

GROSS, Zenith

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POLICE POWER AND CITIZENS' RIGHTS

the case for an independent
police review board

This pamphlet was prepared
by Zenith Gross and Alan Reitman.
Graphic design by Allan Gold.

INTRODUCTION

1966

"Justice, sir, is the great interest of man on earth"

—Daniel Webster

The crisis of justice in American cities daily grows more acute.

Urban centers are the showcases of American civilization. They are also microcosms of all the problems of an open society in which change is straining the fabric of democracy — sometimes nearly to the breaking point.

In the years since World War II, there have been a long series of crises in the nation's cities. They range from the mounting drive for racial equality which in some cases has erupted into ghetto riots, to school and hospital strikes and news and power black-outs.

But in the past 10 or 15 years, few urban crises have been as severe, persistent and potentially damaging to the American tradition of security under law as the crisis which reveals itself in the current tension between police and the citizens they serve.

This tension is expressed most tragically when the relationship breaks down completely and violence and death result.

But that is only one face of the crisis.

There are other expressions of tension which erode away meaningful concepts of justice more quietly: the small businessman who would rather "pay" the "cop on the corner" than risk losing a friend on the force; the citizen who endures false arrest or illegal search, rather than "get involved with the law;" the derelicts, alcoholics and vagrants whose rights mean little to the community at large and for whom this unconcern is demonstrated by frequent police violations of those rights.

A documented picture of police lawlessness has emerged from government surveys and private reports, hearings and studies.¹ The public's concern is reflected in a recent nationwide poll, which showed that a third of the nation's adults feel uneasy about local police forces. Forty-three per cent of the residents of medium and large cities gave their police forces a negative rating, and among Negroes alone, the figure rose to 49 per cent.²

At best, the citizen is torn over whether he has confidence in the police. At worst, the man in blue is a sworn enemy.

All this in spite of the obvious fact that many police officials are dedicated, responsible men, and that by far the great majority of officers attempt to do their difficult and dangerous jobs competently and properly.

And all this in spite of the fact that citizens still often turn gratefully to the sight of a uniform in frightening or threatening situations, and most

1. "JUSTICE", Book 5, 1961 United States Commission on Civil Rights Report. Minutes of testimony presented to the Seattle, Wash., City Council by the American Civil Liberties Union of Washington, January, 1965.
Report by the Minnesota Civil Liberties Union, based on hearings before the Minnesota Advisory Council to the United States Commission on Civil Rights, August, 1963.

2. The Harris Survey, New York Post, July, 1966.

frequently, receive the help they seek.

The causes, then, of the very real mistrust, suspicion and hostility between the police and the community must be complex; the ways in which the crisis appears are complex, and so too, are the solutions which have been advanced to lessen the tension and restore public confidence. Top police officials, students of law enforcement and some lawyers say the only answer is to upgrade the police profession with better selection, training and pay. Social scientists point to the underlying problems of racial discrimination, crime, narcotics addiction and poverty as complicating factors in police-citizen relations. Still others suggest that government power is so big and pervasive — and still growing — that the citizen needs protection against its encroachment by all agencies, not just the police.

All these explanations are correct. But as a first practical step:

The American Civil Liberties Union, concerned about the violation of individual rights in this tense situation, proposes the adoption of the principle of outside civilian review of police infractions.

This concept is *not* advanced as a cure-all which, in one stroke, will improve the quality of police recruits, remove racial prejudice from the American scene, and solve all other social ills.

It is rather only the *beginning* of a program to resolve this vexing problem of police-community unrest.

WHAT IS THE CIVILIAN REVIEW BOARD?

It is the idea that there should exist somewhere, separate from the police department itself, an independent, impartial tribunal of carefully-selected, outstanding citizens from the community at large.

Ideally, board members' backgrounds would include judicial, legal, investigative and educational experience. Merit, not race, religion or membership in any group, would be the basic criterion for selection.

The board would have the power to hear complaints, investigate and make recommendations **ONLY**. Its function would be purely advisory. It would have no disciplinary powers whatever.

Recommendations would be forwarded to police and municipal authorities who would choose whether or not to act. Clearance or punishment of an individual officer would thus remain where it is presently: in the hands of the police department officials who are legally responsible for the running of their own divisions.

In all cases, the complainants and all interested parties would be informed, in detail and in reasonable time, as to the disposition of their complaints.

Just as important as offering aggrieved citizens a route of redress the forum would also serve to defend the police against unfounded and unproved complaints and to protect their careers, promotions and pensions against false, malicious or vengeful attacks by citizens.

A civilian police review board could perform other subsidiary functions, in addition to reassuring citizens that "someone's listening" to their complaints and acting responsibly to correct them. An outside board could explain proper and legal police procedures to confused and misinformed persons; it could help interpret new laws and complicated enforcement requirements to police; it could set up informal processes to settle minor conflicts. It could do many things that might help toward restoring communication and a genuine dialogue between police and citizens. It could, in short, and most vitally of all, replace the emotion-laden shouts of "brutality," "whitewash" and "why blame the cops for everything?" with a more viable motto: "Equal Justice Under Law."

Each day the need for a check on police power grows more insistent, in the back rooms of station houses and patrol wagons where alcoholics are "cleaned up" in sweeping dragnets of illegal arrest; in private homes, often modest if not poor, where police walk in without warrants; and in the exploding Negro and Puerto Rican ghettos of the North, the racially-troubled South, and the dismal slums of the Mexican-American communities of the West Coast.

The Supreme Court is spotlighting these weak links in the law enforcement chain and is insisting that the Bill of Rights *really* be enforced. And many cities, despite formidable opposition, are attempting to confront the problem of police malpractices through the mechanism of independent review.

This call for a more effective avenue of citizen redress is not new. The American Civil Liberties Union of Southern California had warned five years before the 1965 Watts riots that police-citizen relations could not be worse. In June, 1966, seven years after the Illinois Division of the ACLU first requested a police review board for Chicago, that city's Superintendent of Police, Orlando W. Wilson, stated that dogs would no longer be used to "keep order" in the Puerto Rican community. In Seattle in 1965, citizens' organizations gathered affidavits to prove that police use excessive force on persons who are NOT members of minority groups, that such practices can occur with a fine disregard for race, creed or color; yet similar practices were also documented in a study of the Seattle police as far back as 1931.

But time is running out. Impartial review is required NOW to help lance the festering infection in police-citizen relations, and to assist in halting the violations of civil liberties at the hands of a defensive and beleaguered law enforcement system.

This is why the ACLU urges adoption NOW of the civilian review concept and its immediate implementation as a practical, if partial, answer to the open conflict in our cities between police and citizens.

Let us examine closely the reasons why the Union, in concert with other groups, strongly favors this approach.

THE NATURE OF POLICE POWER

"(In Watts) there is the painful memory . . . of how very often the cop does approach you with his revolver ready, so that nothing he does with it then can really be accidental . . ."

—Author Thomas Pynchon, *New York Times Magazine* article,
"The Mind of Watts," June, 1966

"If you have the powers that a police officer has, you must be discrete in exercising that power . . ."

—Lt. Chester G. Gethers, Director of Community Relations
Division, Philadelphia, Pa. Police Department, April, 1963

The police hold a unique grant of power from the state: they are the only representatives of governmental authority who are legally permitted to use force against the citizen. All other agencies of state power rely upon request, persuasion, public opinion, custom, or finally, as a last recourse, legal and judicial processes to insure compliance with their rules.

Only the police can compel the citizen to obey, through the use of physical force. It is true, of course, that when this force is wrongfully used, the citizen has later legal recourse against the police; but it is lengthy, expensive and frequently ineffective to pursue matters through the courts *after* police power has been abused.

Against this background of force is another unique factor: only the police, among all public employees, stand in an adversary position to the citizen; they are there to prevent him from committing acts which he might otherwise wish to commit. The practical result is that the police wield their great power very often in conflict situations, as a semi-military cadre of armed men within the civilian community. It is perhaps this latter aspect of police procedures which set the police apart from lawyers, doctors and firemen, all of whom also sometimes serve the community in emergency situations but none of whom stand in the adversary relationship to the citizen that the police do. When the police ask why these groups do not have their actions reviewed, one answer is that doctors and other professional community servants mobilize neither the physical force nor the legal sanctions for the use of this force which accrue to the police.

Another complication is that police officers are sworn to enforce the law at all times, whether on duty or off, so that their access to arms is constant and not subject to the usual civilian limitations of working hours and license requirements for specific seasons or places. The number of times in which off-duty policemen figure in controversial cases involving shootings or beatings is frequent enough to suggest that the break-down between the officer's private and public life is a difficult aspect of power to control. In New York in 1964, an off-duty policeman's fatal shooting of a 15-year-old Negro boy precipitated rioting, and a similar shooting — not resulting in a riot, but markedly increasing community tensions — occurred just recently in Seattle, Wash.

Most serious of all, of course, is the possibility of excessive use of firearms in the course of police duties, with its implied power of life and death over the average citizen. A study of the "excessive discharge of firearms" by

an ACLU affiliate in a medium-sized midwestern city in 1953³ showed that the police fired their guns more than 300 times in a two-year period, over a third of them in auto cases involving juveniles. On many more occasions the policemen were neither under attack, nor had reason to believe a felony had been committed.

The police hold that they need this power to maintain the order without which no citizen can enjoy his freedom. But because power always tends to grow if unchecked, the police frequently find themselves moving over the line that marks maintenance of order into the murky area of censorship and suppression of untypical social behavior.

In Philadelphia, for example, before the practice was abolished about four years ago, police routinely stopped for questioning interracial couples in cars and on the street. Recently when police in New York announced plans for a "crack down" on bookstores, record shops and motion picture theaters purveying allegedly obscene material, the New York Civil Liberties Union was forced to object vigorously.⁴ It pointed out that it was "not the police function to serve as arbiter of social conduct and official censor."

Whether it is shooting — too often fatally, and too often a minority group member—, or "roughing up" other untypical members of society, or refusing permission for lawful, though unpopular, political demonstrations on the streets, the police stand alone in our democratic system in the amount and coercive kinds of force they are able to use against the law-abiding citizen, the suspected wrong-doer or the merely unconventional.

3. The study was produced for consultation between local municipal officials and concerned community groups with the understanding that the city's name was not to be disclosed. The report is on file in the national ACLU office.

4. Statement, Aryeh Neier, Executive Director, New York Civil Liberties Union, March, 1966.

ABUSE OF POLICE POWER

"... this Commission must report that police brutality is still a serious problem throughout the United States ..."

—1961 United States Commission On Civil Rights Report

"The existence of police malpractices (in Boston) is undeniable ..."

—Brandeis University Fellowship Study of Police Practices in Boston, Mass., 1964

"... an impartial assessment of police practices (in Syracuse, N.Y.) as they relate to ... force, abusive conduct and regard for the rights of an individual will demonstrate cause for serious concern ..."

—Statement to Mayor's Commission on Human Rights, Central New York Chapter, Niagara Frontier Branch, ACLU, May, 1964

How do the police use their awesome power?

Police authorities say: "With reasonable restraint."

The ACLU, civil rights lawyers and minority group leaders reply: "With too-frequent abuse."

No one seriously disputes that the number of cases of police misconduct is small in relation to the thousands of daily police-citizen contacts throughout the United States. There is, however, a growing accumulation of evidence that a variety of police malpractices, ranging from homicide to verbal abuse, do take place, and that they are increasingly serious and deeply injurious to the public confidence in the police on which must rest hopes of effective citizen cooperation in law enforcement.

The statistical data are difficult to find and document, for most people who are mistreated by the police tend to be poor, friendless, out-of-the-ordinary members of society and frequently in trouble with the law in other situations. They don't complain often, and when they do, seldom have the money, time, confidence in the "system" or knowledge of agencies that could help them thread their way through the maze of legal steps necessary to challenge the abuse.

Moreover, fear of reprisal by the police is quite real, especially among Negroes and other minorities, but this trepidation has no social or economic bounds. There is a general wish to "stay out of trouble" among many white, middle-class citizens.

Therefore, the figures released by local police departments about the number of serious wrong-doers within their own ranks are quite minimal, and are not much more impressive when added to those of higher-level law enforcement agencies such as the Department of Justice and the Federal Bureau of Investigation.⁵ Cases brought to the ACLU, civil rights groups, Legal Aid Society chapters and individual lawyers indicate that there are many more legitimate complaints than are reflected in police internal review figures and that the small amount of reported police misconduct is only the "tip of the iceberg."⁶

Police malpractice falls into three general categories:

5. and 6. *"The Big Blue Line,"* by Ed Cray, a book dealing with police problems to be published by Coward-McCann in 1966.

First and most familiar is the excessive use of force: i.e., shootings, beatings, unnecessarily rough handling. Today, this has become inextricably intertwined with police-minority group relations and the spreading campaigns insisting on real racial equality.

