

April 26, 1973

MEMORANDUM TO: Denise Lewis and the CCR

FROM: Field Division Staff

SUBJECT: The Detroit CCS Procedure: Problems and Potential for Contributing to Community Stability

On March 8, 1973, the CCR wrote Commissioner Nichols of the Detroit Police Department requesting a meeting with him and departmental representatives to discuss the operation of the Citizens Complaint Section (CCS) formerly CCB, as to the quality of its decisions, as to fairness, promptness and other objective criteria, and expressed concern that these critical issues affect police-citizen relations. We have received confirmation that departmental representatives will re-examine with the CCR the functioning of this section at 2:00 P.M. for approximately one hour on April 30, 1973. The summary which follows is focused on identifying and analyzing the basic issues relating to this matter in sufficient depth to provide the required understanding to effectively present the CCR's position in the meeting. The two issues referred to in the enclosed letter to Commissioner Nichols will constitute the scope of the discussion at the meeting.

The standard asserted by the Michigan Association of Chiefs of Police, the official statewide professional organization, is a good one and quite similar to responsible community expressions on this issue. CCR is concerned that in reality it appears that this standard is not being met. The MACP states:

"The standard of conduct to which police officers must adhere is on a higher level than that expected of the average citizen. They must not only avoid the occasion of sin but even the appearance of sin..."

"A belief that the truth is being glossed over is a major source of problems in the area of citizen relations. The average citizen asks only that the department be objective and take proper action when an officer is in the wrong."

I. ORIGIN OF THE CCB

It is important to have some insight as to community factors that led to the creation of the Citizen Complaint Bureau in January, 1965 by former Mayor Jerome Cavanagh. It was to fill the need for some efficient departmental mechanism to which the citizen could turn when he felt misused by a police officer and secure justice. Enlightened government and police officers and substantial numbers of the informed community are aware that the officers on the beat cannot hope to police the community effectively without support of the general public.

The basic truth is:

"Police power is unique in history and throughout the world because it is derived not from fear but almost exclusively from public cooperation with the police, induced by them designedly by behavior which secures and maintains for them the approval, respect, and affection of the public." (From Professional Police In a Free Society- Jerome Skolnick)

Again, it appears fair to pose the question, "Has police performance in Detroit, since creation of the CCB, met this requirement, and, if not, has this failure contributed to the current substantially negative public view of the CCS?"

Chapter 4, Section 27 of the Detroit Police Manual, which described the functions of the Department's Community Relations Bureau, was amended to establish the CCB and require it to "report directly to the Commissioner and function with the directives from this office."

Among the 11 assigned responsibilities were:

- A. Initiation of investigation into any matter in the civil rights field which may reflect unfavorably against the Police Department.
- B. Compiling a comprehensive annual report containing the number and nature of the cases and complaints listed, including the findings and action taken.

II. LATER HISTORY OF THE CCB

A. Procedures Instituted by Former Commissioner Spreen

On July 31, 1969 newly appointed Commissioner Johannes Spreen announced a new 16 step complaint investigation process which provided for:

1. Evaluation and decisions on CCB recommendations by a Commissioner's Advisory Panel (the Commissioner's designated representative, the CCB Inspector, and the Civilian Administrative Assistant to the Commissioner). With minor modifications, this procedure exists intact currently.
2. Reduction of a backlog of 274 cases (134 older cases - 140 from 8/1/68 to 6/1/69) to a balance of 51. Completion of new cases within 90 days was announced as the new departmental goal.

Spreen articulated as the overall departmental policy goal:

"The receipt, prompt and proper investigation, and disposition of complaints made by citizens against police officers is a vital and important issue to both the citizens and the police officers involved and to the City itself... A professional police administrator and a professional Department have a public trust and a public responsibility and it is a tremendous one. It includes the professional obligation of self-policing. A professional police officer must set and adhere to a high standard."

Subsequently, Commissioner Spreen, as the result of conferences with then CCR Secretary-Director Marks and Rev. Roy Allen, agreed to share with the CCR the case number, case name and description of matters under investigation by CCB. There has been substantial compliance with this agreement.

