how important visibility is to maximizing value from citizen review.

What is also clear is the importance of being able to use the information in complaints. This means that the information in complaints—whether substantiated or not—needs to be maintained in a user-friendly way, so that it can be accessed now and in the future for a variety of purposes. Suppose there is concern about the late night shift in one particular precinct in the city. Are the complaints received by everyone who has worked that shift for the last five years accessible? Some of those

complaints were not fully investigated at the time, because the complainants opted not to pursue them. Was a reasonable amount of information obtained and maintained from the complainants during their initial calls?

Or think back to the warrant example. Can all complaints involving search warrants be accessed to determine if there have been similar complaints? Can all the complaints be collected in which officers have used a baton, to see if they reveal any training or supervision problems that need to be addressed? Many police departments—though certainly not all—look very carefully at incidents in which police officers have fired a weapon. But scholars who write about other types of force—like baton use or the discharge of pepper spray—often bemoan that police do not follow incidents involving these types of force as closely. In New York, until CCRB recommended some changes to NYPD practices in the use of pepper spray, the NYPD kept no record at all of the use of pepper spray unless an arrest took place. In circumstances like this, the information in citizen complaints may constitute the most reliable—even the only available—information about significant police practices.

2. Noting Patterns and Problems

The next aspect of value flows from the last. Citizen review agencies can maximize value by noting patterns and problems—by helping to ensure that the information in complaints is used to better policing and to improve relations between police and communities.¹³ Sometimes this boils down to alerting the police department and the community to recurrent issues raised by citizen complaints. Sometimes it requires a more discerning analysis of complaint data, and the formulation of recommendations for change.

New York's CCRB has done some of this, but not as much as citizen oversight in some other places. The CCRB has semi-annual reports, and they seem to get better each year. The reports include some basic matters: the disposition of the substantiated cases once they are sent to the Police Department, as well as the nature of complaint activity, precinct by precinct. Comprehensive information is provided about the age, race, ethnicity, and gender of both complainants and officers. Also, information is routinely published about the nature of the complaints received.

Additionally, some special reports have been prepared. In 2001, CCRB published a major study on complaints involving stop-and-frisk. Two reports were prepared on the use of pepper spray and the recommendations have been implemented by the NYPD. In the “no-knock” warrants area, the CCRB persuaded the NYPD to adopt a policy pursuant to which police help citizens fix their broken doors before leaving the site where a no-knock warrant has been executed

but no contraband has been recovered. CCRB also raised the visibility of warrants issued on erroneous information by advising judges of concerns raised in a number of such cases that had found their way to CCRB.

One illustration from CCRB's recent study on stop-and-frisk helps illustrate the point that complaints shed light on organizational concerns, separate and apart from the role they play in alerting us to instances where misconduct has occurred. CCRB's stop-and-frisk report was based in large part on 641 fully investigated complaints involving the street stop of an individual. The report showed, among other things, that in over half of these complaints, the officer or officers involved failed to fill out a form required by the Police Department for such encounters. Now, the CCRB's jurisdiction does not extend to the failure to fill out internal NYPD forms, and this finding of significant noncompliance with an internal police policy only emerged as a result of the study. But this example demonstrates how the information in complaints can shed light on broader police management issues—in this case, on line officers' failures to comply with an organizational policy designed in part to facilitate managerial control over stop-and-frisk.

As the agency matures, it will likely be doing more of this business of noting patterns and problems. This is an area where CCRB's current structure, the NYPD's size, and also CCRB's independence may ironically work against it. Many complaints are received each month, potentially involving hundreds of different commands. CCRB is one centralized office, located in downtown Manhattan. There is no presence in the Bronx, in Staten Island, in Brooklyn or in Queens. No current police officers serve on CCRB, either as Board members or as investigators. In practice, this means that investigators and the Board do not necessarily read complaints with much background understanding of local conditions in the city's 76 precincts. CCRB may know less than it should about the operations of the NYPD—making it more difficult to intervene to note problematic practices or patterns touching the many neighborhoods of New York.

This is not to say that CCRB has not made progress in this area since its inception in 1993. The agency has developed more sophisticated ways of reading complaints and noting relevant information. Investigators have educated themselves about police record-keeping systems and police operations, so that they can better recognize the significance of the problems presented in complaints. This is an important area for further work, but the agency's leadership is definitely moving in the right direction.

3. Caring About the Experience of Participants in the Process

There is one final way in which a citizen review agency can offer value—can help improve policing and

the relationship between police and communities. The citizen review agency can offer value by caring about the experiences of participants in the complaint review process. This is easily enough asserted. What precisely does it mean? Simply put, a citizen review agency should strive to ensure that both citizens and police perceive the complaint review process to be fair and responsible in its treatment of complaints.

Why is this so important? There is a substantial amount of social science research indicating that “encouraging and maintaining public trust in the character and motives of legal authorities” is an important way of ensuring that citizens want to abide by the law and want to cooperate with police and other law enforcement agencies.¹⁴ It takes no great extrapolation from this work to argue that the manner in which complainants are treated within a complaint review process is important—important for complainants’ views of police and the broader legal system and, ultimately, for their trust in these institutions. Complainants who perceive that they have been treated fairly and with respect are more likely to view the system, broadly, as legitimate and worthy of reciprocal respect.

How police feel they have been treated is also important. There’s a simple reason for this. Police officers who feel that the disciplinary system is arbitrary and unfair are less likely to feel any commitment to the rules that this system seeks to enforce.

Much could be improved in the average complaint review process if the complaint agency borrowed some lessons from private industry. When Reebok gets a complaint about its sneakers (if Reebok wants to remain profitable) the company seeks to learn from that complaint, to improve the sneaker. The company is also concerned that complainants, as a group, feel that the company has treated them well—that this is a company with which they want to continue to do business. These concerns are as important, if not more important, than holding individual Reebok employees accountable for bad manufacturing practices.

So what lessons does this hold for citizen review? Think about the substantial number of cases in which the facts cannot be determined conclusively. A complainant says that the officer swore at her, provoking tears. The officer denies it, and the truth just cannot be determined. How does CCRB deal with that complaint in a responsible way—in a way that might leave the complainant believing that she has been treated fairly and with respect, even though her complaint cannot be definitively resolved? Or take the case of the law-abiding homeowner whose door was lawfully broken down by police pursuant to a no-knock warrant. It is not enough to say that no misconduct occurred—and to send that homeowner a letter saying the police action has been exonerated. How does CCRB responsibly deal

with that complaint, so that the complainant feels that his legitimate problem with the police department has been handled appropriately?

“Review boards should afford both police and complainants timely resolution of their complaints.”

Complainants need to understand, as they participate in the process, that their side of the story is being heard. They sometimes need to understand the limitations of fact-finding in citizen review processes, and more generally in historical investigation itself. Citizens need to understand that even if their individual complaint is not substantiated, they have made a record in itself valuable to bettering police. Moreover, agencies need to provide complainants with the means of understanding the disposition of their complaints and offering feedback.¹⁵

On the flip side, police should perceive that the process is thorough—even aggressive—but fair. Review boards should afford both police and complainants timely resolution of their complaints. It took CCRB, on average, 267 days to complete a full investigation in 2002. CCRB’s Board and its hardworking staff would like to see that number go down dramatically, not only because more timely investigations are more likely to be successful, but also because prompt investigations better serve the needs of both the complainant and the police.

For those complaints that are badly suited to the investigative process, review boards also need to offer alternatives. At CCRB, that means mediation. New York’s CCRB is working to develop and expand its ongoing mediation program. Board members have concluded that for a range of misconduct allegations, mediation offers a superior way to deal with complaints—a way that will enhance learning by the officer, and that will produce greater satisfaction on the part of both the complainant and the officer involved.

CCRB’s program is very small and in need of nurturing, even though in absolute terms it is now one of the largest mediation programs of its kind in the country. Seventy-three cases were successfully mediated in 2002. Over 200 cases were brought to the table in the last five years, and the great majority of them were successfully mediated. CCRB has over thirty trained mediators from around the city who conduct the mediations. Thus far, there seems to be relatively high levels of satisfaction among those complainants and police who have opted for this program; higher levels of satisfaction than seems to exist among participants in the normal investigative process.

II. Conclusion

To maximize value from citizen review, we should think deeply and clearly about at least four aspects of what citizen review agencies do: holding officers to account; keeping a record; noting patterns and problems; and caring about the experience of participants in the complaint review system. Historically, New York's CCRB has tended to focus on the first of these functions, and for good reason. The police disciplinary system cannot be permitted to atrophy, lest discipline itself break down. Complaints are a big part of that system. When CCRB became independent of the NYPD in 1993, it absolutely had an obligation to establish itself in such a way that it could do thorough and complete investigations for the purpose of identifying and rooting out misconduct.

But at this moment in history—this moment when people are asking, “Just what can citizen review achieve?”—it is a mistake to focus too narrowly on holding individual officers to account, no matter how important this function might be. It is also vitally important that we use the information in complaints to improve the ways in which police offer services. It is extremely important that the complaint review system contribute, by its good operations, to the legitimacy of the broader criminal justice system. The citizen review organization needs to bring the skills of aggressive investigation to bear on the task of reviewing complaints. But other skills are needed as well: skills of information management, data analysis, and clear communication. Citizen review personnel need empathy—if they are really interested in overcoming obstacles to bettering relations between communities and police. Organizationally, that's a challenging group of skills to bring together. It is by bringing those skills to bear, however, and not just one to the exclusion of others, that citizen

review agencies like CCRB can help to maximize the value of citizen review.

Endnotes

1. Samuel Walker, *Police Accountability: The Role of Citizen Oversight* 6 (2000).
2. *See id.*
3. *Id.* at 184.
4. Samuel Walker, *Achieving Police Accountability*, 3 Research Brief (Center on Crime, Communities & Culture, New York, New York), Sept. 1998, at 2.
5. Walker, *supra* note 1, at 55–56.
6. Herman Goldstein, *Policing A Free Society* 161 (1977).
7. *See* Walker, *supra* note 1, at 120.
8. *See* Jerome H. Skolnick & James J. Fyfe, *Above the Law: Police and the Excessive Use of Force* 187 (1993); *see also* David Dixon, *Law in Policing: Legal Regulation and Police Practices* 157, 308 (1997).
9. *See* Paul Chevigny, *Edge of the Knife: Police Violence in the Americas* 96 (1995).
10. Walker, *supra* note 1, at 123.
11. *Id.*
12. *Id.* at 111; *see also* Walker, *supra* note 4, at 7.
13. For discussion along similar lines, *see* Walker, *supra* note 1, at 93, 104; Chevigny, *supra* note 9, at 97–98.
14. Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U.L. Rev. 361, 362 (2001).
15. Professor Walker has argued this point very powerfully. *See* Walker, *supra* note 1, at 135.

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Mediating Disputes Between Citizens and Police

By Todd R. Samolis

I. Introduction

Over the last 30 years, the awareness, acceptance and utilization of mediation has grown extensively. At one time in Western culture the practice of mediation was rarely looked upon with any degree of sincerity, and the mere mention of the word often brought to mind a host



of nebulous, non-specific connotations. The traditional image of a mediator is that of a person who is deeply committed to helping others by way of a non-exact, somewhat mysterious process not fully understood by most. Only recently has mediation been cautiously accepted into many professional arenas, including the legal community. The last 25 years have witnessed the emergence of several highly specialized derivations of traditional mediation processes. This article will examine one of the more innovative applications of the mediation process: Using mediation to resolve complaints against law enforcement officers.

not a new or different idea. It is one of the oldest and most common forms of conflict resolution, emerging informally wherever there are three people who rely on one another and two of them quarrel.¹ For centuries, mediation has been the preferred method of dispute resolution in many Eastern cultures. For example, in China it is estimated that 35 times as many disputes are settled through mediation as through the courts; some 800,000 mediation panels operate at local and regional levels, with more than one million people trained as mediators.²

The current wave of mediation popularity in the United States began in the early 1970s with the overcrowding of state and federal courts. A “litigation explosion” overcrowded the courts and resulted in a backlog of cases, at times amounting to years before a case could be heard by a judge. In addition, there were a growing number of individuals who believed that traditional dispute resolution methods actually served to worsen the condition between the disputants rather than improve matters. Institutional support for mediation initiatives have risen out of the perception that confrontational and adversarial approaches often make the situation worse, rather than better, and from the quest of a beleaguered court system for less costly, more efficient mechanisms for resolving conflict.³

In response to overcrowded courts, delayed justice, and a pervasive dissatisfaction with the litigation process, a number of experimental programs were developed in the late 1960s and early 1970s. In one such initiative the United States Department of Justice conducted a study in three cities—Atlanta, Kansas City and Los Angeles—to determine if disputes could be successfully resolved by using mediation as an alternative to litigation. Over a 15-month test period in the late 1970s, 3,947 disputes were handled by mediation centers in the three cities. Of the cases that were mediated, over 82% were resolved; as many as 95% for some types of disputes.⁴ It was therefore concluded that mediation could be used as an effective tool to reduce case backlog and the expense of litigation.

By 1980, the U.S. Congress had found that “the inadequacy of dispute resolution mechanisms throughout the United States is contrary to the general welfare of the people.”⁵ This finding prompted Congress to pass the Dispute Resolution Act to help more cities establish mediation programs. Congress never provided funding for more mediation centers; however, state and local government funding resulted in a sharp increase in the number of mediation centers nationally.

“The current wave of mediation popularity in the United States began in the early 1970s with the overcrowding of state and federal courts.”

This article will discuss a number of elements of the police/citizen mediation process including: mediation and its historical applications, factors giving rise to police/citizen mediation programs, the police/citizen mediation process, unique benefits and challenges of mediating police/citizen disputes, case criteria and screening as well as program challenges. Unless noted otherwise, all specific program details listed in this article refer to the police/citizen mediation program currently being used in Rochester, New York. The reader should not conclude that this is the only or best model in utilization. A number of different police/citizen mediation programs are currently being employed throughout the country—each program is specialized to satisfy a specific need and operate within specific parameters of acceptance in its community.

II. Historical Applications of Mediation

Although the popularity of mediation in Western culture has increased dramatically in recent years, it is

At that time, the vast majority of cases being resolved in mediation centers were civil or small claims in nature—most having to do with interpersonal disputes, neighbor issues, property damage and other relatively minor claims. Historically, the utilization of mediation has been largely limited to the types of disputes that led to its genesis—small claims and domestic issues.

