



## **The Nature of Police Malpractice**

This discussion begins with a consideration of what constitutes police malpractice. To be able to analyze police review systems one must first paint a picture of the raw material that these systems process reactively. In doing so, one also develops an understanding of those types of behavior that review systems attempt to deter prospectively.

This discussion reviews the history of police malpractice, spends some time with classification schemes, and then treats the specifics of review organization caseloads. It presents outlines of two examples of police misconduct investigations and considers them throughout the remainder of the work. Because they are rather spectacular in their impact, the Detroit and Los Angeles malpractice incidents provide guides for analysis. They illustrate organizational problems for review systems, political realities that affect accountability, leadership styles that are pointedly diverse, and external review dynamics that transcend the control of the police.

### **THE HISTORY OF POLICE MALPRACTICE**

Those who have studied the matter have come to the conclusion that there has been a concern over the fiscal corruption of the police as long as there have been police (Lane 1967; Lee 1971; Pringle 1955; Walker 1977). Police malpractice includes more than monetary corruption, however. It has now come to include the daily abuse of authority and the excessive use of force.

When formal police organizations were in their infancy, there was little concern over the use of excessive force, the harassment of citizens, or abuse of discretionary decision-making powers. As Roger Lane notes in his study of the early days of

Boston's police department, "No members of the government in 1837 voiced . . . suspicion of police as possible oppressors" (1967: 38).

A cavalier attitude existed toward the few protests that were launched against police violence. According to Lane, the Boston City Council rejected the charge of one complainant, which related to a beating and denial of bail, stating, "It may happen that the complainants belong to a class not often exposed to the treatment they are likely to meet within a watch house or jail" (1967: 35).

Over time, rising standards of public order, originally aimed at criminality, violence, and riot by citizens, began to be applied to police conduct. The enforcers of law and maintainers of order themselves became subjects of concern. By the turn of the century, the policing of the police had become a problem. The issue of abuse by police was to receive sporadic publicity over the first half of the twentieth century. Beside occasional press coverage, police malpractice was uncovered in numerous riot commission studies. Commissions found the police guilty of misconduct in East St. Louis, Illinois, in 1917 (U.S. Congress. House. 1918), in Chicago in 1919 (Chicago Commission on Race Relations 1922), in New York in 1935 (Mayor's Commission on Conditions in Harlem 1935), and in Detroit in 1943 (Governor's Committee to Investigate Riots Occurring in Detroit 1943), to name several prominent incidents. In 1931 the commonplace nature of station house and curbside abuses by the police was noted by the Wickersham Commission: "The third degree . . . that is, the use of physical brutality or other forms of cruelty to obtain involuntary confessions . . . is widespread. . . . Physical brutality, illegal detention, and refusal to allow access to counsel to the prisoner is common. . . . Brutality and violence in making an arrest also were employed at times" (1931: 4).

Such routine abuses began to catch the eye of the federal judiciary. The United States Supreme Court, first with some reluctance and later with some degree of zeal (Schlesinger 1977, Stephens 1973), began to attempt to control the excesses of the police. The Court issued landmark opinions in cases involving interrogations and confessions of guilt, access to counsel, search and seizure, and electronic surveillance. In *Mapp v. Ohio* (1961),

it issued its most important decree. That case applied the federal exclusionary rule to the states (see Table of Court Cases).

But it was not until the 1960s that police abuse became truly topical throughout all of American society. This era saw the expansion of both black and student protests. On several occasions, reacting to the unfolding events of the period, police officers rioted in the streets. Command structures deteriorated to such an extent that individual police officers vented their frustrations on innocent civilians. Police riots occurred in Los Angeles in 1967, in Berkeley on numerous occasions, at Columbia University in 1968 (Stark 1972), and at the Chicago Democratic National Convention in 1968 (Mailer 1968).

The events in Chicago, more than any other single occurrence, educated the majority of Americans about the existence and gravity of the problem of police abuse. Before that moment in 1968, most Americans thought that accusations of police abuse were the self-serving, irrational rhetoric of criminals and political extremists. It is not an exaggeration to say that after the convention, average, middle-American citizens would never again feel the same about their police and about police review.

When the war in Vietnam ended and the public's interest in the Watergate scandal subsided, concerns about police abuses seemed to dissolve, along with so many issues that had seemed critically important during the 1960s. For ten years people in America hardly heard mention of the topic of police malpractice. That did not mean, of course, that local scandals and debates over review systems no longer existed. In the decade of the 1980s, over thirty civilianized review systems of various kinds were put into place throughout the country. Most were instituted as a direct result of police-abuse scandals (Walker and Bumphus 1991).

Police malpractice and its dramatic nature became topical again at the end of the 1980s. The media coverage of the 1988 police riot in New York City's Tompkins Square gave people evidence of the volatile nature of the issue of police misconduct. The Tompkins Square incident involved hundreds of police officers, and fifty-two civilians were injured seriously enough in the riot to require medical attention. One hundred twenty-one citizens eventually filed complaints against the police. When less

than a dozen officers were found guilty of misconduct, after two years of investigations, the community reacted vehemently (NYCLU 1990).