(A police officer can appeal any punishment to a Trail Board. The maximum penalty usually administered at a Commissioner's Hearing is loss of pay and leave days. There is increasingly heavy reliance on this procedure because it is non-adversary, requires no witnesses, is swifter and does not tie up three officials of at least the deputy commissioner rank, as with trail boards. This proceeding is described as being similar to a

court marshal. It is used most frequently where there is no conflicting testimony. The Commissioner acts solely on information contained in investigatory reports.

A Trail Board can impose more severe financial penalties or can discharge an officer. It is a formal proceeding similar to a court trial, with an attorney for the defendant, witnesses, and formal testimony. Trail Board decisions (by a panel of 3 deputy commissioners) can be appealed to a labor arbitrator; as to the penalty; to Circuit Court on a question of law, and for veterans, to the Mayor. Also, hearings can be reopened after a finding, for presentation of new evidence.

Internal discipline cases usually do not require as much investigation as citizen complaints, because the infraction is usually witnessed by a supervising officer who can suspend an officer upon witnessing any misconduct. Minor infractions are usually dealt with at the precinct level.)

III. THE CCR EXPERIENCE WITH CCB (CCS) AND RESULTING POLICY POSITIONS

- A. On February 7, 1969, Rev. Allen, the Police-Community Relations Committee chairman communicated in a letter to the Common Council: "Our Subcommittee resolved unanimously--on 2/6/69--to convey to you our firm support of the official obligation of Inspector Heffernan to present to the Commissioner true findings resulting from impartial investigations by the CCB. Because we are convinced that impartial, objective, and forthright investigation and disposition of citizen complaints concerning police actions is critical to the welfare of our City consistent with the orders establishing policy for the CCB, we wish to register our support of Mr. Heffernan and the work of his Bureau."
- B. The August 1, 1969 CCR staff Analysis of Police Commissioner's Statement on Reorganization of the CCB.

The Secretary-Director called attention to the petition campaign to place on the ballot a proposal which if passed would institute a Citizen's Police Trial Board. He said public opinion apparently did not then support this concept and urged maximizing the effectiveness of the existing system. He stated: "When he established the Citizens Complaint Bureau, Mayor Cavanagh requested the CCR to periodically report to him regarding its proper functioning and make recommendations which could improve the operations of the Bureau.

"Traditionally in regard to the Police Department, the unique character of the CCR role has been (1) the receipt and investigation of citizen complaints alleging discrimination and inappropriate treatment by police (2) examination, review and evaluation of policies and practices having community relations consequences, and (3) the recommending of courses of action appropriate to the performance of the police task and to the community interest in sound law enforcement and good community relations."

He also referred to the persistent doubt among segments of Detroit's black and white communities as to the ability of the Police Department to do prompt, impartial investigations of citizen complaints and render adequate discipline to officers found guilty. He concluded that "A properly administered complaint review system serves both the special professional interest of the police and the general interest of the community." (77 Harvard Law Review 499,500)

C. The December 12, 1969 Analysis of the Citizens Complaint Bureau Report

The 1968 CCB report and a subsequent review of CCB's records revealed that of 213 cases handled by CCB in 1968, going as far back as March, 1968, approximately 31 cases had been decided by CCB and still awaited final disposition by the Commissioner's Advisory Panel or the Commissioner himself.

The MCRC, which investigates cases alleging discrimination, at the time of this report had received no response from the police on their requests for adjustments in 37 cases from 1968, and a total of more than 100 going back to 1964. A court suit by the DPOA against MCRC was delaying their processing of cases.