Some individuals view the mediation process as having a higher order function in the maintenance of a just, fair society. The goal of dispute resolution programs should be to promote a just society in which power is more evenly distributed, and such projects should be judged on how well they promote this goal.⁶ Whether the ultimate goal of mediation programs is to improve the condition between the individual disputants or society as a whole, mediation had proven itself as a viable, effective means of resolving many disputes that were inundating the courts and troubling our communities. The success experienced by early mediation programs helped inspire some individuals to ponder the feasibility of expanding the mediation process to other areas of conflict. If mediation had proven to be so successful with small claims, interpersonal disputes, and other matters requiring litigation, why could it not be applied to other arenas of conflict?

III. Citizen Complaints: Traditional Processing Procedures

Most law enforcement agencies have formal procedures in place to address citizen complaints. There may, however, be significant variation among law enforcement agencies in the process by which complaints are investigated. One agency's complaint procedure may simply be an informal review by a supervisor while another agency may employ a full investigation process with final review by an independent civilian oversight body. This broad and varying spectrum of methods for addressing citizen complaints has caused increasing concern in many communities.

Most traditional complaint processing methods involve some level of examination of the alleged incident to determine the facts and particulars. Either a supervising officer or a designee of the department's internal affairs unit usually conducts the investigation or administrative review. In most instances the departmental designee will interview witnesses, including the complainant and subject officer, and compile a report with a recommended finding. The complainant is then generally notified of the results by mail and disciplinary action against the officer may or may not occur depending on the results of the investigation. It is common that the complainant is not made aware of any details regarding officer discipline.

Certain types of complaints, including those involving uses of force and more serious allegations of misconduct, are typically processed according to clearly established, formal policies of the law enforcement agency. This is essential for reasons of departmental accountability, quality assurance and public confidence. However, seemingly "less serious" complaints, if left unaddressed, can be equally destructive to a positive police/community relationship and ultimately undermine the community's faith and confidence in law enforcement. Looked upon by some as being "frivolous" or a "waste of time," these "minor" grievances over time and frequency have the potential to topple public confidence and strain the very fiber of any existing bond between law enforcement and the community.

There continues to be a steady pattern of public dissatisfaction with traditional methods of complaint processing. Traditional citizen complaint review systems often compound the frustration and anger felt by complainants for several reasons, including delay, lack of information about the status of the complaint, and the lack of an opportunity to meet face-to-face with a responsible official.⁷ The traditional method of processing complaints is characterized by some as being over-bureaucratic, biased toward police, a closed process, non-conducive to communication and largely useless in effectuating positive change on the part of individual officers and law enforcement agencies.

IV. Interpersonal Approaches to Interpersonal Complaints

By the end of the 1970s, mediation was firmly established as an effective means of resolving common disputes that were inundating the court systems. Many of the court-referred cases that were being successfully mediated were interpersonal in nature. By the early 1980s it had been well established that mediation was highly successful in resolving court-referred interpersonal disputes.

The prevalence of dissatisfaction with the traditional methods of handling complaints against law enforcement officers, coupled with the success of mediation in resolving interpersonal disputes, served as the impetus for the beginning of the formalized use of mediation to resolve complaints against law enforcement officers. Recognizing that the majority of complaints against law enforcement personnel stem from negative interpersonal interaction, logically, it would appear sensible to apply an interpersonal process to resolve the dispute.

V. Case Referrals

Many police/citizen mediation programs currently in operation are administered through Community Dispute Resolution Centers (CDRCs) that exist in all states. Many state judiciaries provide funding to independent

agencies for various alternative dispute resolution processes including mediation. Since most CDRCs minimally provide community mediation services, centralizing police/citizen mediation programs along with community mediation is a sensible practice.

Complaints against law enforcement officers may be referred to mediation a number of different ways; however, in most instances cases are referred either by a police department's internal affairs office, Chief, or other sanctioned governmental entity. Internal affairs offices are, for obvious reasons, in an excellent position to refer complaints to mediation. The internal affairs office is often a citizen's first stop when wishing to initiate complaints against members of law enforcement. This primary interaction with internal affairs staff is critical for two reasons. First, the staff person is able to either encourage or discourage mediation depending on the type of complaint and their own personal level of buy-in to the process. Second, the overall tone of interaction—positive or negative—will ultimately affect the complainant's perception about the entire complaint process, including mediation.

“Mediation should be offered to both complainants and officers as an option and should in no way infringe on the complainant's right to a formal investigation if he or she chooses.”

Clearly not all complaints or grievances against law enforcement officers are appropriate for mediation. In most mediation programs currently mediating police/citizen disputes, it is generally seen as inappropriate to mediate more serious complaints, including those dealing with use of force, serious procedural complaints, or allegations that, if substantiated, would constitute criminal activity. Experienced complaint mediation officials generally agree that use of force allegations should be ineligible for mediation; police officials support this position.⁸ There are reasons for limiting the availability of mediation to only selected types of complaints. First, it is crucial that the mediation process should never be used to circumvent or bypass a formal investigation into alleged misconduct. Mediation should be offered to both complainants and officers as an option and should in no way infringe on the complainant's right to a formal investigation if he or she chooses. Second, as a mechanism for quality assurance most law enforcement supervisors would want to be aware if their subordinate officers were engaging in serious acts of misconduct. From a management perspective, this would allow supervisors to address the situation in a formal manner and render mediation an ineffective means of “sliding through” the formal disci-

plinary process. Finally, for situations where there may be frivolous complaints of a serious nature, the investigation process proves the opportunity for full exoneration of the officer. The success of any matter referred to mediation is largely dependent on the diligence exercised during the screening and referral process as well as the mind-set and ultimate goals of the parties entering into the process.

Some types of disputes that may be appropriate for mediation include: Discourtesy, failure to take a report, complainant's disagreement with the accuracy of a report, failure to take what the complainant believes to be appropriate action, towed vehicle and other matters agreeable to the parties and approved by the police and the mediation center's administrative staff.

VI. Mediator Qualifications and Training

Mediation is a complex process requiring the mediator to simultaneously employ a variety of different skills throughout the session. A mediator will have to effectively listen, paraphrase, monitor themselves for impartiality when speaking, and ask open-ended questions, all while looking for small windows of settlement opportunity. Mediators clearly need to be highly trained and effective in their skills.

Effective mediators possess certain knowledge, skills and abilities about mediation along with personal and stylistic characteristics that tend to increase the rate of successful resolution. The ability to be professional, sensitive, street-smart, and a good communicator increases the chances that an individual will be effective in mediation.⁹ Effective mediators are highly proficient communicators, active listeners, impartial, show empathy for the parties and have a genuine concern for the collective improvement of police/community relationships.

Many police/citizen mediation programs require additional training beyond basic mediator credentialing. For example, the police/citizen mediation program in Rochester, New York, relies on mediators who undergo additional training on police policies, procedures and aspects of police culture in addition to their initial training requirements to become a mediator. The New York State Unified Court System, Office of Community Dispute Resolution Centers Program, governs the qualifications for initial mediator certification. Mediator trainees initially receive thirty hours of instruction during the Principles of Mediation training. An apprenticeship process consisting of a series of observations and co-mediations, and ultimately a solo mediation observed by an experienced mediator follows this training. Individuals who successfully complete the Principles of Mediation training and apprenticeship are then eligible to apply for the police/citizen mediation training. This training familiarizes mediators with police ter-

minology, police subculture, and assists with their understanding of many procedures that could be misinterpreted and serve as the basis for a complaint.

VII. Role of the Mediator

During the mediation session the mediator has the crucial role of facilitating a balanced, impartial process where both the complainant and police officer can feel safe to fully discuss the circumstances that gave rise to the complaint. The mediator must also demonstrate complete impartiality at all times and ensure that both parties have an ample opportunity to discuss the issues surrounding the incident. The mediator may ask open-ended questions to assist the parties in addressing the core issues of the dispute.

The mediator must also vigilantly watch for windows of settlement opportunity when listening to the parties discuss the issues. The true art of mediation lies in the mediator's ability to identify these small windows of settlement opportunity and bring them to the attention of the parties without imposing or suggesting recommendations. Exercising restraint in imposing an evaluation or recommending a settlement may be difficult at times, particularly when the parties are deadlocked and the mediator believes they have the answer.

Another important role of the mediator is to maintain the balance of power or "level the playing field" during the process. This is often a challenging duty in that most officers participate in mediation while armed and in full uniform. The unique power of police officers is derived from two sources: An officer's formal authority within the criminal justice system and an officer's sanction power to inflict harm on or to limit the freedom of another person.¹⁰ In order to establish an environment where the complainant feels safe to openly discuss the incident, the mediator must effectively address both the formal authority and sanctioning power of the officer. Mediators commonly address this during their opening statement by establishing an atmosphere of equality and encouraging both parties to speak to each other as equals. For example, the mediator may encourage the participants to refer to each other by their first names as opposed to "Mr. Smith and Officer Jones." The mediator may also remind the parties that they both will be held to the same set of ground rules outlined at the beginning of the session—the rules will apply to both participants equally.

VIII. The Mediation Process

There is no one universally accepted model or procedure for mediating police/citizen disputes. A number of different models have evolved in various municipalities—each tailored to fulfill a specific need and to operate within the level of acceptance of that particular community.

Once consent to participate is obtained from both the officer and complainant, a mediation is scheduled by the administering agency at a mutually agreeable date and time. At the beginning of the session the mediator gives an overview of the process and clearly explains the mediation procedures. Both the police officer and complainant are required to maintain complete confidentiality about the entire process. No information or statements that are shared during the mediation by either party may be used during any future proceeding including a formal investigation of the complaint. Complete confidentiality is imperative during this process in order for the parties to feel comfortable about speaking freely and openly about the issues at the heart of the dispute.

The mediator will give the complainant an opportunity to fully explain the incident that led to the filing of the complaint. The mediator will usually also encourage the complainants to discuss how they have been impacted by the incident, including full disclosure of all emotions they are willing to share. Complainants will also be encouraged to make suggestions on how to remedy the situation and discuss their needs in order to personally bring closure to the incident.

Once the complainant has had time to fully state their concerns, the officer is given an opportunity to respond to the complainant's statements. It is common for the officer to use the mediation session to explain or clarify some aspect of departmental policy or the law. In other instances the officer may attempt to explain the reasons for the behavior or demeanor if the complaint involved discourtesy. For example, it is quite common that prior to the incident the officer had just come from a difficult or hostile call and was still agitated from the previous experience.

After both parties have had an opportunity to speak and respond to each other the mediator will encourage the parties to communicate directly with one another about the issues contained in the complaint. The mediator may also challenge the participants to envision how their actions or words were taken or perceived by the other party. The mediator will highlight any areas of agreement heard when listening to the parties dialog and focus on areas of potential agreement, encouraging further discussion on those areas.

In most arenas of mediation, a signed, written agreement is the desired end result of a successful session. The agreement serves as a legally binding contract between the parties and clearly establishes specific parameters of participant accountability. However, in some instances police unions or departments prevent officers from entering into written agreements at the conclusion of a successful mediation. In these situations any agreements between the officer and citizen are strictly verbal in nature.

In the event of an unsuccessful mediation, most programs allow the formal investigation process to continue if the complainant chooses. The complainant therefore has nothing to lose and everything to gain by participating in mediation.

IX. Benefits of Mediating Police/Citizen Disputes

Mediation offers the complainant and officer an opportunity to directly communicate about the facts, circumstances, perceptions, and feelings surrounding the incident. It also provides a medium by which there can be a greater understanding about the circumstances leading to the incident, clarification of misunderstandings or misperceptions, and an opportunity to mend relationships whereby promoting a sense of partnership and community between the citizen and police officer. Dialog between the complainant and officer about the incident fosters greater understanding about the perspectives of those involved. Once the complainant attains a more comprehensive understanding about the factors that gave rise to the incident as well as the perspectives of the officer involved, the likelihood of a successful resolution greatly increases.

“The ultimate aim is to provide an experience in which both parties can walk away feeling like they have ‘won’ by resolving the issues in dispute.”

Mediation is by its nature, a non-adversarial process. The ultimate aim is to provide an experience in which both parties can walk away feeling like they have “won” by resolving the issues in dispute. There is the potential for long-term negative consequences from engaging in confrontational, adversarial processes that embrace a “win-lose” philosophy. Conflict has an emotional cost that remains after the battle is over. Win or lose, the scars may be with the individuals the rest of their lives.¹¹ In mediation, the focus is on resolving the matter satisfactorily, not beating the other party.

There are also larger, farther-reaching benefits of mediation that extend beyond the resolution of the incident that caused the dispute. Mediation is appealing not because resolution or settlement is good in itself and conflict evil, but because of the way in which mediation allows disputing parties to understand themselves and relate to one another through and within conflict.¹² Mediation therefore often serves a higher purpose in that it allows for greater insights into each party’s perspectives about the situation and an ability to interrelate in order to effectively work through the conflict.

Mediation offers both the complainant and police officer the opportunity to be heard in a fair and impartial forum in which they will maintain complete control over the outcome of the process. People exposed to the criminal justice system are at least as concerned about the fairness of the process as they are about the outcome—their sense of justice depends not entirely on whether they win or lose but whether they are treated fairly, have a chance to express their point of view, and have a sense of control over the process.¹³ Both parties will usually walk away feeling better about the entire process if they are afforded the opportunity to fairly and impartially be heard.

Mediation provides a forum for the exchange of a variety of information between the officer and the complainant. This information may have a profound effect on each party’s beliefs, cognitions and behaviors, and may serve to change the behavior of both parties during future encounters. For example, a complainant may observe an officer placing handcuffs on another individual prior to questioning and think this is unnecessary. The officer could use the mediation to explain that this is an officer safety precaution and is part of the rules and regulations when questioning suspects. The complainant may not agree with the procedure, but will have a greater understanding of why the procedure occurred. Conversely, complainants may tell an officer that they lose respect for police officers when they are discourteous and will be less apt to provide information to the police about suspicious or illegal activity in their neighborhood. This may prompt officers to realize that their demeanor toward people does affect the degree to which the public will cooperate and assist them in carrying out their duties.

