

FRONTLINE

Is Civilian Oversight the Answer to Distrust of Police?

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In the last week, America has been shaken by a series of deadly encounters between police and citizens. In Louisiana, a shaky video captured the tussle that ended with Alton Sterling's death. Barely a day had passed when Philando Castile's last moments were broadcast on Facebook after he was shot by a police officer in Minnesota. On Thursday, a shooter targeted police officers in Dallas during a peaceful Black Lives Matter protest, killing five.

Amid the grief, anger and despair, these incidents have once again raised the issue of how to ease tensions between police and communities. On Wednesday, President Barack Obama will host a meeting between law enforcement officials, activists and civil rights leaders for a discussion on the issue.

One approach that's gained popularity in recent years is civilian oversight boards, of which there are now more than 200 across the country, according to Liana Perez, director of operations for the National Association for Civilian Oversight of Law Enforcement. While that's still just a fraction compared to the nearly 18,000 law enforcement agencies across the United States, the national conversation around police reform has helped prompt "a great deal of growth" of oversight bodies, according to Perez.

"The oversight is the bridge-building mechanism between the citizens and the police department that serves them," said Perez. "Their role is to be impartial and to ensure that things are being fairly and thoroughly addressed."

Civilian oversight is meant to address community complaints about officer misconduct, and when it works well, it can help hold police accountable and develop trust with local residents.

But success can sometimes be elusive. Civilian boards with the authority to investigate police misconduct can be strong, but also expensive, requiring steep budgets for investigators. Surveys of civilian review boards have found investigative boards vulnerable to inadequate funding or staffing, or slow-moving investigations. Some boards are unable to subpoena officers, while others lack the authority to carry out their own investigations —

instead, they review the findings of a department's internal affairs office. Other times, they're slowed by the absence of sheer political will.

"I tend to be skeptical of the track record of civilian review boards," said Tim Lynch, who has surveyed such bodies as part of his work as director of the Cato Institute's project on criminal justice. "I think they have several weaknesses — they're very vulnerable to local political manipulations."

Some boards, he pointed out, can be staffed with current or former police officers. Those with civilians may sometimes be overly deferential to the police because they don't have sufficient background in law enforcement. And those that rely on internal police investigations can't do much without the cooperation of those they're meant to police.

"Watchdogs Actually Have to Bark"

San Francisco's Office of Citizen Complaints (OCC) was formed by ballot initiative in 1982 in response to a series of allegations of police brutality.

The vote made San Francisco an early adopter of civilian oversight, but the office's 33-year history, critics say, has been checkered by periods of ineffectiveness. The problems have been compounded, they say, by what was a weak mandate to begin with.

In 2007, a scathing audit by the city controller's office excoriated the office for delayed investigations and mismanagement. The audit found that the OCC failed to complete investigations within nine months in 53 percent of its cases between 2003 and 2006. That left potential prosecutions at risk since under law, authorities in most cases have just 12 months to file charges upon learning of officer misconduct.

Barbara Attard, who worked at the OCC in the 80s, said the problems existed from the very beginning. "There was a lack of political will to support the agency," she said via email. "Weak or police-connected directors were hired. In the early days, the agency was vastly underfunded, also due to politics."

Joyce Hicks was brought in as executive director of the OCC after the 2007 report. To help make sure investigations were finished on time, Hicks set out to more evenly distribute cases among investigators. The ideal caseload per the 2007 audit was 16 cases per investigator. "We've never gotten that low," Hicks told FRONTLINE, noting that a recent string of officer-involved shooting cases had stretched resources and meant a caseload as high as 25 for the other investigators.

Meanwhile, charges of police misconduct continue to plague the San Francisco police. The department has been involved in four high-profile shooting deaths already this year — all of which are now open cases at the OCC. And although the city is just 5.8 percent black, black adults account for up to 40 percent of all arrests in the city. In February, the mayor's office asked the DOJ to review the department's policies and practices and make recommendations.

While critics like Attard acknowledge that the OCC has made strides — completing cases in a more timely manner and implementing a mediation program where citizens with complaints can opt for face-to-face dispute resolution with officers — they say there’s still a lack of political will.

John Crew, former director of the police practices project at the ACLU of Northern California, said all too often the OCC fails to fight for cases where it found misconduct and recommended discipline, only for the police department to issue a slap on the wrist.

“The OCC has been silent, and that silence has allowed a culture of accountability avoidance to be created,” said Crew.

