

# The History of the Citizen Oversight

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## A. INTRODUCTION

Citizen oversight is now an established feature of the institutional landscape of U.S. policing. The growth of citizen oversight over the last 35 years represents a dramatic change not only in formal criminal justice institutions but an even more profound change in public expectations about the police and in how police leaders (not the rank and file) respond to citizen input into the complaints process.<sup>1</sup>

By mid-2005 more than 100 oversight agencies covered the police departments in almost every large city in the United States (and consequently a substantial proportion of the population). Additionally, an increasing number of agencies covered county sheriff's departments and police departments in medium-sized cities. The growth of citizen oversight is not confined to the United States. External citizen oversight of the police is virtually univer-

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1. SAMUEL WALKER, *POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT* (2001). SAMUEL WALKER, *THE NEW WORLD OF POLICE ACCOUNTABILITY* (2005).

sal in the rest of the English-speaking world and is spreading in Latin America, Asia, and continental Europe.<sup>2</sup>

This chapter provides a brief overview of the history of the movement for citizen oversight in the United States. That history can be divided into three periods: the Years in the Wilderness, from the 1920s through 1970; the Years of Growth, from 1970 to about 1993; and the Years of Consolidation and Development, from 1993 to the present.

## **B. A DEFINITION OF CITIZEN OVERSIGHT**

Citizen oversight of the police is defined here as an agency or procedure that involves participation by persons who are not sworn officers (citizens) in the review of citizen complaints against the police and/or other allegations of misconduct by police officers. It is important to note that 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. The definition used here is more limited and refers to direct citizen involvement in the citizen complaints process. The nature of that involvement varies considerably among jurisdictions. This does not include involvement in issues of police policy as is the case in many community policing programs.<sup>3</sup>

## **C. YEARS IN THE WILDERNESS: 1920S TO 1970**

From the 1920s through the late 1940s, citizen oversight of the police was a radical idea supported only by a small group of civil liberties activists. The idea first appeared in 1928 when the Los Angeles Bar

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2. CIVILIAN OVERSIGHT OF POLICING: GOVERNANCE, DEMOCRACY AND HUMAN RIGHTS (Andrew Goldsmith & Colleen Lewis, eds., 2000). *See, e.g.*, the Canadian Association for Citizen Oversight of Law Enforcement (CACOLE) at <http://www.cacole.ca/>.

3. *See, e.g.*, the beat meetings in Chicago. WESLEY G. SKOGAN & SUSAN M. HARTNETT, COMMUNITY POLICING, CHICAGO STYLE (1997).

Association created a Committee on Constitutional Rights to receive complaints about police misconduct. The Committee, however, was an unofficial body with no power. In 1931, the Wickersham Commission report on *Lawlessness in Law Enforcement* recommended creating “some disinterested agency” in each city to help people who had complaints about the police.<sup>4</sup> In New York City, following a racial disturbance in 1935, a mayor’s task force recommended “a committee of from five to seven Harlem citizens of both races to whom people may make complaint if mistreated by the police.” Mayor Fiorello LaGuardia found this idea too radical, however, and did not accept it.<sup>5</sup>

The first official civilian review board was established in Washington, D.C., in 1948. Although a historically significant innovation, the Complaint Review Board (CRB) was extremely weak and ineffectual. A 1966 report concluded that it had “functioned quietly and infrequently,” handling a total of only 54 cases between 1948 and 1964. Far more important was the Police Advisory Board (PAB) established in Philadelphia in 1958. The PAB consisted of a board of citizens who would receive citizen complaints, refer them to the police department for investigation, and then make a recommendation to the police commissioner for action after reviewing the police investigative file. The PAB also handled very few cases (particularly as measured by today’s volume of complaints) and had minimal impact on police-community relations.<sup>6</sup>

The movement for citizen oversight exploded into a national issue in the 1960s as the civil rights movement challenged police misconduct in virtually every city. Along with the hiring of more African American officers, the creation of a civilian review board was one of the principal civil rights demands. Demands for civilian review appeared in many cities. The most important response occurred in New York City where Mayor John Lindsay in 1966 expanded the existing Civilian Complaint Review Board (CCRB; created in 1953 as a purely internal procedure) to include four nonpolice members, giving it a 4–3 civilian majority. The

4. NAT’L COMM’N ON LAW OBSERVANCE AND ENFORCEMENT, *LAWLESSNESS IN LAW ENFORCEMENT* 192 (Government Printing Office 1931).