The picture of a policeman with his arm upraised against the Negro, Puerto Rican and Mexican-American has come to symbolize the confrontation of the most alienated members of society with representatives of the existing social order. To the average American this picture of potential force may be a comforting suggestion that tranquillity is about to be restored; to the disenfranchised of our society, it is proof of their "victim status" and a prod to further hate. Both police and citizens are equally victimized in the situation⁷ but more substantial force is commanded by the police. As Author James Baldwin put it: "... the police know they are hated, so they are always afraid ... it would be hard to find a more sure-fire formula for cruelty."

The use of too much force has a special configuration in the South, where a racially patterned double-standard of law enforcement has been documented repeatedly over many years⁸ and where the abuse of police power is by no means limited to the large cities. This is also true of certain parts of the West Coast⁹ and the Southwest, where Mexican-Americans in their depressing slum quarters feel the contempt of the police, and where even the American Indian, in small towns near reservations, is not safe from the sting of police scorn.¹⁰

The second class of police malpractices is committed not only against minority group members, but against poor whites nearly as often. (These violations occur less frequently, though occasionally, to white, middle-class persons who can afford lawyers and know how to utilize publicity media and influential contacts.) These improprieties include illegal arrest and detention, denial of right to counsel or right to remain silent when arrested, coerced confessions, mistreatment of ill prisoners, "investigative" arrests and entrapment of sexual deviants.

Such kinds of mistreatment, extended to what police usually call "the scum of the earth" (vagrants, alcoholics, homosexuals, prostitutes and other untypical citizens) are specifically illegal and, in most cases, run counter to police department regulations.

There is a third kind of police behavior which is not always illegal, but is always irresponsible, and often leads to a break-down of social controls. This is verbal abuse, discourtesy, unwillingness to allow a suspect to explain himself and openly contemptuous "baiting" and humiliation of Negroes, Puerto Ricans and "social undesirables." In Chicago, for example, where a

7. Author Thomas Pynchon, reporting on "The Mind of Watts" in the June, 1966, *New York Times Magazine*, said: "... the history of this place and these times makes it impossible for the cop to come on any different or for you to hate him any less ..."

8. "Law Enforcement, A Report On Equal Protection In The South ..." a separate statement by Erwin N. Griswold, Dean of Harvard Law School, and a member of the United States Commission on Civil Rights, April, 1966.

9. Statement by the ACLU of Southern California, outlining causes of police-minority tensions and requesting the establishment of an independent review board, June, 1960.

10. 1961 United States Commission on Civil Rights Report.

large Puerto Rican community maintains its ancient Spanish cultural pattern of male jealousy concerning female members of the family, police risk serious incidents by addressing Puerto Rican women in taunting terms.

The policeman who calls a Negro adult male "boy" or "smart nigger" is not breaking the law per se. Similarly, his search of the underclothing of a woman narcotics suspect in a callous manner can probably be justified under "stop and frisk" laws. But in both cases, contempt is shown and resentment engendered.

A curse or an epithet may not be against the law (though it probably contradicts department regulations in many instances) but it creates an atmosphere in which police violations of constitutional rights occur — and it can trigger off a serious shooting incident.¹¹

These procedures are compounded by the police habit of exaggerating or actually perjuring themselves in court proceedings in order to cover the initial wrong-doing.¹² Attorneys handling civil rights cases contrast the policeman's courtroom statement — under oath, — that the defendant interfered with an officer and resisted arrest with the actual physical evidence of brutal treatment (cuts, bruises, broken bones) which their clients clearly exhibit.¹³

The fact that some excessive use of force is actively provoked, that in today's tense cities juveniles, particularly, are often tempted to "take on" the police as acts of defiance and rebellion, does not change the responsibility of the police to adhere to proper standards, nor the rest of the law enforcement process to insist upon those standards. It only underlines the complexity of police-citizens relations, and the need for avenues of recourse for both aggrieved citizens and sorely pressed police officers.

Let us examine more closely the instances of police-citizen conflict.

THE RECORD I

"Anyone who says there is not considerable malpractice is not being realistic. There is widespread prejudice . . . and hostility. Policemen are more suspicious of Negroes than whites, because there are such misconceptions . . . they stop more Negroes without probable cause than whites . . . given these prejudices, hostility, the policeman's authoritarian personality, limited training and ignorance of the law, there has to be police malpractice."

—Charlotte Epstein, social scientist and consultant for human relations for the Philadelphia Police Department, in a November, 1965 interview with a student of police affairs.

Police authorities claim now and have claimed for half a century that police misdeeds do not occur often, and are blown out of proportion by "do-gooders" and those "exaggeratedly" concerned with the rights of in-

11. Affidavit of Ovelmar Bradley, a Negro living in Watts, to the ACLU of Southern California, September, 1965.

12. and 13. Interview with Attorney Paul Chevigny, Director of the Police Practices Project of the New York Civil Liberties Union, July, 1966.

dividuals.¹⁴

Sobering refutation to this position is provided by a few specific cases chosen from the many in the ACLU's files. These arise in one city after another — of all sizes.

- In Atlanta, Ga., more than a dozen clear-cut cases of police mistreatment, illegal search and seizure and verbal abuse were authenticated by an ACLU of Georgia research team within the space of one year.¹⁵

- The fatal shooting in 1964 in Dayton, Ohio, of a 13-year-old boy by police, who claimed the youngster was attempting to run away from the scene of a burglary, was undeniably unnecessary.

- Similarly, a 20-year-old man was shot by police in Denver, Colo., in July, 1964 as he fled from a wrecked stolen car.

- Detroit, Mich., was the scene of a police "crackdown" on crime in 1961 which caused such a sweeping dragnet of arrests, primarily of Negroes, that community tensions were brought to fever pitch.

- The citizens of Seattle, Wash., who have been making urgent requests for impartial review of police procedures for decades, apprehensively await the next in a lengthy series of "incidents." It is unhappily certain, on the basis of more than 40 cases of police malpractice and excessive use of force which have piled up during the last two and a half years, that some new triggering episode will ignite an explosive situation.

- The ACLU of Southern California last year attached 25 sworn affidavits, containing almost unbelievable accounts of police mistreatment, to its post-riot Watts report, and indicated there were many more which it lacked time and staff to substantiate.

- Small York, Pa., found itself with an "incident" in the summer of 1965 when police used brutal tactics in attempting to break up a neighborhood quarrel in a Negro district. An on-the-scene photographer took pictures of the attack.

These reports of police misuse of authority have been echoed by leading judges. Supreme Court Justice William J. Brennan, Jr., speaking at New York University's Law Center in 1961, observed: "Far too many cases come from the states to the Supreme Court presenting dismal pictures of official lawlessness, of illegal searches and seizures, illegal detentions attended by prolonged interrogation and coerced admission of guilt, of the denial of counsel, and of downright brutality."

The "official lawlessness" to which Justice Brennan referred occurs in many different areas of police activity and the results of it are felt not only at the end of a nightstick by Negroes and Puerto Ricans, but by more "typical" citizens in many aspects of daily life. In fact, Aryeh Neier, Executive Director of the NYCLU, in a letter to the *New York Times* in July, 1966, stated that most of the complaints filed with that city's police department

14. Statement, Curtis Lindley, President of the California Bar Association, 1910.

15. "Police Procedures In Atlanta," an ACLU of Georgia report, May, 1966.

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during the past 13 years had been by white persons.

It is not only the "incident" of brutality which demonstrates police wrong-doing. There are a variety of ways in which police misuse their authority. For example:

- In Boston, a 1961 survey of police practices showed the police made 1,260 arrests on "suspicion," although the Fourth Amendment requires "probable cause."

- The Illinois Division of the ACLU in a 1957 study revealed that more than 20,000 Chicagoans arrested during a year were held for an average of longer than 17 hours before being permitted to contact anyone. This practice was followed by police despite clear-cut laws guaranteeing the right of all arrestees to contact counsel or family.

- In Indianapolis, Ind. in May, 1966, police raided a housewarming party in a private apartment without either a search or arrest warrant. More than 30 friends of the tenants, including social workers, school teachers and university graduate students were fingerprinted and photographed under a local "Visiting A Dive" ordinance which requires proof of "lewd and immoral conduct," or excessive drinking. One of the police officers testified later he observed none of this. An Indiana Civil Liberties Union lawyer, in cross-examining one of the police officers, revealed clearly that improper police practices in enforcing this local statute remained the same despite recent amendments in the law. The charges were subsequently dropped.

- In Los Angeles in 1965, citizens made sworn statements that the police searched their homes and took their possessions without warrants.

- In New York state, during 1964 and 1965, six confessions obtained by police from suspects for a variety of crimes were investigated by various civil-rights groups and found to need further checking. All six confessions later turned out to be false, including the George Whitmore Jr. confession to a celebrated double murder. The NYCLU asked Gov. Nelson Rockefeller for a further probe into the problem of coerced confessions by police, but to no avail.

- (Illegal wiretapping of private phones in Kansas City, Mo., was documented in testimony blaming both law enforcement officials and the telephone company before a U.S. Senate hearing in 1965.

- In New York City, the NYCLU had to battle for eight months during 1965 to get a press card for a radical newspaper which had criticized the police vigorously. (In that city, the police have the power legally to refuse issuance of working press cards to newspaper staff members. These cards are passes to reporters to get behind police and fire lines in pursuing their news-gathering duties.)

- Entrapment, dragnet arrests and trumped-up charges of "assault and battery" based on any degree of physical contact whatever are common police methods of handling homosexuals, particularly in Atlanta, Ga., and to a lesser extent in New York, where the practice has been frowned upon by police since late 1965.

These violations of civil liberties do not take place in a vacuum. They all too accurately reflect one set of community attitudes, the open hostility of some and the complete indifference of many, to the fate of those who deviate from society's conventions. This combination can be interpreted by the police as permitting encroachment on the rights of people who "don't matter much anyway." But such police behavior overlooks a vitally-important third element which is felt in the community — the commitment of Americans to fair treatment for every individual, however unpopular or unpres-
tigious. This standard requires that the law protect each person even in the face of popular hostility or indifference.

An outside review panel could reflect this conscience of the community and serve as a check on official lawlessness.

THE RECORD II

"The Negro and his supporters march in the streets, not because the law is not clear . . . but because the law has not been followed . . ."

—Erwin N. Griswold, Dean of Harvard Law School, in a statement on law enforcement practices in the South, April, 1966

"I have no complaints, but if I did, the last place in the world I'd take it would be to the cops. Why? Because white folks stick together, cops stick together, and white cops stick together like glue . . . that's why!"

—Negro citizen interviewed by ACLU of Georgia researcher in preparation for affiliate's police practices survey, 1965-66

"Every failure worsens relations between the Puerto Rican community and police . . ."

—Roberto Lebron, then President, The Puerto Rican Bar Association of New York, discussing failure of authorities to furnish satisfactory explanations of suicides in jail of Puerto Ricans held in police custody, at Police Review Board Conference, October, 1965

Police misconduct, especially the more serious incidents, are easily identified with the turbulence of the "second American revolution" — the unrelenting and necessary drive for civil rights. The hatred and fear of the police, whether overt or hidden, felt by many Negroes, Puerto Ricans and Mexican-Americans cannot be overstated.

It is not surprising that in a very large measure, and with notable individual exceptions, the police respond with mutual dislike and fear. Even though the police have problems with white citizens as well, there is nothing quite to match the intensity or historical complexity of police-minority group relations; this helps to account for the current civils right push being the most dramatic, but not the sole, focus of public attention on police violations of civil liberties.

Fear and hatred of the police have at least two obvious sources:

First is the unenviable role of the police as a symbol.

To the underprivileged minorities, barred from participation in the main-

stream of American life at every door, the police represent a society which has damned them to shameful second-class citizenship. Moreover, this society does not seem to be changing very fast, and appears divided, confused and reluctant about the requisite steps for meaningful change. Although the police did not seek this role, they must continue to discharge their responsibilities as the official arm — and visible authority — of the white majority's government. Moreover, policemen are citizens too, and as part of the still prejudice-marked society, harbor bias within their own ranks. (There are hopeful signs that this is being reduced through the beginning of police training courses in human relations, intergroup dynamics and the history and background of different cultures.)

Second, also not the fault of the police, is the day-to-day reality of life in the ghetto and the despair and hopelessness, as well as anger and bitterness, which this breeds.

Into this ground, the police, indeed, walk as into a battlefield.

Because they are always armed, and because desperate people can manage to arm themselves as well, "border skirmishes" become common, and so does the atmosphere of unrelenting warfare. "The Negro (in Detroit) feels as though he is living in an occupied country," said an NAACP official in 1961 in that northern city.

The war environment of the ghetto does not build belief in law and order. It does not help to develop police respect for the constitutional rights of the ghetto's inhabitants, and if the "war" continues long enough, it can ultimately destroy the law itself.