For the complainant, mediation provides the opportunity to directly address the problem or concern with the officer involved. If complainants choose to have the matter investigated, they will not have the opportunity to speak to the officer about their concerns. Confronting and communicating with the other party in a dispute is often a key part of being able to process the feelings associated with the incident, ultimately bringing closure and starting the healing process.

Another benefit for the complainant is the expediency in which cases are mediated. Most mediation referrals are scheduled within two weeks of the date of receipt by the mediation agency. Cases that are investigated may take months to complete, possibly longer depending on the backlog, availability of witnesses and investigative staff. Significant delay in the processing of complaints to be formally investigated often leaves complainants with a strong sense of dissatisfaction about the complaint process. Mediation offers an expedient method of addressing complaints that will ultimately lead to higher satisfaction with the complaint process.

The mediation process provides an avenue of redress for complainants whose issues may involve an event or activity that may be difficult or impossible to prove in an investigation. For example, an officer may have been discourteous to a complainant in the absence of any witnesses. Such an allegation would be difficult to clearly prove or disprove in an investigative context. In this instance, mediation may be a more fulfilling way for the complainant to proceed. Most complainants do not feel satisfied at the conclusion of an investigation when they receive a finding of “Unprovable”—meaning there was insufficient evidence to clearly establish whether or not the alleged act occurred. This typically lends the complainant to question the value of bothering to file a complaint and many times adds to the feeling of resentment and distrust of police officers and “the system.”

There are a number of direct benefits to police officers that participate in the mediation process. Mediation provides police officers with an opportunity to explain what they did and why they did it. In the traditional complaint review process, officers are required to explain themselves to investigators—from either internal affairs or a citizen oversight agency—but they have no opportunity to talk directly to the complainant.¹⁴ This opportunity for direct communication serves as an important vehicle for educating individuals in the community on aspects of police procedure and protocols.

Opportunities for face-to-face interaction are generally not part of the formal investigation processes, and as a result, there is a missed opportunity for sharing the affects of the interaction. Officers are reminded that the way they interact with the citizenry does have an effect and leaves a lasting impression on citizens and their perceptions of police officers and their department as a whole.

A Vera Institute study of the complaint process in New York City found that officers who had gone through the complaint process found it to be deeply dissatisfying. Officers viewed investigations as being biased against them and expressed a strong desire for face-to-face meetings with complainants. In particular, they wanted an opportunity to explain their actions to citizens.¹⁵ Mediation may therefore potentially serve as a more satisfying way to resolve complaints for the police officer as well as the complainant.

Another potential benefit for the police officer participating in the mediation process is the fact that there is often no record of any complaint being filed if the matter is successfully resolved. Mediation is an option for the officer to potentially avoid a formal investigation and maintain a clean employee index.

Mediation also provides a number of potential benefits to police departments. Just as community-based mediation programs serve to lessen the strain on the

courts, police/citizen mediation programs serve to reduce the caseload of internal affairs investigators, thereby freeing up personnel to investigate more serious, priority cases. With the reality of shrinking budgets and limited personnel, meditation programs provide police departments with a viable means of maximizing their personnel resources and ensuring that priority cases get expedient investigative attention. Mediation is a cost-effective alternative to formal internal affairs investigations. In many police departments the cost of formal investigation is higher than \$2,000 per case. This includes the cost of investigation, administration, review, and discipline. The cost to mediate a case is considerably less—in some programs approximately \$100 per case.

Police/citizen mediation provides a benefit to the larger community as well as the individual citizen and officer involved. With repeated, widespread negative encounters between citizens and police there is an overall souring of trust and respect. This loss of trust and respect along with a pervasive ill-sentiment will begin to decay any fiber of cohesion that binds the community with the police. Over time, this progression will likely lead to a complete breakdown of positive police/community interaction and damage any remaining trust between police and the community. Mediation may not be the comprehensive answer, but it is a proactive step in the direction of positive change.

X. Program Challenges

One of the continuing challenges facing police/citizen mediation programs is how to increase the rate of case referrals. A major determining factor affecting the number of complaint referrals is the degree to which those who are in positions to refer cases are persuaded of the merits of mediation. Most complaints are typically filed at police departments or police internal affairs offices. Mediation programs with steady referrals typically receive cases from personnel in the police department who believe in the mediation process. These individuals understand the benefits of mediation and use it to not only help themselves, but also their departments and the communities as a whole.

One critically important aspect of the mediation model is the voluntary nature of the process. The first phase in empowering the parties to resolve their own dispute is empowerment to choose whether or not to participate in the process. There has been some question regarding how much input the individual officer has in deciding whether or not to participate. Complaints and mediation requests will generally come through a supervisory chain of command within a law enforcement agency. When an officer “agrees” with a mediation request, the question then becomes whether the officer has freely agreed to participate in mediation

or is simply obeying a supervisor's wishes when the opportunity to mediate is "offered."

Another critically important component of the mediation process is maintaining a balance of power between the participating parties. If there is a power imbalance, the party being dominated may, out of fear and intimidation, be less than fully expressive about issues and concerns. If this occurs, the success of the mediation process will be significantly undermined. In most models of police/citizen mediation, officers enter the mediation room in uniform carrying their service weapon. Even if no words are spoken, all participants become immediately aware of a power imbalance. Our society teaches us from a very young age to respect and obey police officers. The sight of a police uniform for most conjures up a wide range of thoughts ranging from fear, power, and control to respect, honor and discipline. A complainant's perceptions and precognitions about police officers undoubtedly affect the dynamics of the mediation process. Police officers who participate in mediation while in full uniform will have an effect on the dynamics in the room and very likely the outcome of the entire process.

"Law enforcement and the communities it serves are interdependent on one another and neither can flourish without a strong, positive relationship between them."

XI. Conclusion

Over the last 30 years, there has been a tremendous change in the way mediation is perceived and utilized. Mediation is no longer viewed as a nebulous, non-exact, controversial process. It has been established as a satisfying, cost-effective, mutually beneficial means of permanently resolving a wide array of disputes. The success of early mediation programs served as the impetus for the later development of highly innovative derivations of traditional models of mediation. Police/citizen mediation programs were one of the more creative innovations derived out of a belief that there existed a more satisfying way to address complaints against members of law enforcement. In addition to benefiting the complainant, mediation also affords significant benefits to police departments and communities as a whole. These wide-reaching benefits along with cost benefits make mediating police/citizen disputes a highly sensible alternative to traditional methods of complaint processing.

In this time of strained police/community relationships and wavering trust for law enforcement, it is necessary to be proactive in repairing damaged relationships and reestablishing partnerships between citizens and the police. Law enforcement and the communities it serves are interdependent on one another and neither can flourish without a strong, positive relationship between them. This must be kept in mind as police/citizen mediation programs are instituted, evaluated, and improved. Mediating complaints against law enforcement is not a comprehensive process that will mend all that is broken. It is, however, an important tool in reestablishing trust and a sense of partnership between police and citizens in our communities.

Endnotes

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Racial Profiling Traffic Stop Data: Is It Reliable?

By Iris Jones

The subject of race relations continues to be an unresolved and perplexing issue for Americans to face. More specifically, there are 14 states and over 2,000 municipalities grappling with the daunting task of collecting and analyzing data from traffic stops pursuant to either state mandate or on a voluntary basis. Even more challenging than compiling the data is fully understanding and clearly explaining the statistics created from the data analysis. The difficulty lies in the method of collecting and the subjective nature of the tasks at hand. The collection of traffic stop data is literally a moving target. Police officers and state troopers are faced with the vexing responsibility of determining the race and ethnicity of each person that they stop, as well as carrying out the duty to enforce the law in a fair and equitable manner.



Increased diversity in the United States adds to what was once less complex; in certain respects it was a black-and-white issue. The United States population was significantly more racially diverse in 2000 than it was in 1900.¹ According to *Demographic Trends in the 20th Century*, “[a]t the beginning of the century, 1 out of 8 Americans was of a race other than White; at the end of the century the ratio was 1 out of 4.”²

By 2000, 40 states and the District of Columbia had populations with at least 10% of races other than White. From 1980 to 2000, the Hispanic population more than doubled. The aggregated minority population (people of races other than White or of Hispanic origin) increased by 88% between 1980 and 2000, while the White non-Hispanic population grew by only 7.9% during the same 20-year period. In 1980, more than 50% of the population in Hawaii and the District of Columbia was minority.³

By 2000, California and New Mexico had also become more than 50% minority, and Texas was the only other state with at least 40% minority (48%), according to the census data. Congressional Democrats, city politicians and major civil rights groups have argued that the minorities recorded on the census data are undercounted by approximately 6.4 million people.⁴ After census takers and census questionnaires were sent out in 2000, the Census Bureau used mathematical formulas to estimate how many minorities, renters and other groups might have been missed in inner cities,

rural areas and other locations. Those figures are often referred to as the undercount. Texas’ undercount percentage was put at 1.7%, while California and New York were both at 1.5%. The Census also estimates that they counted 3.1 million people twice. Most of these people were White and affluent.⁵

Training of each law enforcement officer in the correct method or non-biased method of stopping individuals is a noble effort toward the eradication of racial profiling. However, the training of adult individuals is difficult when officers bring to the position their own background and belief system which ultimately affects human behavior. Conduct is not usually changed from a lifetime of perceptions and beliefs after a four-hour training session. It is well-documented by law enforcement officers around the country that Blacks and Hispanics are more likely than Whites to be stopped by the police. Recently, the mandated reports submitted by law enforcement in cities such as Los Angeles, Dallas, Boston and Houston confirm that minorities are stopped and searched most, which leads civil rights advocates to call for an end to racial profiling.⁶ In Texas, civil rights activists believe that Blacks have cause for concern based on the statistics compiled for the state to detect patterns of racial profiling. Houston NAACP Executive Director Yolanda Smith said: “We’re hearing about it every day in our police complaint center. I’m just glad to see the statistics finally prove that.”⁷

“Police officers and state troopers are faced with the vexing responsibility of determining the race and ethnicity of each person that they stop, as well as carrying out the duty to enforce the law in a fair and equitable manner.”

An analysis conducted by the *Boston Globe* shows a wide disparity in traffic tickets and vehicle searches. Although Blacks and Hispanics are more likely to be searched, Whites are more likely than other racial groups to face drug charges following a search.⁸ This conclusion supports the claim by civil rights advocates that minorities are searched with less reason than Whites.

The statistics compiled and analyzed to detect whether there is a pattern of racial profiling by the police across Texas also show that Blacks have reason to be concerned. In 2001, the Texas Legislature passed a

law prohibiting racial profiling. Under that law, all law enforcement agencies in Texas were required, beginning January 1, 2002, to gather information related to all traffic stops in which a citation was issued or an arrest made. A report on this information gathered was required to be presented to local governing bodies by March 1, 2003.⁹ The required information for the report includes the reason for the stop, the stopped person's gender and race or ethnicity, whether or not a search was conducted, and if so, if the search was consensual and whether or not the person was arrested as a result of the stop.

In Austin, Texas, officers gather traffic stop information by five different means: 1) ticket; 2) warning citation; 3) offense report; 4) arrest or field release citation; and 5) field observation tracking system card. A field observation tracking system card is only completed when there is no other way in which to document the stop. Officers are required by law to document every stop. The public can assist the officers in gathering this information by being cooperative and by providing the requested information to the officer. Assisting the officer in completing the card is especially important when it comes to accurately completing the race and ethnicity field. This can be a very delicate subject, and some officers may be uncomfortable asking a person's ethnicity.

Article 2.133(b)1(B) of Texas law, entitled "Reports Required for Traffic and Pedestrian Stops," mandates:

A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including: (1) a physical description of each person detained as a result of the stop, including: (A) the person's gender; and (B) *the person's race or ethnicity, as stated by the person* or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability.¹⁰

Officers are understandably reluctant to inquire about the race and ethnicity of the person being stopped. However, it is clearly stated under the Texas statute that the race or ethnicity is determined by the person and not by the officer.¹¹ Each person stopped should be informed that this information is required by law to be gathered and that it will be used in accurately reporting each traffic stop. To ensure that any data analysis is reliable, it is important that the data be accurate. Obviously, erroneous or incomplete data will affect the analysis and lead to the wrong conclusions, or as

the old saying goes, "Garbage In, Garbage Out." To ensure that law enforcement provides accurate reports to the citizens concerning the activity on traffic stops, there must be an emphasis on completing information on all stops and being accurate in determining the race and ethnicity of the individual being stopped. To complicate this process of collecting traffic stops data, Census 2000 for the first time ever included a count of the number of people reporting two or more races, which at 6.8 million exceeded the American Indian and Alaska Native population.¹²

I. The Impediments to Obtaining Reliable Data

A. Resistance to the Mandate or Requirement

Often the officers will reject the notion that racial profiling even exists. The officers resent the claim that they may be profiling persons for traffic stops based on race or ethnicity. There is a genuine concern that the analysis of the data collected in good faith will target individual officers for stopping a disproportionate number of minorities and they will then be labeled as "racists." In response to the fear, concern, and resistance to the data collection, numerous departments have chosen to place the emphasis on the total data collection of the department and not to track each individual officer's data collection. How does one ensure that the data is actually collected by the individual consistently, accurately, and completely? If the officer believes that the department places zero emphasis on an individual's collection efforts and does nothing to verify the accuracy of the data, how can the department ensure data integrity? It is imperative to this process that the data be randomly checked or verified through an automated system to guarantee accuracy. Several agencies utilize their Mobile Data Terminal (MDT) to enter the race and ethnicity data on traffic stops which saves the officer time in completing hard copies and allows the department better tracking and verification capabilities. Once the tracking system is in place, notification should be given to the individual officers that one's traffic stop data is subject to being verified and crosschecked for accuracy.

B. Data Verification/Data Integrity

Many departments mandated to collect data currently are not auditing the data collected for the purpose of determining whether the information recorded was intentionally or unintentionally documented to reflect the traffic/pedestrian stop. There has been and continues to be a degree of resistance on the part of police officers nationwide to complete the necessary documentation in electronic format or on hard copy forms. Some officers perceive that they would be labeled as a "racist" if their reports or field observation

cards indicated that they were stopping, searching, and/or arresting a disproportionate number of minorities. However, the failure to record the race or ethnicity of the drivers stopped, as required by law, certainly thwarts the ability to capture complete data for analysis and thus complicates any effort to effectively monitor racial profiling in traffic stops. Although there is the pressure of being labeled a “racist” for stopping too many of one race or ethnicity, police departments should not ignore the officer who fails to record the traffic stop or enters false data in order to balance one’s traffic stop data.