5. The Mayor’s Commission on Conditions in Harlem is discussed in *THE POLITICS OF RIOT COMMISSIONS* 159–95 (Anthony M. Platt ed., 1971).

6. Richard J. Terrill, *Police Accountability in Philadelphia: Retrospects and Prospects*, 7 *AM. J. POLICE* 79–97 (1988).

police rank and file reacted immediately and sponsored a referendum in November 1966 in which the voters abolished the expanded CCRB.<sup>7</sup>

In Philadelphia, meanwhile, the mayor allowed the PAB to lapse in 1969. By the end of the decade, with the two major civilian review boards abolished, citizen oversight of the police appeared to have no political support and no future.

#### D. YEARS OF GROWTH: 1970 TO 1993

Citizen oversight quietly revived in the 1970s. Kansas City, Missouri, created the Office of Citizen Complaints (OCC; authorized in 1969; operational in 1970), the first citizen oversight agency to survive to the present day. Like the old Philadelphia PAB, the OCC reviewed police investigations but had no independent power to investigate complaints. Even more important, in 1973, a referendum in Berkeley, California, established the Police Review Commission (PRC), the first oversight agency with independent authority to investigate complaints.<sup>8</sup> That same year Detroit voters created the Board of Police Commissioners (BPC) to govern the police department, and the board established its own complaint review process staffed by nonsworn investigators.<sup>9</sup>

The growth of oversight agencies steadily gained momentum. By 1980 there were about 13 agencies, and by 2000 more than 100.<sup>10</sup> Although the absolute number appears small, these agencies exist in all but a few of the major cities and counties and thereby cover a substantial portion of the population. The maturation of the oversight movement was marked by the creation of professional associations, the International Association of Citizen Oversight of Law Enforcement (IACOLE) in 1985 and later the National Association for Citizen Oversight of Law Enforcement (NACOLE).<sup>11</sup>

The creation of an oversight agency, however, was often just the first stage in a long struggle for legitimacy. The San Francisco OCC was cre-

7. ALGERNON BLACK, *THE PEOPLE AND THE POLICE* (1968).

8. See <http://www.ci.berkeley.ca.us/prc>.

9. See [http://www.ci.detroit.mi.us/police\\_commissioners](http://www.ci.detroit.mi.us/police_commissioners).

10. WALKER, *POLICE ACCOUNTABILITY*, *supra* note 1, at 6.

11. 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), see <http://www.nacole.org/>.

ated in 1982, but it faced a combination of bitter opposition from the police union and indifferent support from the mayor's office for many years. It finally established an effective program of activities in the mid-1990s. The Citizens Police Review Board in neighboring Oakland, California, meanwhile, was severely hampered for many years because of noncooperation by police officers and other problems.<sup>12</sup>

## **E. YEARS OF CONSOLIDATION AND DEVELOPMENT: 1993 TO THE PRESENT**

It is not possible to set a precise date for when citizen oversight finally became an established part of U.S. policing and entered into a period of maturation and development, but the year 1993 witnessed a number of important developments.

Most notably, several jurisdictions created police auditors, which emerged as an alternative model of oversight of the police. San Jose, California, established the Independent Police Auditor (IPA) that year, and Seattle created a Police Auditor. New York City, meanwhile, revised the CCRB once again, this time creating an agency fully independent of the police department. Perhaps even more important, Los Angeles County created the office of Special Counsel to the Los Angeles Sheriff's Department (LASD). Merrick Bobb, the Special Counsel, had a broad license to investigate any and all aspects of LASD operations and, over the next decade, established the most impressive record of achievement of any oversight agency.<sup>13</sup> In an even more notable development, Sheriff Lee Baca created the Office of Independent Review (OIR) for the LASD in 2002, making it the only law enforcement agency in the United States with two oversight agencies.<sup>14</sup>

One of the most important indicators of the maturity of the citizen oversight movement was the gradual development of professional standards for agencies along with activities that involved more than just investigating complaints. Although there are still no accepted national standards, a number of local agencies developed their own policies and

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12. ACLU OF NORTHERN CALIFORNIA, *FAILING THE TEST: OAKLAND'S POLICE COMPLAINT PROCESS IN CRISIS* (1996).

