Civilian Complaints Against the Police In Los Angeles

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ABSTRACT: The call for a police review board in many of the metropolitan centers of the country is a call for a civilian body which would receive and investigate complaints against the police, determine their validity and impose sanctions where such action was warranted. Mr. Naegele's article is an analysis of relevant materials aimed at discerning the optimum means of carrying out these functions. He discusses in considerable detail the present handling of complaints in Los Angeles, the forms of redress of grievances against the police, the potential solution afforded by a review board, and he suggests modifications of board structure which might make the board more meaningful and acceptable to police and community alike. The alternative concept of the ombudsman is also discussed.

Prior to 1958 the idea of a civilian board reviewing complaints against police departments was virtually unheard of. In that year, however, Mayor Richard Dilworth of Philadelphia created such a body, called the "Police Review Board," which was to be the subject of a great deal of controversy for years to come. The Board's purpose was to "receive, hear and determine complaints by any person or organization of alleged misconduct to private citizens by personnel of the Philadelphia Police Department." The "misconduct" with which the Board was concerned included mistreatment, abusive language, false arrest, unreasonable and unwarranted interference with private property or business, unreasonable or unwarranted use of force, unreasonable search and seizure, unreasonable or unwarranted interference with lawful associations and assemblies, and denial of civil rights or discrimination because of race, religion or national origin. In short, the Board replaced the existing police procedure for handing public complaints. The Board had been bitterly opposed by certain sectors of that community and continues to be up to the present day.

The Philadelphia example prompted the adoption of such a plan in

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1Throughout this article, the term "civilian" shall refer to persons disassociated from police interests.

2The term "Police Review Board" refers to an official administrative agency outside the police department which considers claims of abuse of police authority.

Minneapolis, New York City, York, Pennsylvania, and Rochester, New York. Of those cities, the only operative Board exists in Rochester. The Police Review Board "movement," however, seems to have lost little momentum. The concept is being proposed in many cities, among which is Los Angeles, where the "fire" has been rekindled since the Watts riots of August 1965. This city will serve as the focal point of discussion because the response of its leaders to such a proposal is typical of that found in other cities.

This article will not attempt a detailed discussion of the police activities which commonly provoke civilian complaints, nor will it attempt to determine whether "police brutality" really occurs. It suffices to say that the problem exists, be it real or imaginary. The article will not deal to any length with a comparison of the existing police procedures for handling such complaints.

The Review Board controversy has often been so wrought with emotion in the past that objective evaluation of the arguments "pro" and "con" has been impossible. Any order that might be brought to the

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4 The Minneapolis Board was appointed but never functioned, having been advised by counsel that its unofficial status was not sufficient to clothe its members with an absolute privilege in defamation actions. Note, The Administration of Complaints by Civilians against the Police, 77 Harv. L. Rev. 499, 511 (1964). The New York Board was abolished by referendum on November 8, 1966. N.A.A.C.P. Set Up Own Review Unit, New York Times, November 10, 1966, pp. 1, 41. The York Board was appointed in 1960, but was not reappointed by the new mayor when its term expired in 1961. 77 Harv. L. Rev. 499, 511 (1964).

5 A proposal for the creation of such a board was submitted in 1960, but was defeated.

6 The term "police brutality" is commonly used to characterize a broad spectrum of abuses including illegal search and seizure; false arrest; false imprisonment; non-promptness of arraignment; incommunicado detention; violations of right-to-counsel; lack of access or delayed access to medical care; coerced confessions; excessive use of force; violations of free speech, petition, and assembly; entrapment and harassment of homosexuals; harassment of vagrants; abusive language; unlawful confiscation of property; and discrimination because of race, religion, ethnic background, or sexual deviance.

7 The first McCona Commission report stated that "the conduct of law enforcement agencies, most particularly the Los Angeles Police Department, has been subject to severe criticism by many Negroes who have appeared before the Commission as witnesses. The bitter criticism we have heard evidences a deep and long-standing schism between a substantial portion of the Negro community and the Police Department. Police brutality has been the recurring charge. One witness after another has recounted instances in which, in their opinion, the police have used excessive force or have been disrespectful and abusive in their language or manner. Governor's Commission on the Los Angeles Riots, Violence in the City—An End or a Beginning?, 27 (December 2, 1965) [Hereafter referred to as "McCona Commission Report No. 1"].


"mire" would be beneficial. Basically the function of the existing review boards, whether they be intra-departmental or extra-departmental, is "the reception and investigation of complaints, the determination of their validity, and the imposition of sanctions." The purpose of this article is to discern how best these functions may be carried out.

I. The Problem

An examination of seven riots in Northern cities of the United States in 1964 reveals that each one was started over a police incident, just as the Los Angeles riot started with the arrest of [a Negro woman]. In each of the 1964 riots, "police brutality" was an issue, as it was . . . [in Los Angeles], and, indeed, as it has been in riots and insurrections elsewhere in the world. The fact that this charge is repeatedly made must not go unnoticed, for there is a real danger that persistent criticism will reduce and perhaps destroy the effectiveness of law enforcement.

Such was the warning of the McCone Commission after its investigation into the causes of the Watts riots of 1965. The Commission went on to observe that, while our society is founded on respect for the law, there are many who would resort to criminal conduct but for the existence of our law enforcement agencies. It was noted that "while we must examine carefully the claim of police brutality and must see that justice is done to all groups within our society, we must, at the same time, be sure that law enforcement agencies, upon which so much depends, are not rendered impotent."

The police have waged an effective battle against the Review Boards since their inception based on the argument that such Boards would frustrate the police officer's determination to use the authority vested in him and ultimately render law enforcement agencies impotent. "The basic concept . . . [of such disciplinary boards]," said the International Association of Chiefs of Police, "is so violative of sound administrative concepts as to be untenable. . . . Any attempt of private groups to superimpose a police . . . review board . . . lends itself to the impairment of government through vigilantism . . . harassment, weakening and usurpation of the legally constituted . . . law enforcement personnel. . . ." Continual reference is made to the fact that the power and responsibility of disciplining officers is the exclusive prerogative of "management" (that

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12 "If police authority is destroyed, if their effectiveness is impaired, and if their determination to use the authority vested in them to preserve a law abiding community is frustrated, all of society will suffer because groups would feel free to disobey the law. . . ." Id. at 29.
is, the higher echelons of the police departments). A subsidiary contention is that, in addition to the dilution of law enforcement's effectiveness that would result, the Boards represent the transfer to an untrained body of the function of investigating highly complex situations.

Apart from these administrative considerations, the police contend that the Boards would violate the fundamental liberties of the individual officer as a citizen, and that there are other means of redress available to the aggrieved party. They refer to the fact that police officers may be subject to criminal prosecution or held liable in tort for their misconduct, and that the courts have recently formulated rules that curb illegal police practices (for example, the "exclusionary rule").

Finally they contend that the Review Board "movement" is merely one aspect of the larger Civil Rights Movement in the United States and that the creation of such Boards will not solve the problems that are plaguing the minority groups (or more specifically the Negro).

The proponents of the Review Board concept say that "police brutality" is a fact, and that only after such brutality is brought to public attention will the police departments be compelled to act. They contend that civilian redress for alleged police misconduct is ineffective, both within the present departmental review structures and without (that is, through the course). They believe that effective disposition of civilian complaints requires the creation of an independent body capable of impartial investigation, regardless of what groups or interests might be benefited incidentally. The gaps between police practices and their legal duties must be corrected or serious problems in law enforcement will result. They contend that a properly administered complaint review system would serve not only the general interests of the community but the special professional interests of the police as well. Not only would the Board provide satisfaction to those civilians who are adversely affected by police misconduct, and hence restore public confidence which is vitally needed for an effective law enforcement program, but it would also "promote and maintain desired standards of conduct among police officers by punishing—and thereby deterring—aberrant behavior. There is also some suggestion that the present internal handling of complaints might be unconstitutional.

Against this background, the present Police Review Board contro-

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14Outline of Testimony by Thomas Reddin [Deputy Chief of Police, City of Los Angeles] to the McCone Commission Hearings [hereafter referred to as "Reddin Testimony"]. 3 pp. mimeo (1963); Id. at 34.
15Delegates Pass Major Amendments to Policies, Nation's Cities, 20, 24 (September 1965).
16Elam, supra note 9.
17Reddin Testimony, supra note 14.
18The most often cited authority is Justice, Book 5, U. S. Commission on Civil Rights, 26 (1961).
versy is being waged. This article will analyze the various contentions set forth above, and determine whether the Police Review Board is the solution.

