

**Preliminary Observations on Civilian Oversight in Denver
Presented at the SWACJ Conference
San Antonio, Texas
October 5, 2002**

**Joseph G. Sandoval
Metropolitan State College of Denver
Criminal Justice and Criminology Department
[REDACTED]@mscd.edu**

In 1992, the City and County of Denver City Council enacted an ordinance that created the Public Safety Review Commission. The ordinance provides the Commission with the authority for general oversight of the police and sheriff agencies in the City and County of Denver. Among other powers under the ordinance, the Public Safety Review Commission (PSRC) may review policy, make recommendations on policy and programs, review investigations alleging unnecessary force, harassment, abusive treatment of a person who is not a member of the police or sheriff, hire an investigator, subpoena witnesses or documents, establish rules for its internal use. PSRC has jurisdiction over sworn officers in the police department and sheriff department (Ordinance No. 585, Series of 1992, hereinafter Ordinance).

The ordinance did not arrive in Denver spontaneously, rather it developed, as most police oversight agencies or commissions, with an incident or series of incidents that sparks interest in police behavior and triggers a perceived need for civilian oversight of policing (See Samuel Walker, Police Accountability. The Role of Citizen Oversight, Belmont, California: Wadsworth/Thompson Learning, 2001; Joel Miller, "Civilian Oversight of Policing, Lessons from the Literature," Vera Institute of Justice, Global Meeting on Civilian Oversight of Police, Los Angeles, 2002). The development of the ordinance creating PSRC was the culmination of a four-year effort initiated by a local businessperson with the assistance of a city council member and community organizers/activists. However it was not the first effort in Denver for civilian review or oversight of police. There had been efforts since the 1940s to establish a formal mechanism for civilian participation in the policing function (See "Report of the Denver Citizens Hearing Panel on Allegations of Police Misconduct, June 30, 1991, for a summary). Those efforts met with limited success and those with a modicum of success have been characterized as ineffectual, inconsistent and sometimes resulted in police cooption.

In 1978 the electorate in Denver voted on a referendum amending the City Charter and creating a Police Commission. This referendum resulted from the efforts of the Denver Bar Association and its Community Concerns Committee created in 1971. The Community Concerns Committee held a series of meetings in Denver in 1976 to determine whether its observation that the Denver Police Department was not responsive or effective in investigating allegations of police misconduct. At the conclusion of those

meetings, the Committee issued its report and worked on drafting and proposing to the City Council amendments to the City Charter creating a police commission ("Report of the Community Concerns Committee of the Denver Bar Association on Police-Community Relations in Denver," September 9, 1976).

The formation of the Community Concerns Committee of the Denver Bar Association did not occur without some basis. There was a public outcry, reflected in newspaper articles in the early 1970s, about the incidence of police abuse of authority ("Police Brutality Charges Show Marked Rise," Denver Post, March 3, 1974, p. 3). There was public sentiment favoring a civilian review board in Denver. The Chief of Police Art Dill in a luncheon speech to the City Club of Denver said he would not support a civilian review board, but he would support an advisory group to determine whether investigations against police were thorough (Pat Bray, "Dill Opposes 'Override' Authority for Civilian Review Board," Denver Post, September 18, 1974, p. 25).

The controversial facts surrounding the death of an individual in police custody exacerbated the existing tensions between the police and members of the community, especially minority communities. On April 9, 1976 a man detained by Denver Police Officers became embroiled in a dispute with those officers. Apparently, the officers were investigating a robbery of a newsstand and this man fit the general description. However, the clerk at the newsstand could not identify him as the robber. Nonetheless there was some oral jousting and as a result the man was arrested. Most accounts of the events leading to his death suggest that he was choked and physically restrained. Guards in the jail found him unconscious in his cell a few hours after his arrival. He died four days later although there was evidence of thrombotic occlusion of the right internal carotid artery resulting in brain damage.

A grand jury investigated the matter and determined that there was no use of excessive force and that his death could have been of natural causes. This event may have been the immediate reason for the Denver Bar Association's participation in the civilian oversight efforts. Indeed, the circumstances surrounding this tragic situation epitomized to many what was wrong with police internal investigations in Denver. It was within this context that the first proposal for civilian oversight originated.

