

THE FUTURE OF POLICE REVIEW COMMISSIONS
IN PREVENTING POLICE MISCONDUCT
IN MID-SIZED AGENCIES

Article

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Introduction

During the past few decades, law enforcement's reputation with the public has suffered as a result of various incidents of misconduct. Severe cases of police misconduct have occurred throughout the United States, and they have been well publicized by the media. These cases of misconduct affect all agencies either directly or indirectly. Certainly, when newspapers run articles entitled: "Fact and fiction blend through history of LAPD--Corruption has a way of returning again and again,"ⁱ "The Thin Blue Line—A Shocking Accusation of Abuse Raises Old Questions About Police Brutality,"ⁱⁱ and "Scandal No Surprise to Rampart,"ⁱⁱⁱ police conduct is kept in the public eye. In reporting these incidents, the articles often include interviews with citizens about their perceptions of the incident and the police in general. From those interviews, the press prints the most inflammatory or controversial comments. As everyday citizens read these articles, they must question, to some extent, the conduct of law enforcement in general. The public must wonder how ethical the average officer actually is, particularly those in their own community.

Police misconduct is not a new phenomenon. Even though law enforcement has worked to professionalize policing over the past several decades, misconduct still occurs. Statistically, such incidents are rare events. For instance, in 1999, there were 19,034 reported citizens' complaints against peace officers in California, of which only 2,549 were sustained. Of these complaints, 1,232 were of a criminal nature and only 242 of these were sustained. The total number of peace officers employed within the state that

year was 69,363.^{iv} Considering how many hundreds of incidents officers handle each year, the ratio between citizen contacts and sustained citizen complaints is very small.

Although the number of criminal misconduct incidents is small, they do get wide attention by the media. This is particularly true for severe cases of misconduct in major cities where there is some distrust between police and groups within the community. The Rodney King incident in Los Angeles, the Louima incident in New York, and the recent Rampart corruption scandal are examples of misconduct in large agencies.^v However, small and mid-sized departments are not immune. Often, leaders of these departments feel that they are better able to monitor both the operations of their departments as well as their personnel. However, as much as leaders would hope that is true, it is not always the case. As an example, in Contra Costa County agencies over the past fifteen years, officers have been involved in cases of burglary, robbery and even homicide. Again, the numbers of these incidents were very small compared to the total number of peace officers within the county. These incidents are significant because they occurred in small and medium sized departments in suburban communities that were supportive of their police departments. These are the types of departments that many leaders feel are less likely to suffer from instances of major misconduct.

There are many factors that impact the likelihood of major misconduct occurring in a given agency. One of the most critical is the hiring of quality personnel. Certainly, the size of the recruitment pool has an impact on this factor. The larger the pool, the greater the choice in selection of new officers. Unfortunately, the size of the recruitment pool has been declining over the past several years. This has been a statewide issue and has affected large and small agencies alike. It is more difficult to hire high quality

candidates than in the past due to decreasing number of applicants.^{vi} Changing values and expectations of the generation currently being recruited and selected may also impact the incidence of misconduct. Since new officers are less likely to see law enforcement as a long-term professional career, they may also view the issue of ethical behavior differently. The changing structure of agencies may also be a factor. Departments have generally moved from a quasi-military structure to a more open, participative structure. As this has occurred, supervision has become less direct, allowing officers more freedom and decision-making ability. Supervisors may be less aware of when officers' conduct begins to change. The above are just a few of many factors that may have an impact upon the issue of misconduct.

Leaders in law enforcement have long been concerned with preventing misconduct. Most have formal policies prohibiting gratuities, under the assumption that small problems lead to bigger problems. Departments have developed in-house training regarding ethics and they tend to deal severely with sustained instances of ethical misconduct.

At the statewide level, the Commission on Peace Officer Standards and Training (POST) is charged with the responsibility for developing training standards according to the needs of the profession. Over the years, POST has expanded the number of hours devoted to ethics training at the basic academies and developed an Ethics Facilitator course. The issue of ethical behavior is also a thread that runs deeply throughout POST's Supervisory Leadership Institute, a program provided for sergeants.