II. Discussion

A. General

The argument is constantly made that reception, investigation and final disposition of civilian complaints against the police is the exclusive prerogative of police department management and that when this power is shared by someone with no responsibility for the performance of the officer, control over him is lost. It is further argued that the Review Board concept violates sound administrative principles and that it represents a usurpation of the powers of legally constituted law enforcement agencies.

The "management" argument seems to stem from a feeling on the part of the police that the Review Board would represent a superficial attempt at dealing with a highly complex problem. Placing the disciplinary function in public hands, it is argued, is no solution since the responsibility and authority for the basic functions of police administration (for example, recruitment, selection, training, direction and incentive) remain in the hands of law enforcement officials. Instead of correcting mistakes, the Board would merely add to them. Authority and responsibility will then be divided between two separate entities, neither of which is capable of remedying the deficiencies of the entire system. The foregoing is based however, on the assumption that the power to discipline will be removed from those responsible for the officer's conduct and vested in a group of civilians. This is not the case, however, in either the Philadelphia or Rochester Boards, the proposed boards (for example, Los Angeles), or the recent New York Board. The power to discipline would remain in the hands of the authority responsible. The Board's function would merely be to recommend discipline to the authority who in turn could act or not as he saw fit. Thus the power would remain in one entity and the "division of authority" argument would seem to fall. A different situation would be present, however, if the Board were given direct power to discipline. Here, in the absence of close cooperation between the Board and the police department (and the establishment of definite criteria to govern this rela-

20Reddin Testimony, supra note 14.

21"During the news conference [which announced appointments to the New York Civilian Review Board], all the participants—Mayor Lindsay, Mr. Black [chairman of the new board] and Mr. Leary [Police Commissioner of New York]—took pains to emphasize that the civilian review board served only in an advisory capacity to the Police Commissioner. If the Police Commissioner does go along with the board's recommendations, a departmental trial against the policeman in question would follow, with the trial prosecuted by policemen and judged by other policemen." New Police Board Has Two Negroses and Puerto Rican, New York Times, July 12, 1966, pp. 1, 32.
tionship), the officer may be subject to harassment and the police department prevented from achieving an over-all remedy to the deficiency. This would serve neither the interests of the public nor the police in achieving effective law enforcement.

Yet, the Los Angeles Police Department has indicated that it would be opposed to the Board as a "sharing of the responsibility of disciplining officers, and as an intrusion into the policy realm of the police department," even if the Board's power were limited to that of making recommendations22 (for example, to either the Chief of Police or Mayor).23 Such limitation on the Board's powers would appear to answer the police objections that control over the officers was being divested from the "management" since the ultimate control over discipline would be vested in the "management." The position of the police therefore appears to be untenable.

Any argument that the police department is immune from public control, or that indirect controls (such as those over elected officials) must be resorted to where there is abuse, is sheer folly in the minds of law enforcement officers. The evolution of law enforcement agencies in this country and abroad clearly indicates that the public has always retained ultimate control. "The misapprehension prevails in this country that the citizen need play no part in police services [and] that that task belongs exclusively to the publicly employed police officers. . . . This is the basic American fallacy, the current myth, which must be exposed if progress is to be made."24 As late as 1829 there were no full-time policemen in all of England. There was no need, for it is said that "every able-bodied freeman was a policeman."25 It was not until 1829 that Sir Robert Peel finally persuaded Parliament to enact his bill for the London Metropolitan Police—the first such body in the English speaking world.26 New York City followed Peel's lead in 1844, but it was not until the 1870's that the essential features of such a police force were fully accepted in the United States.27 It has been pointed out that "it was not until 1827 that the rule differentiating the legal powers of lay persons from that of peace officers

22Letter from O.C. Woods [Captain, Los Angeles Police Department; then Commander, Public Information Division] to the author, November 1, 1965.
23Article XIX, Section 202 of the Charter of the City of Los Angeles presently provides that the Chief of Police has sole authority to discipline officers. In Philadelphia such power is vested in the Mayor, which could be the case in Los Angeles pursuant to a change in the City Charter.
24Hall, Police and Law in a Democratic Society, 28 Ind. L. J. 135, 135 (1952).
25It is true that there were constables but the job was unpaid and was filled by rotation among the parishioners. Ibid.
26It is noted that "merchants and shopkeepers, as well as political leaders, had long opposed the creation of a force which in unscrupulous hands might become an instrument of tyranny." Id. at 134.
27Id. at 135-36.
was established. . . 28 This enlargement of the officer's powers, however was not accompanied by any lessening of those of laymen. That, together with the recency of any difference at all, underlies the historic participation of the general populace in police service." 29 Thus in answer to the argument of police that the Review Board has no right to pass on their conduct, it must be remembered that the police are required to answer to the public for their misconduct, whether indirectly through pressure from publicly elected officials or directly through the use of civilian Review Boards. The public may intervene in any form necessary to insure that effective law enforcement is achieved. 30

The strongest argument against the absolute vesting of powers over the reception and investigation of civilian complaints and the imposition of sanctions may well rest in the fact that "the present . . . violation of the rules by the police, [when] condoned by their superior officers [through either leniency or lack of discipline entirely], encourages undisciplined behavior and nullification of democratic laws." 31 If the necessary steps are not taken by the "management" it may be necessary for the public to intervene. 32

Aside from the arguments usually given by law enforcement authorities as to why such Boards should not be adopted, perhaps the real rationale which underlies this opposition is best expressed by the following statement:

Outside review boards represent a direct reflection upon inadequate police leadership, since they can exist only where the police leaders fail, for whatever reason, to adequately discharge their responsibility to impartially investigate and deal with complaints by citizens against department personnel. 33

If this is true, police leadership is not likely to accept such a "solution" regardless of how compelling its merits may be. However, such may not be the case. The Boards may instead represent a realization that no matter how capable our law enforcement officials may be, they are still human beings, and that their willingness to shelter one of their "own kind" may at times take precedence over what objective and impartial law enforcement requires. The public may have confidence in the police but may lack

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28 Hall notes that "after that a constable could arrest when he had reasonable ground to suspect that a felony had been committed, although none had, in fact, been committed." Id. at 137.
29 Id. at 135-37.
30 This is not meant, however, to suggest that the public should interfere indiscriminately.
31 Hall, supra note 24, at 159.
32 The actual presence of deficiencies must be distinguished from the appearance or suspicion of such on the part of the general public which will be discussed later. If the former is present and the law enforcement agency will not take the necessary steps to correct them, then the public must intervene either directly or indirectly.
33 Police Review Boards, supra note 13, at 34. It may also be suggested that the police view the Boards as a potential threat to their "power."
confidence in the existing review structure, feeling that it offers many temptations and is open to abuse by the most honest officials. Seen in this light the establishment of a Review Board may not present a threat to police leadership, but instead may remove one of the obstacles to obtaining a healthy community-police relationship.

The police contend that if the officer "knows his actions will be second-guessed by someone not acquainted with the problems that attend police work, and . . . that his job may depend on this outside judgment . . . he will no longer take aggressive action." They refer to a statement issued by the F.B.I. after the riots of summer 1964 in Rochester and Philadelphia, which stated that "where there . . . [was] an outside civilian review board the restraint of the police was so great that effective action against the rioters appeared to be impossible." It appears that this contention may have merit. Certainly if one were to posit a review board composed completely of civilians whose backgrounds were not even remotely related to the field of law enforcement, and vest such a board with the power to discipline (as distinguished from the power to recommend discipline), then the officer might well be hesitant to take aggressive action. However as one moves away from this extreme example to more realistic proposals, there is reason to question whether such a board would inhibit the officer's conduct. For example, in proposing a Police Review Board for New York City, it was said that such a board should be composed of attorneys, law professors, retired jurists, human relations and intergroup relations experts, social science professionals such as a criminologist, a sociologist, or a psychologist, or a behavioral scientist, and distinguished community leaders dedicated to professional law enforcement and improved police-community relations. The members should be appointed by the Mayor after lists of candidates have been presented by universities, law schools, the Bar, the judiciary, the American Civil Liberties Union and human rights organizations. Certainly a board with a