13. The reports of the Special Counsel are *available at* <http://www.parc.info>.

14. LOS ANGELES SHERIFF'S DEPARTMENT, OFFICE OF INDEPENDENT REVIEW, *FIRST ANN. REP. 2002 at 32* (2002), *available at* <http://laoir.com/report1.pdf>.

procedures for the review of complaints. The San Jose IPA, for example, developed a set of formal criteria for evaluating whether a complaint investigation was thorough and fair.<sup>15</sup> The Boise, Idaho, Community Ombudsman produced 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 criteria for evaluating evidence and disposing of a complaint, and many other issues.<sup>16</sup> A 1997 referendum in San Francisco established a minimum of one OCC investigator for every 150 sworn officers in the police department.<sup>17</sup> This remains the only formal standard for the staffing of a complaint investigation procedure, either for an oversight agency or a police internal affairs unit. Several oversight agencies—in Minneapolis, New York City, Washington, D.C., among others—created mediation programs as an alternative method of resolving citizen complaints.<sup>18</sup> Finally, 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.<sup>19</sup>

## F. SETBACKS

Despite the steady growth of citizen oversight agencies, the movement has suffered a number of significant setbacks, in the form of agencies either failing to function effectively or being abolished altogether. The most important setback was the abolition of the Minneapolis CRA by a new mayor in 2002, despite the fact that the CRA had established a solid record of achievement and was rated highly by both complainants and officers. As a result, citizen complaints were not investigated for about two years until a new complaint procedure was established. The Santa Cruz, California, Citizen's Police Review Board was also abol-

15. See <http://www.ci.san-jose.ca.us/ipa>.

16. Boise Office of the Community Ombudsman, *Policies and Procedures* (2001), available at <http://www.boiseombudsman.org/PoliciesProcedures2001.pdf>.

17. See <http://www.ci.sf.ca.us/occ>.

18. Samuel Walker et al., *Mediating Citizen Complaints against Police Officers: A Guide for Police and Community Leaders* (2002), available at <http://www.cops.usdoj.gov/pdf/e04021486web.pdf>.

19. MINNEAPOLIS CIVILIAN REV. AUTHORITY, 2000 ANN. REP. (2000).

ished in 2003 for budgetary reasons. Meanwhile, in Cambridge, Massachusetts, the Police Review and Advisory Board (PRAB) fell into disarray for more than a year as city officials did not appoint members to the board and attempted to merge it with another city agency. The Washington, D.C., CCRB was abolished in 1995, but it had been extremely dysfunctional. It was replaced by a new and more effective review board in 1999.<sup>20</sup>

A number of oversight agencies did not operate effectively. An evaluation of oversight in Albuquerque, New Mexico, found that the Independent Counsel, an auditor-style agency, and the Public Safety Advisory Board (PSAB), an advisory committee, had both failed to use their authorized powers adequately and had achieved little.<sup>21</sup> The Seattle Police Auditor also proved to be a low-visibility and ineffectual agency. The Pittsburgh Office of Municipal Investigations (OMI) was found to be deficient by the court-appointed monitor overseeing the settlement of a federal lawsuit.<sup>22</sup> Over the years, the New York City 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.<sup>23</sup>

## G. SOURCES OF CHANGE

Several factors explain the growth of oversight from the 1970s to the present. Clearly, there was a significant change in public attitudes, which was reflected in the political process. In the 1960s, few elected city or county officials supported citizen oversight, and in New York City and Philadelphia, the police unions were able to use their political clout to abolish the agencies that liberal mayors had created. By the 1970s and 1980s, however, several oversight agencies were created directly by the votes in referenda or by city councils in response to a changed political

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20. See <http://www.occr.dc.gov/>.

21. SAMUEL WALKER & EILEEN LUNA, AN EVALUATION OF THE OVERSIGHT MECHANISMS OF THE ALBUQUERQUE POLICE DEPARTMENT (Albuquerque City Council, February 1997). Report available at <http://www.cabq.gov/council/abqrpt0.html>.

