

The Baltimore Police Complaint Evaluation Procedure

July 1980

—A statement by the Maryland Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This statement will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the recommendations in this statement should not be attributed to the Commission, but only to the Maryland Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information regarding discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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MARYLAND ADVISORY COMMITTEE TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS**

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Introduction

The recommendations contained in this statement are those of the Maryland Advisory Committee to the U.S. Commission on Civil Rights and, as such, are not attributable to the Commission. As observers of local and State developments and as advisors to the Commission, it is the Advisory Committee's responsibility to apprise its parent body of local conditions and problems that fall within the Commission's jurisdiction. The Commission may act on the Advisory Committee's work by accepting or rejecting its conclusions or by referring the matter to staff for further study.

In this instance the Maryland Advisory Committee has reviewed the disposition of certain kinds of citizen complaints regarding the conduct of Baltimore police. This review has been made as part of the Committee's ongoing responsibility to monitor the administration of justice in Maryland and to report its findings to the Commission. As part of this process, the Committee has shared the statement with the affected agencies before submitting it to the Commission. The agency responses have been duly noted and changes have been made in the text as required.

Citizen complaints against Baltimore City police officers are currently investigated by the police department and reviewed by the Complaint Evaluation Board. A real possibility exists that the complaint procedures contained in the Baltimore City Police General Order 48-77 have a discriminatory

effect with respect to minority groups. In hearings held by the Baltimore Community Relations Commission (CRC) and in conversations with representatives of the Baltimore community, a perception of unfair and unredressed discrimination by the police against minorities emerged.

However, this perception of discriminatory police conduct and of the inability of citizens to do anything about it has been only vaguely articulated. It does not emerge from the available quantitative studies of police practices, although a detailed analysis has yet to be made. Yet the perception is real, widespread, and persistent. It results from personal experiences of contact with police and with the procedure to redress grievances. Whatever their origin, the police department must acknowledge that these perceptions about their operations and procedures exist and do everything possible to alleviate the causes of these perceptions. The Maryland Advisory Committee believes some procedural changes would improve matters considerably, especially if combined with firm leadership in this area.

In preparing to make these observations, Committee members examined previous studies of the Baltimore police complaint process, analyzed primary legislative and statistical materials relevant to the process, and met and corresponded with informed parties. A summary of these activities and the complaint process follows.

The Complaint System

General Order 48-77 of the Baltimore City Police Department details the laws, administrative rules, and police procedures that constitute the department's internal disciplinary process. Through the mechanisms provided by GO 48-77, citizens may seek redress for complaints about police misconduct. Among other things, the order describes the procedures used by the Internal Investigation Division (IID), the rights of an accused police officer, and the function of the Complaint Evaluation Board.

If a complaint alleges discourtesy or brutality (excessive force) by a police officer towards a citizen, the complaint must be reduced to writing on a Complaint Evaluation Board form and signed and sworn to by the complainant within 90 days of the incident in question. (Cases involving police homicide are handled separately by the State's attorney.)

The complaint is then investigated by the Internal Investigation Division of the Baltimore City Police Department. The investigation may be ended at any time if the complaint appears clearly unfounded. When the investigation is complete, the complaint is classified as either sustained, not sustained, exonerated, or unfounded. The Police Commissioner may take any disciplinary action deemed appropriate based on the report.

An accused police officer is entitled to a number of due process protections. These are embodied in the *Law Enforcement Officer's Bill of Rights*.¹ A complete investigation is required. The officer is assured of an interrogation conducted at a reasonable hour at a reasonably convenient place, by one identified individual. The officer must be notified of the complaint, have a right to counsel, and access to the transcript of any interrogation at least 10 days prior to any hearing. Finally, he is entitled to a hearing by a hearing board with due process procedures similar to those found in courts of law.