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84Friedan, supra note 9, at 49.
85Murdy, Is There a Board in Your Future?, The Police Chief, 10 (June 1965). This statement is often quoted by law enforcement agencies to show that the Philadelphia and Rochester Boards have not only failed to bring about improved conditions in those cities, but have had a damaging effect on the officers' morale. The statement is, however, unsupported by other evidence. City officials [are said to have] promptly denied that the police had not acted efficiently. Mr. [J. Edgar] Hoover was challenged to substantiate his assertions and failed to do so. Coxe, The Philadelphia Police Advisory Board [6 pp. mimeo published by Greater Philadelphia Branch, American Civil Liberties Union] (May 10, 1965).
87Ibid. The board ultimately adopted in New York City was comprised of four civilians and three police members. The civilian contingent included a religious leader, who also served on the Boards of the N.A.A.C.P. and the A.C.L.U.; a professor of education; the director of New York City's Puerto Rican Community Development Project; and an attorney. The police members all held law degrees. The civilian members were appointed by the Mayor after recommendations were submitted by an eleven-member panel headed by former U. S. Attorney General Herbert Brownell, Jr. New Police Board, supra note 21, at 32, 33.
similar composition could not be said to be wholly unacquainted with the problems that attend police work.\textsuperscript{38}

Thus, the establishment of a civilian Review Board cannot be said to constitute a divesting of "management's" power to discipline if the Board is restricted to making recommendations. At the same time the public has a right (and in some sense a duty) to correct deficiencies in the civilian complaint review structure if the law enforcement agency involved fails to do so. Moreover, the establishment of a Review Board (or the correction of deficiencies by other means), instead of reflecting on police leadership, may represent a realization by the public that the existing review structure is inherently defective. As to the possibility that the officer's determination to use the authority vested in him would be frustrated if his actions were passed on by "civilians," one can only say that with the proper Board composition, and cooperation between the police and Board, these problems may be minimized.\textsuperscript{39}

\section*{B. Present Handling of Complaints}

In Los Angeles,\textsuperscript{40} prior to the first McCone Commission report, civilian complaints against the police were handled as follows:

1. Complaints were received by the Police Department or the Los Angeles Board of Police Commissioners.\textsuperscript{41}

2. All investigations of complaints, wherever received, were conducted under the over-all supervision of the Internal Affairs Division of the Police Department which was directly responsible to the Chief.\textsuperscript{42}

   a. In most cases, the Internal Affairs Division had broad discretion in deciding whether to conduct its own investigation. While it generally referred around 80 per cent of the complaints received to the division commander of the individual officer involved for investigation, it would investigate any case meeting the criteria of complexity, seriousness or need for secrecy.\textsuperscript{43}

\textsuperscript{38}It would, however, seem to be essential to have representatives of the police department either serving on the Board or acting as official advisors to the Board.

\textsuperscript{39}Certainly any amount of restriction on his conduct, be it justified or unjustified, will frustrate him to a certain extent. It is only the unjustified restriction which must be prevented (\textit{i.e.}, where there has been no abuse of authority).

\textsuperscript{40}Los Angeles will be the only city to which reference will be made in discussing the existing complaint review structures not only because it serves as the focal point of this article, but also because of the great divergence in internal review structures. See Note, 77 Harv. L. Rev. 499 (1964).

\textsuperscript{41}The Board of Police Commissioners is "a civilian Board appointed by the Mayor and confirmed by the City Council, to be the head of the Police Department, charged with the responsibility of establishing policies, supervising and managing the Department, and seeing to it that its policies are followed." Governor's Commission on the Los Angeles Riots, \textit{Staff Report of Actions Taken to Implement the Recommendations in the Commission's Report}, 18 (August 17, 1966) [hereafter referred to as "McCone Commission Report No. 2"].

\textsuperscript{42}McCone Commission Report No. 1, \textit{ibid} note 7, at 31.

\textsuperscript{43}Note, 77 Harv. L. Rev. 499, 504 (1964).
b. The Division was required to investigate any complaint against an officer with the rank of Lieutenant or higher.\footnote{Ibid.}

c. When the complaint was referred to the division commander and his investigation was completed, he would recommend punishment and forward the record of the investigation to the Internal Affairs Division. If it were not satisfied with the report, it would send the case back to the division commander for further investigation or order a new investigation by its own personnel if necessary.\footnote{Ibid.}

3. Upon completion of the investigation by the Internal Affairs Division, a summary of findings was sent to the division commander of the individual officer involved who reviewed the case and recommended the appropriate penalty, if any.\footnote{\textit{Interpretations and Functions of the Internal Affairs Division} [5 pp. mimeo issued by the Los Angeles Police Department] (1965).}

4. The recommendation was then reviewed by the Commander of the Bureau of Administration\footnote{This official was ultimately responsible for the conduct of the Internal Affairs Division. Ibid.} and/or by the Chief of Police who increased or lessened the recommended penalty, or concurred with the division commander’s recommendation.\footnote{Ibid.}

5. If the ultimate decision was that the officer be suspended or removed from his position, the Chief of Police was required, within one year of the act (or omission) complained of, to file a complaint with the Board of Police Commissioners and request a hearing before the Board of Rights.\footnote{Such a request is not necessary if the accused has requested a hearing. Article XIX, Section 202 of the Charter of the City of Los Angeles.}

6. If, however, the complaint had been originally filed with the Board of Police Commissioners, that body determined whether the complaint should be sustained after investigation by the Internal Affairs Division.\footnote{McCoine Commission Report No. 1, \textit{op. cit. supra} note 7, at 31.}

7. If the complaint was sustained by either party, the Board of Rights (which was composed of three officers of the rank of Captain or higher) heard the evidence on both sides and rendered its decision. If its decision was “guilty,” the Board prescribed its penalty which was thereafter executed by the Chief.\footnote{Article XIX, Section 202 of the Charter of the City of Los Angeles.}
elicit ing and evaluating of testimony. . . .")52 while safeguards against its drawbacks were incorporated. Complaints were supervised by the Internal Affairs Division and might be independently investigated by it if necessary. This was said to guard "against dishonest local unit investigation and . . . [provide] an apparatus for large-scale internal investigations beyond the competence of any single unit."53 The Los Angeles Police Department felt that the joint investigative arrangement was adequate, and that by preserving it, and at the same time "running a clean, effective, and professional organization, by maintaining high standards in the selection and training of officers, and by maintaining internal discipline through careful scrutiny of complaints against its officers . . . ," the police department was discharging its duty to the public.54 Review of complaints by civilians, it was argued, would not materially increase the impartiality with which they were reviewed nor would it restore public confidence, if such was in fact lacking. The McCone Commission, in its first report, however, stated that despite the efforts of the police department, "police brutality" was the recurring charge after the Watts riots of 1965.55 The Commission went on to state that:

A strained relationship such as . . . [exists] between the police and the Negro Community can be relieved only if the citizen knows that he will be fairly and properly treated, that his complaints of police misconduct will be heard and investigated, and that, if justified, disciplinary action will be taken against the offending officer. . . . Under the existing procedure, [however,] the impression is widespread that complaints by civilians go unnoticed, that police officers are free to conduct themselves as they will, and that the manner in which they handle the public is of little concern to the higher authorities.56

53Id. at 504.
54Woods, supra note 22. The late Chief William H. Parker of Los Angeles stated that two of the factors which militate against public understanding of police service are "the criticism of the police by certain minority groups in order to distract attention from the high incidence of criminal activity within those groups, and the practice of the press in magnifying police failures and in minimizing their successes or accomplishments." Parker, The Police, 13 (a pamphlet published by the Center for the Study of Democratic Institutions) (April 1962). He believed that a proper understanding was to be reached through community education and cooperation between the various groups involved; however, he pointed out that education and constant supervision of the officers was also a necessity. They are taught that they "must be impartial in dealing with all people regardless of what . . . [the officer's] personal ingrained or acquired attitudes might have been in the past. . . . We watch the behavior of our men in this area of human relations. If they discriminate in their handling of individuals because of race or color, we take prompt action." Parker, supra at 16. Certainly the police department is to be commended for its continued efforts to improve law enforcement. However, as earlier suggested, the solution may lie beyond the power of the police department.
55"One witness after another . . . recounted instances in which, in their opinion, the police . . . used excessive force or . . . [were] disrespectful and abusive in their language or manner." McCone Commission Report No. 1, supra note 7. This is extremely significant in light of the fact that the fundamental cause of the 1964 riots in the East, aside from the lack of jobs and adequate schooling, was said to be the "resentment, even hatred, of the police as the symbol of authority." McCone Commission Report No. 1, supra at 2.
56Id. at 31-32.
The Commission concluded that "division commanders and those in the command structure should not conduct investigations of complaints with respect to their own subordinate officers." The existing complaint review procedure had, in essence, created the impression that upon submission of the complaint, the result was already skewed against the complainant.