The emphasis on community oriented policing should help to discourage misconduct by officers. This philosophy is designed to increase the connection between

a community and its police and creates a collaborative law enforcement environment. One of the by-products of this collaboration is decreasing any us versus them attitude that can develop between a community and its police. As the collaboration grows, greater trust is developed. Misconduct decreases because officers have developed a closer relationship with the community and are less likely to jeopardize that relationship and trust. As more departments embrace this philosophy, it may have a positive impact upon the issue of misconduct.^{vii}

Unfortunately, despite the efforts of law enforcement leaders, POST, and the vast majority of officers who act ethically, incidents involving major misconduct still occur. To help deal with this issue some communities have developed methods of civilian overview of police conduct. The structure and processes of such oversight bodies vary among communities, but they all provide some form of civilian review of cases of alleged misconduct. As will be seen, such programs are not prevalent and they often exist in an adversarial relationship with the law enforcement agencies they oversee. However, more communities than ever are considering implementing civilian oversight processes. There is a growing trend, both in California and throughout the country, to utilize such a method as a response to severe misconduct on the part of peace officers.^{viii}

Historical Perspective

The concept of civilian oversight of police conduct is not new. Professor Zachariah Chafie, Jr. of Harvard University, first presented the idea in 1931. The first civilian review board was not established until 1948 in Washington D.C. However, this board was largely ineffectual and possessed little power over the operations of the police

department. In 1958, Philadelphia established what is considered the first review board that had substantive power.^{ix}

During the 1960s and 1970s, the idea of civilian review began to interest leaders within many major cities. During these years, there was a great deal of civil unrest due to racial and social issues. There was a perception on the part of many communities, or significant parts of communities, that the police handled such civil unrest with excessive force. There was also a perception that employing agencies were unwilling to objectively investigate instances of alleged excessive force. As the distrust between police and government in general grew, the call for civilian oversight increased. Many major cities implemented some form of civilian review during this period of time. Some functioned for a period and eventually disappeared. Others were formed and have remained in place for many years. By 1998, there were more than 90 cities and counties across the country that have civilian review processes, most of these in large cities.^x

As major misconduct in agencies continues to be captured by the media, there will be increasing pressure to implement civilian review. One of the results of the Rampart corruption scandal, the recent shootings in Cincinnati, and the cases in New York has been to call for greater review of police conduct. In each, leaders of groups within the community have expressed concerns regarding the effectiveness of the police policing themselves. As this issue is raised, political leaders of the communities have begun to listen. Over the past several years, there has been added pressure by groups that advocate widespread use of civilian review as a way to combat police misconduct. Many of these groups, such as Copwatch, promote the idea to a large audience via the Internet. Additionally, the move towards citizen review is not limited to large cities. Recently,

community groups, supported by the media, have begun to call for citizen review in some mid-sized suburban cities.^{xi}

Research has shown that most current and past processes of civilian oversight can be characterized as one of four models.

- The first model allows for the citizen oversight group to actually investigate misconduct and then recommend findings to the agency head.
- The second model allows the police to investigate the allegations and recommend findings. The review board then recommends that the agency head either accept or reject the findings.
- The third model allows for the police to investigate misconduct and develop findings. The review board plays the role of an appeals body. A complainant who feels that the police finding is incorrect, can appeal to the board, which will review the investigation and recommend its own findings to the head of the agency.
- The fourth model is one in which the board reviews the investigative process and findings for fairness and makes recommendations to the head of the agency regarding the investigation only.^{xii}

The research indicates that most forms of civilian review involve a group of people functioning within one of the four models described above. For purposes of this project, such a review process will be titled a Police Review Commission (PRC). Although such bodies have different names in different jurisdictions, Police Review Commission is a fairly common title.