C. Identifying Race or Ethnicity Accurately Instead of Guessing

Is it fair to ask someone you probably have never met for information regarding his or her race or ethnicity? Police officers are either forced to ask or to guess the race or ethnicity of drivers and pedestrians each and every day. Since nearly seven million Americans consider themselves to be members of two or more races in the 2000 Census Data,¹³ it is reasonable to understand that these same individuals may not wish to state one race or another when asked by law enforcement to identify themselves by one race or ethnicity. This dilemma, as well as some that choose to be categorized as “other,” certainly adds to the difficulty of collecting and analyzing the data. Only when law enforcement agencies are prepared to mirror the wide latitude afforded to citizens by the Census Bureau will individuals be afforded the opportunity to record one’s race or ethnicity as they did for the 2000 Census. Giving the people being stopped the chance to select the race or ethnicity they represent is the best way to determine race and ethnicity as accurately as possible. It is often impossible for an officer to know or even to accurately guess the race of a driver. Some officers simply leave the race space blank on the ticket. Officer Brian Barnes from Webster, Massachusetts, believes the state should have put that information on all drivers’ licenses. “I believe that the law definitely leaves the police officer in a predicament,” said Barnes. He continued: “Why should it be incumbent upon me to determine the race? Why do I have to guess? I don’t guess your address, I don’t guess your name, I don’t guess your date of birth.”¹⁴ Perhaps the number of categories of races and ethnicities will grow beyond what is reasonable for statistical analysis purposes. On the other hand, to give an officer carte blanche authority to decide whether he or she will designate the person stopped as Hispanic or Black or American Indian or Anglo may be completely unfair to the officer who must select based on one’s own personal knowledge, expertise and judgment. It is highly unlikely that officers actually receive law enforcement training on how to label or identify individuals based on race or ethnicity. The better method to ensuring

accuracy about race or ethnicity would be to ask the person stopped. However, requesting sensitive information like race and ethnicity without offending the person is difficult for the untrained officer.

D. Fear of Being Labeled a “Racist” for Reporting Disproportionate Numbers

Concern relating to labeling any number of officers as “racist” based on their field observation cards is certainly valid. The purpose and intent is to obtain information from every individual officer, but it should not be designed to punish individual conduct. If individuals are made to suffer then there will not be a sufficient number of willing participants to ensure accuracy and consistency.

Examination of the serious problem of racial profiling deserves a serious application of the best methodology for determining if racial profiling exists in one’s community once the data collection phase has been completed.

An analysis is conducted to spot trends and determine if racial profiling is actually occurring in a particular community. The numbers alone are not sufficient evidence to prove racial profiling within a law enforcement agency. One of the most troubling questions which plagues law enforcement after the data is collected is how to analyze the data. It is impossible to analyze data to determine whether there is a racial profiling problem, if there is no basis for comparison.

II. Baselines

There are four recognized methods for comparing the data to outside data (baselines), which will be discussed below along with the advantages and disadvantages of each method.

A. Consensual Search Baseline

This methodology compares the data of those searched to those stopped. The baseline includes the individuals who are stopped. It excludes from comparison all those who are arrested as a result of the stop either through having outstanding warrants or for some violation of the law. They are excluded because the officer has no discretion over whether or not the person is searched once the person is under arrest. The baseline looks solely at those who are stopped and then are free to continue on their way.¹⁵ Advantages: This method creates a simple, easy-to-find baseline since it is located in the report itself. It costs nothing to obtain the data since it is already being gathered. This includes all drivers, both residents and visitors who are stopped. Disadvantages: All gathered data is required to be analyzed under the law. There are other variables that might affect whether or not someone is searched.

B. DPS Driver's License Data

This methodology compares the data of those stopped to the driving population of the area as given by the Texas Department of Public Safety driver's license information.¹⁶ Advantages: The baseline only provides information for people who have driver's licenses. These are the people who are presumed to be on the roadways, rather than looking at the entire population. Disadvantages: DPS includes Hispanics under Whites for race, rather than as a separate category. The information provided does not include out-of-area drivers who might be stopped. There is a charge for this information from DPS and it is only available to City Councils. Agencies using this data might be prohibited from reproducing it in their reports, so others cannot recreate the comparison for themselves.

"When police enthusiastically support the collection of data on the racial and ethnic demographics of their stops according to a mandate or directive, then they demonstrate to the community that they have nothing to hide and the analysis of the data will be more reliable."

C. Fair Roads Standard

This methodology uses the Census 2000 data of households with access to at least one vehicle. A simple formula allows one to compute the percentage of each ethnicity. The percentages are then compared to the percentage of each ethnicity stopped. This figure can be computed for the area or a metropolitan region to include out-of-area drivers.¹⁷ Advantages: It is free and accessible to everyone since it is available online through the Census 2000 Web site. It includes all ethnicities, categorized separately. Disadvantages: It compares households (groups) with access to cars to persons (individuals) stopped. Even with the percentage for the metropolitan areas, it may not accurately reflect the out-of-area driving population. The numbers given are based on a sample of those answering the long form Census survey, rather than an actual count of those with access to cars.

D. Traffic Stream Analysis

This methodology involves simply counting the cars on the roads. Through a method of counting cars and determining the ethnicity of the driver by sight, percentages for each ethnicity on the roads can be determined. These numbers are then compared to the number of persons who are stopped. Only discretionary stops are used in this type of analysis. Discretionary

stops are when the officer chooses to make the stop based on some inner reasoning but are not required to do so as in call for service or BOLO's (Be On the Look Out).¹⁸ Advantages: This method involves seeing the traffic from the officer's point of view. Since racial profiling is allegedly based on the officer seeing someone of a certain race or ethnicity and deciding to stop that person on that basis alone, an analysis would be conducted based on viewing the traffic. This would also entail covering all the streets, roads and highways, whether or not there are residents or visitors on the streets, roads, and highways. Disadvantage: It is very expensive to design and implement such a study. The reliability of this study can be questioned, since re-creating the conditions under which the count was undertaken may be difficult if not impossible. Furthermore, the percentages and numbers are not readily available to everyone unless the agency includes all its methodologies in the report.

Aggregate numbers alone will not confirm or deny that racial profiling exists in a community, and these are just four methods to analyze the required data. Law enforcement agencies will have to decide which system of collecting and analyzing data is best for their communities. This is the first year for mandatory reporting in Texas and in other jurisdictions, and it is expected that the reports might appear less than perfect. As agencies become more comfortable with the collection of data, training becomes more sophisticated within each agency, and departments become more familiar with the methodology of analyzing the data, the collection efforts and data analysis should improve substantially.

A person stopped on the streets and highways does not necessarily live and work in the community where the data is collected and analyzed. Comparing the data collected on individuals stopped may not accurately reflect what goes on in the mind and heart of the law enforcement officer. However, each citizen is entitled to be treated fairly and should not be profiled solely based on one's race or ethnicity. Racial profiling will cease when the unfairness is brought to light. Community leaders must continue to work with their law enforcement officials to improve the racial profiling data collection, analysis and the reports. Community leaders and civic organizations must continue to ask the tough questions when the reports are disseminated to the public and should expect to receive accurate detailed reporting and most importantly must insist upon fair treatment of all citizens at all times.

III. Is There a Real Problem? Should We Be Concerned?

After collecting the data, reviewing and analyzing all the information, what next? The law in Texas includes no penalty for failure to comply. However, the

Houston Police Department (HPD) is currently working with Sam Houston State University (SHSU) criminal justice experts, who were asked by HPD to analyze the data, to help that department determine whether racial profiling occurred last year.¹⁹ Several civil rights advocates and police watchdog organizations around the country are calling for an independent analysis of the data. In addition to the SHSU study, The League of United Latin American Citizens, the NAACP and the ACLU expect to analyze the data collected in Houston with the help of experts from Texas Southern University and the University of Houston.²⁰

When police enthusiastically support the collection of data on the racial and ethnic demographics of their stops according to a mandate or directive, then they demonstrate to the community that they have nothing to hide and the analysis of the data will be more reliable. Honesty and accuracy is the first step in promoting a reliable and trustworthy process. This will certainly aid in promoting open dialogue and for advancing positive community-police relationships. With the elimination of racial profiling in our communities, the quality of police-citizen encounters will improve and perhaps the mandate for data collection and analysis may no longer be necessary.

Endnotes

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2. *Id.*
3. *See id.*
4. See Eugene Ericksen, *An Evaluation of the 2000 Census*, in U.S. Census Monitoring Board, Presidential Members, Final Report to Congress, available at http://govinfo.library.unt.edu/cmb/cmbp/reports/final_report/default.asp.htm (2001).

5. *See id.*
6. See Tina Daunt & Jill Leovy, *LAPD Offers 1st Data On Traffic Stops Study Finds Blacks And Latinos Were More Likely To Be Searched When Pulled Over By Police*, Los Angeles Times, Jan. 7, 2003, at A1; Blacks, Hispanics Get More Traffic Searches, Mar. 5, 2003, at 8A; Bill Dedman & Francie Latour, *Traffic Citations Reveal Disparity In Police Searches*, Boston Globe, Jan. 6, 2003, at A1.
7. Dale Lezon, *Minorities Searched Most: Critics Say HPD Traffic Stop Data Show Racial Profiling*, Houston Chronicle, Mar. 5, 2003, at 1.
8. Dedman, *supra* note 6, at A1.
9. *See* Tex. Crim. Pro. Code Ann. § 2.132 (Vernon 2003).
10. *Id.*
11. *See id.* at § 2.133(b)(B).
12. Hobbs, *supra* note 1.
13. *See id.*
14. Bill Dedman & Francie Latour, *Police Not Pressed On Racial Records: Ticket Notation Is Key In Bid To Fight Profiling*, Boston Globe, Jan. 2, 2003, at A1.
15. *See* Dwight Steward & M. Douglas Berg, Steward Research Group, *A Statistical Examination of Racial Profiling: A preliminary statistical analysis of the search rates of minority and non-minority Texas motorists*, 8–10 (2000).
16. Alejandro del Carmen, Ph.D., Director of the Center for Criminal Justice Research and Training, Arlington, Texas.
17. Letter from the ACLU, NAACP, LULAC, and TJRC, to Police Departments across Texas (Dec. 30, 2002), available at <http://www.aclutx.org/projects/police/profiling/fairroadsletter.htm>.
18. *See* John Lamberth, Lamberth Consulting Group, *Racial Profiling: Assessment and Evaluation in Urban/Suburban Jurisdictions*, (2003).
19. *See* Dale Lezon, *Experts To Analyze HPD Stops; Study To Check For Racial Profiling*, Houston Chronicle, Mar. 5, 2003, at 24.
20. *See id.*

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Police Oversight Within New York's Collective Bargaining

By Elayne G. Gold and Robert E. Smith

Forms of Police Oversight

Police oversight comes in many different forms. In the last decade or so, many municipalities around New York State have implemented or attempted to implement effective oversight organizations by amendments to local law, or by resolutions of the municipality's City Council.¹ In Syracuse, the Common Council enacted Local Law No. 11 in 1993. The enabling legislation states, as its purpose:

To establish an open citizen-controlled process for reviewing grievances involving members of the Syracuse Police Department. In order to insure public accountability over the powers exercised by members of the Syracuse Police Department, while preserving the integrity of the agency that employs them, citizen complaints regarding members of the Syracuse Police Department shall be heard and reviewed fairly and impartially by the review board established in this section. . . . To establish a Citizen Review Board to hear complaints regarding Syracuse police officers and the Syracuse Police Department, and which would maintain procedural due process safe guards to protect the rights of both police officers and individuals who come in contact with the Syracuse Police Department and its officers.²

The City of New York has had an active Civilian Complaint Review Board since 1953. The Board initially consisted of three deputy police commissioners "who were charged with the responsibility of reviewing investigative reports prepared by Police Department staff; the board then reported its findings and recommendations directly to the Police Commissioner."³ By 1993, the Board was converted to an all civilian, non-police Review Board, via an amendment to the city's Charter.⁴ New York City's enabling legislation establishes the Board with thirteen members of the public-at-large appointed by the Mayor. The public appointees must be residents of the City and "shall reflect the diversity of the City's population."⁵ In addition, those



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appointed cannot be otherwise employed by the City and may not have any prior law enforcement experience.⁶

In 1991, Schenectady's City Council established the Police Objective Review Committee (PORC).⁷ In its stated purpose, PORC was to "demonstrate to the community that the Schenectady Police Department competently, legitimately and thoroughly investigates citizen



Robert E. Smith

complaints against members of the Department. . . ."⁸ The PORC met to review documents presented to it by a member of the Schenectady Police Department's Internal Affairs unit and would issue recommendations as to whether the complaint was founded, needed further investigation, or would be referred back to the Schenectady Police Department for further action. PORC did not compel officer attendance nor hold hearings on complaints.⁹

In 2002, the Schenectady Police Department was investigated by the FBI, leading to the indictment and conviction of four officers. Additionally, there was simultaneous public concern that the police and city citizens did not have a solid, focused working relationship. The City Council, working with the Police Department, numerous citizen/human rights groups, and the Schenectady Police Benevolent Association (PBA), abolished PORC and established the Schenectady Civilian Police Review Board (CPRB).¹⁰ The Legislative Intent of the CPRB states that:

[T]he citizens of the community will be best served with civilian oversight of internal police complaint procedures and investigations, and in addition to have a permanent body whose mission shall include the bettering of relations between civilians and police. . . . [CPRB's] goals are to improve communications between the Police Department and the community, to increase police accountability and credibility with the public, and to create a complaint review process that is free from bias and informed of actual police practices.¹¹

Similar to the New York City oversight body, the Schenectady CPRB will not include among its members any city employees, elected officials, or members of the Schenectady Police Department; however, the city's Public Safety Commissioner is an ex-officio, non-voting member.¹² Like its predecessor PORC, the CPRB reviews investigations submitted by the Police Department's Internal Affairs unit with police officer names redacted, and limits its authority to issuing recommendations to the Schenectady Police Department.¹³

Collective Bargaining Agreements

The creation of a civilian review board (CRB) and oversight agencies must be considered in the context of a collective bargaining agreement (CBA) between a municipality and its police union. One of the parties to a CBA will generally be "the city." The city is represented by its chief executive officer, the Mayor, who in turn represents the executive branch of government. The other party to the collective agreement will be the union.¹⁴ The New York State Civil Service Law sets limited responsibility for the legislative body in the realm of negotiations, primarily relating to financial/economic matters.¹⁵

"The creation of a civilian review board and oversight agencies must be considered in the context of a collective bargaining agreement between a municipality and its police union."