The Mc Cone Commission therefore recommended that:

[A]n "Inspector General" . . . be established in the Police Department, under the authority of the Chief of Police but outside the chain of command. Properly staffed with sworn officers and civilian personnel, the Inspector General would perform the functions of the present Internal Affairs Division and would be responsible for making investigations and recommendations on all citizen complaints, whether filed with the Board [of Police Commissioners] or the Department. An adequate hearing process for the complainant should be made available at some point in the procedure, and he should be informed of the action taken on his complaint. . . . [The Inspector General] would report to the Chief of Police, and his findings and recommendations on all complaints would be the basis for the Chief’s report to the Board on all such complaints. The Board would act on all complaints as it now acts on some complaints initially presented to it; that is, it would pass on whether the complaint is or is not sustained. Under the procedure suggested here, responsibility for discipline would remain with the Chief of Police and the Board of Rights as provided by the City Charter.

Analyzing the Commission’s proposal in terms of the three functions of complaint review (i.e., reception, investigation and hearing), it must be noted that complaints would continue to be received by the Board of Police Commissioners or by the police department. With reference to reception by the latter, criticism has been directed at the fact that complainants are often intimidated by the atmosphere at police headquarters and therefore reluctant to lodge their complaints. An interim departmental solution in New York City provided for the establishment of offices outside the police department premises which would handle the reception and hearing of complaints. If such a feature were incorporated in the Inspector General proposal, much of the criticism levelled at the reception of complaints would be removed. With respect to the investigation of complaints, while it is true that by preventing those in the command structure from investigating complaints against their subordinates, much of the motivation for shielding the wrongdoer is removed, nevertheless the public may still feel that paternalism enters into a staff agency’s determinations. The only way to alleviate this impression would be

57Id. at 32.
58Mc Cone Commission Report No. 1, supra at 33-34 (emphasis added).
through the use of civilian investigations. If such are not feasible under the circumstances, however, certainly staff investigations would represent an improvement over the existing procedure. With respect to the hearing process, the Commission points out that "the Los Angeles City Charter is unique in that it provides for a civilian Board appointed by the Mayor and confirmed by the City Council, to be the head of the Police Department. . . ." Implicit in the Commission's recommendations is the idea that this board (which under the Inspector General concept would be acting on all complaints), when properly strengthened, should logically serve as the means by which civilian participation is injected into departmental complaint review structures. If the board were to conduct hearings on complaints, a significant step would have been taken in the improvement of existing procedures. However, aside from the fact that the board receives only part of the complaints and investigates none of them, the hearing process was evidently not intended to be conducted by the board. The recommendations indicate that the board was merely to "pass on whether the complaint is or is not sustained." Under such an arrangement, it is doubtful whether a significant degree of civilian participation is really achieved, and hence whether the presence of a civilian Board of Police Commissioners serves to allay public suspicions. The Commission's recommendations imply that the hearing requirement would be satisfied by the disciplinary hearing before the Board of Rights which would be held only if the Board of Police Commissioners sustained the complaint. If this is true, the complainant would be denied a hearing prior to the determination of the validity of his complaint, which would nullify any benefits gained from the "impartial" investigation of the complaint by the Inspector General. If such is not true and, in fact, a hearing is required before the Board of Police Commissioners passes on the complaint, then the Commission's recommendations represent the most effective departmental solution available. It must be noted, however, that under the proposal the three functions of complaint review would be performed in part,

62 "At a time when there is much divisive controversy over civilian review boards for law enforcement agencies, Los Angeles has the advantage that civilian control of the police department was long ago established by our City Charter. We believe that the civilian Board of Police Commissioners can play a vital and constructive role in police-community relations if it will fully exercise its authority under the Charter." Id. at 4.
64 Ibid.
65 The Commission's report states that "an adequate hearing process for the complaint should be made available at some point in the procedure. . . ." Ibid.

The report goes on to state that the Board of Police Commissioners "would pass on whether the complaint is or is not sustained . . .", but "responsibility for discipline would remain with the Chief of Police and the Board of Rights as provided by the City Charter." Id. at 33-34. The procedure presently in effect under the City Charter specifies that if the decision is that the officer be suspended or removed from his position, then the Chief of Police must file a complaint with the Board of Rights and the board shall hear the evidence on both sides and thereafter render its decision.
if not entirely, by departmental personnel and hence the prospects for the
restoration of public confidence would be reduced.

The complaint review structure which presently exists in Los Angeles
is, however, essentially the same as that which existed prior to the first
McCone Commission report. The only exception is that the office of
"Inspector—Administration of Discipline" has been created. This position
represents a partial implementation of the McCone Commission's recom-
mendation for the establishment of an "Inspector General"-type post. The
second McCone Commission report states that the Inspector—Administra-
tion of Discipline

receives a copy of every citizen complaint . . . [and] has the authority
to require full investigation of any complaint, although he has no staff.
Actual investigation of complaints against police personnel . . . [con-
tinues to be] conducted and reported by the staff of the Internal Affairs
Division . . . and . . . by . . . the commanding officer of the ac-
cused employee. . . . If the failure to provide the Inspector . . .
with the recommended staff assistance is an economy move, . . . we
think it is a false economy. Following these steps the Inspector—
Administration of Discipline reviews the reports and may order addi-
tional investigation before he forwards the results to the Chief of Police.
. . . The Inspector—Administration of Discipline is supervisory and
has . . . been assigned a portion of the supervisory duties formerly
assigned to . . . [the Commander of the Bureau of Administration].

Since the Inspector—Administration of Discipline has no staff through
which to make his own investigations of complaints, he is relegated to
merely supervisory functions and as such, the new position in no way
removes the features against which poignant criticism had been levied
(for example, investigation of complaints by the accused officer's imme-
diate superiors). The McCone Commission, in its second report, was there-
fore forced to conclude that "the concept of 'Inspector General' recom-
mended by this Commission to the Los Angeles Authorities is not in
operation."84

If provisions are made for the Inspector's staff and he thereafter dis-
charges his duty of "making investigations and recommendations on all
citizen complaints . . . ;"69 and the Board of Police Commissioners begins
to function in a manner similar to that envisaged by the Commission, then
Los Angeles will have made a marked stride toward eradicating those
deficiencies which, the Commission concluded, create "the impression that
citizen complaints are ignored. . . ."71 The question remains, however,
whether a Police Review Board might not be a more effective solution?

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67Id. at 5.
68Id. at 22.
69bid.
70McCone Commission Report No. 1, supra at 33 (emphasis added).
71Id. at 32.
C. Other Forms of Redress

An aggrieved citizen . . . believing his rights and liberties under the Constitution and Laws of the land have been violated or abused by law enforcement personnel has recourse to the established and tested civil and criminal processes of justice, through prosecuting officials, grand juries, . . . and the powerful and diligent news media always alert for such misconduct.72

Regardless of whether deficiencies exist in the present complaint review structures, it is argued, redress may be had through the criminal and civil processes. While this may be true in theory, actual practice may show otherwise. Redress through the criminal processes may be difficult to obtain. "A criminal charge against a policeman cannot be brought to trial unless the district attorney is convinced that prosecution is feasible, and prosecutors may well be reluctant to jeopardize their relations with the police, on whose cooperation they often rely. Even when a criminal action is brought, it may be difficult to get a conviction. The complainant and the accused may be the only witnesses to the alleged misconduct, and it may be difficult to establish the officer's guilt beyond a reasonable doubt—especially if the complainant has a criminal record which may reflect upon his credibility. Furthermore, there are many kinds of police misconduct, such as discourtesy, which are not criminal offenses."78

In discussing the officer's or city's liability in tort as an effective means of curbing abuse, the rule of governmental immunity which has constituted a bar to recovery in the past must serve as a starting point. In 1961, California74 discarded the doctrine as "mistaken, . . . unjust . . .; and an

Section 242 of the United States Code [and its companion conspiracy statute § 241] provides federal criminal penalties for anyone who "under the color of any law, [or] statute . . . wilfully subjects any inhabitant . . . of any state to the deprivation of any rights or privileges or immunities secured or protected by the Constitution and law of the United States . . . " 18 U.S.C. § 242 (1952). While redress may be had for deprivation of constitutionally protected rights, there would be no redress for minor infractions.
Similarly, a civil remedy for the deprivation of constitutional rights is afforded under § 1983 of the federal Civil Rights Act:
"Every person, who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution, and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983 (1958); Monroe v. Pape, 365 U.S. 167 (1961).
Many police abuses are not serious enough, however, to constitute a deprivation of a constitutionally protected right.
74 For the sake of brevity the discussion of Sovereign Immunity will be confined to California.
anachronism, without rational basis" in Muskopf v. Corning Hospital District. While not equating the liability of the governmental entities with that of private parties, the court did destroy the distinction between "governmental" and "proprietary" functions as the basis for immunity, and held the entity liable when its employee was liable. The employee was said to be liable for the negligent performance of his ministerial duties, but was not to be liable for discretionary acts within the scope of his authority, even if done maliciously. In Lipman v. Brisbane Elementary School District there was also dictum to the effect that a governmental entity might be held liable in tort for its employee's discretionary acts (within the scope of his authority) even though the employee could not be held. This was changed, however, in 1963 with the enactment of the California Tort Claims Act.