After investigation, complaints alleging excessive force or discourtesy are reviewed by the Complaint

Evaluation Board (CEB).² The CEB is composed of representatives from seven agencies as established by statute. They are:

- 1) The State's Attorney of Baltimore.
- 2) The Attorney General of Maryland.
- 3) The City Solicitor of Baltimore City.
- 4) The Police Commissioner of Baltimore City.
- 5) The Executive Director of the Legal Aid Bureau, Inc., of Baltimore City.
- 6) The Executive Director of the Maryland Human Relations Commission.
- 7) The Executive Director of the Baltimore City Community Relations Commission.

(Any of the above may also receive complaints directly. Such complaints are referred to IID for investigation.)

The CEB reviews the investigation of the Internal Investigation Division and may recommend that the Police Commissioner:

- 1) Sustain the complaint and approve, disapprove or modify the proposed (IID) action against the police personnel.
- 2) Dismiss the complaint because of lack or insufficiency of evidence.
- 3) Exonerate the police personnel because of the complainant's failure to prove his case by clear and convincing evidence.
- 4) Remand the case for further investigation to the IID or to the Maryland State Police.³

Also, the CEB may request any party or witness to a complaint to submit voluntarily to a polygraph test or appear voluntarily before the Board. In all cases, the CEB has an advisory role only and final decisionmaking responsibility is vested solely in the Police Commissioner.

Reviewing the Literature

In meeting with various informed parties, the Committee became acquainted with the efforts of several groups to improve the relationship of the police department with the community at large by improving the operation of the CEB. Four reports were reviewed.

First, in a May 14, 1979, CRC report to Mayor William D. Schaefer, entitled *Report on Community Relations Commission Hearings on the Relationship between the Baltimore City Police Department and The Community, October 19 & 20, 1978*, the Baltimore City Police Department's performance was judged satisfactory overall but in need of certain changes in order to improve its community relations. Among other things, the report found that citizens, especially the poor and black, believe they are mistreated by some police officers and are occasionally the victims of excessive force. Also, there seemed to be no viable mechanism to allow for real dialogue between the police and the community.

A June 12, 1978, report by the staff of the Community Relations Commission, entitled *Police Complaint Evaluation Board/Police Community Relations*, presented a comparative study of complaints submitted to the CEB for review. CRC staff analyzed the IID investigative record for each complaint. The differences between the recommendations of the IID, the CEB, and the staff recommendations of the CRC for the years 1975-1977 are presented below.

Comparison of IID, CEB, and CRC Recommendations by Year

	1975	1976	1977
IID			
sustained	9	13	11
other	92(98)	256	255
total	101(107)	269	266
CEB			
remand	5	26	5
affirm	96(102)	248	252
disapprove/modify	—	—	9
total	101(107)	269	266
CRC			
remand	40	142	46
affirm	61	127	149
disapprove/modify	—	—	91
total	101	269	266

Source: Staff Report of the CRC, *Police Complaint Evaluation Board/Police Community Relations*, June 12, 1978.

A significant discrepancy exists between the recommendations of the CRC and the CEB/IID. The CEB tends to agree with the recommendations and findings of the IID and the CRC tends to disagree. For example, in 1975 the CEB upheld IID findings in 96 cases; the CRC would have upheld them in only 61 cases. In general, the CRC found the IID investigations inadequate and favored remanding cases 8 times as often as the CEB.

An article by Stephen Cochell and John Jones, entitled *An Analysis of the Baltimore City Policy Complaint Evaluation Procedures*, found that:

The CEB members must rely on those [IID] reports in evaluating credibility and demeanor of the witnesses Significantly, the CEB process, as constituted, does not provide for the complainant to review and either agree or

disagree with the findings of the IID investigation procedure before, during, or after the case has been processed. The citizen-complainant is completely excluded from the process until he is notified by the Commissioner of the disposition of his case.⁴

The authors recommend that the CEB process allow for citizen participation in an adversary system. Currently the CEB, dominated by representatives of enforcement agencies, reviews only the written reports prepared by the IID.

