

CIVILIAN OVERSIGHT OF THE POLICE IN  
DEMOCRATIC SOCIETIES

Global Meeting on Civilian Oversight of Police  
Los Angeles, May 5-8, 2002

Christopher Stone, *Vera Institute of Justice*  
Merrick Bobb, *Police Assessment Resource Center*

## Introduction

In democratic societies, the police are accountable for many things. Most prominently, police are accountable for the effectiveness with which they deal with crime and disorder, as well as for the legality, professionalism, and respect with which they treat people.

But to whom are police accountable? While authoritarian police are accountable only to their superiors, democratic police are accountable to a multiplicity of bodies. In addition to their superiors, democratic police are accountable to the legislature, to the courts, to members of the public who seek their assistance, and to society as a whole through the press and organizations of citizens. It would be simpler for police if they were accountable to only one or two authorities, but the presence of an armed police force in a democratic society requires these multiple lines of accountability, making the job of police executives particularly challenging.

This paper concerns the accountability of the police *to the public, for the way that police treat people*. The creation of mechanisms for the routine oversight of police conduct on behalf of the public, mechanisms that curb or correct abuses of power, is a common project of democratic societies.

It is fundamental to democratic societies that police power, including the powers to arrest, to question, and to use lethal and non-lethal force, be closely regulated, often through the mechanism of an independent judiciary, and ultimately be subject to civilian control through democratic institutions. In such societies, a continuing challenge is to create practical mechanisms for ongoing oversight that curb or correct the occasional abuses of police power.

In some countries, the police are already enmeshed in many overlapping and highly elaborate legal structures intended to constrain police discretion, and the fundamental rights of all residents to be free from arbitrary use of police power are embedded in constitutional or legal proscriptions. The legal system, in theory, provides mechanisms to enforce fundamental rights and to redress persons whose rights have been violated. Remedies for the abuse of police power are scattered throughout the legal system and are applied in both criminal and civil law contexts. An independent judiciary is meant to be the guarantor and enforcer of fundamental rights.

There are arguments that the structure of civilian oversight should reach even farther into policing. In the United States, for example, there are debates today about whether, and to what degree, the discretion of police chiefs to impose or withhold discipline from officers who abuse power should be subject to oversight or control by persons or groups outside the police establishment. Similarly, there is debate concerning the degree to which the power to direct local police affairs should be ceded by mayors and the political establishment in favor of independent boards, monitors, inspectors general, commissions, or quasi-judicial bodies like some citizen review boards. Likewise, there is currently debate concerning the degree to which internal police investigations and disciplinary

processes should be transparent and open to public scrutiny either by the press or by monitors or inspectors general.

At the same time, there are other debates about whether even the most basic legal restraints and civilian oversight have any practical hold over police action. Critics complain that fundamental rights are articulated and often said to be guaranteed, but the legal or constitutional structures to enforce them are incomplete. The judiciary is timid, and political imperatives or other demands of the state may on occasion override judges and the law. Remedies for abuse of police power are often weak or inconsistently enforced. These arguments often focus on particular units resistant to democratic control—be they the military police, the secret police, or extralegal or irregular squads or groups.

To strengthen the expertise, resources, and independence of civilian oversight of police, democratic governments are increasingly creating specialized, permanent structures to undertake this work. These include the **police ombudsmen** appointed in several states of Brazil as well as in Northern Ireland, the **civilian complaint review boards, monitors, and inspectors general** established in many cities in the United States, and the **Independent Complaints Directorate** established as part of the South African constitution.

Whether they are general or specialized, these oversight structures face a set of common dilemmas in the design and conduct of their own operations. This paper briefly reviews those common dilemmas.

## Specific Issues

### **Size and Composition**

Some citizen review entities are multi-member panels or boards, such as the Civilian Complaint Review Board in New York City or the National Human Rights Commission in India. Members may be appointed by an executive, a legislative body, the police department, community groups, or they may be elected. Other citizen review entities have only one member, assisted by a staff. Examples would include the various *Ouvidorias* (ombuds-offices), which now operate in several Brazilian states.

It would be useful to consider the strengths and weaknesses of these varying structures, and the operational practices that make each model work best.