The Tort Claims Act imposes vicarious liability upon public entities for the tortious acts and omissions of their employees, while at the same time making clear that a public entity could not be liable for an employee's act or omission where the employee himself would be immune. The act preserved the distinction between "discretionary" and "ministerial" functions as the basis for liability; however, it amplified on this general grant of immunity (and to some extent detracted from it.) Applying the act to the various types of complaints that might be lodged before a civilian Review Board, one may conclude the following: illegal search and seizure would be actionable; false arrest and false imprisonment would be actionable; non-promptness of arraignment and incommunicado detention would not be actionable unless the confinement was shown to be illegal and "injury" occurred; lack of access or delayed access to medical care would not be actionable unless it could be shown that the officer knew or had reason to know that the complainant was in need of immediate medical care and failed to take reasonable action to summon such medical

7The court cited Justice Jackson as stating that it "is not a tort for the Government to govern (Dalebile v. United States, 346 U.S. 15, 57," and laid down the rule that "basic policy decisions of government within constitutional limitations are . . . non-tortious." ibid.
73Muskopf, supra note 75, at 220.
70Calif. Gov't. Code §§ 810-895.8. The 1963 legislation was not given a "short title" by the legislature. Professor Van Alstyne has referred to it as the California Tort Claims Act of 1963 and this author will follow suit. Van Alstyne, California Governmental Tort Liability, 120 (1964).
81Section 815.2(b) thus put to rest any suggestion to the contrary made in Lipman. Ne Casek v. City of Los Angeles, 233 Cal. App. 2d 131, 141; 43 Cal. Rptr. 294 (1965).
82Calif. Gov't. Code § 820.2; id. at 138.
83Ne Casek v. City of Los Angeles, supra note 81, at 139.
care, use of excessive force would be actionable, however, coerced confessions would not; failure to enforce the law would not be actionable; and wrongful suspension or revocation of a license would not be actionable. Liability for entrapment and harassment of homosexuals, harassment of vagrants, unlawful confiscation of property, and abusive language would depend on whether the officer's actions were considered "discretionary." If these acts were deemed "discretionary," no liability would follow.

The only decision which has passed on what constitutes a "discretionary" act, since the statutory scheme was enacted, and which is relevant to police activities is Ne Casek v. City of Los Angeles. In this case an action was brought against two police officers and their employer city for having carelessly, recklessly, negligently, and unlawfully allowed two suspects, handcuffed together, to escape and in doing so, collide with the complainant who was thrown to the sidewalk and injured. Whether an act is to be deemed "discretionary" or "ministerial," the court said, must be determined with reference to the purpose of the discretionary immunity doctrine—namely, the ardor and zeal with which the official performs his discretionary acts has been deemed to be of such importance that it is better to leave the injury unredressed (and hence permit the guilty to escape liability), than to impair the zeal of the honest officials by subjecting them to the constant dread of retaliation. Applying this general purpose to the facts at hand, and recognizing that the public has a vital interest in seeing that suspected violators are arrested and brought to trial, the court reasoned that "any rule which would restrict a police officer's zeal in . . . [accomplishing the latter] is undesirable. . . ." Hence the officer's actions were held to be immune from liability. This argument can be applied with equal force to justify the granting of immunity in suits based on entrapment and harassment of homosexuals, harassment of vagrants, unlawful confiscation of property, and abusive language. If the court's reasoning in Ne Casek is followed, tort recovery may be denied against a police officer in California, in precisely those cases in which "other forms of redress" are said to be available.

Even though civil recovery is provided for, many aggrieved persons

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88Calif. Gov't Code § 844.6(d).
90Calif. Gov't Code §§ 818.4, 821.2.
91Section 820(a) states that "a public employee is liable for injury caused by his act or omission to the same extent as a private person." While this might allow tort recovery for intentional infliction of mental distress (in the case of entrapment and harassment of homosexuals, harassment of vagrants and abusive language) and conversion (in the case of confiscation of property), the former would be difficult to make out, Prosser, Torts § 11 (3d ed. 1964), and both might be precluded altogether if the officer's actions were considered "discretionary" under § 820.2.
92Ne Casek v. City of Los Angeles, supra note 81.
93Id. at 135.
94Id. at 136.
will not take advantage of it because of practical reasons. They may be unable to bear the expense of litigation, and unless some physical disability or property loss can be shown, it will be difficult to establish actual damages. Professor Jerome Hall notes that "there are several million illegal arrests and imprisonments in the United States each year, and . . . [yet] only a handful of damage suits are filed against policemen. . . . Most victims of illegal arrest and imprisonment are vagrants, drunkards, and other maladjusted or economically underprivileged persons. The vast majority of these victims of illegal police practices consult no lawyers or organizations with a view of redressing the legal wrongs done them. They seem to accept the treatment as normal procedure." Moreover, where the only redress sought is an apology or assurance that a particular infraction will not recur, judicial recourse seems inappropriate. Even if recovery is obtained, its effectiveness in curbing abusive conduct on the part of police officers is doubtful since the judgment will ultimately be paid by the governmental entity, thus taking the "sting" out of any liability imposed.

It is also significant to note that the exclusionary rule, pertaining to inadmissibility of illegally seized evidence, does not provide relief for such allegations as false arrest or illegal detention unless the arrestee stands trial.

Hence it is doubtful whether civilian redress outside of the present review structure offers an adequate substitute for effective review, either as a means of curbing abuse or of satisfying aggrieved citizens.

D. Will a Police Review Board Provide the Answers?

Out of the seven Eastern cities which were stricken by riots in 1964, the two which had the greatest number of arrests and injuries were Philadelphia and Rochester—the only two communities which had Police Review Boards. Further reference is made to the F.B.I. report issued after those riots which stated that "where there . . . [was] an outside civilian review board the restraint of the police was so great that effective action against the rioters appeared to be impossible." No unfavorable conclusions may be drawn from either statement on the value of the

86Hall, Police and Law in a Democratic Society, 28 Ind. L.J. 133, 152-53 (1952).
877 Harv. L. Rev. 499, 500 (1964). Note that if a criminal or civil action is brought against the accused officer and finally concluded, thereafter the complainant may bring an action through a departmental review board. All employees may be subjected to discipline by their employer regardless of whether their conduct creates criminal or civil liability. Miller v. Hennepin County Medical Society, 124 Minn. 314, 144 N.W. 1091 (1914). This may not, however, offer a complainant much avail in a jurisdiction in which the review board is ineffective.
89McCone Commission Report No. 1, supra note 58, at 2.
90Murdy, Is There a Board in Your Future?, The Police Chief, 10 (June 1965).
Boards to those cities\textsuperscript{101} (however some have chosen to do so).\textsuperscript{102} On the contrary, the weight of authority would seem to lead to an opposite conclusion.\textsuperscript{103}

Prior mention has been made to the argument that the officer's determination to use the authority vested in him might be frustrated if his actions were to be passed on by someone not acquainted with the problems that attend police work.\textsuperscript{104} This problem may be alleviated with the proper Board composition, and cooperation between the police and the Board. It should be noted, however, that there is doubt on the desirability of requiring every member, or even a majority of members, to be experts on police operations. A certain amount of "detachment" is necessary to view the police procedures objectively.\textsuperscript{105}

It is important to observe that in many cities, departmental disciplinary systems contain a number of procedural defects and yet enjoy the utmost confidence of their communities and have good reputations for fairness and honesty.\textsuperscript{106} In such cities the equilibrium need not be disturbed. It is only in those cities whose police complaint system is widely distrusted that institutional reforms are urgently needed.\textsuperscript{107} Furthermore, in answer to the argument that the underlying causes of events coming to the attention of such a board\textsuperscript{108} would go unresolved,\textsuperscript{109} it must be noted

\textsuperscript{101}The statistics referred to by the McConie Commission [see note 99 supra] are unsupported by any evidence to show that the Boards have had a damaging effect. Hence one may draw the conclusion that the Boards have been relatively ineffective in solving the problem; or, with equal justification, that the riots evidenced the seriousness of the problem in those cities and that the Boards not been in operation the extent of the disaster would have been compounded. The F.B.I. statement is also unsupported. See note 35 supra.