In April 1979, a report sponsored by the Community Survival Center and authored by Barry Kissin of the University of Maryland Law School was issued on the subject of improving the CEB. The report, *Another Approach Toward Analyzing the Baltimore City Police Complaint Evaluation Procedures*, is more critical of the present CEB procedures than the Cochell/Jones study. The report criticizes the limited statutory powers granted to the CEB and also the apparent failure

of the CEB to use its existing powers to the fullest extent. The CEB's ability to conduct an investigation independent of the IID is limited. Even so, the CEB fails to request voluntary appearances of witnesses and complainants and does not prepare its findings or follow-up on what action the Commissioner takes on its recommendations, according to Kissin.⁵

Kissin suggests that first, the CEB should exercise its existing authority to ensure that it sees all complaints filed and that the IID investigation is completed within 90 days from the date of the complaint. Second, there should be some provision for investigation of complaints by a body not connected with the police department. Third, the CEB should be given the same power to summon witnesses as is now enjoyed by the Police Hearing Board. Last, the membership of the CEB should be modified to include representatives from the community at large.

Committee Activities

On May 22, 1979, the subcommittee met with Commissioner Pomerleau and the assistant chiefs in charge of the operational aspects of the Baltimore City Police Department. The purpose of the meeting was to develop an understanding of the complaint process from the police point of view and to explore ways to make the process more efficient and responsive to community needs. On June 26, 1979, the Committee met with representatives from the CEB, community organizations, the police-community relations department and private citizens. (A list of those present at the meetings is contained in the Appendix.)

The Police Viewpoint⁶

The police outlined the interlocking mechanisms of GO 48-77 and the history of police-community relations leading up to the creation of the CEB. (These details are summarized above.) The creation of the CEB and the police Bill of Rights were described as innovations not usually found in big city police operations that have helped improve police-community relations.

The police acknowledged that isolated incidents of police misconduct have occurred and probably will occur in the future. They believe that these incidents were handled adequately by existing procedures. In fact, the 6-7 percent rate of complaints sustained by the CEB was emphasized as an indicator of adequate police performance. Also, it was emphasized that approximately 1 percent of the police force was deployed in the IID and that was considered an ample number. In addition, 27 people are assigned to the police-community relations department to educate the community about the police and to gather citizen input concerning police operations.

In addition to the IID and the community outreach program, each police officer takes 40 hours of human relations training each year. Police personnel are considered to be well-trained in general to deal with human relations situations and to advise citizens of their rights, especially with

regard to the complaint process. Citizen councils in each district are held every month to give a forum to citizens to air their grievances.

Regarding the CEB, it was emphasized that the system was working properly because of the high level of investigative expertise embodied in the membership of the Board. These qualities together with the wide range of organizations represented combine to give a balanced, experienced professionalism in reviewing complaints. It was thought that the recent improvements in the CEB process, ensuring a 90 day completion of IID investigation and automatic receipt of IID reports by the CEB, are working well and that no further improvements were necessary. The idea of an independent citizen review of police procedures was considered unsatisfactory because it would lack professionalism and would not be credible with police personnel.

Views of the Complaint Evaluation Board (CEB)⁷

The president of the CEB delivered a consensus of recommendations developed in a recent CEB meeting. The CEB recommends independent investigation of complaints. It was felt that while the IID has done a credible job, the investigation was tainted with the appearance of impropriety because the IID was a part of the police establishment. A second CEB recommendation is that the current practice of requesting polygraph tests be changed so that both the complainant and the accused police officer take the test. Third, the CEB recommends no change in its present membership. Last, the CEB recommends that it not be abolished.

Some additional and even dissenting recommendations were offered by some of the CEB members individually. The president and secretary of the CEB along with representatives from the CRC argued that the membership of the CEB should be changed to reflect an independent, community-oriented (rather than a law-enforcement-oriented) point of view. One person argued for adding citizen representatives (preferably a female and a

youth) to the existing board; another argued for geographic citizen representatives; and the last argued for representatives from credible organizations like the Baltimore City Bar Association. It should also be noted that one or more of the current agencies represented on the CEB may withdraw due to conflict of interest concerns. This would automatically create vacancies on the Board that must be filled through new legislation.