The research also indicates that PRCs often function in a contentious relationship with the law enforcement agency. There has historically been little trust between PRCs and either the administration or the labor groups within the agency. However, there are some benefits reported by individuals and groups within the community, as well as by law enforcement leaders. Individuals and groups feel that PRCs provide an opportunity to express their complaints to an independent party. They feel that they are helping hold officers accountable, and ultimately get an unbiased decision on the complaint. Law enforcement leaders feel that a PRC helps improve the image of the police department as well as improve relationships with diverse groups within the community. A PRC also reassures the public that a particular investigation has been conducted properly. It can also ensure high quality investigations and provide insight into policy and training issues. In addition, other officials within a jurisdiction, such as City Managers and City Council report certain benefits. PRCs are tangible proof to the public that city officials will not tolerate misconduct. In some cases, the existence of a PRC may reduce lawsuits.^{xiii}

The Issue

Certainly, it would be simplistic to assume that there is any one specific cause of misconduct by the police. Just as each officer is unique in his or her values and approach to the job, each department and community has a unique culture. Those established cultures play an undeniable part in establishing what is acceptable and unacceptable conduct. Just as the police culture and police actions are complex, the causes of misconduct, be it excessive force or criminal behavior, are difficult to define. Unfortunately, because the causes are complex, there is no simple answer to eliminating

police misconduct. In the future, there may be a move towards using PRCs as a method for prevention of police misconduct.

Examining the Future

To examine how PRCs may be used in the future to impact the issue of police misconduct, a Nominal Group Technique (NGT) was used. This process used a panel of eight people from diverse backgrounds to analyze the trends and events that may have an impact upon the issue in the future. The panelists included:

- A member of a PRC for a medium sized department serving a very diverse community
- A police lieutenant that has been assigned to the internal affairs division of her department and has also been department liaison to the PRC
- A member of a PRC from a medium sized department
- A specialist in community involvement and outreach programs
- An attorney that defends officers accused of misconduct
- The President of a Police Officer Association
- Two lieutenants from different agencies that have conducted investigations into allegations of misconduct

The panel discussed forty-nine different trends that may have an impact on how PRCs can affect misconduct. They then identified the ten trends that they felt would be most significant in the future. These ten trends were:

- Level of public trust in law enforcement due to outside oversight will increase, allowing agencies to work in partnership with its community.
- Changing demographics within the state will cause greater potential for misconduct due to differences in values and expectations.
- Level of PRCs politicization and development of alternative agendas may become an obstacle to cooperation with the agency due to mistrust.
- Level of trust in PRCs functioning will depend upon the experiences of those subject to the PRC.
- Alliances (politicization) between police association and PRC, or department administrations and PRC will break down trust.
- Amount of time taken to resolve cases of misconduct will increase due to PRCs.

- Level of proactive/self initiated police work will remain much as it is currently after officers get used to the idea of a PRC.
- Number of internal reportings of misconduct will increase as officers develop an understanding that PRC is working in partnership with them to prevent misconduct.
- Level of focus on police misconduct rather than positive service to the community may increase if PRC stays in the public eye.
- Level of legal representation required as a result of misconduct investigations will increase and will have a financial impact upon agencies and individuals.

The panel thoroughly discussed how the trends would affect PRC's impact on police misconduct in the future. The panel recognized that there are potential pitfalls for agencies and communities that institute PRCs. There are few positive models, most function in an adversarial relationship with the police department. However, the panel also felt that PRCs could help develop a strong sense of trust between a community and its police department. It can bolster credibility, and work as a partner with the agency. In the best case, a PRC becomes a strong supporter of the way the department functions, and provides another, unbiased, avenue of communication with the community. A PRC can also make sure that facts are brought to light that may sound defensive when brought to light by the department.

The panel felt that PRCs might work more effectively in some communities than others. As mentioned, the most critical role for a successful PRC is to develop greater credibility and trust between a community and its department. Therefore, they can most effectively be used in communities that generally trust their police to begin with. The PRC then serves to enhance that trust and help prevent it from deteriorating.

Additionally, it will be beneficial if there are not strong political influences in the community, and little history of police misconduct. Mid-sized departments may be most successful in using PRCs as part of a system to prevent misconduct. They are better able

to control other parts of the system, such as recruitment and hiring, values training, and early recognition of aberrant behavior.