City Council proposed a referendum with the election scheduled for November 2, 1976. The proposal would have made sweeping changes in the Department of Safety and created a five-member police commission (See Council Bill No. 494, Series of 1976). This proposal was the result of the work of the Community Concerns Committee. The Council defeated the proposal by one vote after a number of organizations, including the Denver Police Protective Association, testified against it. Some testimony from the police groups suggested that the Mayor had an alternative proposal.

Shortly thereafter, Mayor Bill McNichols created by executive order a Citizens Police Advisory Review Committee on October 1, 1976. In a scathing editorial, the Rocky Mountain News pointed out that this was a political move resulting in a "toothless investigation committee whose findings the mayor had predicted in advance..." The

editorial mentioned the "memory of Carl Newland" as it exhorted the Citizens Police Advisory Review Committee "to rise above their meager charter and do a thorough and decent job." The task of the committee was to review the results of the internal police investigations of officer misconduct to determine that those investigations were thorough and fair. If the committee was not satisfied then it could recommend that further investigation occur (Rocky Mountain News, "A City Hall Watchdog with Rubber Teeth," October 10, 1976, P. 54).

Although the City and County of Denver had dodged this proposal for reform, the issue and the effort for civilian oversight remained. In July 1977, police shot and killed two men in an inner city park during the late afternoon. Police sought these two men because of previous reports that they had threatened someone earlier in the afternoon. When police found them they were laying prone in a drunken condition.¹ As police surrounded them to arrest them, the men made some move perceived by the officers as threatening. The officers opened fire hitting one man many times and the other once killing both.² The District Attorney in Denver, apparently bowing to pressure from prominent city and state officials, initiated a grand jury investigation. There was a tremendous howl of outrage that resulted with spontaneous demonstrations and marches on the Denver Police Building the day after the incident. This incident and its aftermath served as the impetus to continue efforts to create a civilian oversight system.

The Grand Jury handed down one indictment against one police officer. This indictment alleged the equivalent of involuntary manslaughter against the officer who shot and killed the man who was shot once amidst the volley of shots. A jury acquitted this officer after a well-publicized trial. Indeed, the police and the mayor insisted that the police acted properly under those circumstances. Others thought differently and suggested that even assuming that the "slayings were as innocent as the police and Mayor Bill McNichol's administration has sought to make them appear, the mere occurrence [sic] of those deaths means there's something not quite right in the way our police are performing their duty." (The Colorado Daily, "Civilian Control of the Police," October 13, 1978, p. 4)

The result was that the proposal that failed to make the ballot in November 1976, in modified form, now was scheduled for election in 1978. The police internal investigative mechanism was the continuous object of criticism from various sources including the Citizens Police Advisory Review Commission (Gary Delsohn, "SIB Dismissal Record Criticized," The Rocky Mountain News, September 17, 1978, p. 5).

¹ Preliminary autopsy reports on the deaths of both men indicate that the blood alcohol of one was .29 and of the other .14 (after approximately 13 blood transfusions).

² The preliminary autopsy report indicated that six bullets were recovered from one body within the left shoulder, left chest, right lower back, left pelvis (2) and right upper leg. On this body, the bullet in the left chest causes massive internal bleeding that resulted in the death of the victim. The preliminary autopsy report indicated that one bullet wound and one bullet was found on this body. The wound was in the left groin leading to a track extending to the right and backward through the colon, small bowel, abdominal aorta, right lung and came to rest under the right shoulder blade. Office of the District Attorney, Second Judicial District, "Scope of the Investigation," released August 1, 1977.

The proposal creating a police commission required a Denver City Charter amendment and voter approval. The election was scheduled for November 7, 1978. Records from the Denver City Clerk's Office indicate that two major groups opposing the ordinance spent over \$39,000 to defeat the proposal; while the proponents of the charter amendment spent less than \$7,000 (Charles P. Fogg, "The Citizen's Police Advisory Review Committee," paper submitted as part of LEN 220, fall 1978 semester, MSCD). The Denver Police Protective Association also enlisted its political forces to defeat the proposal.