\textsuperscript{102}The McConie Commission report, in rejecting the idea of a Police Review Board for Los Angeles, stated that "experience in two cities which have such boards . . . has not demonstrated the advantages of such a review board. From our observations and from testimony of knowledgeable law enforcement administrators [see, e.g., Reddin Testimony, note 14, supra], we are persuaded that the value of an independent board would not outweigh the likely deleterious effects on law enforcement. We, therefore, propose improvements in existing procedure . . . which will not destroy the authority vested . . . in the Board of Police Commissioners and the Chief of Police." McConie Commission Report No. 1, supra note 58, at 32-33.

\textsuperscript{103}Mr. Howard R. Leafy, who was Police Commissioner in Philadelphia before assuming a similar post in New York City, stated that "the [Philadelphia Police] department functioned in a superlative manner" with a Police Review Board. "The review board itself in no way impaired its efficiency." New Police Board Has Two Negroes and Puerto Rican, New York Times, July 12, 1966, pp. 1, 32.

\textsuperscript{104}Murdy, supra note 100, at 12.


\textsuperscript{106}Harv. L. Rev. 499, 500 (1964).

\textsuperscript{107}Ibid.

\textsuperscript{108}For example, inadequate preparation of the officers for the task at hand, incompetence, unrealistic or improper attitudes or inept leadership.

that the Review Board cannot be expected to solve all the ills of the police. It can only point up the deficiencies that are most visible to the public and hope the police (or the authority ultimately responsible) will correct them. The advocate of the Review Board concept who are realistic about the possible benefits to be derived from such a board, hope at most for an easing of tension between the police and minority groups. They do not look for a cessation of hatred for the police which exists in certain sectors, but rather see a gradual restoration of confidence as the public is convinced that the wrongs of the police will not go unredressed.

The decision as to how the Board is structured will determine to a large extent how successful it will be in removing suspicion and restoring confidence. Some of the features that might be incorporated into such a board are as follows:

1. **Maximum Scope of Review**—The Board should be empowered to receive, investigate, hear and make recommendations concerning all civilian complaints of abuse of authority by police officers. The Board’s purview should include, but not be limited to, the review of complaints alleging illegal search and seizure; false arrest; false imprisonment; non-promptness of arraignment; incommunicado detention; violations of right-to-counsel; lack of access or delayed access to medical care; coerced confessions; excessive use of force; violations of free speech, petition and assembly; entrapment and harassment of homosexuals; harassment of vagrants; abusive language; unlawful confiscation of property; and discrimination because of race, religion, ethnic background or sexual deviance.

10Algeron D. Black, Chairman of New York City’s now-defunct Civilian Review Board, has stated that “this board has one purpose and one purpose only, and that is the welfare of this city, the relief of tension and distrust. . . .” *New Police Board, supra* note 103.

11It is also relevant to consider on what governmental level (i.e., federal, state or local) the Boards should be instituted. While a proposal was introduced in the California Legislature in 1963 which called for the establishment of the Boards in all cities of 50,000 or more population [Cal. Assembly Bill No. 1826, regular session (1963)], most plans involve isolated instances on the local level.

12Because of the wide divergence in Review Board proposals, it is impossible to cover all in this short article. A discussion of some of their more important features is, however, included. This is not meant to suggest that the Review Board is necessarily the answer.

13The power to receive all civilian complaints would entail the power to receive them from whatever source submitted (e.g., private individuals or civil liberties organizations who would be filing them on the individual’s behalf). This practice has been opposed for the reason that it would tend to “make the police subservient to certain special interest groups.” Letter from O. C. Woods [Captain, Los Angeles Police Department; Commander, Public Information Division] to the author, November 1, 1965; Address by Edward M. Davis [Los Angeles Police Inspector] to the Police Chiefs Section, California League of Cities, *Move Over, Chief*, October 23, 1962. Such opposition appears to be unfounded. The practice of allowing “anyone with a legitimate interest, including civil liberties organizations, to file complaints . . .” has been established in Philadelphia and has met with success. Coxe, *Police Advisory Board: The Philadelphia Story*, 35 Conn. B.J., 138, 146 (1961). Not only will individuals who might otherwise be reluctant to present their complaints, do so through such groups, but the groups might perform a beneficial service in weeding out unfounded claims and only submitting those which have merit.
2. **Maximum Scope of Advisory Functions**—The Board should be empowered to recommend revisions in police department policy and procedures if necessary.

3. **Adequate Budget**—Without sufficient funds the Board's effectiveness may be diminished considerably (for example, its ability to conduct independent investigations may be curtailed; its capacity to handle complaints in a prompt and efficient manner may be impaired).

4. **Composition of Board Membership**—The Board should consist entirely of qualified independent citizens (that is, no active law enforcement or governmental officials may be selected). A representative body, similar to that previously discussed, should be appointed by the Mayor after lists of candidates have been submitted by responsible groups within the community (for example, the universities, the local Bar, the judiciary).

5. **Powers of the Board**
   a. **Original Jurisdiction**—The Board should have original jurisdiction over all civilian complaints lodged against a police officer. It should not be an appellate tribunal superimposed upon the departmental review structure.
   
   b. **Investigative and Advisory Authority**—The Board should possess investigative and advisory powers, but not judicial or disciplinary authority. The decision whether to follow the Board's recommendation should be up to the discretion of the authority ultimately responsible for the officer's conduct (for example, the Chief of Police, Police Commissioner or Mayor). Thus "management" would not be divested of its power to discipline. To facilitate effective investigations the Board should be given the power to subpoena witnesses, and access to departmental files and personnel. Ideally Board personnel (that is, staff members) should perform all investigations to insure impartiality, however practicalities may

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114This is the feature that has caused the most controversy. Since discussion thus far has related to a "pure" Board (i.e., one composed entirely of civilians), it will continue with that basis. Other alternatives will be discussed, however, in the summary which follows.

115If such a plan were to be selected it would be essential, however, to have representatives of the police department acting as official advisors to the Board. No amount of expertise in law enforcement operations on the part of civilian members, can replace the "incite" into police problems gained from effective advocacy by the police themselves.

116This is necessary to insure that the complaints are properly received and investigated from the outset.

117While it is true that the Board's hearings would constitute an adjudicatory proceeding (i.e., the "case" would be heard and decided), nevertheless the Board would be precluded from taking disciplinary action (e.g., damages could not be awarded to the aggrieved party and punishment could not be inflicted on the offender) which normally accompanies judicial authority. It is interesting to note that the Review Board proposed by the A.C.L.U. for Los Angeles in 1960 was to be given the power to award compensation up to $500 to any person injured by police misconduct. Elam, *Wake Up, Police*, 55 (July-August 1961). The decision to limit the Board's powers represents a value judgment. In creating the Board, the desire is not to duplicate existing judicial machinery, but rather to provide an informal system by which complaints could be received, investigated and determined promptly and effectively.
dictate otherwise.\textsuperscript{118} At the least, it has been suggested, the Board should be given "the power to review the police investigation and request full or partial reinvestigation where the original report reveals inadequacies."\textsuperscript{119} If provision is made for departmental investigation (and funds permit), the Board should be given the discretion whether to investigate the complaint itself or refer it to the department.

c. Informal Mediation—The complainant may not be interested in seeing that the officer is disciplined but may be satisfied to receive an apology from him. In some cases the complainant may have lacked understanding as to the state of the law, in which case a simple explanation may be sufficient.

6. Public Accountability and Publicity—A report should be submitted periodically to the authority responsible for the Board's actions,\textsuperscript{120} setting forth the complaints received, the recommendations made, and the ultimate disposition of the complaints by the police department. Also any recommendations as to policy or procedural changes might be included. Copies of the report should be made available to the public.