Clearly, there are risks in implementing a PRC. The panel felt that many of the risks could be minimized through a non-political selection process and a comprehensive training program for PRC members. After the PRC is in place, members of the agency will discover that the PRC can function in a positive relationship with the agency. Their fears of civilian oversight will diminish. In reviewing the various stakeholders in implementing a PRC, it became obvious that many of the stakeholders shared similar concerns:

- A high performing organization that is considered a model for others
- Maintain a high level of trust between the community and organization
- Ensure that major misconduct is dealt with appropriately
- Encourage citizen/agency collaboration and involvement
- Want any system of citizen oversight to be effective, but not intrusive

Communities that have the most opportunity for success as mentioned earlier can use the shared concerns to help design the structure, roles and responsibilities for a PRC to meet those concerns. After it is in place, the PRC must be monitored to ensure that it is functioning as it was designed, and avoiding the pitfalls identified by the panel.

Strategies for Implementation

Agencies that choose to develop a collaborative oversight system will need to assess their agency and community and then develop strategies such as:

- Assess the organization's ability to react positively to change. Develop that capacity by implementing changes, showing a willingness to experiment, and involving others in the change process. As members become more used to

'change being a constant' they will not be as threatened by it. It will become a way of life, and they will recognize its value in maintaining a vital and effective organization.

- Develop an inspiring vision regarding the issue of civilian oversight. Focus on the positives that can result, such as increased trust, greater collaboration and greater appreciation of the agency by the community. It will be important to provide this vision at the right time and in the right format. There is no pressing need in most agencies to institute a PRC immediately. Therefore, time can be taken to develop the organization's understanding of the issue as well as its capacity for change. As the organization becomes more comfortable with the idea, the vision can be shared.
- Work with the critical stakeholders--those that will be most impacted and those that have the most impact upon successful implementation. These stakeholders should be involved in designing the roles, responsibilities and operational guidelines for the PRC. The structure may be based upon a past model, or may become a new model for others to follow. The role of the PRC may be expanded from what has been done in the past. Review of misconduct may be only one of its roles. It may have a broader function, such as advising about policy formulation, helping assess training needs or developing community/agency programs. The most critical part of an effectively functioning PRC is to clearly structure its roles and processes according to the needs of stakeholders.
- Once the PRC is in place, it is also critical to monitor its functioning. If the roles and responsibilities are developed clearly, then it should function effectively.

However, if the evaluation process shows that it is straying from its role, there must be a process to bring it back on track. PRCs that develop political agendas would break down the trust that has developed with the agency. Once that happens, they function in a contentious atmosphere that benefits neither the agency nor the community; they also have little positive effect upon misconduct.

- The NGT panel felt that a PRC's most positive impact upon misconduct would come from a sense of collaboration and trust that will develop between officers, the PRC and the community at large. The more the members of the agency work with members of the community, the stronger the trust becomes. When officers feel that they are part of the community and not just serving the community, they will be less likely to be involved in misconduct. This relationship can best be maintained in mid-sized agencies that have a history of good relationships with the community, few cases of misconduct in the past, and little political pressure.
- Recognize that a PRC is but one part of a system to address the issue of misconduct. Mid-sized agencies are those that have the best chance of implementing a system to prevent misconduct, with the PRC being only one part of that system. Other parts of this system must include:
 - strong recruitment and hiring strategies
 - effective training programs in the area of ethics
 - reinforcement of organizational values
 - recognition and reward of desired behavior
 - using values assessment as a tool for selection and promotion
 - effectively dealing with misconduct when it does occur
- Focus attention on the successes realized through working with a PRC. Agencies that have few incidents of misconduct will benefit greatly from having a PRC that

reviews those few incidents. It will become a group that is a strong supporter of the police department since it will see firsthand how professionally the agency provides police services. Its credibility with the public will naturally help build trust between the agency and its community.