What happens to civil liberties in protracted "warfare" of this kind is clearly illustrated in the South. Here, after centuries of discrimination, the law as an instrument of impartial justice for all has been perverted into a weapon of suppression and attack against the Negro.¹⁶

In the South, the Negro not only fears for his physical safety, he is systematically barred from *any* kinds of experience which might make him look with confidence on the law. Bail practices are discriminatory; he is excluded from jury duty; in most small Southern towns there are as yet few or no Negro law enforcement officers; even social custom segregates him in courtroom seating. The heavier penalties of death for certain offenses (a white man seldom receives the death sentence for rape; a Negro almost always does) and the fact that many white men known to be implicated in the deaths of Negroes have gone unpunished remain as ugly stains on the theory of American justice.

Although such practices are not so blatant in other parts of the country, there *is* a pattern of the abuse of police power specifically directed against minorities.

To cite a few examples: A Boston attorney charges that between one-fourth and one-sixth of all Negroes arrested in that city were "roughed up" during the sample year analyzed in a Brandeis University student's 1964

16. "Law Enforcement, A Report on Equal Protection In The South . . .," a separate statement by Erwin N. Griswold, Dean of Harvard Law School, and a member of the United States Commission on Civil Rights, April, 1966.

report. Similarly, two Loyola University sociology students in New Orleans reported in 1964 that in their city, one-third of all Negroes arrested claimed the police used uncomplimentary racial epithets; 30 per cent reported that they used obscenity and 23 per cent said police spoke threateningly. Eighteen per cent of these arrestees said they were slapped and pushed, 16 per cent said they were hit or beaten.¹⁷

The number of times, during periods of tension and disorder, that members of a minority race are the victims of violence and finally death, can be traced in too-frequent daily newspaper headlines in Cleveland, New York and Chicago during too many "long hot summers."

Even when the police do not physically abuse minority group members, the mistreatment is subtle and galling. Describing police attitudes toward Negro citizens in Atlanta's traffic court, the ACLU of Georgia police practices report said, "they don't mistreat him or fine him unfairly. They just refuse to acknowledge that he is a man." Equally galling are the police sins of omission¹⁸ in providing equal standards for the Negro communities. In 1959, a Chicago Negro civic leader was arrested by police on a morals charge in reprisal for his having complained to his alderman that the police had not done enough to quash vice in the ghetto area. Just recently, in Atlanta, Ga., at least one father took to defending with a gun his small youngster's street play after complaints to the police failed to elicit any action against hot rodders using the play streets as racing strips. The cars had narrowly avoided killing several toddlers on tricycles.

In such an atmosphere, when minority groups believe the law is not their servant or protector, but their oppressor and sometimes their murderer,¹⁹ it is not difficult to understand why pleas for calm and caution go unanswered.

17. Statistics drawn from "The Big Blue Line," by Ed Cray, a book on police problems to be published by Coward-McCann in 1966.

18. A survey of Negro attitudes in Watts and Harlem, published in the New York Times, September, 1966, indicated that 'ghetto dwellers are more concerned about police protection than about police brutality'. The poll, conducted by a private public opinion research organization with Watts and Harlem residents doing the interviewing, show that while minority groups did, indeed, feel hostility toward the police, they also wanted more, rather than less, police protection in their neighborhoods.

19. "Report From Occupied Territory," James Baldwin, *The Nation*, July, 1966.

THE NEED FOR CHECKS AND BALANCES

"Power tends to corrupt; absolute power corrupts absolutely"

—Lord Acton

Even if there were no demonstrable pattern of police malpractice, the experience of American history suggests that safeguards must be constructed against any grant of state power as large as that given the police.

Our constitutional system of checks and balances is based on exactly the memory of the earliest Americans, brought over in painful experiences from the Old World, that power unchecked in any sphere will lead to tyranny.

Even if every policeman did his job properly at all times (a virtual human impossibility), and even if every police chief were as zealous in guarding the Constitution and the Bill of Rights as in fighting crime, the ACLU would still believe that society must protect itself against the *possibility* that police power could be misused. Moreover, that protections must be made automatic; they must be worked in to our institutions, so that there is always an effective avenue of redress when abuses do occur.

There are several aspects of the present situation which suggest that built-in safeguards must be established.

First, there is the flagrant disregard for constitutional methods in our law-enforcement system. This is the vacuum into which the Supreme Court has moved recently and forcefully, with decisions specifying the right-to-counsel, supporting the privilege against self-incrimination, prohibiting enforced confessions, and tightening the rules governing lawful methods of interrogation and detention. However these may be resented by the police, they are designed to demonstrate that the protections of the Bill of Rights must remain operative even in the seething cauldrons of modern cities.

But these illegal practices are not only the responsibility of the police. The permissiveness of prosecutors, magistrates and judges who, as part of the price of a good working relationship with the police, fail to bar illegal investigation, arrest and detention procedures is also at fault.

An Atlanta attorney, with many years of experience, summed up the general situation when he said that he knew suspects were often denied the right of counsel and information on other rights, and that they were sometimes tricked or frightened into making confessions. This happens, he charged, "not because the police officer is dishonest or brutal, but because our system of justice not only permits, but actually encourages him to use these methods."²⁰

In this interview, the lawyer stated that "the prosecuting attorneys' offices know the Supreme Court rules, yet they are perfectly content to let the police secure confessions any way they can. They get the police preparation late, just before the trial. They never question the methods used. They never attend the interrogation session. They completely abjure their responsibility to protect the innocent as well as prosecute the guilty. They don't know what goes on in the police station and they don't want to know . . . and their attitude is made perfectly clear to police officers."

20. "Police Procedures in Atlanta," an ACLU of Georgia report, May, 1966.

He claimed also that state and local courts and even the legal profession abdicate their responsibility to the defendant. In fact, the legal system as a whole is hostile to those who raise such questions and must share in the guilt for a judicial process largely indifferent "to the basic Constitutional issues." The attorney concluded that when "prosecutors and judges and the legal community accept their responsibilities, police officers will adapt their practices to conform to the new standards."

In this same vein Prof. Herbert L. Packer of the Stanford University School of Law has warned that the higher courts will continue to "police the police" in increasingly harsh terms until better procedures are developed with the help of law enforcement officers.²¹

"Many of the restrictions now imposed upon the police arise because of an implicit lack of confidence in the capacity of the police to discipline themselves," said Prof. Packer, an expert in criminal law. He said that if better disciplinary procedures were evolved, there would be a "greater willingness on the part of courts to give police the discretion which they so constantly assert they need."

A second reason for "built in" safeguards against abuse of police power is also a uniquely contemporary one. This is the huge bureaucratic weight which large urban institutions have developed in our time. The sheer mass of a large bureaucracy tends to discourage adequate self-criticism. An urban police department, like all other large, multi-level organizations, is forced to defend its vested interests; it is particularly prone to self-justification when, operating in tense areas of social conflict and lacking proper machinery for sufficient self-criticism, it forgets the limitations on its power.

This inherent danger within any large institution was pointedly described in this comment by Secretary of Health, Education and Welfare John W. Gardner on the organizational "dry-rot" that tends to set in to all large groups of functionaries: "The individuals who hold the reins of power in any enterprise cannot trust themselves to be adequately self-critical . . . *the danger of self-deception is very great, the danger of failing or refusing to see the problems is ever-present and the only protection is to create an atmosphere in which anyone can speak up.*" (italics ours)

A third aspect of the present scene for which little in our history prepares us is the very complexity of police-citizen relationships in today's world. These encompass a range of economic, cultural, sociological and psychological factors which, while outside the area of civil liberties expertise, do contribute to the violations of civil liberties which make necessary an apparatus to guard against abuse of police power.

A sociological study of the urban policeman offers an illuminating insight in suggesting that any occupation, such as law enforcement, which combines high power (use of arms, control of life and death) with low social and economic status, will "tend to show a more likely abuse of power to augment income, both financial and psychic."²²

21. An address to the Northwestern University Conference on The Supreme Court and the Police, April, 1966.

22. "Towards A Functional Analysis Of The Urban Policeman;" an unpublished graduate seminar paper, Alan S. Meyer, Department of Sociology, Columbia University, 1949-50.

Similarly, studies of persons who elect police work as a career, mostly before new professional methods began to be employed in recruitment and screening, suggested a heavy percentage with an authoritarian approach to individual relationships. Another study²³ advanced the theory that police self-esteem is probably not high and that the officer himself accepts some of the stereotypes about that "flatfoot" who is not overly supplied with integrity. This low self-image possibly leads to a higher incidence of wrongful police actions than is encountered in other levels of the law enforcement hierarchy.

And finally, it would be difficult to imagine a place more suited than the modern city to the sharpest intensification of the age-old problem of government: order vs. liberty.

"The metropolis created a whole new type of public with which the police must work. The public is impersonal. Its members are not aware of their membership in the community, hence they have no interest in it," is the way one police official explained the peculiarly modern aspect of the city law enforcement scene.²⁴

Today's city presents this picture to law enforcement officials: a densely packed, competitively structured metropolis of widely differing population groups whose cultures, life styles, aims and goals all are different, pressing against the structure of a society whose distribution of power and material benefits is not changing rapidly enough to satisfy the groups' basic needs.

Senator Abraham Ribicoff vividly described this "crisis of the cities" in August, 1966, when he said that despite massive aid from the federal government, there are still few answers to the problems of urban living.

"Despite 2.3 billion Federal hospital construction since 1947, there still is no hospital in Watts. Today," said Senator Ribicoff, "four million urban families live in substandard housing. Today sprinklers were added to the fire hydrants in steaming streets of one city only after riots and violence. And today, 14,000 infants and adults suffer death, injury and infection each year due to rat bites."

Referring to the riots and disorders in several large cities during the summer of 1966, Senator Ribicoff said these "clearly show that we do not have the answers, and, in many cases, we have not even asked the right questions . . . we have yet to enunciate and carry out a clear-cut national policy on urban development . . . we have not come to grips with the problems of our cities."

In such a situation, which shall be paramount — the citizen's right to "safety in the streets," without which all other rights can hardly be enjoyed, or the individual's right to be protected from the might of the state as symbolized by the police?

There are a considerable number of responsible community leaders who feel that "safety in the streets," meaning protection against criminals, narcotics addicts and other "undesirables," is the supreme consideration. A

23. "Police Training Bulletin: Guide to Race Relations For Police Officers"; McEntire and Powers.

24. "Racial Factors in Law Enforcement;" Larry W. Fultz, Inspector of Police, Houston, Texas, 1959.

former head of the American Bar Association exemplified this approach when he said that the citizen's right to be free from criminal attack must now be put ahead of the constitutional rights of persons accused of crimes.²⁵

The American Civil Liberties Union recognizes that without social order there are few operative freedoms left to protect, but it also believes that individual rights and freedoms are worth the considerable risk they require and must not be sacrificed on the altar of security.

The problem of balancing society's needs for stability and order with the individual's right to be protected from governmental abuse poses no problem for a totalitarian state or, as they have come to be called, a police state. In those governments, the decision has been made in favor of order — its triumph over liberty is complete.

In a free society, a better balance can be struck.

The ACLU agrees that in the difficult and dangerous fight against crime, the police need many weapons: i.e., better training and pay, more respect and cooperation from the citizens, more understanding of the dangers they face. But what they do NOT need is the permission to take short-cuts around the Constitution. Not only will that, in the long run, destroy *both* order and liberty, but will sabotage the very respect for law and order which must be founded on the obvious compliance of the police themselves with the Constitution and the Bill of Rights.

Supreme Court Justice William O. Douglas has aptly phrased it: "We, in this country, early made the choice that the dignity and privacy of the individual were worth more to society than an all-powerful police."

Once the law enforcement establishment comes to accept that philosophy not only as an official statement of conscience, but in its day-to-day dealing with citizens, perhaps the nature of its current opposition to some apparatus of citizen protection, such as outside review boards, will be altered.

25. Lewis F. Powell, President of the American Bar Association at the group's annual meeting in 1965. It should be noted, however, that at the 1966 annual meeting, the ABA voted to establish a section with individual rights and responsibilities. This section will have over 1,000 lawyer members.

PUBLIC LOSS OF CONFIDENCE IN THE LAW: THE POLICE IMAGE

"It is legitimate to argue that at least as important as the fact of impartial justice is the image of justice in a community . . ."

—John A. Hannah, Chairman, U.S. Civil Rights Commission, 1962

In our concern for civil liberties, it becomes significant to study not only what the police actually *do* in their day-to-day dealings with citizens, but what the public *believes* that the police do.

The consequences of police misconduct have created a crisis of confidence in the community, even though police authorities hotly deny this.²⁶

Too many citizens, not always members of a minority group, have ceased to expect impartial enforcement of the law. They are cynical and skeptical about the possibility of swift, even-handed justice, especially in tense situations.

Most communities report this loss of confidence and growing distrust of the police following some dramatic, explosive "incident." However, several cities point to a general "uneasiness" as to the quality of law enforcement and are particularly doubtful of the possibility that the police could fairly police themselves in cases of their own wrong-doing.²⁷

The problem is more complicated when, as in the urban ghettos, *actual* police malpractices are joined to *imaginary* police misbehavior. As a result, the line between verifiable police improprieties and legitimate police operations become blurred in a mixture of gossip, legend and generalized fear.