Some frustration was expressed over the low percentage of complaints sustained by the Board. Also, some CEB members were greatly concerned about the current practice of not reviewing homicide cases, and recommended that the CEB automatically look into each case of police homicide. It was acknowledged that the CEB has low visibility in the community, leading to less use of the complaint procedure by the community at large and, especially, by low-income minority persons in particular. No clear-cut evidence of racial discrimination in the complaint process was advanced, but some members thought that since low-income minority populations seem to be very frustrated by the present system, discrimination might be a problem for these groups.

Views of Community Organizations and Interested Citizens

Many believe that low-income minority populations have a problem with police misconduct and redressing grievances through police procedures.⁸ Extreme frustration with the complaint process was attributed to the fact that complaints were rarely sustained, and complainants felt harassed and believed they were sometimes arrested to undermine their credibility. In addition, the prospects of using criminal or civil remedies were seen as so remote as to make the CEB the only forum for pressing grievances.

The representatives expressed the desire to create a new, independent (i.e., citizen-oriented) CEB with the authority and resources to investigate complaints. Many expressed concern that IID investigations were not pressed with full vigor because the IID was a part of the police department. Also, some expressed concern that the community was unaware of the CEB, and that the police department either did not advise citizens of its existence or actually discouraged the filing of complaints. It was thought that current police activities in community relations were aimed at minimizing community discontent without really effecting meaningful change. Most thought that homicide cases should be investigated automatically and that the CEB should press its legislative mandate to its fullest extent.

Conclusions and Recommendations

In keeping with its role as advisor to the U.S. Commission on Civil Rights, the Maryland Advisory Committee has several conclusions and recommendations for consideration by the Commission. These are based on an evaluation of the information provided by the police, the CEB, and others. It is the view of the advisory committee that:

1) CEB membership should be modified.

A major factor contributing to the perception of unfairness is the way the complaint process is organized. The domination of the CEB by enforcement agencies, the CEB's dependence on the police department to investigate complaints of police misconduct, and the rather limited visibility of the complaint procedures in low socioeconomic communities combine to cast doubt on the credibility of the existing procedures. The CEB seems to many to be merely an extension of the police department. The membership of the board should be restructured to reflect a community perspective and to differentiate the board from the law enforcement community.

In particular, the Committee recommends that the Police Commissioner, the State's Attorney, and the City Solicitor should be removed from the CEB because their membership results in a conflict of interest. The Police Commissioner represents the police department. As such, he should not be in a position of evaluating their performance. The State's Attorney is charged with bringing any criminal charges against police personnel and should make judgments concerning possible prosecutions independently of any other actions.

The Committee identified three organizations that would be valuable additions to the CEB. They are the Baltimore City Bar Association, the Ministerial Alliance, and the Baltimore League of Women Voters. The bar association's expertise and reputation make it well-suited to become a CEB member.

The Ministerial Alliance includes many com-

munity leaders. Its presence on the CEB would give the board credibility, especially with minority groups, and provide insight into how police actions affect the grass roots of the community.

The Baltimore League of Women Voters has a long-standing record of public service to the Baltimore community, with emphasis on careful analysis of the issues.

2) The CEB should be able to refer cases directly to the State Police or Baltimore Community Relations Commission.

In cases alleging "excessive force," the CEB should have the authority to refer cases directly to the Maryland State Police and/or the Baltimore Community Relations Commission. At present, the CEB normally reviews synopses of cases investigated by the IID. On the basis of the IID report, the CEB may recommend to the Commissioner that all or part of the case be referred to the Maryland State Police for further investigation. Since the Commissioner may disregard such a recommendation, in effect, he may veto any further investigation.

3) The CEB should review all homicide cases.