22. The court's judgment was based on the report of the court-appointed auditor. PITTSBURGH POLICE BUREAU, AUDITOR'S EIGHTEENTH Q. REP.: QUARTER ENDING FEBRUARY 16, 2002 (2002).

23. 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).

environment. Whereas in the 1960s, police unions were able to successfully play the “crime card,” arguing that oversight would cripple crime-fighting efforts,<sup>24</sup> by the 1980s such appeals were increasingly trumped by concerns about police accountability.

What brought about this profound change in public attitudes? There have been no academic studies of this question, but the evidence suggests a broad change in public attitudes toward official misconduct. On the one hand, incidents of serious police misconduct and the resulting community crises continued to occur in virtually every U.S. city. We can assume that an increasing number of Americans accepted the civil rights activists’ argument that a serious problem of police misconduct existed and that the traditional police internal affairs units were not adequate.<sup>25</sup> In the 1960s and early 1970s, such respected authorities as the President’s Crime Commission<sup>26</sup> and the American Bar Association<sup>27</sup> expressed opposition to citizen oversight. By the 1980s, opposition from such elite sources had vanished.

It is also reasonable to speculate that the shift in public attitudes was influenced by the Watergate scandal and other revelations about official misconduct. A series of federal laws since the Watergate era indicate the growing public concern about the need for oversight of government agencies. These include the 1978 Inspector General Act related to a number of federal agencies,<sup>28</sup> a federal law also requiring ombudsmen for nursing homes to ensure quality care for patients,<sup>29</sup> and the 1974 Privacy Act controlling how government agencies use information about citizens.

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24. RACE AND POLITICS IN NEW YORK CITY (Jewell Bush ed., 1971).

25. It is noteworthy that public opinion polls on the issue of racial profiling in recent years have found a significant number of white Americans agreeing that profiling exists.

26. PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REP.: THE POLICE (Government Printing Office 1967).

27. AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO THE URBAN POLICE FUNCTION 1.148–1.150 (Little, Brown, 2d ed. 1980).

28. PAUL C. LIGHT, MONITORING GOVERNMENT: INSPECTORS GENERAL AND THE SEARCH FOR ACCOUNTABILITY (Brookings Institution 1993).

29. JO HARRIS-WEHLING et al., REAL PEOPLE, REAL PROBLEMS: AN EVALUATION OF THE LONG-TERM CARE OMBUDSMAN PROGRAMS OF THE OLDER AMERICANS ACT (1995).

There was also an important change in attitudes among the police. Through the 1960s, police chiefs adamantly opposed citizen oversight, and the International Association of Chiefs of Police (IACP) issued formal resolutions to that effect.<sup>30</sup> By the late 1980s, however, most police chiefs did not publicly oppose the creation of oversight agencies (although many were probably not enthusiastic about the concept). The community policing idea, which swept the country, held that police departments needed to establish partnerships with local communities and solicit public input regarding neighborhood problems. In this context, it became difficult if not impossible for a chief to then argue against citizen input with regard to complaints.

Local police unions remained fierce opponents of citizen oversight. The New York City Patrolmen's Benevolent Association (PBA) sponsored the 1966 referendum that abolished the citizen-dominated CCRB. Unions continued to fight the creation of oversight agencies but, as the growth of oversight indicates, were increasingly unsuccessful. Opposition also took the form of lawsuits challenging subpoena power or other features of oversight agencies, but these were also mostly unsuccessful. The most significant form of hostility was simple noncooperation, in some cases in violation of ordinances requiring cooperation.

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 U.S. phenomenon, but rather a reflection of common concern about controlling police misconduct in all urban industrial societies.<sup>31</sup>

## H. CONCLUSION

The movement for citizen oversight fought a decades-long and bitter battle to gain legitimacy both as an idea and as a practical reality. That battle is now largely won, and the movement now faces new challenges, including the development of accepted professional standards for oversight agencies and performance measures that can indicate whether or

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30. International Association of Chiefs of Police, *Police Review Boards*, THE POLICE CHIEF 12 (February 1964).

31. Goldsmith & Lewis eds., *supra* note 2.

not an agency is operating effectively. Citizen oversight is a major innovation in U.S. 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.