The real and imagined grievances which feed the fires of suspicion and mistrust are compounded by the continued urgency of civil rights demands which multiply citizen-police contacts at points of greatest emotional intensity.

As the police "image" is a vital clue to the possibility of improving police-citizen relations, how does it reveal itself?

- In Atlanta, when the police department in 1965 decided to hold open public hearings on citizen complaints, practically no one attended except community leaders who came to discuss other general issues. When an ACLU of Georgia research team conducted 88 interviews with individual citizens to find out why, they discovered a total lack of interest and confidence by the entire group sampled. Of those interviewed, 50 said they never heard about the hearings, and of the 37 who knew something about them, *all* stated that "they did not believe the police would listen to their complaints impartially and that attendance would be a waste of time." Juveniles responded to the interviewer's question: "Man, you crazy?"

- In Springfield, Mass., following serious outbreaks of violence in the Negro section in the summer of 1965, attempts by police and other city

26. Ex-New York Police Commissioner Michael Murphy, writing in a Police Department pamphlet, "Civil Rights and the Police," June, 1964.

27. Reports verifying this from several affiliates are on file in the national ACLU office.

officials to analyze the ensuing tension and decide on a course of action consumed so much time and delay that the Negro community came to view official reliance on "the law" as merely another "stalling" device to deny them dignity and recognition. Confidence in the police and municipal officials was so badly damaged that before the crisis abated, National Guardsmen were called out to restore order.

- In Boston, where 92 per cent of that city's Negroes live in a clearly-defined ghetto, the Brandeis University Fellowship study issued in 1964 stated that whatever the truth or falsity of charges against the police, "equally important . . . is the belief that there are no institutional ways to deal with (police brutality). This leads to contempt for the police and a breakdown in necessary cooperation . . . further it encourages extra-legal steps to seek justice."

- The New York CLU, on the basis of many cases brought to its headquarters in recent years, stated in 1965 that "there is *widespread belief, whether justified or not* (italics ours), that complaints by civilians of police brutality and discrimination are not now objectively handled."

- In Kansas City, Mo. a special Police Study Committee of the Greater Kansas City Civil Liberties Union reported in 1965 that while it could not fairly evaluate charges of police brutality, it could state that the general public dissatisfaction with present internal police review practices was so strong and complaints of persistent discourtesy by police to Negro citizens so steady that public demands were growing for a civilian review board.

- In Minneapolis, the Minnesota Advisory Committee to the U.S. Commission on Civil Rights, following hearings in 1963, said that "minority group members generally lack faith that their complaints will be dealt with properly, by procedures now current in the police departments in Minneapolis and St. Paul."

This mistrust of police impartiality not only undercuts police-citizen cooperation, but actually helps spread disorder and violence. Social scientists studying precipitating factors in race riots have found that "when members of the victimized races are dubious about the intention or capacity of relevant functionaries to achieve justice or a 'fair' solution, then the *normal social controls are greatly weakened by the lack of faith* (italics ours) in the community's institutions."²⁸

Not only do many citizens lack faith that complaints to the police themselves will receive justice ("it strains credibility," said a NYCLU study of internal review methods), but they actively fear police displeasure, if they should summon the courage, time, money, and perseverance to initiate and sustain the complaint process.

The police "image" is not helped by the fact that reprisal against those who *do* complain of police mistreatment has been authenticated; harassment of people who do not quietly endure illegal or improper procedures has been noted in several large cities, including Philadelphia before its Police Advisory Board was appointed.

28. "The Precipitants and Underlying Conditions of Race Riots," a study of 76 race riots occurring in the U.S. between 1913 and 1963; by Profs. Stanley Lieberson and Arnold R. Silverman, Department of Sociology, University of Wisconsin, 1964.

In Los Angeles, for example, prosecutions for filing false reports with the police followed several complaints, until a court ruled they were an unconstitutional infringement upon a citizen's right to petition for redress of grievances. In New York, the police would retaliate by charging the complainant with criminally libeling a police officer. The NYCLU was finally assured, after a court dismissed one such case, that the practice would be discontinued. Police in other cities use the "disorderly conduct" device to arrest people who may have observed improper police activities and questioned the officers.

A kind of blackmail not unrelated to the problem of reprisals is the very widespread police practice, sometimes openly aided by judges from the bench, of demanding that arrestees sign a stipulation that the police had probable cause for arrest. In some cases, though certainly not all, the district attorney will agree to drop the case in exchange for this stipulation.²⁹

For most citizens, caught up in the intimidating machinery of the law, the tempting offer to sign and get out will almost always win over the question of whether they ought NOT to waive this right to institute a later possible suit for false arrest. Most will simply sign with a sigh of relief and be glad to be free.

There are growing signs that the police are sensitive to their "image" problem. In Baltimore, Md., they considered hiring outside public relations counsel, and in Los Angeles and New York, police display hair-trigger sensitivity to even mild criticism.

But this is not merely a "public relations" problem of projecting a better appearance to the public. It is more a problem of improving police performance. If the police performance is *really* good, a civilian review board of impartial citizens would be a helpful and effective agency to adequately communicate this to a skeptical and questioning public.

Why, then, are the police unalterably opposed to the civilian review board?

29. Data drawn from "The Big Blue Line," by Ed Cray, a book on police problems to be published by Coward-McCann in 1966. The author gathered reports of this practice in California, Massachusetts, Kentucky, and Washington, D.C.

OUTSIDE REVIEW: PRO AND CON

"Police Review Boards . . . are a page out of the Communist manual . . .
—California Peace Officer, November, 1960

"We must continue to speak out against meddlers who would hamstring the police with Civilian Review Boards . . ."

—Police Chief Daniel S. C. Liu of Honolulu, speech to International Association of Chiefs of Police, as retiring head of that organization, 1964

"Totally negative police opposition to review boards is both wrong in principle and strategically foolish . . . to reject it categorically and in advance seems to deny that the police are part of society . . . the sensible strategy for police is to accept it, to domesticate it, and make it their own . . ."

—Prof. Herbert L. Packer, Stanford University Law Faculty, April, 1966

Any kind of check on police power, from the courts, from the community, even sometimes from within their own ranks, is generally greeted by the police with angry cries of "handcuffing," "spying" and "interference." To this is added the dire warnings of crime rampant in the streets with a total break-down of law and order³⁰ caused by lax and fearful police work.³¹

This has always been true, even before the recent Supreme Court decisions curbing police incursions on constitutional rights and the current pressures for impartial advisory panels. As long as 50 years ago, blame for the "crime wave" was attributed to an "exaggerated respect for the individual."³² New York prosecutor Charles Nott was urging the elimination of the constitutional privilege against self-incrimination as one of the chief obstacles to law enforcement in 1911! In 1922, the head of the newly-established Chicago Crime Commission, Edwin W. Sims, was inveighing against "coddling" of the criminal population.

And even today, police authorities and individual officers, almost to a man, echo similar arguments when any outside review formula is proposed for handling citizen complaints that their rights are disregarded. Opposition ranges from FBI Director J. Edgar Hoover, who hinted that riots were worse in 1964 because police feared civilian review action and did less, rather than more, to quell the disorder, to the responsible and highly professional publication of the International Association of Chiefs of Police. *The Police Chief* sees review boards as a "politically expedient" move, leaving untouched what it believes is the more basic problem: improving the quality and training of those who enter the profession.

Less responsible opposition is voiced by Robert H. W. Welch, founder of the John Birch Society. In a 1965 Society Bulletin which devoted 10 pages

30. "If the police are intimidated, we're going to have an asphalt jungle," said Barry Gray, New York radio commentator, August, 1966, upon his being named co-chairman of the New York Independent Citizens Committee Against Civilian Review Boards.

31. "The policeman now, instead of thinking in terms of acting within split seconds, must think of what will happen to him if he comes before the review board. It'll hurt the police," said Rodney Ertman, businessman and co-chairman of the New York Independent Citizens Committee Against Review Boards in August 1966.

32. Curtis Lindley, president of the California Bar Association, 1910.

to the police-citizen crisis, Welch wrote that civilian review represents an effort to "harass and discredit local police forces and their individual officials and members." He linked it with a "Communist drive to destroy respect for and the value, strength and morale of our local police forces . . ."

Insistent and vociferous as police opposition has been to the review board idea, there are some cracks in the wall.

New York Police Commissioner Howard R. Leary in 1966 was partially, at least, brought to the city from a similar Philadelphia post because he had "learned to live" with the Philadelphia review board and obviously intended to cooperate with any which functions in New York.

The New York *Times* reported in October, 1966 that the 1,360-member Guardian Association, representing the Negro patrolmen within the New York City department, was backing the review board despite the strong opposition of the Patrolmen's Benevolent Association leadership.

In July, 1966, the acting police commissioner of Baltimore, Md. wrote to community groups that he "personally (was) not opposed to such a board," but urged time for thorough study because of the controversy surrounding the issue.

Generally speaking, however, police opposition remains at a near-unanimous and unusually emotional level. As an attorney on the staff of the United States Commission on Civil Rights put it, "the police have a pathological paranoia about complaints; they feel strongly that they are the object of counter-terrorism. They won't listen to criticism; they're practically hysterical about it."³³

What are the major police arguments — and the answers — advanced both against and for the concept of civilian review?



When the police are occasionally guilty of wrong-doing, present methods within the department for reviewing complaints and appropriately punishing the guilty are satisfactory.



The American Civil Liberties Union, lawyers and police affairs experts are united in their belief that internal review methods are generally ineffective and unsatisfactory from the point of view of the aggrieved citizen. From the standpoint of the public interest, they too often leave the charge of "whitewash" hanging in the air. And from the standpoint of the police themselves, they seldom catch up with the damage done to an innocent policeman's record by unfounded charges.

What other criticisms are leveled against police reliance on intra-departmental review?

They themselves, often in a special division staffed by non-uniformed officers, receive, investigate, hear and decide the complaint against themselves, their profession and the efficacy of their command. They select the sanctions and, in most cases, decide how much the public, or even the complainant, shall be informed about the disposition of the case. It has been compared to the ballplayers doing the umpiring, and it strikes many as

33. "The Big Blue Line," by Ed Cray, *supra*.

unfair to expect police to achieve an almost inhuman impartiality and detachment.

This is what the citizens of Boston clearly felt in 1959, when the police reluctantly permitted open hearings of citizen complaints. Not a single case was heard through 1962. Departmental moves against offending policemen are similarly sparse in the internal review reports from other large-city police departments.

The actual mechanics of internal review, revealing the protective "inner sanctum" atmosphere of the whole process, were studied in 1964 in some detail by the *Harvard Law Review*. A survey made by two law school seniors in 1963 and 1964 was based on interviews with 70 police officials of large and medium-sized departments. They also received 191 answers to 544 questionnaires mailed to police officials in all communities over 25,000 population.

Their research showed that basic internal review methods tended to follow these patterns:

First came a fairly standardized method of receiving complaints. They are taken by mail, phone, or in person at precinct stations or at headquarters. Most departments permit anyone with a legitimate interest, such as an ACLU affiliate or a Legal Aid Society representative, to file complaints on behalf of an aggrieved citizen. Some departments stress the necessity for taking the complaint in a courteous manner, because grudging or hostile reception is immediately discouraging to many, and though the police claim they cannot understand why, the aura of a police station is highly intimidating.³⁴ Some departments require the complaint to be in writing and signed; other don't.

Once a complaint has been received, departments vary in the way they investigate it. Some have a special investigatory unit, but most do not, for that would duplicate their crime-investigation structure at considerable cost. In many police departments, the accused officer's superior unit commander investigates and reports to headquarters. Lower-echelon investigations, because of the tendency to "cover up" violations, shield brother officers, uphold the record of the precinct and conceal their own failings, are generally disapproved by administrative experts.

After a case has been looked into, there is also great variation in how the alleged misconduct is tried and punished. A few police departments have no hearing procedures whatever. A superior officer, usually the chief, studies the cases and decides on the discipline. Neither the complainant nor witnesses appear, though the officer involved may be interviewed by the chief. In about 70 per cent of the departments studied, quasi-military departmental hearings are held, though in some cases the requirement for a hearing is mandatory, in others optional.

Actual punishment for police misbehavior shows a certain obtuseness about the possibility of remedy for aggrieved citizens. According to the

34. In the Roxbury area of Boston, with a large Negro population, young teen-agers were asked to sign up at police stations to participate in a recreation program designed specifically for them; their refusal to do this led to the use of other community facilities as sign-up places. In New York, reception centers were moved to a downtown office building and complaints taken by plainclothes men.

Harvard study, for example, where a disciplinary mechanism exists within a department, 72 per cent *could* order reprimands or suspensions, but only 57 per cent could actually order a discharge; usually only the chief himself can do this. Trial boards and lower authorities are often limited to reprimand, suspensions or fines.