The collective agreement will generally have a section entitled "Management's Rights," providing to management the right to manage and direct the work force, together with the right to consider and implement discipline. For example, the city of Schenectady, in its most recent collective agreement with its police union, has a management's rights clause which provides, in pertinent part, as follows:

[T]he Mayor, acting through appropriate officials, shall have the sole and exclusive right to direct and manage the Department of Police, including but not limited to, the following rights: . . . to determine the Rules and Regulations governing the Department; to determine what training or instructional programs are necessary [and] . . . to determine practices and procedures for the efficient, disciplined and orderly operation of the Department.¹⁶

Many CBAs also have sections variously titled but generally dealing with rights of the employees.¹⁷ The

Syracuse CBA between the city and its police union addresses the procedures, rights and obligations of an "Investigation." The contract language is very explicit in detailing employees' rights during investigation and interrogation by management.

The wide-ranging powers and duties given to the [police] Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the Force. These questions may require investigation by superior officers designated by the City. In an effort to ensure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

* * *

(b) The interrogation of a member of the Force shall be at a reasonable hour, preferably when the member of the Force is on duty, unless the urgency of the investigation dictates otherwise. If any time is lost, the member of the Force shall be given compensatory time.

(c) The interrogation shall take place at a location designated by the Chief of Police . . .

(d) The member of the Force shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the member of the allegation should be provided . . .

(e) The questioning shall be reasonable in length. Reasonable respite shall be allowed . . .

(f) All members of the Force shall be obligated to answer any questions concerning their conduct as it relates to their employment, except those which violate their constitutional, legal or contractual rights.

The contract further provides that:

(i) If a member of the Force is under arrest, or is likely to be, or if he is the subject or the target of a criminal investigation, he shall be given his rights pursuant to the current decisions of the United States Supreme Court.

(j) In non-criminal cases where infractions are nevertheless of a serious character, the individual shall have an opportunity to consult within 24 hours with this counsel and/or Association representative, if he so requests, before being questioned . . .¹⁸

When investigations and interrogations are conducted by a police department, generally through an office of professional standards or an internal affairs unit, the information from the investigations is kept in separate confidential internal affairs files. If at such time disciplinary action is going to be levied against a particular police officer by virtue of the investigation or interrogation, then the employee would be provided with notice of the charges against him or her and an opportunity to be heard either pursuant to the state civil service law¹⁹ or pursuant to the provisions of the applicable CBA dealing with disciplinary action.²⁰

Information contained in internal affairs files is generally considered confidential and not available for public consumption.²¹ An employee's personnel file (and the information contained in it) is confidential and not publicly available unless the employee signs a release permitting the municipality to share that personnel file data with others.²²

Interplay Between Police Oversight Committees and Collective Bargaining Agreements

Problems can arise when municipalities create CRBs without taking into account the separately negotiated CBA. As indicated above, the CBA is an agreement between the police union and the municipality, acting through its chief executive officer.²³ These two parties have the exclusive right to determine the terms of the contract.²⁴ CRBs created by enactment of a local law grant the city's Common Council responsibility and authority which has often risen to a level of conflict with the rights, protections and authority contained in the CBA.²⁵

The Syracuse Citizen Review Board was established as independent from the Syracuse Police Department. The enabling legislation indicates that this CRB has the power to: "Hear and review complaints and recommend action regarding police misconduct. Jurisdiction shall include misconduct that violates state and/or federal law and Syracuse Police Department rules and regulations."²⁶

The Syracuse Board, through its enabling legislation, assists the complainant in writing the complaint against the officer, and provides for notification to the officer who is the subject of the complaint.²⁷ Although a copy of the formal complaint will be filed with the Internal Affairs unit of the Syracuse Police Department,²⁸ if Internal Affairs does not complete its investi-

gation within an established time frame or fails to respond to the request to investigate, the Board itself will begin review of the complaint.²⁹ The Syracuse CRB hearing procedure would include a full fact-finding before the Board itself which, by the enabling legislation, includes the right to take testimony, subpoena and compel attendance of witnesses, and require production of records and other documentation to support or defend the complaint.³⁰

A review of the language from the enabling legislation in Syracuse appears to duplicate the language found in the negotiated collective bargaining agreement entered into between the city of Syracuse and its labor union. The question arises as to whom the police officer must answer to and whether the police department falls within the purview of the executive branch, through the office of the Mayor, or the legislative branch, acting through its City Council and its CRB.

Challenges

The Taylor Law of New York State, the public sector labor relations statute governing all municipalities in the state³¹ (except those which choose to create their own statutory scheme),³² provides that it is an unfair labor practice for rules and regulations to be unilaterally (without negotiations) implemented upon public sector employees when said rules and/or regulations would have an effect on the terms and conditions of the employees' employment with the municipality.³³ The parties to a CBA have the opportunity to negotiate the language which appears in their collective agreement, the joint opportunity to dispute any proposal submitted by either party, and the opportunity to ultimately reach an agreement on the language which each party must abide by. Creation by municipalities of CRBs with the CRB's concomitant promulgation of its own set of rules, regulations and stated obligations upon both the police department and employees, can prove to be problematic. In fact, enactments by the cities of New York, Rochester, and Syracuse have all been challenged in various forms.

Syracuse adopted its Civilian Review Board in 1993.³⁴ Subsequently, the Syracuse PBA brought an improper practice charge to the State Public Employment Relations Board (PERB) alleging that the City of Syracuse unilaterally implemented procedures compelling PBA members to participate in hearings held before the CRB concerning citizen complaints against city police officers.³⁵ The PBA contended that any development of procedures, certainly those which could impact employees' terms and conditions of employment (i.e., carry the possibility of discipline if the employee fails to follow the unilaterally enacted procedure), are subject to mandatory negotiations.³⁶

PERB held that it lacked jurisdiction over the issue since the Syracuse police contract contained negotiated

procedures for investigation and interrogation, therefore the matter was deferred to arbitration.³⁷

The Syracuse PBA filed its Demand for Arbitration³⁸ and simultaneously went to court to seek an injunction “enjoining the [City of Syracuse’s CRB] from compelling the participation of [Syracuse PBA members] in hearings before the CRB while an arbitration proceeding is pending . . .”³⁹ The court granted the injunction, finding that despite the city’s arguments that the CRB can only recommend, and not impose, discipline (and arguably there would then be no impact upon PBA members), “[t]he issue in the arbitration is whether or not the City violated the Collective Bargaining Agreement when it unilaterally implemented the procedures set forth in Local Law No. 11 of 1993.”⁴⁰

The court further stated: “Since the relief sought at the arbitration will be a ruling that the [City] cannot compel the participation of the police officer outside the procedures set forth in the collective bargaining agreement, the relief will be rendered ineffectual unless . . . the Court grants an injunction.”⁴¹ Currently, the injunction is still in effect and the arbitration is pending.⁴²

The New York City PBA brought an Article 78 proceeding against the City and its Civilian Complaint Review Board (CCRB) to permanently enjoin the CCRB from enforcing its local law claiming, among other things, that the law “is . . . in derogation of the contractual rights of members of the police department.”⁴³

With respect to the argument that the City Charter’s creation of the CCRB violated the collective bargaining agreement, the court reviewed the CBA’s “Bill of Rights” provisions, quoting as follows: “The ‘Guidelines for Interrogation of Members of the Department’ in force at the execution date of this Agreement will not be altered during the term of this Agreement, except to reflect subsequent *changes in law*.”⁴⁴

The court found that “A ‘change in law’ is precisely what occurred here. Specifically, the City Charter ‘changes the law’ with respect to interrogation of officers. Therefore, there is no impairment of contractual rights.”⁴⁵

In the city of Schenectady, the Schenectady PBA President was a member of the City Council task force which reviewed the status of police oversight in the city. Unlike Syracuse, Rochester or New York City, the Schenectady ordinance⁴⁶ specifically states that the “[Civilian Police Review] Board shall not itself participate in an internal affairs investigation, nor shall it issue subpoenas concerning the same.”⁴⁷ The Schenectady CPRB may offer recommendations after it is provided with a copy of the Police Department’s Internal Affairs investigation and, pursuant to the law, may encourage resolution of the matter between the civilian complainant and the officer, through a mediation process.⁴⁸

The City of Schenectady CPRB will sunset by June 2005 “unless continued by ordinance duly adopted by the Schenectady City Council.”⁴⁹

The need for civilian police review boards will focus on a CRB’s utility and effectiveness. Central to this matter is that the issues affecting public employees and police departments also have larger implications for society as a whole; i.e., should there be public review boards to resolve police misconduct claims?

One rationale is that creation of a CRB preserves citizens’ legitimate interests from being jeopardized if issues of public policy are resolved through collective bargaining without the opportunity for the citizens of a particular community to provide their input on specific issues. In some municipalities throughout the country, the belief is that citizens have a right to meaningful participation in the determination of such issues and that this right would be denied if a public employer voluntarily committed them to the collective bargaining process.⁵⁰ In his 1974 article in the *Yale Law Journal*, *Public Employee Bargaining: A Political Perspective*, Clyde Summers described a perceived threat to democratic values inherent in channeling discussions of politically sensitive issues regarding public sector employment into closed-door bargaining sessions.⁵¹

Conversely, police officers typically view civilian police review boards with understandable disdain, believing that “civilians” are outside the police subculture and do not understand the types of people with whom police officers must routinely deal.⁵² In New York City in 1992, thousands of off-duty New York police officers staged a demonstration that verged on a riot in order to voice their opposition to then-Mayor David Dinkins’ plans for such a Board.⁵³

In Syracuse, there was a divisive dispute as to whether or not a civilian review board should be created. The local police chief and the Republican leader of the City’s Democrat-controlled Common Council were among those opposed to the creation of such a CRB; conversely, community leaders and civil liberties advocates supported its creation.⁵⁴ Nevertheless, the Board was created, but to date there is no cooperation between the Syracuse PBA and the Syracuse CRB; however, despite the lack of participation by the PBA, the Board still manages to hear complaints and make recommendations.⁵⁵

Conclusion

Civilian review boards will continue to be created in municipalities across the state. The CRB must be considered in terms of its utility to the overall goal of correcting and/or overseeing allegations of police misconduct and in creating an atmosphere of improved communication and understanding between the police department and the community at large. Unless the

municipal PBA goes along with the legislative mandates, a CRB will be rendered ineffectual. In the municipalities where a CRB functions without challenge we find that it was created in a collaborative effort between police personnel and legislative leaders. Although the Schenectady CPRB has no subpoena power and does not convene formal hearings, it still makes recommendations and provides the public with, at least, a sense of independent oversight.

As with all matters in public sector labor-management relations, cooperation and respect for each side's perspective will lead to a successful outcome.

Endnotes

1. 1993 Syracuse Local Law No. 11; 1993 N.Y.C. Local Law No. 1; Rochester Resolution No. 92-4 & 95-8; Schenectady, N.Y., Ordinance No. 91-37 (City Code §§ 93-94), as amended by Ordinance Nos. 93-41, 95-07, 97-32 & 2002-09.
2. 1993 Syracuse Local Law No. 11, § 1.
3. Civilian Complaint Review Board, City of New York, Status Report, Jan.-Dec. 2000, Vol. VIII, No. 2 at 3, available at <http://home.nyc.gov/html/ccrb/pdf/ccrbann2002.pdf>.
4. N.Y.C. Charter § 440, *et seq.*, available at <http://home.nyc.gov/html/charter/pdf/citycharter2002.pdf>.
5. *Id.* at § 440(b)(1).
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7. Schenectady, N.Y., City Code §§ 93-94; *see also supra* note 1.
8. Schenectady, N.Y., City Code § 94-1.
9. Schenectady, N.Y., Ordinance No. 91-37 (Sept. 16, 1991), amended Nov. 22, 1993 by Ordinances 93-41, 95-07 & 97-32; *see also supra* note 1.
10. Schenectady, N.Y., Ordinance No. 2002-09 (June 24, 2002); *see also* Schenectady, N.Y., City Code § 93.
11. Schenectady, N.Y., City Code §§ 93-2A, 93-2D.
12. *Id.* at §§ 93-4, 93-5.
13. *Id.* at § 93-13.
14. N.Y. Civ. Serv. Law § 204 (McKinney 1999); *Professional, Clerical, Technical Employees Ass'n v. Buffalo Bd. of Educ.*, 90 N.Y.2d 364, 372 (1997).
15. CSL § 204-a(1); *see also Board of Educ. v. Buffalo Teachers Fed'n, Inc.*, 217 A.D.2d 366, 371, 634 N.Y.S.2d 904, 908 (4th Dep't 1995), *lv. to appeal denied, lv. to appeal granted*, 88 N.Y.2d 802, 645 N.Y.S.2d 445 (1996), *rev'd*, 89 N.Y.2d 370, 653 N.Y.S.2d 250 (1996).
16. Labor Relations Contract between the City of Schenectady, N.Y., and the Schenectady Police Benevolent Association for the period Jan. 1, 1997–Dec. 31, 1999, as amended by PERB Case No. IA200-011; M200-006 (Sept. 25, 2001) (Schenectady Labor Relations Contract), art. VI § G; *see also* 1998-1999 Labor Agreement between the Syracuse Police Benevolent Association, Inc. and the City of Syracuse ("Syracuse Labor Agreement"), art. 15.
17. *Id.*; *see also* Agreement between the City of Rochester and Rochester Police Locust Club, Inc., July 1, 1999-June 30, 2001, as amended by PERB Case No. IA201-028; M201-104 (Sept. 24, 2002) ("Rochester Agreement"), art. 20.
18. Syracuse Labor Agreement at art. 16, *supra* note 16.
19. N.Y. CLS § 75(1) (McKinney 1999).
20. Syracuse Labor Agreement at art. 11, *supra* note 16.
21. CRL § 50-a(1).
22. *Id.*; *see also Feerick v. Safir*, 297 A.D.2d 212, 213 (1st Dep't 2002).
23. CSL § 204, *supra* note 14.
24. CSL § 200, *et seq.*
25. *Piedmonte v. City of Syracuse*, No. 97-5241 (Sup. Ct., Onondaga Co. Mar. 19, 1998); *see also Caruso v. Civilian Complaint Review Bd.*, 158 Misc. 2d 909, 910 (Sup. Ct., New York Co. Aug. 20, 1993).
26. 1993 Syracuse Local Law No. 11, § 3, *supra* note 1.
27. *Id.* at § 7 (2)(a).
28. *Id.* at § 7 (3)(a)(i).
29. *Id.* at § 7 (3)(a)(i)-(iv).
30. *Id.* at § 7 (3)(a)(v)-(vi).
31. CSL § 200, *et seq.*
32. CSL § 212(1).
33. CSL § 209-a(1)(d).
34. *See supra* note 1.
35. Syracuse PBA and City of Syracuse, 31 PERB 3004 (1998); Rochester Police Locust Club, Inc. and City of Rochester, 26 PERB 3049 (1993), *affirmed* 27 PERB 7003 (1994).
36. Syracuse PBA, 31 PERB 3004.
37. *Id.*
38. American Arbitration Association Case No. A15 390 006 2097.
39. *Piedmonte*, No. 97-5241 (Sup. Ct., Onondaga Co. 1998).
40. *Id.* at 2.
41. *Id.* at 4.
42. Telephone conversation with Rocco A. DePerno, Esq., DePerno & Khanzadian, counsel to the Syracuse PBA (Feb. 3, 2003).
43. *Caruso v. Civilian Complaint Review Bd.*, 158 Misc. 2d at 910, 602 N.Y.S.2d at 488.
44. *Id.* at 915 (emphasis supplied).
45. *Id.*
46. Schenectady, N.Y., Ordinance 91-37, *supra* note 1.
47. Schenectady, N.Y., City Code § 93-13(B).
48. *Id.* at § 93-11.
49. *Id.* at § 93-23.
50. *See, e.g., Ridgefield Park Educ. Ass'n v. Ridgefield Park Bd. of Educ.*, 78 N.J. 144, 162-66 (1978); *Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Educ. Ass'n*, 572 P.2d 416, 419 (Alaska 1977).
51. Clyde W. Summers, *Public Employee Bargaining: A Political Perspective*, 83 Yale L.J. 1156, 1192-97 (1974).
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55. Allen Czelusniak, *Arrested Development*, Syracuse New Times, Apr. 18, 2001, available at <http://newtimes.rway.com/2001/041801/cover.shtml>.