“The OCC does push for discipline in cases that it sustains,” Hicks insisted. The problem, she said, is that her office, doesn’t have final say on discipline — the police chief and police commission hold that authority. Hicks’ office recommends discipline, and the police chief can agree or disagree with the recommendation. If it’s an especially serious case that could result in discipline exceeding 10 days suspension, Hicks can go above the police chief to take complaints to the police commission directly. She has done so once, resulting in the termination of an officer. During her tenure, another officer was also terminated.

“In fairness to Joyce, she has been saying recently, ‘Well, I’m going to start doing that,’” Crew said, pointing out that unless the OCC makes the lack of discipline a public issue, it’s hard for San Francisco’s equivalent of a city council to know there’s a problem. “Independent watchdogs actually have to bark once in a while.”

Hicks said more changes are in the offing, including an increase in staffing. She anticipates they will soon be able to add five investigators. San Francisco voters also overwhelmingly supported a ballot measure last month that gives the OCC authority to automatically investigate all officer-involved shootings. Previously, Hicks said they could only investigate after a citizen complaint was filed. They investigated eight of the 35 officer-involved shootings between 2011 and 2016. The OCC didn’t substantiate complaints in any of those cases, but some did lead to policy recommendations — like not shooting at a moving vehicle. The OCC has also played a key role in the reform of use of force policies, and is pushing for body-worn cameras, and more transparency on police records.

“The public’s trust has been eroded,” Hicks said. “I remember earlier in my career an interim police chief saying to me, ‘You know, there’s some things that are lawful but they’re awful.’ The public is now able to see what lawful but awful looks like. We need to work on getting away from those awful things and be the bridge between the public and law enforcement.”

The D.C. Model

The Washington, D.C. Office of Police Complaints is a model that’s won praise, according to Lynch. He said the D.C. board’s effectiveness has been bolstered by successful outreach to the community, and the involvement of the city council in approving members on the board — a move designed to reinforce its independence. Four of the five-person board must have no current

ties to law enforcement, and collectively they oversee the work of more than a dozen full-time investigators. The board also approves any policy or training recommendations to the police department.

Michael Tobin, who since 2014 has served as the executive director of the OPC, says that civilian oversight is essential to building community trust, which in turn makes cities safer.

“Every officer’s job on the beat will be easier if the community trusts that officer,” Tobin said. “People will more readily call the police, they’ll more readily approach the officer with information, with tips.”

For the most part, Tobin said, the police department has cooperated with the OPC’s recommendations. Some recent accomplishments for the OPC include access to footage from the Metropolitan Police’s body-worn cameras, and the police department adopting its recommendations on doing additional research before serving arrest warrants after citizens complained about officers entering the wrong houses.

Can Newark Make It Work?

For the citizens of Newark, civilian oversight over their troubled police department has been a long time coming — more than 50 years, according to civil rights advocates.

The police and the policed in New Jersey’s largest city had an anguished relationship as far back as the 1960s, when the Newark Police Department was accused of using unjustified force to put down riots that exploded after two white cops beat up a black cab driver in 1967.

The relationship never fully recovered. In 2011, the Department of Justice stepped in and found a pattern or practice of constitutional violations in stops and arrests by the Newark police. In March, the DOJ and the city agreed on a plan to implement widespread reforms of the police department — including the formation of a civilian oversight body.

Earlier this month, the 11 members of Newark’s civilian review board were sworn in. The question now is, can the board be effective?

Udi Ofer, the executive director of the American Civil Liberties Union of New Jersey, said Newark has the potential to be a national model for strong civilian oversight, “but only if implemented correctly” with the independence, authority and funding to make it work.

Newark’s board was given the rare authority to issue subpoenas, to ensure that discipline sticks, and it has the power to audit the police department’s policies and practices.

Ofer said an important mark of independence is that seven of the 11 members of the board are nominated by community and civil rights organizations instead of the mayor or police chief.

Newark’s largest police union, the Fraternal Order of Police, vowed to challenge the board’s legality. James Stewart, the union’s president, told FRONTLINE the review board “can’t exist

the way it's constituted right now in the state of New Jersey," adding that a judge would have to decide if the board overstepped the bounds of the state's laws.

"Nothing personal, but we're not just going to allow a new entity to be created and come in here and dictate discipline to police officers," Stewart said.

If all goes according to plan, Ofer said the Newark civilian review board will hire and train staff and investigators and begin community outreach and be in position to begin addressing complaints by next spring.

But Ofer stressed the importance of it being properly implemented. "A weak civilian review board is worse than no civilian review board, because it gives the illusion of independent accountability but actually provides little to none," he said.