It must be remembered that the goal of a departmental trial or investigation is not necessarily to provide redress for an injured citizen. A departmental trial or hearing is a proceeding aimed at maintaining discipline within the department itself; thus occasionally an officer will be more severely punished for sleeping on duty or striking a superior officer than for violating the civil liberties of a drunk or a prostitute. The department's quite justifiable interest is compliance with department regulations, and grievance machinery for the citizen can be quite irrelevant to the department's need to keep its own house in order.³⁵

Despite these differences in goals, and despite procedural defects in many internal review systems, the Harvard study found that sometimes methods of internal review will seem to function — at least for a period of time — in a reasonably satisfactory way. When this happens, and it happens very rarely, the crucial reason is generally the presence of some high administrative police official who *really wants* the review system to work. An important police authority who is determined to give the community the appearance *and* the fact of justice can make virtually any system work. However, the "chanciness" of fate in providing such men to head up urban police departments is what makes an outside review system so necessary.

Another problem rests on the pivotal question of police inter-dependence. The historical truth is that it is unreasonable to expect police to take steps which would impair their need for each other. This is what sociologists call "the code of mutual aid;" what students of police affairs call the "brother officer concept;" and what civil rights attorneys term the "battlefield buddy" psychology.

The fact is that to a degree unusual in most occupations, police depend on their brother officers for protection and help in moments of crisis. The fact that their calling *is* full of danger reinforces the view of the police station as a "fortress." Also involved is the more subtle factor of public hostility, which tends to drive the police to see themselves as embattled allies, always exposed to some kind of attack (maybe only verbal) from "the enemy." The police slogan, "never take a cop killer alive," is more than a line from an old movie; it represents the unusual, but quite understandable, solidarity which justifiably grows up around any threatened group of men who think of themselves as isolated. The difficulty, almost impossibility, of getting police thus to indicate knowledge of any brother officer's defections on any level, however minor, is a result of this atmosphere.³⁶ To expect adverse judgments on serious matters involving careers, promotions and pensions, towards a man whom you may depend on to save your life tomorrow, seems most unfair.

35. "The Big Blue Line," by Ed Cray, *supra*.

36. "Violence and the Police," William A. Westerley, *American Journal of Sociology*, 1953.

Related to the "battle comrade" approach is the quasi-military, near wartime, police approach to secrecy. This seems to be almost an ingrained habit, despite the fact that there is very little which really needs to be kept confidential; most police work winds up a matter of courtroom record anyway. But the police deliberately surround their work with an aura of secrecy. Police training manuals are strictly for internal functions. Even statistical reports are numbered, and some innocuous documents are classified for police use only. Such a setting certainly works against the idea of a disinterested third party at interrogations of prisoners, even when such a presence would prove that a confession was obtained lawfully.³⁷



If police administrative machinery is faulty, and complaints are not properly handled or wrong-doers are not punished, there are many additional channels of redress for the aggrieved citizen. These include civil suits, the grand jury, the district attorneys, criminal court proceedings, and even the FBI. Because all these are technically equipped to handle some facet of violation of civil liberties against the citizen, a review board would be redundant.



Both criminal and civil court proceedings against police are forbidding and unknown complexities to the poor, the minority groups and the social outcasts who are so often the complainants. Arraigned against the resourceless and friendless is the interlocking chain of the law enforcement "establishment." For instance, in criminal court proceedings, the district attorney can hardly be expected to drive hard against the very police officer whose help he needs to get evidence for convictions in the day-to-day work of his department.

Furthermore, it could not be expected that a district attorney would prosecute a law-breaker on evidence or testimony presented by an arresting officer, and then later expect that policeman to stand trial for his misdeeds done in the course of the initial arrest.³⁸ Nor will a district attorney be very active in initiating prosecutions when he knows the chances of conviction are poor.

Federal criminal proceedings are equally unfruitful.

In the years since the Civil Rights Section of the Department of Justice was set up in 1939, there have been extremely few prosecutions of offending policemen. This is so not because the Department was convinced there was not police brutality, but because the chances of winning such cases were also poor.³⁹ In addition, FBI Director Hoover stated plainly that the FBI doesn't even particularly want the role it has been given in Justice Department civil rights investigations, because it was convinced that federal laws were "inadequate weapons" for efficient enforcement.

This relative inaction on the federal level tosses the ball back to the communities to offer some sort of adequate redress, and makes ironically empty

37. "The Big Blue Line," by Ed Cray, *supra*.

38. "The Big Blue Line," by Ed Cray *supra*.

39. Arthur Caldwell, attorney, Justice Department, Civil Rights Section.

local efforts to shift the controversy to Washington.⁴⁰

Civil suits are more frequent and more successful for victims of police misconduct. But here, too, the process is slow, as such cases can drag on for as long as three years. Moreover, the victim must be prepared to pay out, in advance, money for depositions, jury fees, investigators' costs and court filing fees. The total can average out to be as high as \$800 and the jury ruling could still be adverse. On the other hand, the defendant policeman has the advantage of fellow officers to do his investigative work for him and to testify on his behalf, and he gets free legal services from the city attorney or from a policeman's fraternal association.

Commenting on the inadequacies of civil or criminal court suits, Massachusetts Attorney General Edward W. Brooke said in 1963: "Civil remedies are designed to redress personal wrong and are not adaptable for use beyond this purpose; similarly criminal action is . . . for more serious aberrations . . . but the *public interest demands* (italics ours) that police abuses be brought to light as swiftly as possible, that impartial adjudications be made . . . steps taken to correct the situation, and the public be made aware that this is being done."

With court proceedings lengthy and costly, district attorneys loath to move against the very men on whose daily law enforcement skills they depend for a good record of convictions, and the Justice Department hamstrung unless the case is "very bloody,"⁴¹ the average victim of police mistreatment must look elsewhere for a hearing on legitimate grievances.



Police work is so complex and unique, no civilian could make sound judgments as to the correctness of police action in a given situation, or even understand the law enforcement processes themselves. Citizens thus would tend to "fall apart" in emotionally charged conflict situations and would always rule against the police when violence occurs.



Except for experienced, veteran officers with many years on the force, most policemen are themselves recent civilians with extremely sketchy training. Something like 25 per cent of the police departments in the U.S. give their recruits less than one month's training, many less than one week.⁴²

Only 23 states have established minimum standards for peace officers, and only in five are the individual departments required by law to meet these qualifications. In 1961, the International Association of Chiefs of Police (IACP) conducted a survey and found that fully one-third of the 243 responding departments offered recruits two weeks or less of classroom training and a little over 19 per cent had no class hours at all in recruit training programs. In effect, officials merely handed the civilians a nightstick, a gun and a badge and they became police officers.

40. "Newark (N.J.) Plans To Call In FBI If Police Brutality Is Charged," *New York Times* headline, September, 1965.

41. Arthur Caldwell, attorney, Justice Department, Civil Rights Section.

42. "The Big Blue Line," by Ed Cray, *supra*.

About 10 per cent of the departments questioned offered nine weeks (360 class hours) of instruction, but much of it was devoted to internal problems such as report writing, discipline and departmental organization, or technical matters such as weapons instruction.

In-service or follow-up training is little better.

With fairly minimal education requirements (nearly 25 per cent of departments in the IACP survey had no education requirements at all, most of the rest asked for a high school diploma), the flood of new laws and the difficulty in interpreting old ones, it appears probable that law enforcement requirements are not that much better understood by police than by the allegedly ignorant civilians.

If one looks at the average officer's somewhat inadequate knowledge of the law, including his own legal authority, the charge that civilians—even those with legal, judicial or investigative evidence—could never understand law enforcement expertise becomes tenuous.

These questions of professionalism and advanced training are also factors which separate policemen from brain surgeons or lawyers with whom they always compare themselves in asserting that other professions are not burdened by independent review. It is very difficult to train laymen in medical or constitutional law questions, but it is much less difficult to explain the regular processes of law enforcement.

If it is not training, education or special professional techniques which distinguish the police officer from the civilian, does each police-citizen confrontation require such unusual responses in conflict situations ("split second" decisions are normal police routine), that ordinary persons could never understand them? And if they did try to understand them, would their sympathies not always be with the aggrieved citizen?

The experience of functioning review boards suggests that these fears are groundless.

In Philadelphia, where the police department was at first sure that an impartial tribunal would be organized solely to "get the cops," the actual disposition of cases proved exactly the opposite. Of the 530 complaints the Board processed during the 1958-1965 period, only 38 reprimands or suspensions were recommended.

The Rochester Board's 1964 annual report indicated that in its first real test, the Board cleared the patrolman involved, though it was troubled by some police practices and discussed these with police officials.

From the experience of the two oldest review panels, it would seem that several police fears are unfounded. Citizens did *not* inundate the Boards with massive case loads of complaints and minority groups did *not* monopolize the Boards' services.

Three factors contribute to the restraint and objectivity which feature the fair-minded and non-punitive attitude toward police on the part of existing boards.

One is the outstandingly high quality of citizens named to the Boards

initially. Many had precisely the combinations of legal, scholarly, investigative or community leadership experience and background thought to be necessary for a high level of competent service.

The second factor is the awareness displayed by the Board members of police fears and the sensitive role of outside forums.

A third aspect is that as continuing institutions they *do* tend to build, through case-by-case approaches, a body of informed citizens with exactly the kind of expertise in police affairs which attempts to insure impartiality and fairness. The continuity offered by a well-organized, smoothly functioning board is in contrast to grand juries, where citizens far more ignorant of day-to-day police problems are called upon to weigh evidence in police misconduct cases. Grand juries are convened infrequently, and their members are not always chosen on the basis of relevant achievements or experience, compared to the carefully-selected review board members. Yet police seem much more willing to trust their careers and futures to complaints sifted through grand juries than through review boards, perhaps because they regard these juries as part of the law-enforcement machinery and thus more favorably disposed to the police side in a dispute.



Outside review boards would invite crime by weakening the morale and sapping the efficiency of the ordinary officer. He would tend to do "less rather than more" to enforce the law, because of the fear of outside criticism.



The implications of this argument are astounding. They suggest that the only way the police can be efficient or enjoy high morale is if they are free of any citizen-based check on misuse of their power.

The ACLU has no such fears. It does NOT believe most officers will shirk their clear duty to enforce the law and fight crime simply because there is a channel through which citizens can be assured of a fair hearing of grievances. The current emotional pleas to "Stop murder and rape — Fight the Review Board"⁴³ are unworthy slurs, because the police can follow lawful procedures AND do their work competently. The police have nothing to hide from an objective outside review group; on the contrary, the benefit to efficient and lawful police action would be enormous and, in the ACLU's view, the majority of officers will eventually realize this.

The fear, inherent in the "morale" argument, that lawful police practices are not compatible with vigorous crime fighting, has been challenged by lawyers, judges and police officials themselves.

Former Philadelphia Police Commissioner Thomas J. Gibbons, when asked in 1959 whether the Review Board had a "good or a harmful effect on the morale of the Police Department?" replied: "Well, if you talk to some individual officer who has appeared before the Board, then I guess the answer would be that it had a harmful effect, but from my point of view as Commissioner, I think *the Board has not only aided me, but has aided the police department.*" (italics ours) The Board may have even helped

43. Sign in a mid-town New York City apartment house during the New York review board referendum campaign signature drive, July, 1966.

law enforcement because from 1962 to the present, Philadelphia had one of the lowest crime rates of the first five major cities in the U.S. and the highest rate of arrests to crimes committed.

A federal judge with a police background, Judge George Edwards of the United States Court of Appeals for the Sixth Circuit, who resigned from the Michigan Supreme Court to serve as Police Commissioner in Detroit during 1962 and 1963, stated in 1965 that he had run the Detroit Police Department under the same rules as later outlined in Supreme Court decisions.

"It wasn't exactly easy," Judge Edwards said, "but the police sought to observe the rights of suspected criminals in such areas as searches and seizures, confessions, legal counsel and arraignments.

"We stopped 'alley court' and 'falling on the precinct steps' and the merry-go-round of prisoners from one precinct to another, and we did take prisoners promptly before a judge. And the town did not fall apart. Murder and pillage did not run rampant."

It is doubtful that San Francisco police expect *their* town to fall apart, either, though they have recently instituted a new plan aimed at compliance with respect for accused persons' rights. In August, 1966, they announced that a printed card spelling out the suspect's right to remain silent and to be advised by a lawyer would be given all arrestees, who would be asked to sign the card in the presence of a witness to make a documented record that he had been advised of his constitutional rights.



If such an impartial forum existed, there would be no further discipline left because police officials would have "surrendered" their departments to outsiders.



Nothing could be further from the truth. No existing board operates on this basis today and it has never even been suggested that the boards should have the authority to discipline the police in any way. The ACLU and other proponents of civilian review, while recognizing that police performance is, in the final analysis, subject to review by the publicly-elected civilian Mayor, are well aware of the Police Chiefs' and the Police Commissioners' legal responsibilities for the conduct of the department. They have never advocated any procedures which would sabotage that legal responsibility.

A review board's real weight is based on the fairness with which it listens to both sides in a dispute and to the publicity it gives its recommendations, as well as a procedure for informing all parties about its final conclusions.