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Police Review Boards Meet the Public Right to Know: Balancing Public Trust and Personal Privacy

By Robert J. Freeman

One of the most significant developments of the past quarter century in the relationship between the public and the government involves greater disclosure of information concerning public officers and employees. Often the information is basic, such as a public employee's salary. At other times it suggests how the government operates, for example the amount of public money expended for overtime. In other instances, the information involves how well or poorly public employees perform their duties, for instance, an employee engaged in misconduct. In each instance, the disclosure in some way relates to the accountability of government agencies and their employees.



Disclosure is generally the rule. There is a crucial exception, however, regarding police officers. Somewhat ironically, those public employees who have the greatest power or authority over the public are least accountable to the public.

The focus of the tension between access and privacy in this context involves three statutes: the Freedom of Information Law (FOIL),¹ Open Meetings Laws (OML),² and the key exception to the general rule favoring disclosure, section 50-a of the Civil Rights Law (CRL).³ FOIL and OML are based on a presumption of access. All agency records are available under FOIL, except to the extent that a ground for denial of access may properly be asserted; meetings of public bodies must be conducted open to the public, unless there is a basis for entry into executive session or asserting an exemption from the coverage of the OML.

I. Police Review Boards

While the functions and duties of police review boards differ, they are usually creations of local law and are authorized to investigate allegations of police misconduct made by members of the public. Those boards generally receive complaints, investigate in some manner, and offer findings and recommendations to a police commissioner or municipal governing body following allegations of excessive force or brutality, abuse of authority, discourtesy, offensive language and other

similar situations. Their records and meetings fall within the coverage of FOIL and OML.

A primary goal in establishing a review board involves the need to build public trust and confidence in government, and particularly in law enforcement agencies. The public must know that there is justice, and that those who engage in wrongdoing, regardless of any perceived privilege, are punished in some manner. While police review boards can enhance the development of trust and a belief that there can be justice, it is difficult to do so under existing law.

"Somewhat ironically, those public employees who have the greatest power or authority over the public are least accountable to the public."

II. Personnel Matters

Nothing in FOIL deals specifically with personnel records or personnel files. The nature and content of so-called personnel files may differ from one agency to another and from one employee to another. Neither the characterization of documents as "personnel records" nor their placement in personnel files would necessarily render those documents "confidential" or deniable under the Freedom of Information Law.⁴ On the contrary, the contents of those documents serve as the relevant factors in determining the extent to which they are available or deniable under the Freedom of Information Law. Two of the grounds for denial typically are pertinent to an analysis of rights of access to personnel records.

A. The Freedom of Information Law and Open Meetings Law

Section 87(2)(b) permits an agency to withhold records to the extent that disclosure would constitute "an unwarranted invasion of personal privacy."⁵ While the standard concerning privacy is flexible and may be subject to conflicting interpretations, the courts have provided substantial direction regarding the privacy of public officers and employees. It is clear that public officers and employees enjoy a lesser degree of privacy than others, for it has been found in various contexts that public officers and employees are required to be more accountable than others. With regard to records

pertaining to public officers and employees, the courts have found that, as a general rule, records that are *relevant* to the performance of their official duties are available, for disclosure in such instances would result in a permissible invasion of personal privacy.⁶ Conversely, to the extent that records are *irrelevant* to the performance of one's official duties, it has been found that disclosure would indeed constitute an unwarranted invasion of personal privacy.⁷

The second ground for denial of significance, section 87(2)(g), states that an agency may withhold records that are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations; or
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government.⁸

Notably, the language quoted above contains what in effect is a double negative. While inter-agency or intra-agency materials may be withheld, portions of such materials consisting of statistical or factual information, instructions to staff that affect the public, final agency policy or determinations or external audits must be made available, unless a different ground for denial could appropriately be asserted. Concurrently, those portions of inter-agency or intra-agency materials that are reflective of opinion, advice, recommendation and the like could in my view be withheld. Insofar as a request involves final agency determinations, it appears that those determinations must be disclosed—again, unless a different ground for denial could be asserted.

In terms of the judicial interpretation of FOIL, in situations in which allegations or charges have resulted in the issuance of a written reprimand, disciplinary action, or findings or admissions that public employees have engaged in misconduct, courts have found that records reflective of those kinds of determinations would be made available, including the names of those who are the subjects of disciplinary action.⁹ In contrast, when allegations or charges of misconduct have not yet been resolved or did not result in disciplinary action or a finding of misconduct, the records relating to such allegations apparently may be withheld, on the ground that disclosure would result in an unwarranted invasion of personal privacy. Similarly, to the extent that charges are dismissed or allegations are found to be without merit, they may be withheld.

In short, it has clearly been established by the courts that disclosure of determinations indicating that public employees have been found to have engaged in misconduct would not constitute an unwarranted inva-

sion of personal privacy so long as the employee was afforded proper procedural safeguards.

Despite its frequent use, the term “personnel” appears nowhere in the either FOIL or OML. Some personnel-related issues must be considered by public bodies in a public forum; in other instances, there may be a basis for entry into executive session. The provision of greatest significance in consideration of personnel matters is section 105(1)(f) of the OML, which authorizes a public body to enter into executive session to discuss “. . . the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. . . .”¹⁰

When action is taken by a public body, minutes must be prepared pursuant to section 106 of the OML. If action is taken during an executive session, minutes indicating the nature of the action taken must be made available in accordance with FOIL.

The foregoing represents the law concerning disclosure regarding nearly all public employees. When a public employee admits misconduct or is the subject of a determination indicating misconduct, the record will be accessible. In terms of privacy, the record is clearly relevant to the performance of the employee's duties, and although the record consists of intra-agency material, it represents a final agency determination accessible under section 87(2)(g)(iii). The outcome, however, is different with respect to issues relating to police officers due to section 50-a of the CRL.

B. Section 50-a: An Exemption from Disclosure

The first ground for denial of access under FOIL, section 87(2)(a), pertains to records that “are specifically exempted from disclosure by state or federal statute.”¹¹ Subdivision (1) of section 50-a states that:

All personnel records, used to evaluate performance toward continued employment or promotion, under the control of any police agency or department . . . shall be considered confidential and not subject to inspection or review without the express written consent of such police officer . . . except as may be mandated by lawful court order.¹²

The remainder of section 50-a states that:

2. Prior to issuing such court order the judge must review all such requests and give interested parties the opportunity to be heard. No such order shall issue without a clear showing of facts

sufficient to warrant the judge to request records for review.

3. If, after such hearing, the judge concludes there is a sufficient basis he shall sign an order requiring that the personnel records in question be sealed and sent directly to him. He shall then review the file and make a determination as to whether the records are relevant and material in the action before him. Upon such a finding the court shall make those parts of the record found to be relevant and material available to the persons so requesting.

4. The provisions of this section shall not apply to any district attorney or his assistants, the attorney general or his deputies or assistants, a county attorney or his deputies or assistants, a corporation counsel or his deputies or assistants, a town attorney or his deputies or assistants, a village attorney or his deputies or assistants, a grand jury, or any agency of government which requires the records described in subdivision one, in the furtherance of their official functions.¹³

The Court of Appeals, in reviewing the legislative history leading to the enactment of section 50-a, found that:

[T]he legislative intent underlying the enactment of Civil Rights Law section 50-a was narrowly specific, 'to prevent time-consuming and perhaps vexatious investigation into irrelevant collateral matters in the context of a civil or criminal action.' In view of the FOIL's presumption of access, our practice of construing FOIL exemptions narrowly, and this legislative history, section 50-a should not be construed to exempt intervenor's 'Lost Time Record' from disclosure by the Police Department in a non-litigation context under Public Officers section 87(2)(a).¹⁴

The Court also determined that the exemption from disclosure conferred by section 50-a of the Civil Rights Law "was designed to limit access to said personnel records by criminal defense counsel, who used the contents of the records, including unsubstantiated and irrelevant complaints against officers, to embarrass officers during cross-examination."¹⁵ In another decision, which dealt with unsubstantiated complaints against correction officers, a class of public employees also

falling within the coverage of section 50-a, the Court of Appeals held that the purpose of section 50-a "was to prevent the release of sensitive personnel records that could be used in litigation for purposes of harassing or embarrassing correction officers."¹⁶

In its landmark 1999 decision in *Daily Gazette v. City of Schenectady*, the Court of Appeals clarified the application of section 50-a and its relationship to FOIL. The incident involved reprimands of eighteen police officers who admitted their involvement in what has become known as the "egg throwing incident."¹⁷ The Court found that the potential use of the information contained in the personnel record was the determinative factor in ordering disclosure, rather than the purpose of the individual requesting access, due to the potential for the information being used in a manner which would harass the police officer.¹⁸

The Court further held that:

[W]hen access to an officer's personnel records relevant to promotion or continued employment is sought under FOIL, nondisclosure will be limited to the extent reasonably necessary to effectuate the purposes of Civil Rights Law section 50-a—to prevent the potential use of information in the records in litigation to degrade, embarrass, harass or impeach the integrity of the officer. We said as much in *Matter of Prisoners' Legal Services (supra)*, when after describing the legislative purpose of section 50-a, we expressly stipulated that 'records having *remote or not potential use*, like those sought in *Capital Newspapers*, fall outside the scope of the statute.' Thus, in *Capital Newspapers v. Burns*, we upheld FOIL disclosure of a single police officer's record of absences from duty for a specific month. By itself, the information was neutral and did not contain any invidious implications capable facially of harassment or degradation of the officer in a courtroom. The remoteness of any potential use of that officer's attendance record for abusive exploitation freed the courts from the policy constraints of Civil Rights Law section 50-a, enabling judicial enforcement of the FOIL legislative objectives in that case.¹⁹

As the Court has made clear, section 50-a is intended to shield certain records from disclosure when those records could be used in a litigation context. Nevertheless, it is also clear that not all personnel records per-

taining to police officers are confidential. That point is particularly important in relation to disclosure to the public, and perhaps in relation to disclosure to a police review board.

In its 1996 decision in *Gould et al. v. New York City Police Department*, the Court of Appeals expressed its general view of the intent of the Freedom of Information Law, stating that:

To ensure maximum access to government records, the “exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption.” As this Court has stated, “[o]nly where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld.”²⁰

Significantly, the Court in *Gould* repeatedly specified that a categorical denial of access to records is inconsistent with the requirements of the Freedom of Information Law. In that case, the Police Department contended that certain follow-up reports could be withheld in their entirety on the ground that they fall within the exception regarding intra-agency materials, section 87(2)(g). The Court, however, held that since the complaints contained factual material, complete nondisclosure of the reports could not be justified in light of the aims of FOIL, because “blanket exemptions for particular types of documents are inimical to FOIL’s policy of open government.”²¹

The direction offered in *Gould* was reiterated in *Daily Gazette*, when the Court indicated that certain details might be deleted from records to accomplish the objectives of section 50-a, while providing access to other aspects of the records. Specifically, the Court stated that:

[D]isclosure for uses that would not undermine the protective legislative objectives could be attained either by a restrictive formulation of the FOIL request itself, or through redaction by the agency having custody of the records, tailored in either case so as to preclude use in personal attacks against an officer which Civil Rights Law § 50-a was enacted to preclude. Thus, it may well be possible for petitioners largely to fulfill their important function of dissemination of matters of legitimate public interest, *i.e.*, concerning the appropriateness of the City’s response to off-duty misconduct by members of its police force, without sacrificing the

values the Legislature embraced in enacting Civil Rights Law § 50-a.²²

Based on the foregoing, names or other identifying details pertaining to police officers who are subjects of complaints or investigations might be deleted from records pursuant to section 50-a; the remainder, however, would be subject to rights conferred by FOIL. That is not to suggest that the remainder of the records must be made available, for other elements of the records might justifiably be withheld under other exceptions. As a result, it is apparent that section 50-a shields some aspects of police officers’ personnel records from disclosure, but that others likely should be disclosed.