**SUMMARY. Review Board or Not?**

At the outset it must be stressed that if the present review system enjoys the confidence of the community, it need not be altered. It is only where this confidence is lacking that the community must turn to a possible solution.

The arguments for the adoption of such Boards are founded on the need to protect individual rights against encroachment by the police (and on the belief that they will be protected only if civilian complaints are effectively disposed of). The arguments against resolve themselves into a need for effective law enforcement. Thus any solution must, of necessity, involve a reconciliation of these two important interests. In determining whether the Police Review Board represents the solution, it must be viewed against a broad spectrum of complaint review structures ranging from that which is referred to as the "departmental review board" (where none of the functions of complaint review—reception, investigation, or hearing—are performed by civilians), to the "pure" Police Review Board (where all of the functions of complaint review are performed by civilians).

There are many variations of the departmental review board; however, it will usually take the form of an intra-departmental adversary hear-

\textsuperscript{118}Because of budgetary restraints, the Philadelphia Board has been forced to rely solely on the police to investigate its complaints. Although the Board has found that the investigations are competent, 77 Harv. L. Rev. 499, 515 (1964), a stigma is nevertheless attached to them.

\textsuperscript{119}Ibid.

\textsuperscript{120}In all likelihood this would be the same authority who was responsible for appointing the Board members. A public "check" on the Board's conduct would thus exist through this official (assuming that he is an elected official).
ing coupled with intra-departmental complaint investigation by 1) the accused officer's superior, 2) the accused officer's superior with supervision by a higher echelon authority, 3) the accused officer's superior with supervision, and investigation if necessary, by an independent higher echelon unit or by 4) an independent higher echelon unit exclusively. As to the first of these alternatives, the police would argue that it is the best solution from the standpoint of efficiency. Those complaints which are unfounded may be disposed of quickly, without any unnecessary expense or waste of personnel, and by persons thoroughly acquainted with the problems of the precinct. This structure, however, creates the impression (and indeed the possibility) that complaints may be ignored, and thus breeds the very distrust for police departments which must be overcome. The addition of a right to appeal the decision of the accused officer's superior (that the complaint is not meritorious) to an intra-departmental review board or to the Chief of Police would not alleviate the problem. A citizen might be hesitant to submit a complaint to the accused officer's superior initially and thus the appellate machinery might never be used. The effect of requiring this "exhaustion of remedies" might be to discourage the submission of complaints altogether by many people. Thus for the reasons set forth here and earlier in the discussion, this alternative must be rejected. Restricting discussion to departmental review systems, the solution which would be most compatible with the demands of the police and the public would consist of complaint investigation by an independent unit within the police department coupled with an intra-departmental adversary hearing if the investigation shows that the complaint warrants it. Control over the complaint review system would thus be retained by "management"; however, a major deficiency in the present boards (and hence one of the reasons for their vulnerability to criticism), would have been removed: "[T]he existence of a special investigating staff could convey to the community the impression that the police department gives serious attention to the processing of complaints." Such a structure would not solve the problem entirely though. The proceedings would still be conducted by officers of the same police force of which the accused was a member. The degree of independence could never equal that reached by a board composed completely of qualified civilians.

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121This is the structure presently being used in Los Angeles.
122This is the structure apparently envisaged by the McCoae Commission for use in Los Angeles.
123This discussion would be equally applicable to the second and third alternatives since the complainant must first seek recourse through the accused officer's superior before the additional structures may be resorted to.
125It has been noted, however, that "if the [disciplinary] proceeding is open to the public, there is less reason for the complainant or the community to suspect that the department has something to hide." Id. at 507. This would, to a great extent, remove the disciplinary proceeding from vulnerability but it would not affect the weaknesses in the investigative machinery.
Turning to a discussion of police Review Boards, a broad array of Boards may be found in which some, but not all, of the functions of complaint review are performed by civilians. This group usually consists of an extra-departmental (or civilian) adversary hearing coupled with intradepartmental complaint investigation by 1) the accused officer's superior, 2) the accused officer's superior with supervision by a higher echelon authority, 3) the accused officer's superior with supervision, and investigation if necessary, by an independent higher echelon unit, or by 4) an independent higher echelon unit exclusively. The only distinction between these Boards and the variations of the departmental review board previously discussed is that civilians have now been added to the intra-departmental review board (or, if enough civilians have been added, the police contingent on the board has been displaced entirely). For the reasons previously stated in the discussion of departmental review boards, the first three alternatives must be rejected.\(^{126}\) The fourth alternative substantially represents the solution in Philadelphia.\(^{127}\) While this plan is certainly an improvement over the other three alternatives, it is still deficient in that complaints are being investigated by departmental personnel. Budgetary restrictions dictated the dependence of the Philadelphia Board on the police for investigation of complaints,\(^{128}\) and will probably do so in other cities until the Review Board concept receives sufficient support.\(^{129}\)

The "pure" Police Review Board exists only when all of the functions of complaint review are performed by civilians.\(^{186}\) While it is essential that the reception and investigation of civilian complaints be conducted by civilians wherever possible,\(^{131}\) it may be neither necessary nor desirable to require that the complaints be heard before a Board composed entirely of civilians. The rejection of a "pure" Board in favor of a "mixed" Board,\(^{182}\) may be advantageous for a number of reasons. First, from a practical standpoint it may be easier to gain local approval for the latter. The police

\(^{126}\)The addition of civilians to the hearing process does not alleviate the deficiencies found in the investigative process.

\(^{127}\)While an independent "unit" per se has not been set up, the Philadelphia Board has relied solely on police personnel (other than the accused officer's superior) to investigate its complaints. 77 Harv. L. Rev. 499, 515 (1964).

\(^{128}\)The plan to which the McCona Commission alluded (i.e., investigations conducted by the civilian Board of Police Commissioners) would approximate the fourth alternative and the Philadelphia solution if the board were composed of qualified civilians.

\(^{187}\)It has been noted, however, that "it would . . . require little added expense . . . if the board were given the power to review the police investigation and request full or partial reinvestigation where the original investigation report reveals inadequacies." \textit{Ibid}.

\(^{130}\)It must be kept in mind that the power of this Board (as well as those previously discussed) is limited to making recommendations to the authority ultimately responsible for the officer's conduct.

\(^{131}\)Such would dispel any impression that complaints were being ignored or that partiality was involved in their disposition, and would go far toward establishing the widest possible confidence in the handling of all complaints.

\(^{129}\)This was the solution adopted in New York City.
may view it as a compromise measure or, even if such is not the case, the public may feel that the police will be adequately represented on it. Second, there may be substantive advantages to the inclusion of law enforcement officials on the Board. Not only will their presence help to convince police interests that the Board's judgments will be fair and equitable to all concerned, but it may provide insight into police operations that even the most qualified civilian members may lack.\textsuperscript{135} The proponents of the "pure" Board solution state that the desired neutrality of the Board would be compromised if the police were represented, even if civilians constituted a majority on the Board.\textsuperscript{134} This conclusion is doubtful; however, it must be taken into account in making a decision.

A police Review Board composed primarily of qualified civilians and given the power to make recommendations only, coupled with the reception and investigation of civilian complaints by civilian staff members of such a board, would represent a significant step in improving community-police relations, and in reconciling the two important interests set forth at the outset of this discussion. There is, however, one further consideration which deserves mention. The Boards are designed to protect citizens against abuses by the police; however, they ignore many other areas of governmental activity that equally concern citizens. Professor Walter Gellhorn has stated that creation of a "civilian review board external to each administrative authority would produce a municipal monstrosity. Some better coordinated device must be sought if citizens' protection against offensive administration is to be as broad as the need for it."

\textsuperscript{135} The Ombudsman may, in fact, represent the desired solution. It cannot be overemphasized however, that a structural change in the complaint system is merely an initial step toward achieving the desired goal. Increased cooperation between the police and the public, community education programs, and strong leadership on both sides are necessary to bring about noticeable changes in relations.

E. Other Solutions

Other solutions that must be mentioned briefly are the Ombudsman, and the New York City complaint review proposals.\textsuperscript{136}

The Ombudsman has been referred to as a Swedish "grievance man" who is charged "with the responsibility of receiving and hearing individual complaints and of instituting proceedings before the appropriate court,

\textsuperscript{135} As to the latter consideration, query whether this might not be obtained equally from police advisors to the Board?