The police claim that they would no longer be running their own departments is a "straw man," for at all times they could reject review board recommendations if board procedures or conclusions did not meet reasonable criteria.

These points have been so studiously ignored, confused and overlooked, that they must be stated as insistently and frequently as possible:

Review boards, by offering an impartial place for a thorough

bearing of a controversy, would gather carefully documented facts and forward them to the proper authorities for action.

Final authority for the punishment of any police officer would remain where it is now: in the hands of department authorities.



Police themselves have become a highly visible minority, suffering from stereotyping as "brutal sadists" and have become the scapegoats for all unsolved social problems, particularly those of urban centers.



This police perception is unfortunately a true vision. As noted previously, the police symbolize the authority of government which fails to end unemployment, poor housing and inferior education.

One can sympathize with the policeman's lot in this regard, but this is no excuse for ignoring abuses of power or not establishing methods to curb them. Certainly concerned groups within the community should attack causes of poverty, poor education, discrimination in employment or mistreatment of citizens by other governmental agencies. But it is the unique function and experience of the ACLU, as a guardian of the Bill of Rights, to point up wrongful use of governmental authority which abridges civil liberties. The fact that special groups apply their expertise to particular problems is not unusual. Moreover, one set of advances does not preclude progress in other areas. The fact that the police in New York, at the prodding of civil liberties groups, have recently cut down on "dragnet" arrests of alcoholics does not solve the problem that some other social welfare facility, not a jail, is required to care for these homeless, hungry persons. The amelioration of social problems will not automatically stop the misuse of police power, and vice-versa.

The defensive police attitude, that they are regarded by the public as eager practitioners of brutality at worst, or at best, dumb cops who exist only as foils for brilliant private investigators, also deserves sympathetic understanding. The ACLU deplores stereotyping in any situation; but again, it reminds that the solution to this police concern is not to pretend police malpractice does not exist. The answer lies rather in an outside impartial agency which would be as fair to the police as to the aggrieved citizen, and which could, once and for all, make completely clear for all to see how much police work is competent and responsible and how much is improper.



To force police participation in review board hearings would be to expose the officer to double jeopardy, because in most cases, suits still could be brought against him in regular court proceedings if the citizen wished to press false arrest or excessive use of force charges.



This argument ignores the fact that a policeman is always open to multiple actions on various levels if improper acts can be proved, most of them carrying the potential of much heavier sanctions than the advisory recommendations a review board might make to his superior officer. For example, an officer accused of brutality first must face departmental hearings. A district attorney *could* (but rarely does) press for a

criminal prosecution based on assault with a deadly weapon, and there is always the theoretical possibility of federal action by the Justice Department. Finally, the victim, if he could scrape up the money, witnesses and evidence, might seek civil damages. But none of these constitutes double jeopardy because this arises only if a second *criminal* proceeding is brought against the officer as a result of the same act — and review board administrative actions are far from such criminal proceedings.



The establishment of a review board would bring "politics" into the administration of police officers. This would make it impossible for a department to be well-run, for opening the police to political control means that law enforcement is no longer the primary interest or competence of the department.



In reality, no police department is ever completely free of politics. If politicians meddle in internal affairs of a department, especially in such areas as assignments and promotions, they can succeed in destroying the professionalism of any law enforcement structure. This is a legitimate danger which must be guarded against.

But politics and appointive office do not always mean the worst men in the most sensitive job. There are many examples of dedicated responsible citizens serving the public, even though appointed through the political process. Moreover, because of the essential need to have review board decisions receive wide community support, "hack" appointees unequipped to handle the job would only boomerang against the appointing Mayor or City Council. The built-in requirement for *qualified* citizens to serve is an inherent safeguard against the board turning into a haven for defeated politicians.

Doubtless the debate, pro and con, concerning the usefulness of outside review systems, will continue throughout the nation. Police will hammer away at their arguments, threatening the community with the break-down of order and expressing an assortment of fears. Proponents of outside review will continue to be troubled by the present imbalance between the power of the state and the rights of mistreated citizens.

Since some communities have wrestled with the crisis and have actually created functioning police review boards, an examination of the history, structure and achievement of these boards might provide further helpful background.

SURVEY OF EXISTING BOARDS

"It is time, then, for police procedures to be strengthened in accordance with our traditions (of due process). It is time for independent review to be joined with professional knowledge..."

—Congressman John V. Lindsay, campaigning for office of Mayor of New York City, May, 1965

For some cities, the tense confrontations between police power and citizens' rights usually had a long, smoldering history which eventually exploded. In two cities, Rochester and Philadelphia,⁴⁴ a bitter "moment of truth" so focussed the underlying conflict that some dramatic remedy had to be found and the police review board was the instrument finally selected.

In other places, the steady loss of confidence in the police was not traceable to a single incident, but rather to the consequences of riots, "whitewashes" of specific cases, or instances of reprisal and harassment of citizens who *did* complain, as well as accumulations of out-and-out brutality cases. The latter causes brought review boards into existence in Washington, D.C. and New York.

There are some places in the U.S. where committed community organizations are actively seeking to stimulate public consciousness about the police problem, but where no board has as yet been created. For instance, a careful, thorough research report recently was offered to Atlanta residents by the ACLU of Georgia, documenting the need for a review board. Similar reports have been done by ACLU affiliates and others in Seattle, Los Angeles and Springfield, Mass.

Even in cities where the outlook appears dim for the immediate creation of a formal, legally-authorized review mechanism, other steps can be taken to press for redress of grievances. ACLU affiliates and other groups are demonstrating this by serving as clearing houses in individual cases. They forward their documentation, usually sworn depositions or affidavits, about citizen charges of police misconduct to the police and other city officials. In Los Angeles, just a few months ago, in the absence of official action in the wake of various Watts post-riot reports and recommendations, a chapter of the ACLU of Southern California opened a Police Malpractices Office in Watts. It is run by a full-time staff member, with three law school students as volunteer workers. Here, too, the information is collected, investigated, and passed on to police and city officials.

The police policy toward existing boards is strangely ambivalent. On the one hand, experience shows that the police continue to function routinely when the board is appointed, and in most cases, the department cooperates to the limit that the review structure requires. On the other hand, the police are unrelenting in their opposition, pushing legal and political moves against the boards including incessant statements of attack and harassment. In Washington, D.C., for example, the police "play down" recent revisions in board composition and procedure and claim the review system is confined to a "grand jury" role.

44. In both cities, cases involving alleged abuse of Negro citizens ignited the fuse. In Philadelphia, police mistreatment of John Archer with a subsequent internal investigation was interpreted by the civil liberties community as a complete "whitewash." In Rochester, a similar case involving Rufus Fairwell led to the formation of a clergyman's committee which was eventually successful in helping establish the review panel.

Regardless of police attitudes, few boards have been in existence long enough, with the exception of Philadelphia, to consider any of them other than experimental. However, perhaps even the limited experience of the existing boards can provide some understanding of a board's role and what it can contribute to the community.

● PHILADELPHIA, PA. ●

The nation's first and oldest independent police review tribunal, established in Philadelphia in 1958, has had an up-and-down history, with alternating periods of achievement and ineffectiveness. On the whole, however, despite many handicaps, the Philadelphia Board has managed to rack up a solid record of contributions and it remains the prototype which most communities study.

Mayor Richardson Dilworth appointed as the first board a blue ribbon group of citizens, including a Nobel Peace Prize winner as chairman and an internationally famous sociologist as one of the Board members. The original panel of five has grown over the years to number eight.

The Mayor's action was the result not only of an "incident" and its attendant publicity, but also reflected his own sensitivity to the problem of police practices and the sustained expression of concern over many years on the part of civil rights groups and the Greater Philadelphia Branch, ACLU. This was coupled with the presentation of statistics on specific complaints collected by the ACLU and given to the City Council and the public as well as the Mayor. The Mayor was aided by the careful spadework of the ACLU affiliate which had laid before him a precise plan spelling out the purposes and powers of the new body. These proposals stressed that the police review board would have advisory powers only; it could recommend action to the police department which, under the City Charter, has the sole authority to discipline members of the force. The advisory nature of the Board was re-emphasized in 1960 when its name was changed from Police Review Board to Police Advisory Board.

How has the Philadelphia Board functioned in its six years of operation?

The Board is empowered to receive citizen complaints concerning "brutality, false arrest, racial, religious, or ethnic discrimination or other wrongful conduct of police personnel toward citizens." Its formal hearing procedures accord with due process by providing the rights of cross-examination and counsel for both sides. The Board's reports point to a cooperative relationship with the Police Commissioner and invariably their recommendations have been accepted.

However, the Board has encountered several obstacles. Two separate legal actions have been mounted against it by the city's Fraternal Order of Police. In 1960, the FOP brought a suit for an injunction which it withdrew when some minor changes were instituted in Board procedures. A second injunction suit was initiated in 1965 and is pending as this pamphlet goes to press. Meanwhile the Board continues its work, and is handling a greater volume of complaints than before — about 20 a month.

Other impediments which have faced the Board included personnel

shifts, an inadequate staff and budget, lack of publicity in the arrest-prone elements of the population most requiring its services and, at one time, the absence of support by the incumbent mayor which resulted in the executive director's post being vacant for several months.

Yet, despite the inherent limitations on the Board's power, and the handicaps under which it has labored, it can claim several notable accomplishments: The Board's formal hearings have, in some cases, resulted in the discipline of policemen who exceeded their authority, thus providing aggrieved citizens with a relatively simple form of redress and demonstrating to the entire police force that they are answerable for illegal acts. It has obtained for scores of illegally arrested citizens the expunging of damaging assumed responsibility for repairing doors which were broken in the course and degrading arrest records, and in some cases, the Police Department has of an illegal entry.

The Board has vindicated policemen who have been unjustifiably accused of wrongdoing. (Not infrequently, civilians have complained of practices which they mistakenly assume are abuses of police authority, especially fingerprinting and photographing of persons in police custody.) By informal meetings between aggrieved citizens and policemen, the Board's staff has been able to elicit apologies and explanations that have allayed ill-will, especially in relatively minor matters such as discourtesy.

The overall effect of these accomplishments upon police-community relations is hard to assay. But on balance the Philadelphia Board has been a success. Despite its tribulations, it has demonstrated that civilian review of police activity is a sound and a workable principle. The Board has had a direct effect upon the attitudes of the police and the civilians who have had dealings with it, and an imponderable effect upon the larger community of police and civilians alike. Perhaps most important is that its very presence acts as a safety valve for the daily pile-up of resentments and simmering hostilities that poor people in urban areas inevitably harbor toward the police as the symbol and embodiment of authority.

This was strongly confirmed when Maurice B. Fagan, Chairman of the Philadelphia Fellowship Commission, testifying in favor of the Board in September, 1966, during the FOP suit, declared there has been a "remarkable" effect on police-citizen relations since the Board was established eight years ago.

"Since 1958, there has been a tremendous improvement in respect for the police, there are far fewer wild rumors flying," Mr. Fagan pointed out in noting that statistics on numbers of cases handled by the Philadelphia Board did not tell the whole story of the impression on the community made by the Board. "One single 'incident' can upset an entire neighborhood and the effect can last for a number of years. One case properly handled can make a huge difference," he said.

All in all, the Board has become a significant part of the city's life. As the late Clarence Pickett, the first chairman of the Philadelphia Board, said:

"We know that on the whole the police don't like us and haven't wanted us but they cooperate very well with us . . . the police represent the

strong arm of the city. We represent citizen concern — for common decency to be observed in the community . . ."

● ROCHESTER, N.Y. ●

This second-oldest review board in the nation, established by city ordinance three years ago, has had a rocky road to travel since its creation. The community remains divided over the legality of its existence, and also over its effectiveness as an instrument for ameliorating police-citizen tensions.

At present, legal action brought by the Rochester Locust Club against the Board testing its constitutionality is pending in the courts and the Board is enjoined temporarily from functioning. The Locust Club, an organization of those dedicated to support of the Rochester Police Department, is open to all of the city's 525 policemen.

The Genessee Valley chapter of the New York Civil Liberties Union filed an amicus curiae brief on behalf of the Board in the suit but the state Supreme Court ruled against the Board on the grounds that the City Council did not have the authority to establish it. An appeal is being taken from the early 1966 ruling.

Before the latest police onslaught, however, the Rochester Board had established certain procedures which appeared to hold promise for relieving some community tensions. The nine-member panel has an extremely limited jurisdiction, since the City Council permitted it to hear only complaints against the police which allege excessive use of force. However, at the request of the Chief of Police, the Board agreed to receive *all* citizen complaints against the police, screen them, and forward those complaints to department officials which it felt deserved further investigation by the police themselves. The Chief promised all would be followed up by the Department's Internal Inspection Office.

In the first 15 months of its existence, the Board received 27 complaints. Six fell within the Board's jurisdiction, the others being informal complaints. The Board established the precedent of commenting on the propriety of police actions and has elicited a promise from the Chief that the procedures involved would be thoroughly checked out.