Conclusion

The law enforcement profession cannot afford to ignore the issue of police misconduct. Recent data for California shows that the reported rate of misconduct in the past decade has been steady when compared to the number of sworn officers.^{xiv} However, the public's perception of misconduct is that it is on the rise, and incidents of serious misconduct generate a great deal of media attention.^{xv} This attention reinforces the public's perception and slowly erodes their trust in the police.

As mentioned earlier, there is no single cause of misconduct; each officer, each agency and each situation is different. Whether the misconduct is a single event that is clearly an aberration, or a more widespread norm of a small group within an agency, there are multiple causes. Therefore, there is not going to be any single solution that will prevent misconduct in every case. Agencies need to develop systems within their agencies to help prevent misconduct, and when it does occur, deal with it effectively.

The issue of civilian oversight as part of a system to deal with misconduct is also a complex one. There is no single model to turn to that has been successful. In fact, due to the low incidence of misconduct relative to opportunities for misconduct, it is very difficult to measure whether civilian review has had a significant impact on misconduct in the past. Data regarding major incidents of misconduct is insufficient to draw

conclusions and there are no studies that clearly address this issue.^{xvi} What has been shown, and described earlier, is that there are other positive impacts that result from civilian participation.

What lies ahead for the future regarding this issue? There is little evidence to suggest that misconduct is going to decrease by using the same systems we have been using. Currently, there is growing interest in utilizing civilian oversight to deal with misconduct. Given those facts, proactively designing a PRC for an agency may prove the most viable alternative for the future. It may also be the most difficult strategy for law enforcement to embrace. Leaders of a specific agency will have to decide whether that community and its agency can develop a collaborative civilian oversight process that will provide a positive future. As previously mentioned, the most success may come in mid-sized agencies that have positive relationships with their communities, little political tension and a history of minimal citizen complaints. These are the agencies in which a PRC may become a part of a system to minimize misconduct in the future.

Agencies that chose to voluntarily implement PRCs face some risk. However, they are also in the position of creating their own future in this area without having it created for them. In many communities, a PRC that is structured properly, monitored properly and supported by stakeholders can function as a partner with the agency. Over the past several years, agencies have tried to increase the involvement of citizens. A PRC may be yet another way to include them. If designed as a partner with the agency, effectively structured, and focused on its roles, a PRC is not destined to be a negative factor for a police agency. It can become a supporter of the agency and develop greater trust between

the agency and the community. Over time, that trust and collaboration with the community will have an effect on decreasing incidents of misconduct.

Endnotes

- ⁱ "Fact and Fiction Blend Through History of LAPD," The Press Democrat, (March 2000).
- ⁱⁱ "The Thin Blue Line—A Shocking Accusation of Abuse Raises Old Questions About Police Brutality", Newsweek, September 1, 1997.
- ⁱⁱⁱ "Scandal No Surprise to Rampart—Residents Aware of Corruption," The Press Democrat, (February 27, 2000).
- ^{iv} Crime and Delinquency in California, 1999, California Department of Justice--Division of Criminal Justice Information Services. 96.
- ^v "A Decade after Rodney King, LAPD Laments its Reputation", Contra Costa Times, (March 3, 2001); "LAPD Trial Draws Criticism, Doubt", Contra Costa Times (October 9, 2000); "Louima Beating Trial Set for Brooklyn", Bergen Record (February 20, 1999).
- ^{vi} "Police Seeking New Recruits Face Obstacles", Contra Costa Times, (July 30, 2001).
- ^{vii} Bayley, David, The Best Defense, 2.
- ^{viii} Finn, Peter, Citizen Review of Police: Approaches and Implementation, vii.
- ^{ix} Report to the Mayor on Civilian Participation in Review of Citizen Complaints Against Police, Gilford, Rotea J., 1981, 1.
- ^x Finn, *ibid.*, 4.
- ^{xi} "Some Residents Support Police; Others are Wary", The Press Democrat, May 7, 2000.
- ^{xii} Finn, *ibid.*, x.
- ^{xiii} *ibid.*, xi.
- ^{xiv} Crime and Delinquency in California, *ibid.* 96.
- ^{xv} Newsweek, *ibid.* 52.
- ^{xvi} Finn, *ibid.*, 26.

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