There were other efforts to ascertain the truth about the park incident, including City Council creating a task force and allocating money to retain an attorney to advise it. However those efforts ended in failure or without any result. Suggestions for meaningful civilian oversight continued to surface. For example, the Mayor created a group in 1978 (ostensibly during his re-election campaign) to study a new approach to civilian review. This group recommended an 18-member citizens' commission to monitor the police (Bob Threlkeld, "Citizen Unit Proposed for Monitoring Police," The Denver Post, August 30, 1979, p. 1). The proposal only reached the talking stage and no official action ensued. In the meantime a Denver Sheriff Officer shot a 17-year-old while in transit from a state juvenile facility to a city facility. This incident caused The Denver Post to suggest the "need for citizen participation in investigations of complaints against police officers." The editorial concluded that civilian participation could "restore public confidence in the investigative process and avoid the charges of self-serving whitewash that so often accompany the release of findings." ("Police Oversight Needed," The Denver Post, March 30, 1979, p. 26) The following year, in the wake of riots in Miami, both Denver dailies suggested the need for independent review of police actions ("Curbing Police Violence," Rocky Mountain News, June 3, 1980, p. 32; "Denver's Own Need," The Denver Post, May 21, 1980, p. 22). However the civilian oversight mechanism did not materialize and the Citizens Police Advisory Review Committee continued its operation.

In the early part of the 1980's Mayor Bill McNichols lost his reelection effort to Federico Pena. The election itself is a study for political scientists on how the "underdog" is able to muster political support to win, but enthusiastic supporters of the newly elected mayor may have had their optimism tempered by the realities Pena faced in public office. In 1983, Mayor Pena abolished the Citizens Police Advisory Review Committee. There was no shedding of tears at the demise of the committee, because many viewed it as ineffectual. The quest for meaningful civilian oversight did not wane although there was no concerted effort at its creation.

In 1988 a brief automobile incident resulting in a traffic citation sparked the civilian oversight effort anew. Clarke Watson filed a complaint alleging improper conduct because of exchanged gestures and words with two Denver police detectives as they traveled along I-25 in Denver. The officers issued a traffic citation for careless driving and Watson complained to the internal affairs office. The internal affairs investigation resulted in a finding of not sustained.

Not satisfied with this response, Watson, who has had a continuing interest in police use of excessive force, asked for the police reports for 1986 and 1987 in which the public complained about police behavior. He asked the Chief of Police for the information as he wanted to prepare a request to City Council seeking a civilian review board. He took the request to the chief's superior the Manager of Safety.

The Manager of Safety provided data requested by Watson. However he told Mr. Watson "...unequivocally that, in [his] opinion, the data that follows does not support such an initiative and, furthermore, the citizens of Denver, the City Council, the Mayor, and several respected and nationally known police chiefs have opposed creation of such Boards for a score of sound reasons." (Letter Manuel L. Martinez to Clarke R. Watson, September 6, 1988) However, Mr. Watson was undaunted. He wrote a letter to Hiawatha Davis, President of Denver City Council in which he proposed the creation of a Police Civilian Review Board. In his view, "more than adequate evidence [exists] that a PCRB is long overdue" and that while review board proposals create "fierce opposition" from Denver police officers "democratic principles and constitutional government" require citizen participation in reviewing complaints against the police (Letter Clarke R. Watson to Hiawatha Davis, September 22, 1988).

There was a flurry of discussions, communications and meetings during the fall 1988. Council member Cathy Reynolds, Chair of the Public Safety and Courts Committee of the Denver City Council referred the matter to the entire Council. Although Watson had proposed a civilian review board, that proposal had evolved into a study committee to evaluate the Department of Safety. Ms. Reynolds did not think that it would be appropriate for her committee to make a decision on the proposal (Memorandum Cathy Reynolds to Members of Council, December 15, 1988). The police responded by making improvements in its disciplinary process and by establishing a panel of captains to review the department's internal investigations bureau. The Denver Post commented that the public had "eroded faith" in the police and that the only way to "re-establish" that faith is to increase public participation in the disciplinary actions. The Post urged police officials and Denver politicians to "take positive action to ensure that police understand they cannot put themselves above their oaths to uphold the law." (The Denver Post, "Policing the Police," March 6, 1989)