What are the attitudes within the community toward the Board?

Those who worked hard for its establishment urge it "not as a full solution, but as ameliorative procedures which can help create a healthier atmosphere."⁴⁵ They say it is making progress toward lessening tension and building public confidence in the police by quieting anxieties, eliminating rumor and gossip, and offering a neutral place for dealing with strained community relations. Rochester's former Public Safety Commissioner, Harper Sibley Jr., said in 1965 that the Board played a valuable symbolic role in easing fears of police mistreatment. Moreover, at least partially because of its existence, the Police Department has taken excellent steps to strengthen its own internal review machinery and to raise standards of recruit selection and to improve training.

45. Prentiss L. Pemberton, faculty, Colgate Divinity School, member of the original clergymen's committee formed to support the creation of the Rochester PAB.

● NEW YORK, N.Y. ●

Perhaps the brightest spotlight of all in the review board controversy is now focused on the nation's largest city, New York, where police-citizen relations are in a new and tense stage. The just-established civilian-majority review board, only appointed by Mayor Lindsay in July, 1966, faced an ominous challenge by the Patrolmen's Benevolent Association, spokesman for most of the city's 28,000-man force, and the right-wing Conservative Party. These two groups pressed a referendum campaign to put before the voters the issue of the continued existence of the Board.

At the time this pamphlet was being prepared, the outcome of the heated contest was in doubt. However, the city administration, many community groups, and state and national political leaders, including the two New York Senators, Jacob Javits and Robert F. Kennedy, vigorously supported the Board and deplored the necessity for a referendum. The anti-review board forces used issues of racial conflict and "safety in the streets" to wage a bitterly disruptive campaign aimed at defeating the independent review concept. The New York Civil Liberties Union sparked the formation of FAIR (Federated Associations for Impartial Review), an organization representing some 70 civil rights, labor and religious groups which spearheaded defense of the Board.

The New York Board is different from other outside review boards in that it mixes four civilians with three police department officials. The Board is mandated to receive these complaints: unnecessary or excessive use of force; abuse of authority (including unreasonable action taken in an official capacity which deprives individuals of rights guaranteed by law); discourtesy, or abusive or insulting language; and language, conduct or behavior which is derogatory of a person's race, religion, creed or national origin. ♦

Although its hearings are not open to the public, both the complaining citizen and the accused policeman, together with anyone else who testified, can examine a transcript of the hearing at the Board's office. The transcript is forwarded to the Board with the recommendations of the hearing officer and the executive director. The Board reviews the record to find out whether it should recommend to the Police Commissioner that a departmental trial be held. The recommendation of the Board is confidential, but the parties involved are notified in writing of the Police Commissioner's action on the complaint.

The Board is not involved in the departmental trial; this is still handled completely within the department, with a Deputy Commissioner in charge of trials reporting his findings and recommendations to the Police Commissioner. The departmental trial must return a verdict of wrong-doing before any disciplinary action can be taken against the policeman.

Harold Baer Jr., a former federal prosecutor who now serves as the Board's executive director, reported that since the formation of the Board on June 30, 1966, complaint reception averaged 100 cases a month.⁴⁶ More came from whites than Negroes, and 85% were classified by Mr. Baer as

46. This contrasts with the pure *internal* review proceedings of the Police Department which averaged about 200 complaints a year from 1953 to 1965. In 1965 it received its largest volume of complaints: 234.

either unsubstantiated or falling into regular conciliation procedures.

The New York Times of September 21, 1966, stated that the civilian-majority board is "not quite what either side says it is." "It will not really hamper the police," said the Times, "nor will it do much for Negroes and Puerto Ricans — except, perhaps, *to make them feel the city really cares about them.*" (italics ours)

As the Times indicated, the Board will not really bother the police, but it might, in fact, take steps which would be very helpful to them. For example, in New York, before the new review board, unsubstantiated complaints against an officer were entered on personal record folders. This, of course, was resented by policemen who felt that the notations would hamper efforts to obtain promotions. Under the new Board procedures, complaints which are not substantiated are never entered on a policeman's personal record folder.

Although still in its infancy, the Board has already contributed important evidence suggesting that its eventual role in the city will be positive and helpful. Police Commissioner Howard R. Leary in September, 1966, scorned PBA hints that the existence of a review board would reduce police effectiveness and threaten the safety of New York citizens. Calling such suggestions "totally without foundation," Commissioner Leary pointed out that during the first three months of the Board's existence, "there has been absolutely no discernible rise in crime, nor has there been any discernible reduction in arrests."

Mayor Lindsay, too, indicated the Board's significant participation in the city's life when he said, in a September, 1966, statement, that the city was able to keep racial tensions under control during the past summer largely because the Board was operating "well, effectively and quietly."

● WASHINGTON, D.C. ●

Revisions in Washington's police review machinery were instituted in 1965 after a vigorous campaign led by the National Capital Area Civil Liberties Union brought to public attention the inadequacies of the existing review mechanisms.

Part of the dissatisfaction stemmed from an abnormally high number of police prosecutions of citizens for "false complaints," and a large amount of withdrawals of complaints due to suspected reprisals or fear of reprisals.

Under new procedures set by the District of Columbia Board of Commissioners (which governs the city in the absence of home rule), the so-called Civilian Review Board, which had operated largely within the Department, has been expanded from three members to five, two of whom must be lawyers. The complaint procedure now operates in a two-step program, in which the civilian apparatus does not become operative until the Police Department has investigated the complaint and decided to take no action in a given case.

Under present rules, a citizen may file a complaint with the Secretary to the District of Columbia Board of Commissioners, instead of the Police Department as he was formerly required to do. The Secretary forwards the

complaint to the Police Chief and the Department conducts a preliminary investigation. If police officials feel that charges should be brought, they will be heard by a Department trial board whose findings are subject to review by the District of Columbia Commissioners.

If the Police Chief decides NOT to proceed after a preliminary investigation, the complaints automatically will go before the newly-enlarged board. The Washington review panel, as the others, is advisory only and its recommendations are sent to the Police Chief and the District of Columbia Commissioners. Only the latter have legal authority to dismiss a complaint, so the D.C. Commissioners retain ultimate authority over both the internal and the outside review apparatus. At civilian board hearings, complainants and officers both appear and both have the right to counsel, though the proceedings are held behind closed doors. At the time the revisions were adopted in October, 1965, the NCACLU called them a "much needed improvement" (though the affiliate had suggested public hearings and an investigative unit separate from the police department), but mild criticism was voiced by the Policemen's Association.

STRUCTURAL FEATURES OF THE BOARD

The experience of all the existing boards, together with model review board ordinance proposals drafted in several other cities, suggest certain structural features that are vital to implementing the spirit, as well as the letter, of legally-authorized civilian review.

For example, when possible, it is best for the board to be established by city ordinance, rather than executive order. The former shows a wider base of community support and does not make existence of the board depend upon the particular person who happens to inhabit the mayor's office at a given time.

Similarly, in order to meet the whole range of police malpractices it is preferable to have the jurisdiction of the board cover all types of complaints, rather than limiting its area to charges of simple brutality or excessive use of force.

Another significant procedural recommendation is the importance of open hearings or, if this is unfeasible, full disclosure of board action after investigation and hearings. It is crucial for the complainant and the accused officer both to know exactly how the case was followed through to its proper conclusion. The withholding of information, not only about the original investigation and what it showed, but also as to the final disposition of the complaint, has been cited as one of the main reasons why public confidence in police internal review methods is so low. (*Investigation reports currently are kept confidential in fully half the police department* [italics ours] surveyed in the 1964 *Harvard Law Review* study; less than 5 per cent of the 191 responding departments said they would give a copy of the investigation and its results to the complainant on request.)

Most important, it must be made clear that review machinery in no way infringes upon the basic objectives of police work or the rights and duties of police officials to keep reprimand, suspension or dismissal procedures within their own hands.

Other suggestions which have been advanced as essential to truly effective review include:

- A reception center for complaints physically removed from police installations.
- A budget adequate for clerical services, a paid director and a separately-staffed investigative unit so that the board need not rely upon the police department for preliminary investigations as existing boards now do.
- A hearing procedure which closely follows due process protections available in a court of law; i.e., right to counsel, subpoena of witnesses, right to cross-examination, etc.
- A system for the informal settlement of less serious complaints and for prompt redress of justified grievances (expunging of false arrest records, etc.)

The format of review boards can be quite varied. Indeed, formal review systems may have many names (advisory board, commission of human relations, mayor's committee, etc.). They can come into being in different ways. They might be composed of a smaller or large number of members, adopt a wide or a limited jurisdiction, follow formal or informal procedures or both, have a cooperative or a distant relationship with the police and conduct their business in a loosely-formulated or quasi-judicial manner. These are not mere details; they do have an impact on how effectively review boards can contribute to the solution of the police-citizen conflict. Communities which early "build in" a number of carefully thoughtout structural features, responsive to local conditions, probably have a better chance of success.

However, as in all human institutions, the fundamental hope for the review process must come from individuals within the community, and will probably derive ultimately from the quality of leadership displayed by both citizens and police officials.

There are several other approaches which take into consideration both these human factors and the difficulties of creating new social institutions and reforming old ones.

What are these additional proposals which have been advocated to end the police-citizen crisis?

STEPS BEYOND THE REVIEW BOARD

"It may be true that some citizens may take solace in the spectacle of punishment (of the police), but the community cannot hope to achieve a better level of police service by administering punishment . . . (it needs) the highest possible standards for selection and education of law enforcement officials . . ."

—*The Police Chief Magazine*, February, 1964

"Because punishment for a past mistake is a rather antiquated way of encouraging sound administration, Ombudsmen (Swedish directors of civilian redress) have developed (in Sweden) the practice of 'giving reminders' to erring officials . . ."

—Prof. Walter Gelhorn, Columbia University Law Faculty, writing in *Yale Law Journal*, November, 1965

The ACLU advocates the independent review board as a basic first step toward enlarging the rights of citizens under the rubric: "Equal Justice Under Law." However, there are other ideas linked to the review board proposal which promise significant relief and which have been endorsed by the ACLU.

Just at the review board itself is not a panacea, neither are these other suggestions meant to be cure-alls for a complex problem. However, either singly or together, a number of plans which present possible solutions for the police-citizen crisis deserve the most serious consideration. These further steps might include ● Implementation of various steps toward true police "professionalization" which would help to upgrade the occupation of law enforcement ● Revisions of legal and judicial procedures against misbehaving police and toward modernizing old or ineffective laws which hamper proper law enforcement ● Adoption of the Swedish Ombudsman concept, a type of outside review of all governmental agencies.

POLICE PROFESSIONALIZATION

For over a hundred years, the policeman's job has been simply difficult, dangerous and unrewarding, with low pay, long hours, and inferior social status. Naturally, it did not attract the most superior individuals. Moreover, the institutional device of Civil Service recruitment has not worked out well, either. As exemplified by the experience of Massachusetts and Seattle, Wash., the rigid control over selection of police applicants has not been productive of a high-level force. One study of the Boston Police Department⁴⁷ suggested that Civil Service selection processes had failed to set up minimal education standards, relied too much on a single written examination and failed to use psychological and other screening devices — with the result that applicants with serious criminal records had been accepted into the city's police force. Corrective action has been taken in Boston, but much remains to be done there and elsewhere.

Recognition of the need for professionalization which is generally defined to mean better recruitment, screening and selection processes; improved training in law enforcement techniques, in the study of the law

47. Brandeis University Fellowship Study of Police Practices in Boston, Mass., by Alan Gartner, 1964.

itself and in human relations; also higher pay has begun in some localities, but such trends are not very far advanced. For example, an extensive battery of psychological and other screening tests have been perfected in order to weed out undesirable candidates and spot those with superior qualifications, but few cities or states are using them. The need to speed up improvements in this area was emphasized by the Tamm Report, a 1962 survey of the Boston Police Department conducted by the Field Service Division of the International Association of Chiefs of Police. The Tamm Report suggested that a written personality inventory profile be worked up for each applicant, to alert the examiner to serious personality deviations. It also suggested a psychiatric interview immediately prior to certification, and this is a slowly growing trend.

While there is no question that better selection of candidates for the police force would be a welcome improvement, thoughtful observers know it cannot be the whole answer to the professionalization process. In Los Angeles, for instance, professionalization is relatively far advanced. Most students of police affairs would probably agree that no major U.S. city is as well policed as Los Angeles, especially with so few men per capita. The police get salaries quite a bit higher than the national average and efforts toward continuing education and in-service training are rewarded with promotions and choice assignments. As a result of these improvements, the Los Angeles police generally are more highly regarded in that city's *white* community than in other big cities. *But* the stubborn problem of police-minority group relations has not yielded to the upgrading of the profession and remains a festering sore of which the Watts riots are the most dramatic, but not the only, expression.

New York, aware of the multi-faceted police-citizen tension, has tried to include in its "professionalization" package a conscious effort to hire more Negroes and Puerto Ricans as part of its over-all campaign to obtain generally well-qualified people. A special drive headed by Chief Inspector Sanford D. Garelik and the City's Personnel Department is aiming for high school and college students as part of the new emphasis on "quality."