At the national level, the incident involving the beating of Rodney King by police on 3 March 1991 in Los Angeles once again brought to center stage issues that would necessitate serious consideration of police review (*Time*, 1 April 1991). On the heels of that incident, Sacramento, Boston, Milwaukee, San Jose, and St. Louis all held debates over civilianized review. Once again, the media coverage that followed the events in Los Angeles had helped to bring to the surface issues that had been simmering not so far below. The death of a Detroit man at the hands of several police officers in November 1992 threw additional fuel on the fire. The move to civilianize police review was given added political support owing to these spectacular incidents of police abuse.

It is important to remember that such incidents have *always* been the basis for change in the field of police review (Goldsmith 1988; Guyot 1991; Petterson 1991), and they will be discussed more fully later in the book. This study has not discovered any examples of police review being debated without the influence of emotion and opportunism produced through crisis. And "the *ad hoc* response to 'yesterday's battle' poses the danger not only that police will be ill-equipped to fight 'tomorrow's battle' but that incremental steps will be taken in the heat of the moment that would have been avoided following rational appraisal" (Waddington 1991).

To evaluate adequately the occurrences of police abuse and the systems necessary to deal with them, one must first understand what that term entails.

#### WHAT IS POLICE MALPRACTICE?

A good definition of police misconduct can be found in Richard Lundman's *Police Behavior*: "Misconduct by police patrol officers includes abuse of discretion, corruption, and use of unnecessary force" (1980). Because it is an important, albeit separate, topic from the focus of this book, what follows is only a brief discussion of corruption.

Police corruption is an illegal use of organizational power for personal gain. The personal nature of the gain distinguishes corruption from brutality, perjury, illegal search, or other law violations committed in the pursuit of such legitimate organizational goals as fighting crime. . . . Police corruption inverts the formal goals of the police organization. It is a use of organizational power to encourage and create crime rather than to deter it. (Sherman 1978)

The kinds of activities that are considered specifically herein are corruption of authority, kickbacks, shakedowns, protection of illegal activities, "fixes," direct criminal activities, and internal payoffs (Barker and Roebuck 1973; Carter 1990). These are termed "organizational corruption." While external review mechanisms may not be necessary for handling individual corruption, they are absolutely essential for dealing with organizational corruption.

It is important to differentiate between corruption *in* police organizations and corruption *by* police organizations. The former involves deviant behavior by individuals or small groups of officers. It is the sort of behavior that can be investigated and reformed by administrative mechanisms within the organization itself.

Corruption *by* police organizations convolutes the entire mission of the organization. It sometimes involves entire police departmental command structures, local politicians, and even prosecutors. To objectively evaluate such organizational corruption, external, state, or even federal agencies and perspectives are necessary. Because organizational corruption is not a part of the normal work load of citizens' complaints systems, it will only be referred to tangentially.

Our concern is the sort of police malpractice that generates the common citizen's complaint, that which involves the day-to-day operations of systems that must receive, investigate, and adjudicate such complaints. The use of excessive force and the abuse of discretion are two standard classifications of behavior labeled here as "police malpractice." These classifications constitute the bulk of the work load of police review systems and the overwhelming majority of citizens' complaint cases.

The use of excessive force, or "police brutality," is perhaps



more topical and important than are all other forms of police malpractice combined. There is a critical, threshold difficulty in defining excessive force. As Egon Bittner cogently illustrates:

The frequently heard talk about the lawful use of force by the police is practically meaningless and, because no one knows what is meant by it, so is the talk about the use of minimum force. . . . In fact, the only instructions any policeman ever receives in this respect consist of sermonizing that he should be humane and circumspect, and that he must not desist from what he has undertaken merely because its accomplishment may call for coercive means. . . . Our expectation that policemen will use force, coupled by our refusals to state clearly what we mean by it (aside from sanctimonious homilies), smacks of more than a bit of perversity. (1990)

Parallel to concerns about formulating formal rules for police work in general, this inability to successfully define excessive force in a meaningful way is the premiere limitation of review of police conduct. Absent specific standards with which to gauge behavior, either retrospectively or prospectively, it is problematic for any morally defensible system to review the actions of the individual police officer.

Police use of excessive force is also an important topic because of the amount of physical abuse that occurs, or that people believe occurs, on the streets of America. A study on the subject found that 25 percent of a cross section of residents of the Bronx, New York, indicated that they had witnessed police harassment or brutality during an arrest (Davis 1990). Whether or not such abuse was "genuine," this figure indicates that a number of people believe that abuse is a serious problem. In a remark about the amount of abuse in the same city, Mike Meyers of the New York Civil Liberties Union said, "There is an epidemic of police officer violence and misconduct in New York City" (ACLU 1991).

Excessive force is used quite often on the most disenfranchised members of society *precisely because of their position in the social order* (Betz 1985; Box 1983; Chigwada 1991; Whitaker and Phillips 1983). Allen Wagner's study of complaint demographics in the inner city is illustrative. Blacks made up 41 percent of the population base of his study area, yet they filed 67