The present CEB policy of not reviewing homicide cases should be reversed. The CEB should automatically review any case involving the killing of a citizen by police personnel. With the CEB membership changed, any previous conflict of interest should be eliminated.

4) Community outreach should be expanded.

Efforts to educate citizens about the complaint process should be expanded, especially in poor neighborhoods. The police department and the Baltimore Community Relations Commission should take the lead in implementing the expanded "outreach program." This outreach should include surveys or other means to evaluate public awareness of the complaint procedure. Outreach efforts could be based on the findings of such

research. Federal and other funding sources for outreach should be explored. Currently, citizens learn about the complaint process from either police or CEB members.

5) The CEB should exercise its mandate more fully.

The CEB should request voluntary appearances by the parties or witnesses to a crime; at present this option is seldom used. The full details of the IID investigation should be provided in a timely manner on every complaint. The CEB should receive a detailed statement from the Police Commissioner on the action he has taken regarding each case.

6) The CEB should have a permanent staff.

At present, the CEB has no staff. It cannot, therefore, effectively oversee the work of the IID. Its members all have other priorities, as do their staffs. Thus, it operates at a severe disadvantage in comparison to the police department. This imbalance contributes to the perception of unfairness, deserved or not.

None of the observations made by the Committee are intended to conflict with the spirit or letter of the policeman's Bill of Rights.

Notes

1. Maryland Code, Article 27, Sections 727-734D.
2. Public Local Laws of Maryland, Sections 16-41 to 16-50.
3. Public Local Laws of Maryland, Section 16-43.
4. University of Baltimore Law Forum, Spring 1979, Volume IX, No. 2, p. 19.
5. Unpublished paper dated April 4, 1979.
6. Meeting with Commissioner Pomerleau and his staff, May 22, 1979.
7. Delivered to the Maryland Advisory Committee.
8. Meeting, June 26, 1979. See also Baltimore Community Relations Commission Public Hearing, October 19 and 20, 1979.

Appendix

May 22, 1979, Meeting in the Office of Police
Commissioner Pomerleau
601 E. Fayette Street
Baltimore, Maryland

PRESENT:

Maryland Advisory Committee Members:

Newton I. Steers, Chair
V. Jeffrey Evans, Subcommittee Chair
Samuel I. Rosenberg
Edward Snowden
Chester L. Wickwire

Edward M. Darden, Staff, U.S. Commission on
Civil Rights

Baltimore Police Department:

Donald D. Pomerleau, Commissioner
C. Jared Glauser, Deputy Commissioner,
Administrative Bureau
Frank J. Battaglia, Deputy Commissioner,
Operations Bureau
Bishop L. Robinson, Deputy Commissioner,
Services Bureau
Millard Rubenstein, Assistant City Solicitor
Major William L. Rawlings

June 26, 1979
Maryland Advisory Committee
State Highway Administration
300 Preston Street
Baltimore, Maryland

PRESENT:

The Maryland Advisory Committee Members

Newton I. Steers, Chairman
Sol del Ande Eaton
Patsy Baker Balckshear
Bert Booth
Jill Moss Greenberg
Richard Grumbacher
Eloise Hall
Delores Hunt
Elaine Newman
Samuel Rosenberg
Seiko Wakabayashi
Chester Wickwire

Commission Staff

Edward Rutledge, Regional Director
Edward Darden, Field Representative
Everett Waldo, Deputy Director
Charles Wilson, Attorney

Participants

John Ferron, director, Baltimore Community
Relations Commission
Lawrence Coshnear, Legal Aid Bureau
Barry Kissen, student, University of Baltimore Law
School
Edward Smith, president, Monumental Bar
Association
Benjamin L. Brown, president, Complaint
Evaluation Board and Baltimore City Solicitor
Dwight Pettit, attorney
Sergeant Mercedes Rankin, Baltimore Police
Department, Community Relations Division
Tom Cullatta, director, Community Survival
Center
Irvin J. Conway, president, Baltimore Civic
Interest Group

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