D. Current Operating Procedures in the Citizens Complaint Section

Departmental officials have described several procedural changes that have occurred in recent years:

Formerly, the CCS inspector sat on the Commissioner's Advisory Panel and participated in decision-making on cases his staff had previously investigated and made a recommendation. The lieutenant's endorsement as to accuracy and completeness now replaces the recommendation. Mr. Allan Eichman, the present CCS inspector, is available to the Board (the new title) only as a resource person for the purpose of clarifying information and noting and responding to requests for additional information, such as the need for a legal opinion, to aid the Board in developing a finding. The Board meets on Wednesdays and Fridays normally and decides on cases often on the same day they are considered. They are then referred to the Commissioner. Board members are: the administrative assistant to the Commissioner and two street unit inspectors or lieutenants. Two policewomen command officers and Mel Potter, head of the Administrative Procedures Section, are alternate members.

The CCS inspector has indicated that the number of cases processed by CCS annually is continuously increasing--from about 240 in 1971 to about 275 or more in 1972. However, he said only 31 cases are currently under investigation by CCS and only a few of these are as much as two months old. No cases are awaiting decision by the Commissioner's Advisory Board, although three will be referred to the Board on April 27 and it is expected that they will be decided no later than May 1. CCR staff have noted some discrepancies on this issue, having found it impossible to reconcile the reported backlog of cases with totals developed from the last seven monthly reports.

Eichman estimated that the "average" case--uncomplicated by such factors as large numbers of officers, witnesses that are hard to locate, need for court records or unusual information sources like the communication tape--is processed in about 30 days. Also, a hospitalized prisoner may cause delay by forestalling release of a court examination form by not signing. He also said an investigation must be completed even if a complainant signs a withdrawal form--because unreported breaches of departmental procedures and policy may be discovered, and for other reasons also.

Minor cases, presently undefined to staff except that verbal abuse cases are included are referred without investigation to the precinct or bureau (section) involved. When completed, these reports are submitted or resubmitted, to CCS for acceptance, rejection due to insufficient information, or they are reinvestigated from the beginning.

Annual reports formerly received by CCR have not been compiled for several years, staff has been informed, because of lack of public interest. Monthly summaries of cases received and disposed of by CCS and the Board, with categories of charges, are collected and reported in the police yearbook as part of the Department's annual report. No specific community groups or persons have access to these reports, as a rule.

Recent CCR staff inquiry into the status of the 27 citizen complaints growing out of the December, 1972-January, 1973 STRESS manhunt incidents revealed that they are still "hung up" at CCS. A Detroit News account on 1/25/73 indicated investigations would be "completed by Friday (1/26/73) and sent to the Police Advisory Board." Further, Inspector Eichman indicated in this article that CCS would make its recommendations on the merits of the cases and turn them over to Commissioner Nichols by Tuesday, January 20. Eichman and Delore Ricard, District Inspector, also said written decisions on the cases should start coming to the Council "in a week to 10 days". This pattern of delays in responses, in crisis community cases particularly, has been most apparent since 1969, (the Clifford Howell Case).

A Michigan Civil Rights Commission (MCRC) staff supervisor has informed CCR, on April 26, 1973, as follows:

A total of 247 citizen complaint cases are pending in conciliation at the MCRC, with probable cause findings against the police officers. About 190 involve Detroit policemen. Recommendations for adjustments have been made in 90 of these cases. One hundred eighty cases (about 100 involving Detroit officers) are under investigation. One hundred of MCRC's citizen complaint cases have not been conciliated, although investigations have been completed, because of the Police Department's failure to respond to MCRC's May, 1972 request for discussion and development of a mutually agreeable procedure for conciliation of cases. About 35 to 50 very old MCRC cases, more than 5 years old, have been conciliated and adjusted.

- E. The CCR 2/10/72 memo from Secretary-Director Denise Lewis to Mr. Philip Tannian of the Mayor's Office

This memo analyzed the problems CCR staff has experienced in investigating citizen complaints, particularly the problem of inadequate police cooperation, and proposed that corrective measures should be identified and implemented.