III. Former Police Officers

If a person is no longer a police officer, because of resignation, retirement, or termination following a disciplinary proceeding or as a result of an agreement, a recent decision suggests that section 50-a would no longer be applicable.²³ The case involved a situation in which a request was made for disclosure of a settlement agreement between a village and a chief of police under which the chief left the employ of the village. The court cited and concurred with an advisory opinion rendered by the Committee on Open Government that section 50-a does not apply when the subject of a record is no longer employed as a police officer.

When an employee has left a position as a police officer, there is no issue involving continued employment or promotion. Consequently, the rationale for the confidentiality accorded by section 50-a is no longer present, and that statute should not, at that point, be pertinent or controlling.

IV. Disclosure to Police Review Boards

Thus far, the discussion has centered on disclosure to the *public* of police records. But are there restrictions on the ability of a *police review board* to gain access to records that must be withheld from the public under section 50-a? Although there are no decisions regarding that question, subdivision (4) specifies that the prohibition concerning disclosure “shall not apply to . . . any agency of government which requires the records described in subdivision one, in the furtherance of their official functions.”²⁴ Notwithstanding that provision, it has been contended by police officers and police unions that a police department cannot disclose to a review board personally identifiable information contained in records subject to subdivision (1), *i.e.*, those personnel records that are used to evaluate performance toward continued employment or promotion. But the accuracy of that assertion seems dependent on the terms of the enabling legislation describing the powers and duties of a review board. If indeed the legislation authorizes disclosure to boards “in the furtherance of their official

functions," they should have the ability to gain unrestricted access to records falling within the scope of subdivision (1).

Moreover, to carry out their duties effectively on behalf of both the municipality and the public, police review boards should have, at the very least, the ability to know whether a particular police officer is the subject of persistent complaints. To achieve that end, names need not necessarily be disclosed; some other identifier could be used.

V. Meetings of Police Review Boards

Because they are entities created by law to carry out certain functions, police review boards constitute "public bodies" required to comply with the OML. As indicated earlier, when a discussion focuses on a "particular person," such as a police officer, in relation to that person's employment history or a matter leading to "demotion, discipline, suspension or removal," an executive session, a portion of a meeting during which the public may be excluded, may be held. Additionally, section 108 of the OML contains three exemptions, the last of which pertains to "matters made confidential by state or federal law."²⁵ When an exemption applies, the OML loses all power to compel disclosure. If a discussion involves information contained in or derived from a police officer's personnel record that is exempt from disclosure under section 50-a of the CRL, the matter would be exempt from the coverage of the OML. In short, when police review boards discuss the conduct of a particular officer, they have the ability to do so in private based on a ground for entry into executive session, or because the discussion is exempt from the requirements of the OML.

As in the case of the use of records by means of code or other identifier that would not divulge the name of a police officer, a review board could discuss complaints and similar matters in public through the use of a similar device. So long as the discussion cannot reasonably lead to public knowledge of the identity of a police officer, a review board should have the ability to conduct its business in public.

VI. The Downside of Confidentiality

In an expression of its view regarding the intent and utility of FOIL, the Court of Appeals found that:

The Freedom of Information Law expresses this State's strong commitment to open government and public accountability and imposes a broad standard of disclosure upon the State and its agencies. The statute, enacted in furtherance of the public's vested and inherent "right to know," affords all cit-

izens the means to obtain information concerning the day-to-day functioning of State and local government thus providing the electorate with sufficient information "to make intelligent, informed choices with respect to both the direction and scope of governmental activities" and with an effective tool for exposing waste, negligence and abuse on the part of government officers.²⁶

Due to the language of section 50-a, the public may have no way of learning of "waste, negligence and abuse" on the part of police officers. Moreover, the absence of disclosure and, therefore, accountability, breeds mistrusts. In the aftermath of the egg-throwing incident in Schenectady, the public had no way of knowing which officers engaged in misconduct and which others were guiltless. Absent disclosure of the names of the egg throwers, or others who have been found to have engaged in misconduct, every police officer might be suspect and viewed as guilty or lacking credibility.

The remedy must be disclosure because when the names of those who have committed wrongdoing are made known, the public can ascertain which officers are blameless.

VII. Resolving the Problem

How can the intent of section 50-a be realized in harmony with the goals regarding accountability, trust and confidence in government? The legislative history of section 50-a indicates that its goal is to prevent the disclosure of certain personnel records in a litigation context, unless, according to subdivision (2), a court determines the records "are relevant and material in the action before him."²⁷ In other words, the same principle applies to the use of police officers' personnel records in litigation as it does to all other records. Minutes of meetings of a city council are available to the public under FOIL. Whether they are subject to discovery or may serve as evidence in a judicial proceeding is dependent on whether they are relevant and material to the proceeding. Likewise, a record indicating misconduct on the part of a public employee, especially a police officer, should be accessible to the public under FOIL. As in the case of the minutes of a meeting or any other record, whether it is disclosed in a litigation context is dependent on its relevance and materiality to the proceeding.

In its latest annual report to the Governor and the State Legislature, the Committee on Open Government offered a simple legislative solution. Personnel records falling within the coverage of section 50-a should be

subject to FOIL, but records accessible pursuant to FOIL “shall not be subject to discovery or admissible into evidence or be considered in any litigation or administrative proceeding,” unless the subject of the records, for example, a police officer, consents to disclosure, or unless disclosure is mandated by court order.²⁸

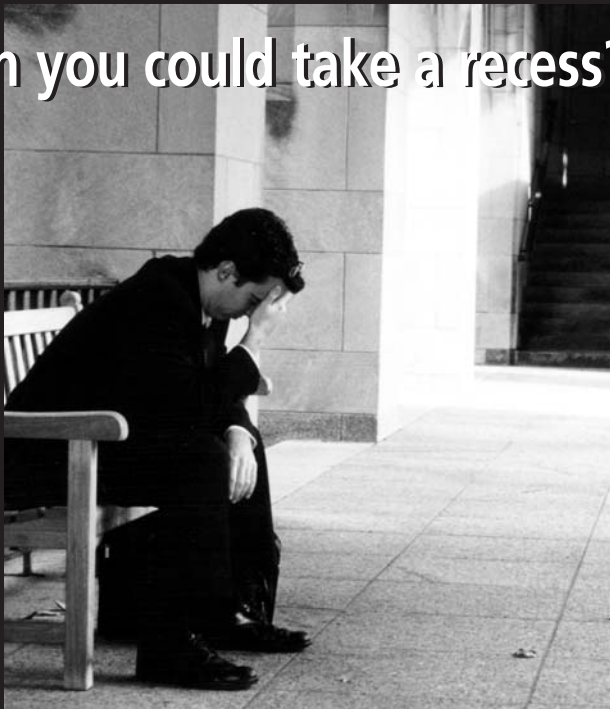
Enactment of an amendment affording access to personnel records within section 50-a, while regulating how these records are used, would enhance the public’s right to know and strengthen public confidence in government in general and police officers in particular, while concurrently shielding records from disclosure in a litigation context in a manner consistent with the intent of section 50-a.

Endnotes

1. N.Y. Public Officers Law §§ 84–90 (McKinney 1998) (“Pub. Off. Law”).
2. Pub. Off. Law § 100-111 (McKinney 1998).
3. N.Y. Civil Rights Law § 50-a (McKinney 1998) (“Civ. Rights Law”).
4. *Steinmetz v. Board of Educ., East Moriches*, Sup. Ct., Suffolk Co., N.Y.L.J., Oct. 30, 1980.
5. Pub. Off. Law § 87(2)(b).
6. *See, e.g., Farrell v. Village Board of Trustees*, 83 Misc. 2d 125 (Broome Co. 1975).
7. *In re Wool*, Sup. Ct., Nassau Co., Nov. 22, 1977.
8. Pub. Off. Law § 87(2)(g).
9. *See, e.g., Powhida v. City of Albany*, 147 A.D.2d 236 (3d Dep’t 1989).
10. Pub. Off. Law § 105(1)(f).
11. *Id.* § 87(2)(a).
12. Civ. Rights Law § 50-a.
13. *Id.*
14. *Capital Newspapers v. Burns*, 67 N.Y.2d 562, 569 (1986) (citations omitted).
15. *Id.* at 568.
16. *Prisoners’ Legal Servs. v. NYS Dep’t of Corr. Servs.*, 73 N.Y.2d 26 (1988).
17. *See Daily Gazette v. City of Schenectady*, 93 N.Y.2d 145 (1999) (referring to an incident in which eighteen off-duty officers on a bus threw eggs at the car of a passing motorist after an altercation).
18. *Id.* at 156–57.
19. *Id.* at 157–58 (emphasis supplied).
20. *Gould et al. v. New York City Police Dep’t*, 87 N.Y.2d 267, 275 (1996) (citations omitted).
21. *Id.* at 275.
22. *Daily Gazette*, 93 N.Y.2d at 159 (citations omitted).
23. *See Village of Brockport v. Calandra*, 191 Misc. 2d 718 (Monroe Co. 2002).
24. Civ. Rights Law § 50-a.
25. Pub. Off. Law § 108.
26. *Capital Newspapers v. Burns*, 67 N.Y.2d at 565–66 (citations omitted).
27. Civ. Rights Law § 50-a(2).
28. Committee on Open Government, Report to the Governor and the State Legislature, 2002, at 13, available at <http://www.dos.state.ny.us/coog/pdfs/2002annualreport.pdf>.

Robert J. Freeman is the Executive Director of the Committee on Open Government at the New York State Department of State.

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Reflections of a Volunteer Board Member: An Interview with Michael Whiteman, Esq.

By Kyle Rose McCauley

In a perfect world, we wouldn't need police review.



Unfortunately, we live in a far from perfect world. Increasingly, citizens across the nation are calling for oversight of police. If the phenomenon is not yet commonplace, it is today far from rare. Municipalities facing difficulties with police and citizen relations are turning to the creation of review boards. A prominent attorney and volunteer member of Albany's Citizens' Police Review Board, Michael Whiteman, agreed to be interviewed to share his insights into police review and, specifically, about the functioning of a review board from the perspective of an insider who has served on one.

Mr. Whiteman, one of the founding partners of Whiteman, Osterman & Hanna, the capital region's largest law firm, personifies the 'crème-de-la-crème' of the legal profession. From serving as counsel to Governors Nelson A. Rockefeller and Malcolm Wilson to teaching at Albany Law School, Mr. Whiteman has had an extraordinary career. He has served on the New York State Law Revision Commission and on the Commission on Drugs and the Courts, and he has generously contributed his time, effort and skills in providing legal services for indigents. As a volunteer member of a police review board and a well-accomplished legal professional, Mr. Whiteman offers legal insights, ideas, and perspectives on police review that are as valuable as they are distinct. What follows is a summary of an interview conducted earlier this year.

* * *

Mr. Whiteman volunteered to serve on the city of Albany Citizens' Police Review Board believing that police and community relations could be improved. After attending two conferences of the National Association of Civilian Oversight in Law Enforcement, Mr. Whiteman concluded that there is great commonality across the country regarding issues of police conduct

and basic issues that review boards face in performing their duties. In his view, the primary obstacles to effective review are inadequate resources and institutional resistance.

Staffing shortages and a lack of essential investigative powers typify the deficit in adequate resources across the country. Mr. Whiteman believes that Albany's monitoring model lacks adequate staffing to serve the community successfully. He points to other models of independent review, such as that in New York City, where the review board has its own investigative staff, and in Sacramento, California, where the review staff takes a proactive approach by sending a representative to the scene of an incident to observe the situation as it unfolds. Citing the different investigatory resources in other communities, Mr. Whiteman has concluded that citizen oversight is less empowered in Albany than elsewhere.

Mr. Whiteman strongly believes, however, that Albany's review board faces less institutional resistance than citizen oversight confronts in other communities; at the least, police resistance is less overt. From the police leadership down to the patrol officer, there seems to be greater receptivity to review and less apparent hostility in Albany than in other similarly situated cities.

With his legal background, Mr. Whiteman believes he provides a perspective that may be different from that of the legally untrained board members. He cited a lawyer's analytical skills, as well as knowledge of the law, as valuable. He noted that non-legally trained board members have equally valuable insights and perspectives, but they are decidedly different from those of a lawyer. Mr. Whiteman also believes that a lawyer is more accustomed to viewing the facts and issues of a case more objectively than others. That is one of the pri-

many reasons he thought he could be useful serving on the board. In addition, he hoped his status within the business and professional communities would add credibility to the board and its goals.

Mr. Whiteman thinks that it is beneficial to have a variety of perspectives on the board. Other members of the Albany board bring genuine “street smarts” and each member brings a host of varied qualities. Many board members live in neighborhoods where police activity is common and, indeed, there literally may have been such activity right on their front steps. Mr. Whiteman hoped that the board members would reflect a wide spectrum from the various communities within the city. A very diverse group of board members—with different business and professional experiences, and different economic and community backgrounds—would benefit the citizens of Albany. Mr. Whiteman believes, however, that the board is still missing representation of the younger community and hopes that the Common Council and the Mayor will address this in the future.

Personally and professionally, many different avenues in Mr. Whiteman’s career have prepared him to serve on a review board. His many years of government service and considerable experience with criminal justice issues has enabled Mr. Whiteman to develop good relations with the police community and greater understanding of policing issues. In addition, his extensive work with criminal defense issues has taught him that the police often fail to appreciate fully the effects of their actions. In Albany, police-citizen problems typically do not entail blatant police abuse of citizens, but rather insensitivity and rudeness that create ill will. Mr. Whiteman believes the board’s work has helped the police identify those issues and that the hierarchy in the police department is dedicated to rectifying the problems.

Despite Mr. Whiteman’s extensive legal expertise, he does not view himself as a legal consultant to the Albany board. Some board members may look to him as such and he is willing to express opinions on the law; but he does not regard himself as an informal counsel to the board. He is often asked about criminal procedure issues or about the board’s powers. While Mr. Whiteman is comfortable commenting on the law or expressing his personal legal opinion, he prefers not to speak as the board’s legal representative.