In the meantime, others in the Denver community were discussing the need for civilian oversight. In addition, organizations such as the ACLU had an interest in the formation of a civilian oversight mechanism. Mark Krug, the ACLU of Colorado Education Director, attended the IACOLE conference in September 1988. After that conference, he submitted a report in which he stated that any movement to create a civilian oversight mechanism would be met with "well-organized, well-financed resistance" from police associations. He suggested that "almost without exception" civilian oversight mechanisms result from a "community tragedy, often the police shooting of a young minority by the local police." He said that it was important that community organization was important so that a political base would exist to galvanize the community "reacting to a tragedy or other public outrage." He also said that dialogue with the police might improve with a "politically potent" community organization whether or not there is a

tragedy (Mark Krug, "Report on IACOLE Conference Montreal, September 25 to 28, 1988, October 10, 1988).

In hindsight, it seems that the incident Watson experienced in 1988 and his communication with the police, manager of safety and elected officials was the beginning of the final chapter initiating the creation of the Denver Public Safety Review Commission. Hindsight, being 20-20, the literature and experience identify certain characteristics necessary and essential for establishing and sustaining effective civilian oversight in communities. Krug suggested political base, community organization, and dialogue with police as important in the development of civilian oversight. Little did he recognize that the characteristics identified in later years included political support, police cooperation and activist support (Miller, 2002). These factors also are necessary for the sustaining of effective civilian oversight. However, because of the temporal nature of the Citizens Police Advisory Review Committee or any other civilian review mechanism initiated through executive order, those involved in the Denver effort sought a mechanism with greater permanence.

Police tend to resist summarily any effort for civilian oversight. While Miller (2002) identified police cooperation as a necessary ingredient in establishing civilian oversight, most involved in the effort saw police resistance as a hurdle, if not a roadblock. As discussed earlier, the 1978 referendum failed because of police opposition. Watson's efforts in 1988 and 1989 ended when Hiawatha Davis introduced a resolution into City Council "asking the members to study the feasibility of a citizens' public safety review commission. After heavy lobbying by the Police Protective Association and former Manager of safety, councilmembers (sic) overwhelmingly defeated the resolution." (Karen Bowers, "Cop Watch Denver Voters May Get a Chance to Put the Heat on the Heat," Westword, December 11-17, 1991) It seems to be a given that police resistance to civilian oversight will exist whenever civilian oversight comes into serious consideration.

The efforts in Denver since the early 1970s is no exception as discussed earlier. This assumption is so widespread that John Crew³, a recognized national leader in the oversight communities, has stressed emphatically that the primary obstacle to civilian oversight will be police associations. He has articulated three general stages of resistance. The first stage is the "over my dead body" stage. The second is the "magical transformation" stage. The third is the "post-partum" stage (Krug, 1988). There may be a fourth stage, but this comes after the oversight mechanism becomes established and the organization successfully overcomes the first three stages. Crew called the fourth stage as the "wa..wa" stage (Joseph G. Sandoval, "Survival of Oversight Activities in a Political Environment, Maintaining Standards in the Face of Adversity," presentation at the NACOLE Conference, October 1997, Oakland, California).

³ John Crew, esq., is the former Director of the Police Practices Project for the ACLU of Northern California. He has worked assiduously in assisting communities to establish civilian review of police mechanisms. The National Association for Civilian Oversight of Law Enforcement honored him at the Association's national conference in 2001 in Denver.

Up to 1990, Denver police organizations had overcome successfully efforts to create a civilian oversight body. The fact that there had been a significant resistance in 1976 and in 1978 and again in 1989 supports this conclusion. The fact that political officials did not support civilian oversight seems a factor as well. In those situations where there seemed to be political support for oversight, the mayor derailed the effort through the creation of the Citizens Police Advisory Review Committee. These same factors would rise again as the last chapter in the creation of Denver Public Safety Review Commission.