These efforts to get good people hint that the training the police receive *after* they pass high-level qualifying tests also is vital. Just as recruitment methods must be elaborated and refined, so training methods need to be carefully scrutinized. Police administrators often are in conflict as to which of two possible approaches to take in organizing training programs. One approach, primarily sociological, concentrates on methods of detection, crime control, and the development of "professional" police attitudes; the second, more psychiatric in origin, deals primarily with attempting to change deep-seated values, attitudes and motivations.

The more progressive police departments throughout the country have combined elements of both, relying in the first instance upon the possibility that there can be built up in the new police trainee a view of himself as playing a role in society which requires him to behave in a fair and impartial manner to all groups. Simultaneously, many departments have instituted special courses in constitutional law and interpretation of Supreme Court decisions, seminars in "human relations," attempts to teach the policeman something about the nature of prejudice, the clash of cultures, life styles and

languages in an urban setting and similar psychologically-oriented approaches to his work. (Police affairs experts believe that such an approach must include on the part of police administrators a strong belief that such professional training is not a "frill" but involves the heart of police work since it is the policeman, more than any other government servant, who has a daily relationship with the citizen. Only if the highest levels of police officialdom clearly construe such training as "standard operating procedures" within the department will those methods truly upgrade the law enforcement occupation.)

Yet, progress is slow. As the Tamm Report clearly revealed in proposing major changes in present methods of training, the largest portion of police departments in the country have not moved at all, or have moved at a snail-like pace, in either of the training directions outlined above.

Recruitment, screening, selection of a higher caliber of law enforcement official and improved training don't make up the total professionalization effort. Another integral element is a better wage scale for the average policeman so that his real (and often, consequently, his psychological) "income" is more truly reflective of his actual importance in serving the community. Independent review boards could be most useful in this regard for they could help generate attitudes among tax-paying citizens which would make them more willing to finance better police operations in which they presently lodge too-little confidence and trust.

LEGAL AND JUDICIAL CHANGES

The upgrading of the police vocation is not the only improvement being urged. Attorneys with long experience in police malpractice cases couple with this advance, recommendations for legal and judicial change which would smooth out some areas of friction between the police and the community.

An example frequently cited is reform of the present misdemeanor-trial system to make certain that complaints of police misconduct are heard before juries instead of judges who, as part of the law-enforcement "establishment," have an interest in supporting the police. In several states persons arrested for a misdemeanor are not entitled as of right to a trial by jury. Judges, sitting alone, very often convict people accused by a policeman of disorderly conduct or assault. Any later complaint of police abuse is, of course, hopeless.

Another necessary reform is removing outdated or ineffective laws from the statute books to ease the policeman's task and reduce the possibility of incidents of mistreatment.⁴⁸ Most frequently mentioned in this latter connection are the narcotics, and to a lesser extent, the abortion laws which, many experts say, lag far behind the latest medical, psychiatric and sociological data on causes and treatments of what are basically social and personal illness.

Some attorneys believe that the narcotics statutes lead to many forms of police wrongdoing, some major, a few minor, because the law directs the police to act as though they were dealing with an uncomplicated robbery or simple assault. In fact, however, narcotics law enforcement requires the police to deal with a complex socio-medical phenomenon.

48. Interview with Attorney Paul Chevigny, Director of the Police Practices Project of the New York Civil Liberties Union, July, 1966.

The frustrations arising from this untenable position force the police into a variety of ignoble "dodges." For example, when asked by judges or magistrates how they obtained narcotics from suspects, the police have adopted a stock answer, "the suspect threw it on the ground." They give this pat response to avoid admitting that they violate the rules governing illegal searches and seizures, but they might not be pushed to such an obvious lie if they were not asked to try to wrestle surviving dosages of drugs away from suspected addicts in tense chase-and-confrontation situations. This only leads to more crime as the addict becomes more desperate for the drug. Many attorneys say this requirement ought to be replaced, with a more humane law which would allow the police to acknowledge the addict as a sick person. Simply put, the police need for unlawful procedures would be curtailed if the laws were more sensible. The most serious consequences of expecting enforcement of antiquated laws is the moral impact, the subtle breakdown of respect for legal procedures which lying and circumventing the law engenders in the average police officer.

THE OMBUDSMAN

A very responsible body of legal, administrative and governmental opinion is coming more and more to believe, however, that no matter how professional the law enforcement occupation becomes, or how much may be achieved through reforms in the law, the essential problem of protecting the individual against the ravages of growing governmental power — particularly the police facet of that power — requires different and larger-scale solutions.

One of the most actively advanced proposals, which the American Civil Liberties Union strongly endorses, is the establishment of an Ombudsman or Director of Citizen Redress. This would set up a "complaint department" to which an aggrieved citizen could go with an incident of mistreatment by *any* agency of government, not alone the police, though they would be included.

The idea originated in Sweden more than a century and a half ago as both a recourse for citizens and as a watchdog of official propriety and efficiency.⁴⁹ In this respect it has the "deterrent" or "conscience-of-the-policeman" effect which advocates of independent review boards say would be a function of such panels in this country.

In addition to Sweden, five other nations have established this office: Finland, Norway, Denmark, New Zealand, and most recently, England.⁵⁰

Its development has spread in Europe as bureaucracy has moved ever more pervasively into the lives of private individuals, particularly in industrialized nations where city and state government units controlling welfare, housing or employment activities have become more extensive and involve

49. In the European concept of the Ombudsman, the official not only receives complaints from citizens concerning official wrong-doing or important omissions of duty by responsible officials, but may himself start investigations based on newspaper accounts of a questionable situation or on inspections of various governmental departments which he is authorized to make.

50. The British Auditor General was named Ombudsman in August, 1966, and was specifically instructed to act as the Queen's champion to defend "the little man" against unjust officialdom. His job is to "protect the man in the street from bumbling bureaucracy and red tape at no cost to the complainant," according to a New York Times dispatch from London when the Ombudsman was appointed.

hundreds of thousands of daily contacts with citizens.

However, the structure and functions of the Ombudsman office in foreign countries often reflect cultural patterns or traditions which are not comparable to those of the United States.

In Sweden, unlike America, it is much more the tradition for all governmental papers and documents to be available for all types of public scrutiny, thus easing the review task of the Ombudsman. Sweden also enjoys a nearly unmatched record of centuries of unusually high standards of competence among its Civil Service employees, so that the Ombudsman's role as a "reminder" of proper conduct has considerable weight which might not be applicable in this country.

Also, in the U.S., the notion that there should be a safeguard such as a civilian review agency against the *possibility* of police misuse of power (See Page 14) is still not widely accepted. In Norway, however, this was considered such an obvious need that the office was NOT created as a result of some dramatic "incident," in the way that so many redress procedures in this country seem to come into being, but rather as simply a wise administrative step to deal with government's bigness.

"It seems unavoidable, at this stage of economic and technical development which regardless of politics, has been achieved in all modern societies, that ever larger and broader powers shall be bestowed upon administrative authorities," pointed out Norwegian Supreme Court President Terje Wold, who headed the Expert Commission on Administrative Procedures which officially recommended the office of overseer of public administration nearly a decade ago.

Furthermore, those European countries which have set up Ombudsmen have been singularly successful in insulating them, by a variety of administrative and legal means, from the winds of political change and in establishing their independence of all other governmental power, insofar as it is humanly possible. In practice, of course, the Ombudsman often works out a "modus vivendi" with government officials which makes reform, corrections and redress possible and effective without the need for scandals or social explosions. It is questionable whether such a complete separation from politics or sensationalism could, should the Ombudsman's office uncover evidence of wrong-doing, be so easily organized and maintained in the U.S.

Despite its success in Europe, opinion there is not unanimous as to the efficacy of the Ombudsman office. When the Danish Ombudsman's office was created in 1955, the first occupant of the office embarked on a vigorous public education campaign at home and abroad. His speeches and writing greatly influenced public opinion in Britain, and his explanations of what the office could do to protect the citizen and help the government function better suggested that this old institution might have very great significance for modern times. However, other Ombudsmen and administrative experts outside Scandinavia have warned against "over-enthusiasm" for the concept, while vigorously explaining its virtues and possibilities.⁵¹

51. Articles on the Ombudsman by Prof. Walter Gellhorn, Betts Professor of Law, Columbia University have appeared in the Stanford, Yale, McGill, California and Pennsylvania Law Reviews, and a book incorporating this and other information on the European Ombudsmen by Prof. Gellhorn will be published by Harvard University Press in 1966.

A few American cities and states have begun investigations into various aspects of the Ombudsman idea, and in some places, experimentation has begun on a version of the plan, though it is not always called by its international name.

In Denver, for instance, a Mayor's Committee on City-Citizen Relationships was established in 1965 to receive citizens' complaints of abuse of their personal or civil rights by *any city* employee. The Committee evaluates such complaints and makes specific recommendations to the Mayor. The Mayor's Committee was charged with certain responsibilities which are not usually spelled out so clearly in the list of duties of the European Ombudsmen, though the practical effect of their efforts is often the same. The panel, in addition to receiving complaints, functions as a "human relations" type of commission to further communication and understanding between city agencies and Denver citizens, especially among minorities.

The Committee, which numbers six members, after a year's work had received a total of 25 complaints of which 22 involved the Police Department, one the Welfare Department and two, the Denver General Hospital. In 1966, the Denver Police Department had begun steps toward a referendum seeking to abolish the Mayor's Committee, but later dropped them. At present the Committee operates without legal disability.

In New York, the creation of an Office of Citizen Redress had been proposed to the City Council and a similar Ombudsman plan was brought before the New York State legislature last year. But neither on the municipal nor state level has the office been approved.

An interesting variant on the "public overseer" or "director of redress" function can be found in the Michigan Civil Rights Commission, which was established more than a year and a half ago as a result of a revision of the state constitution.

This statewide commission, whose jurisdiction at present deals only with discriminatory treatment of citizens based upon race, creed, color, nationality or religion, exceeds in power and staff any type of review machinery now existing on the municipal level.

The Michigan Commission⁵² can investigate such discrimination not only in police affairs, but in other areas of state-citizen relations as well, including jobs, housing and welfare agencies on the city, county or state level. There is also a move to broaden the powers of the Commission to receive all claims of police misconduct (not only those alleging racial or religious discrimination).

The Michigan Commission most closely resembles the Ombudsman office abroad in that its jurisdiction is statewide and it faces some of the same problems of supervisory relations with municipal officials as do those overseers in Scandinavia. From January, 1964, through March, 1966, for example, the Commission received a total of 174 complaints against law enforcement agencies. Of these 114 were against the Detroit Police Department and 60 others involved departments throughout the state. The

52. Report of the Commission's work by Ernest Mazey, Executive Director of the American Civil Liberties Union of Michigan, July, 1966.

Commission was able to reach a "memorandum of agreement" with Detroit police officials concerning some reforms of police malpractices. The Detroit department made several changes in its procedures designed to meet objections by the Commission, based on Commission investigations, and also somewhat revamped its internal review machinery.

Michigan has a second experiment with the Ombudsman plan underway simultaneously with the Commission structure, but in a wholly separate department and quite apart from police considerations. Michigan Secretary of State James M. Hare in August, 1966 appointed one of his deputies, Gordon B. Alexander, to the post of official Ombudsman of the State Department. This department's primary range of responsibility deals with licensing activities within the state, and Alexander's task has been outlined as the classical one: to conduct an over-all review of staff performance, to receive citizen complaints and investigate them, and to initiate investigations on his own. The Secretary of State retains final authority in all cases.

The Michigan State Department Ombudsman may be the beginning step in an administrative trend which will eventually become widespread, but regardless of its worth in this instance, the Ombudsman still is not being widely used in America in relation to police problems.

This, in turn, raises the question of whether the Ombudsman and the review board are in conflict with each other. On the present available evidence, the answer seems to be NO. The NYCLU's Executive Director, Aryeh Neier, stated at City Council hearings last year that he did not regard civilian review or the Ombudsman plan to be mutually exclusive, but that the review board might be the first part of a larger program. Former U.S. Attorney General Nicholas de B. Katzenbach, recently testifying at a Senate hearing on the urban crisis, said that he had no objection to the review board if it would be "recognized as one step in a much more complicated program."

If an Ombudsman or other review machinery can be coupled to systematic and nation-wide upgrading of the profession and needed legal reforms, it would be perhaps less difficult for the average citizen to believe that the ordinary policeman really wants and intends to live up to his official code, which states, in part:

"... Violations of the law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. IF THE LAW IS TO BE HONORED, IT MUST FIRST BE HONORED BY THOSE WHO ENFORCE IT . . ."

—Fourth Canon of Police Ethics (capitals ours)

*The American Civil Liberties Union
believes in the right of the citizen,
as clearly enunciated in the Constitution
and the Bill of Rights,
to enjoy the full measure of due process
and obtain redress of grievances
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