\textsuperscript{135} Gellhorn, \textit{Police Review Board: Hoax or Hope?}, The Columbia University Forum, 5, 8 (Summer 1966).

\textsuperscript{136} Also relevant might be a discussion of the role of Human Rights Councils.
against any public official or employee who, in his judgment, acted illegally in the execution of his official duties or has failed to perform them in an appropriate manner. The Ombudsman's powers are extensive. He is empowered to investigate all complaints, request the assistance of all public officials in an investigation and have access to all files and documents in the course of his inquiry; initiate prosecution against any administrative official or use the technique of warning the official or requesting corrective action if the latter appears more appropriate. The real value of the Ombudsman concept is said to rest, however, "in the citizen's knowledge that he is not helpless before the large impersonal administrative machinery of government. . . ." Proposals for the creation of such an office have been made in the United States at the federal, state and local levels by many who feel that administrative bureaucracy is subject to arbitrary decisions and that the courts are no longer an effective instrument for remedying the wrongs created. Many of the advocates of the Ombudsman concept believe that its applicability in the United States will be on the national level (for example, as an adjunct of Congress whereby the citizens may express their grievances regarding administrative agencies). Its value, however, may truly lie on the local level and it may be considered an effective alternative to a Police Review Board. It is interesting to note that proponents of a Police Review Board for New York City stated, in regard to a bill calling for the creation of an Office of Civilian Redress relating not only to the police department but to all governmental agencies, that it "potentially would interject a civilian voice into the recesses of

138He deals with many matters of maladministration that are not subject to court review or are not serious enough to warrant the high cost of court review. He may deal with complaints about getting no answer to an application, leniency in replying to mail, tardiness or bias in making decisions, or the failure to provide sufficient information on a decision or right of appeal. Nevertheless some of the Ombudsman's most valuable work has been done on serious cases of illegality involving the liberty of persons, such as police brutality. . . . Rowat, Ombudsman from North America, Public Administration Review, 230, 232 (December 1964). The only requirement of form is that the complaints be signed. Rosenthal, supra note 137.
139"[During 1960, in] . . . about one-half of all cases filed, the official's explanation was deemed satisfactory, for the Ombudsman found that, under the existing laws and regulations, the official could not have acted otherwise. In cases where the citizen has not understood the law or regulation, he is notified that his complaint was investigated but that no action will be taken. However, in the remaining one-third of cases filed in 1960, the Ombudsman continued his investigation and determined that action should be taken." Rosenthal, supra note 137, at 229.
140Id. at 228-29.
141In Congress, bill have been introduced calling for creation of an "Administrative Counsel" to receive complaints made to Congressmen regarding alleged administrative abuses. H.R. 4273, S. 984 (89th Cong., 1st Sess. 1965). A bill was recently introduced in the New York State Legislature calling for the establishment of a "Division of Administrative Procedure" in the Executive Department to receive complaints from the public and make recommendations on alleged "objectionable agency practices." S. Int. 3826, S. Pr. 4216; A. Int. 5730, A. Pr. 6156 (1965). In New York City a bill was recently introduced by Councilman Paul O'Dwyer calling for the creation of a local Ombudsman-type office. Council Int. 765 (1965).
the police department more penetratingly and comprehensively than the civilian participation envisaged by the . . . [Review Board bills. The proposal] merits serious study and consideration. If the 'Ombudsman' institution can be adapted to New York City, it could accomplish a great deal with regard to the alleviation of any official abuses against the public."142

A decision as to the appropriate solution for Los Angeles may well be influenced by New York City's course of action. As an indication of the dilemma which faced New York and is facing many cities throughout the nation, the following represents the spectrum of proposals submitted by responsible persons: a completely independent civilian Board; an independent Board of five non-salaried members to be appointed by the city's top judges;143 a Review Board composed of members of the City Council; the permanent establishment of the review committee headed by Deputy Mayor Edward F. Cavanaugh and staffed by lawyers of the Corporation Counsel's Office;144 the addition of four civilians to the police department's existing review board of three Deputy Police Commissioners;145 creation of the Office of Director of Civilian Redress to receive complaints of brutality, with the Director being appointed by the Mayor from a list provided by the heads of the five local universities;146 retention of the existing Civilian Complaint Review Board (consisting of three non-uniformed Deputy Police Commissioners), with the reception and hearing of complaints now taking place outside police department offices; and the maintenance of the

142Friedlander and Garvet, Re: Civilian Complaint Review Board [8 pp., mimeo] (August 10, 1965). While the Ombudsman concept may provide a broader solution to the problem of administrative abuses than the Police Review Board, it is impossible to give any more consideration to it than has been given above. For a more detailed discussion see: Gellhorn, Ombudsman and Others (1966); Rowat, The Ombudsman (1965).

143The first and second proposals were submitted by New York City Councilman Theodore S. Weiss and New York City Council President Paul R. Screvane, respectively. Proposals on Police Panel, New York Times, June 30, 1965, p. 24. Such proposals would have been adequate if the board members chosen had been sufficiently qualified.

144The third and fourth proposals were submitted by New York City Councilmen Dominick Corso and Richard S. Aldrich, respectively. Proposals, supra note 143. The fourth proposal is based on the fact that in July 1964, "in the aftermath of the Harlem . . . riots . . . Mayor Wagner [had] asked Deputy Mayor Cavanaugh to form a temporary civilian committee to evaluate the decisions of the departmental Civilian Complaint Review Board, relating to allegations of police brutality, and to recommend revisions in the procedure of that Board." Friedlander, supra note 134. The primary weakness in a Board composed either of members of the City Council or of lawyers from the Corporation Counsel's Office was that there was a temptation for political considerations to enter into the governmental representative's decision, which would weaken the Board's neutrality. It was also argued that there were "obstacles intrinsic to municipal governmental representatives from one sector of government adjudging and taking to task municipal governmental representatives from another sector of government." Friedlander, supra note 134.

145Proposed by Representative (and now Mayor) John V. Lindsay. Proposals, supra note 143. Such a proposal was said to be inadequate because the "desired neutrality of such a Board would be compromised, even if the civilians constitute a majority on the Board." Ibid. The criticism seems to be unfounded, and as noted later, this proposal was the one finally accepted in New York City.

146Proposed by City Councilman Paul O'Dwyer. Proposals, supra note 143. The establishment of an Ombudsman-type office in the Director of Civilian Redress might have provided the solution.
"status quo."147 After the election of Mayor John V. Lindsay, the proposal which he had sponsored (calling for the addition of four civilians to the existing departmental review board) was adopted. The New York Civilian Review Board then consisted of four civilians named by Mayor Lindsay and three police members named by Police Commissioner Howard R. Leary. Complaints were received and investigated by staff personnel and the Board thereafter rendered its decision. The Board, however, served "only in an advisory capacity to the Police Commissioner. If the Police Commissioner ... [went] along with the Board's recommendations, a departmental trial against the policeman in question would follow, with the trial prosecuted by policemen and judged by other policemen."148 On November 8, 1966, the Board was abolished by referendum. Thereafter, civilian complaints have been reviewed by a departmental review board. The Board's defeat may influence the Review Board "movement" significantly; however, its impact cannot be determined at this time.

III. Conclusion

A Police Review Board may be tailored in such a way as to approximate the solution desired. The Ombudsman concept must also be considered, and may in fact represent the solution to a broad range of administrative problems. If the practicalities of the situation so dictate, the solution may have to fall short of these ideal approaches. Certainly the addition of civilians to the existing departmental review boards would tend to create the impression that the complaints were being treated fairly; however, this improvement would be nullified to a considerable extent if complaint investigation continues to be conducted by lower-echelon departmental personnel. If the realities of the situation dictate that complaint review be handled through departmental channels, then reception, investigation and hearing of complaints by an independent unit accountable only to the authority responsible for the officer's conduct would be acceptable and indeed an improvement over current practices. A properly structured complaint review system will not only serve the interest of the public but those of law enforcement agencies as well.

Regardless of whether the decision reached in Los Angeles is likely to be disturbed, the analysis set forth above may prove helpful in deciding whether the Police Review Board is the best solution for other cities.

147The seventh and eighth proposals were submitted by then New York Police Commissioner Vincent L. Broderick and New York mayoralty candidate William F. Buckley, respectively. Proposals, supra note 143. Retention of the existing departmental review board was said to be inadequate because it would continue to consist entirely of police personnel and thus would be "suspected of exercising professional protectionism and courtesy." Friedlander, supra note 134.