In early 1991, the picture and story of 15-year-old appeared in the Rocky Mountain News. He alleged that police had broke his nose, blackened his eye and made racial slurs against him after a police chase of the stolen car he drove ended in a crash (Mark Brown, "Boy, 15, Says Police Beat Him," Rocky Mountain News, February 1, 1991, p. 7). Clarke R. Watson, a columnist for that newspaper, immediately seized the opportunity to write about the need for civilian oversight of police. He cited other incidents in concluding that "not once in seven years of many incidents involving alleged acts of police brutality against people of color has Early found against the police and in favor of a person of color." (Clarke Watson, "When Denver's Cops Swing, Our DA ducks," The Rocky Mountain News, February 6, 1991, p. 55) Although Watson was railing against the Denver District Attorney, his use of this incident transformed into the need for civilian oversight.

Watson had tremendous response to his article. He conferred with Chet Whye, founder of the African American Advancement Institute, and council member Hiawatha Davis. Davis became chair of a panel to hear complaints about police behavior in a structured setting. The three agreed that this panel should represent a broad cross-section of Denver citizens. The panel included Republicans, Democrats, independents, clergy, a Denver police officer, academics, gay folks, attorneys, men and women. The panel had one purpose: to hear complaints from Denver residents about the conduct of police in various circumstances. The panel heard testimony for three successive Wednesdays. Over 117 people spoke. The panel heard expert comments as well. This effort led to a report and a recommendation for the creation of a Denver Charter Amendment creating the Public Safety Review Commission ("Report of the Denver Citizens Hearing Panel on Allegations of Police Misconduct," June 30, 1991). The creation of civilian oversight seemed imminent, but the work of the panel had just begun.

Additional work needs to be completed regarding the effort of the citizens' panel leading to the passage of the City Ordinance. Furthermore, there is a need to chronicle the development and the accomplishments of PSRC over the past ten years. The following random items are only a guide. Given the political struggles to have civilian review in Denver and the efforts required to keep it alive and functioning leads one to the conclusion that whatever ideal anyone postulates for civilian review bodies or functions simply withers to the onslaught of, what may seem to those withstanding it, a scorched earth policy to opponents. Indeed, the political reality seems greater than the idealism embodied in civilian review.

Some Thoughts for Future Consideration:

Standards for determining the effectiveness of independent review of complaints:

From Douglas Perez, Common Sense about Police Review, Philadelphia: Temple University Press, 1994, as summarized in Samuel Walker, Police Accountability. The Role of Citizen Oversight, Belmont, California: Wadsworth/Thompson Learning, 2001, at page 60

“Integrity refers primarily to the thoroughness and fairness of the complaint investigation process. *Legitimacy* refers to how the complaint investigation is perceived by its clients, stakeholders, and audiences. These include complainants, officers who are subject to complaints, the community at large, the police department, and elected officials ultimately responsible for the process. *Learning* refers to the extent to which the process provides meaningful feedback to responsible officials in such a way that allows them to make improvements in both the complaint process and the police department.”

The Four “T’s” as discussed at the NACOLE annual conference in Oakland, California on October 16, 1997.

Independence—Refers to the degree to which oversight depends upon the police for resources including budget, investigators, outcomes of complaints, information and other items necessary to carry out its function. Of course, Walker divides this into three categories: structure, process and perceived. (P. 61)

Integrity—Refers to the degree to which oversight has established principles of operation and is willing to continue as a principled process in spite of political opposition and hostility. This differs from the Perez principle of integrity, although it assumes thoroughness and fairness in the established principles of operation.

Involvement—Refers to the degree to which oversight operates within the public milieu, e.g., is the process open to public view? This is similar to Perez, but it does not concern itself with the political question of acceptability. It is a fine line between having a sense of involvement and having a sense of Perez’ legitimacy. Oversight bodies may be perceived as legitimate within Perez’ context, but those entities may lack integrity either from the lack of thoroughness and fairness or the political hostility and Sense of Oz which results in the process being politically correct.

Ingenuity—Refers to the degree to which oversight overcomes the Sense of Oz in working toward addressing issues presented in the context of oversight.

Areas of PSRC’s Conflict With PPA

Gang List

Do the right thing

PPA

Subpoena

Compelled testimony