Identified problems were:

1. Evasions in the communication of information by police, and conflicts in the information communicated by different officials.
2. Deviations--without satisfactory explanation--from departmental procedures and policies that have existed since July 31, 1969, illustrated principally by the fairly frequent practices of CCS referring cases to precinct inspectors or bureau chiefs for investigation although they have serious community relations import. Frequently, too, such cases are referred back to CCS for disposition, resulting in significant loss of time in processing of complaints with attendant citizen frustration.
3. Investigative procedures that are somewhat lacking in depth and thoroughness.
4. Unwillingness of CCS to initiate an investigation on its own when a victim, distrustful of the CCS, is reluctant or refuses to file a formal complaint--or when there are no known witnesses.
5. CCS investigations resulting in "not sustained" findings in the face of the bulk of available evidence supporting an opposite conclusion.
6. Inability of staff to effect adequate and certain corrective action in cases of admitted guilt by police officers.
7. Consistent difficulty in obtaining departmental permission to interview police officers for vital information, or failure of officers to supply information, on advice of DPCA.

Mrs. Lewis proposed that information resulting from CCR staff investigations should be considered and evaluated on an equal basis with information reported by police investigators, most particularly in cases where racial discrimination can reasonably be assumed to be a factor. The final report of the CCR could be forwarded to the CCS and the Commissioner's Advisory Panel. CCR staff and representatives of the Commissioner could meet to discuss the conclusions and recommendations contained in the CCR report as well as any factual differences in the CCS and CCR reports. The final decision of the Advisory Panel and the Commissioner would then be communicated to CCR. The periodic meetings would also afford opportunity for a discussion of policy changes within the Police Department which would possibly affect community relations (e.g. the Beat Command Program). Such a procedure would provide a role for CCR that is consistent with its responsibilities as dictated by ordinance.

F. Current Status of the CCR-CCB Relationship

Up to 1969 CCR received monthly and annual reports of CCS case dispositions, although there was usually insufficient detail--it was solely raw statistical data. In recent years, lacking information

from annual reports CCR staff has been forced to rely heavily on written requests for information, directed to the Commissioner. Responses are slow, and, not infrequently, they are not given at all. The attached letters, 1/20/72 and 7/11/72, have not been answered to this date. The July, 1972 letter was written after a CCR staff member spent two full days at CCS in an unfruitful effort to obtain specific and detailed information from CCS.

The CCR views recent experiences of its staff in investigations of citizen complaints and the lack of responsiveness by the Department to staff's requests for information as a negation of the role assigned to CCR under former Mayor Cavanagh. We would hope that communication can be greatly improved and our inter-relationship made decidedly more effective.

Staff members are usually not permitted to see police reports that are important to development of sound conclusions. The police investigative report is an important example in this category. It would certainly have been most helpful to staff to have had access to this kind of report in investigating the 12 cases--of a total of 36--in which a substantial element of racial discrimination was alleged and apparently existed. Reports on "shots fired" is another important report, at the Administrative Procedures section, which staff have been consistently refused permission to examine.

CCR staff have noted that certain kinds of frequently experienced family contacts with the police have been damaging to the police image and have been a factor in some complaints. Attempts to recover property, or to determine where a family member is imprisoned or to secure one's record from the police after dismissal of a case frequently are characterized by unavailability of information or false information resulting in considerable loss of time in telephoning or making trips from precincts to police headquarters and return.

The decision of the CCS to exonerate the officer(s) who were identified by two credible witnesses in August, 1972--because the victim escaped and could not be found--has puzzled staff.

G. Additional Conclusions and Recommendations

In November, 1968 Professor Harold Norris of the Detroit College of Law urged for public and official consideration the following procedures for their possible positive impact on citizen complaint resolutions. They appear to CCR staff to have significant potential:

1. Consider appointing a special prosecutor for Trial Board Hearings. (This would avoid potential conflicts that are possibly inherent in the current use of assistant corporation counsels in prosecuting policemen at Trial Board Hearings and defending them in subsequent court trials).
2. Consider placing some civilians on the police Trial Board.

3. Consider placing blue ribbon civilians in the police complaint bureau. (This has often been proposed also at meetings of the CCR Police-Community Relations Committee).

The CCR staff recalls that under former Commissioner Spreen three or four key command police officials were designated as contact sources for CCR staff to facilitate effective and prompt communication. We would recommend restoration of this procedure.