### **Nature and Degree of Civilian Involvement**

There are typically three types of civilian involvement in review of police misconduct, as outlined by Samuel Walker, who has chronicled the expansion of citizen review in the United States:

1. Civilians outside of the police conduct investigations of citizen complaints, often with access to internal police documents and personnel records. There may or may not be parallel internal police investigations of the same complaints. Under some systems, the civilians only make a recommendation as to how the complaint should be adjudicated and if discipline should be imposed. Under other similar systems, the civilians may be empowered to adjudicate the complaint but not to impose discipline. In still other similar systems, the power to impose discipline is also ultimately put into civilian hands.
2. Civilians are empowered to review how the police department itself has adjudicated complaints but are not empowered to conduct independent investigations. In this case, investigations are usually carried out by police officers. Typically, the civilians do not have access to internal police documents or the entire investigatory file. The power of such groups is limited to a recommendation for further internal investigation.
3. Civilians audit, investigate, monitor, and report on the competence and effectiveness of the police in managing police misconduct but do not investigate and adjudicate individual complaints as such. Under this model, civilians have complete access to internal police documents, personnel files, and data about use of lethal and non-lethal force.<sup>1</sup>

There are places where different features of the various models described above are mixed. Each model has strengths. Proponents of the first model often emphasize that the independence of the investigation is essential to public confidence. Those who favor the second model emphasize the greater resources, expertise, and informal information available to police investigators and argue that the civilian review of each investigation assures their integrity. Finally, those who favor the third emphasize overall structural reform, risk management, systems to identify problem officers or potential problem officers, strategies to reduce use of force generally, and deep analysis of individual force incidents to figure out what went wrong and how it could be done better and more safely. The analyses are often less concerned with who was “right” and who was “wrong” than in the strategic and tactical implications of the force incident. The question becomes: how can legitimate law enforcement goals be achieved, without compromising officer safety, but in a way that lessens the risk or extent of injuries to the suspect? Under this model, discipline, as well as investigation, is carried out through the chain of command, with the monitor overseeing and commenting on the fairness of the entire process.

---

<sup>1</sup> Samuel Walker, “Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police,” *American Journal of Police*, Vol. XV, No. 3, 1996, pp. 72-73).

## **Case by Case Review vs. Policy Review**

Some citizen review mechanisms that receive complaints from individual citizens also review departmental policies and procedures. But providing redress to individual complainants and recommending changes to department policies are two distinct approaches to achieving greater police accountability.

Conducting both of these operations within a single agency raises questions of resource allocation and internal coordination. Those who put higher priority on resolving individual complaints emphasize achieving the appearance of accountability and service to individual citizens. Those who put higher priority on pattern analysis and police recommendations emphasize the role of civilian oversight in making practical changes that reduce the risk of misconduct. Whichever gets higher priority, the mix of these functions in a single entity requires careful coordination and sharing of information; otherwise, the insights available through the investigation of individual complaints and the analysis of patterns are lost in the other work.

## **Type of Complaints Reviewed**

Some citizen review entities limit their activities to a particular type or class of offenses committed by police, either because of resource constraints or limitations in their mandates. Furthermore, many review entities use different procedures for what they regard as the least serious forms of alleged misconduct.

For example, several review panels in the United States, including ones in New York and Minneapolis, try to resolve complaints that do not involve the use of force through mediation, which does not result in any disciplinary action against the accused officer. The police ombudsman for Northern Ireland also refers about 12 percent of complaints for informal resolution between the police and the complainant.

Each agency must decide which complaints to investigate fully, which to divert to mediation, and which to record for pattern analysis but otherwise ignore. The decisions will differ depending on the context, but agencies might learn from each other about how to assess the results of the decisions made.

## **Scope of Authority**

Citizen review mechanisms differ in the extent of their powers to conduct independent investigations, to subpoena witnesses, to hold public hearings, or to provide legal counsel to complainants. Once the review of a case is completed—and if the review mechanism finds that a police officer or officers are responsible for the alleged misconduct—then the entity typically issues recommendations to the prosecuting authority or to the police department for disciplinary action. The prosecutor and the department then each have discretion to act upon the recommendations or not, though in some instances the recommendations are binding.

This raises important questions about the relationship between the civilian oversight body and the prosecuting authority. Those relationships are frequently strained, as they are between any investigative body and its prosecuting counterpart. There may be operational procedures, however, that systematically lessen that strain and improve the outcomes of prosecution and discipline.

## Conclusion

Across the globe, democratic governments articulate and guarantee general, fundamental rights of citizens in relation to the police, but in some places, the legal and institutional structures to enforce those rights are incomplete. In some places, remedies for abuse of police power can be weak or inconsistently enforced.

The development of strong, effective civilian oversight represents an effort to strengthen those remedies and provide more consistent enforcement of basic rights. But the construction of these oversight mechanisms raises a wide range of issues of practice and principle. Some of the practical questions have been described above, but deeper issues of principle underlie many of the discussions about these practical issues.

- Who can be trusted to effectively and fairly investigate alleged misconduct by the police?
- To what degree should the discretion of police chiefs to impose or withhold discipline from officers who abuse power be subject to oversight or control by civilians?
- How should the authority over police agencies be divided among elected officials and independent boards, monitors, inspectors general, commissions, or quasi-judicial bodies like some citizen review boards?
- To what degree should internal police investigations and disciplinary processes should be transparent and open to public scrutiny either by the press or by monitors or inspectors general?

These are fundamental questions that go far beyond the practical issues of designing and operating an oversight body.