At the same time, Mr. Whiteman does not believe that the city of Albany’s corporation counsel is the appropriate legal representative to counsel the board, either. It is corporation counsel’s responsibility to advise the city’s mayor and public safety (police and fire) commissioner; the obvious conflict makes it inappropriate for the same corporation counsel’s office to provide legal advice to an independent oversight committee. The board, in his opinion, ought to be able to

retain counsel that is similarly independent whenever necessary.

Mr. Whiteman’s specific work experience allows him to bring unique insights into the boardroom. His work to create a statewide Public Defense Commission afforded him the opportunity to experience situations where people in positions of power unjustifiably abuse the rights of citizens. Mr. Whiteman has also encountered others who are insensitive to those who are either chronically or episodically underclass, vulnerable, and in need of protection. While working extensively in both the public and private fields, Mr. Whiteman acquired the skills to help people resolve disputes. The ability to work with different personalities to achieve important objectives is an invaluable tool. Mr. Whiteman acknowledges that he may be more prone to see both sides of a case and to weigh them against each other because he has worked both in government and in criminal defense.

According to Mr. Whiteman, many factors have influenced the development of Albany’s Citizens’ Review Board and its powers. Media coverage played an important role in the board’s formation. The public demand for the creation of a strong, independent review board was fostered in the media through newspaper articles, editorials, and television coverage. Since the board’s inception, however, media coverage has dwindled. This may be due to the lack of drama in the board’s proceedings. Mr. Whiteman believes that continued media coverage is an important and underutilized resource. The actions of the board have a direct effect on only a few individuals, notably the specific complainants and the officers involved. However, utilizing the media would broaden the indirect impact of citizen review by heightening community awareness of the decisions of the board and of its purpose to improve police-citizen relations.

Municipal liability may also pressure cities to implement review bodies or enhance the powers of existing review boards. The police administration in Albany, according to Mr. Whiteman, is aware of the fiscal imperative of avoiding damage claims and judgments. There are often other motivating factors for the implementation of review bodies, such as reducing tension in the community, community productivity, citizen cooperation with police investigations, and enhancement of the peace and stability within traditionally high-crime neighborhoods.

Speaking specifically about Albany’s Citizens’ Review Board, Mr. Whiteman has come to the belief that the community may benefit from a more investigatory model of police review. Members of the board are often frustrated by the lack of adequate information. The board’s decision-making process would benefit from a more proactive model of police review with

increased investigative powers. According to Mr. Whiteman, the capacity to conduct its own investigations and to subpoena and question the parties involved would be valuable changes. The board could participate actively in investigations rather than being a mere bystander.

Also, information identifying the accused officer, such as gender, ethnicity, age and experience, are redacted from all records presented to the board. Consequently, the board must rely on the report of the Office of Professional Standards and the interpretation of the monitor of the police investigation. Mr. Whiteman suggests that the redacted information could help in identifying department-wide patterns of police misconduct or career-long misconduct of an individual officer. This information would assist the board in determining whether misconduct is systemic or whether it is particular to certain officers—e.g., those over the age of forty as compared to relatively new police officers, or vice versa. Mr. Whiteman believes strongly that reports should not be redacted, that redaction is justified neither by sound policy nor legal reason.

Mediation, according to Mr. Whiteman, should also play a greater role than it currently does in the review process. In his view, the analysis of events leading to an incident are often more important than the specific act identified in a complaint—more important even than whether the police officer's particular conduct was wrong. Because the board's objective is to achieve greater mutual understating, acceptance of different views, and the reduction of conflict, it seems especially worthwhile to Mr. Whiteman to determine the context in which these situations occur and escalate. The Office of Professional Standards and the board should be looking at the facts and circumstances preceding the ultimately complained-of event, rather than simply determining the appropriate discipline based on the end results of the confrontation. Mr. Whiteman believes that mediation will be used more frequently in the future. The board is increasingly aware that final judgments are not necessarily the best method for evaluating or gaining understanding of police actions.

Mr. Whiteman also offered his opinion on how Albany's Citizens' Police Review Board process can be improved. He would like to see the Office of Professional Standards submit more complete reports and more thoroughly question officers about the events leading up to the final incident. While communication between the board and the police department has been satisfactory, there is always room for improvement. A greater understanding between the board and the police department would assist both agencies in working together toward common goals. In addition, the findings that the board is authorized to make do not parallel the determinations of the Office of Professional Stan-

dards. The board may appear to be ruling directly and affirmatively on cases. In reality, however, the board only determines whether the Office of Professional Standards completed a thorough investigation and whether, based on the facts reported by it, reached a reasonable conclusion. Mr. Whiteman also noted that complainants seldom attend meetings, presumably because the complainants are oftentimes being held in detention. He also suspects that many complainants do not attend meetings because they have little confidence, both in the process and in themselves. He believes it would be beneficial if more complainants participated actively in the process.

Despite their differences, the members of Albany's review board operate with mutual respect. They all seem to understand that police review is politically sensitive and that they share significant responsibilities. In Mr. Whiteman's view, the members understand that police review is too important to allow partisan or ideological differences to jeopardize the progress made to date. The board's members have come to respect the sincerity of each other's views. Over time, critics of the police department seem less ready to find fault, more agreeable to changes in police practice, and more amenable to open communication.

The greatest challenge faced by the board has been to remain credible in the eyes of the police department and community simultaneously. Creating a neutral and fair forum for the resolution of disputes is essential. Mr. Whiteman notes that many Albany residents believe, and with substantial justification, that members of the police department have historically abused their power. On the other hand, of course, Mr. Whiteman notes that the police have a difficult and dangerous job. Both citizens and police officers have often been provoked and harassed by the other. The board must hold police officers to high standards but, at the same time, not demoralize them or undermine their dedication and service to the community. Albany's Citizens' Police Review Board has had some success in enhancing community and police relations and, according to Mr. Whiteman, this is the most important feature of the board's progress to date.

Kyle McCauley, Albany Law School class of 2005, currently works with the Government Law Center as a legal intern providing administrative support services to the Albany Citizens' Police Review Board. Michael Whiteman, Esq., a founding partner of the Albany law firm of Whiteman Osterman & Hanna, LLP, currently serves as a member of the Review Board. Ms. McCauley conducted the interview on March 13, 2003; she acknowledges the assistance of Paul Dontenville, Albany Law School class of 2004.

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Federal Civil Practice is an invaluable guide for new or inexperienced federal court practitioners, who may find the multi-volume treatises on this topic inaccessible as sources of information for quick reference. The more experienced practitioner will benefit from the practical advice and strategies discussed by some of the leading federal court practitioners in New York State.

Evidentiary Privileges (Grand Jury, Criminal and Civil Trials)

This book expands and updates the coverage of the extremely well-received *Grand Jury in New York*. It covers the evidentiary, constitutional and purported privileges which may be asserted at the grand jury and at trial. Also examined are the duties and rights derived from constitutional, statutory and case law.

New York Municipal Formbook, Second Edition

The Municipal Formbook contains over 725 forms, edited for use by town, village and city attorneys and officials, including many documents prepared for unusual situations, which will alleviate the need to "reinvent the wheel" when similar situations present themselves.

Antitrust Law in New York State, Second Edition

This is the only publication devoted exclusively to questions of practice and procedure arising under the Donnelly Act, New York State antitrust law. *Antitrust Law* was written by leading antitrust law practitioners, and includes invaluable, authoritative articles from a variety of sources, settlement agreements and sample jury instructions.

Criminal Law and Practice

Criminal Law and Practice is a practical guide for attorneys representing clients charged with violations, misdemeanors or felonies. This monograph focuses on the types of offenses and crimes that the general practitioner is most likely to encounter. The practice guides are useful for the specialist and nonspecialist alike.

New York Criminal Practice, Second Edition

This publication expands, updates and revises the extremely popular *New York Criminal Practice Handbook*. It covers all aspects of the criminal case, from the initial identification and questioning by law enforcement officials through the trial and appeals. Numerous practice tips are provided, as well as sample lines of questioning and advice on plea bargaining and jury selection.

The Practice of Criminal Law under the CPLR and Related Civil Procedure Statutes, Second Edition

This book pulls together in an orderly, logical way the rules and provisions of law concerning jurisdiction, evidence, motion practice, contempt proceedings and article 78 and habeas corpus applications, none of which is covered in the CPL or the Penal Law. Additionally, some rules that have evolved through judicial precedent—for example, the parent-child privilege and other common law privileges—are included and discussed. The Second Edition features greatly expanded discussions of case law and the relevant statutes.

Environmental Crimes

Federal, state and local prosecutors have specialized units that focus on the prosecution of environmental crimes. As a result, corporations, and those who run them, are often at risk of criminal prosecution for a galaxy of environmental offenses, many of which, years ago, went largely unnoticed or were handled by warnings or civil penalties. The authors have incorporated into this publication a wealth of prosecutorial and defense experience at the federal, state and local levels to assist practitioners in this important area.

School Law, 29th Edition

The 29th edition of *School Law* has undergone significant change, including an updated chapter on Charter Schools. A few of the changes covered include implementation of the “No Child Left Behind Act,” school district reporting responsibilities, the appointment of special education impartial hearing officers, and teacher certification. Especially helpful are the summary of legal developments and the comprehensive index

Representing People with Disabilities, Third Edition

Newly organized and completely updated, *Representing People with Disabilities, Third Edition*, is a comprehensive reference which covers the myriad legal concerns of people with disabilities—including an in-depth examination of the Americans with Disabilities Act. This invaluable resource has been expanded to include four new chapters.

**For the complete NYSBA publications catalog, go to
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GLC Endnote



Patricia E. Salkin

This issue of the *Government Law and Policy Journal* examines a growing trend in municipal law—citizen oversight of law enforcement. The development of local laws establishing these independent bodies or offices reflects the diversity of cultures and conditions in the localities.

There are, however, common political and legal challenges that confront all drafters and

implementers of these laws. For the Government Law Center, our experience with these entities has been a wonderful learning experience and it continues to be a work in progress.

When the city of Albany asked the Government Law Center to assume a unique role in its citizen oversight process, we spent almost a full year studying models, processes and results from other cities within New York and from across the country. Although no other similar agency is affiliated with a law school, we found many difficult and exciting legal issues to work through, including but not limited to: whether provisions in the local law violated contractual obligations between a locality and its unions; how state law regarding access to government information could help and hinder the desire for full disclosure of information; the ethical issues of independent legal representation within the context of a government law office; civil rights issues; exposure to municipality liability resulting from underlying allegations in complaints; municipal liability for failure to train; and the reach of individual liability for board members and whether or not immunity might apply. In addition, we discovered numerous legal issues with the use of mediation to resolve citizen complaints that simply are not clearly answered in statute and caselaw at this time.

Add to the mix of legal issues, cultural dynamics and the history of community-police relations in a community, and the citizens who accept service on police

oversight boards have a heavy load to carry. We have observed that the following traits are invaluable for board members: honesty; impartiality; active participation; and a desire to simply “do the right thing.” Dedicated, committed and community-builder are also descriptive of good board members.



Rose Mary K. Bailly

It is truly a privilege to be part of an academic institution that plays such an important role of neutrality to enhance the quality of life and security for all members of our local community. Additionally, we are not aware of any periodical, other than the *GLP Journal*, that has to date dedicated its full attention to the complex legal and policy issues involved in creating and administering effective citizen oversight of law enforcement agencies. The pages in this issue demonstrate the interplay between local, state, and federal laws—constitutional, statutory, regulatory, and common law—that contribute to the effective and efficient operation of the citizen oversight process.

Our thanks extend to all of the people across New York State and across the country—lawyers, public officials, board members, police officers and citizen activists—who work hard daily to better community-police relations and to ensure fairness, integrity and independence in a critical investigatory and oversight process.

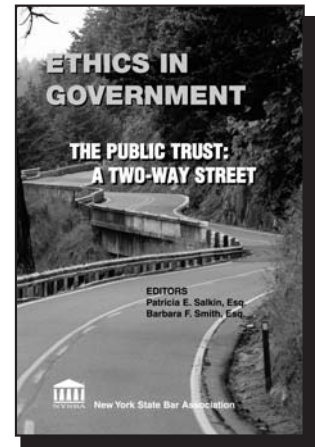
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Director, Government Law Center
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Richard Rifkin
Deputy Attorney General
and former Executive Director,
NYS Ethics Commission



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THANK YOU BARBARA AND TYRONE!

At the July 11th meeting of the Committee on Attorneys in Public Service (CAPS), Barbara Smith and Tyrone Butler, immediate past chair and vice chair of CAPS were honored for their service to the Committee.



Tyrone Butler, James Horan (new chair of CAPS) and Barbara Smith.



Committee members attending the July 11th meeting:
Seated: Tyrone Butler, Barbara Smith, James Horan. Standing: Patricia Wood, Robert Freeman, James McClymonds, David Markus, Sandra Hirsch, NYSBA President A. Thomas Levin, Rachel Kretser, Alan Rachlin

SAVE THE DATE!

**NEW YORK STATE BAR ASSOCIATION
127TH ANNUAL MEETING**

COMMITTEE ON ATTORNEYS IN PUBLIC SERVICE EVENTS

TUESDAY, JANUARY 27, 2004

NEW YORK MARRIOTT MARQUIS, 1535 BROADWAY, NEW YORK

CELEBRATING GOVERNMENT ATTORNEYS

In conjunction with NYSBA's Municipal Law Section / ABA State and Local Government Division's joint Fall 2003 meeting, the CAPS sponsored a reception at the Governor's Mansion in Albany on October 23rd.



Robert Freeman, John Campanie, Owen Walsh



Peter Loomis, James Horan, Patricia Wood, Rachel Kretser



Judge Renee Minarik, Municipal Law Section Chair and the Lt. Governor.



Lt. Governor Mary Donohue



Patricia Salkin (center), Chair of the ABA State and Local Government Law Section and Secretary of NYSBA's Municipal Law Section and the Lieutenant Governor chat with Janice Griffith, Dean of Georgia State College of Law.



Mary Donohue, Lieutenant Governor of the State of New York, kindly found room in her busy schedule to say a few words to the meeting attendees.

THE 29-HOUR DAY.

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