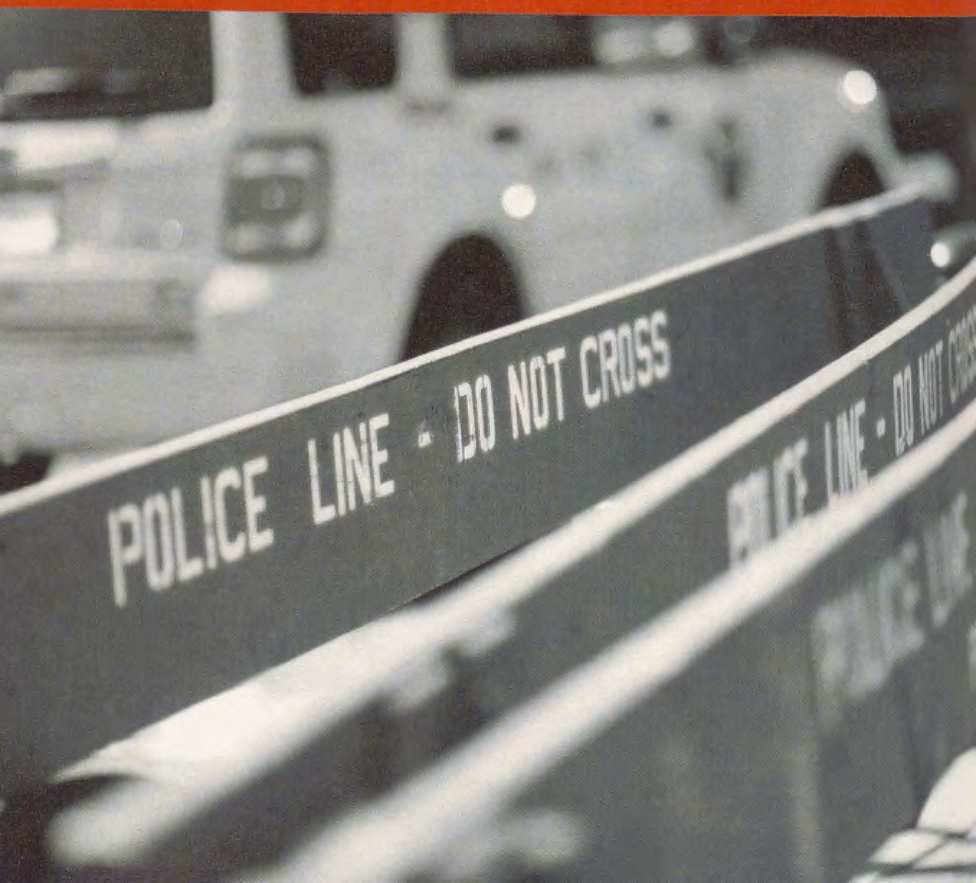


Law unto Oneself



Police Accountability in Chicago

BY CRYSTAL HUEN-FAI TSOI

Introduction

The police accountability apparatus in Chicago is no stranger to criticism. From the creation of the Office of Professional Standards (OPS) in 1974 through the short history of its successor, the Independent Police Review Authority (IPRA), investigations into police misconduct and subsequent disciplinary actions have received constant scrutiny. Cases like the Jon Burge police torture ring have revealed the ineffectiveness of oversight efforts in the city and led to multiple regime changes. The creation of the IPRA in 2007, which operates separately and independently from the Chicago Police Department (CPD), was an admission by city leaders that the OPS was inherently flawed and had failed to hold police accountable. Yet has this change produced tangible and significant improvements over IPRA's predecessor? In this essay, I argue that the IPRA has produced little foundational change, crippled by civilian mistrust of the police department and by a law enforcement culture impervious to substantive change. For these reasons the IPRA is incapable of exercising impartial oversight of the CPD. A lack of personnel, uneven enforcement of policy, and political coercion from institutions such as the Fraternal Order of Police and the Chicago Police Board obstruct real reform and accountability of the police department.

Argument

Since the creation of the IPRA in 2007, there has been limited research into the effectiveness of the IPRA compared to the OPS and specifically whether this regime change has translated into substantial policy changes in police accountability. I examined IPRA's three annual and one biennial reports, compared them to reports from other cities, and contextualized these reports with interviews from lawyers, complainants, a police officer, an IPRA investigator, and the director of the Chicago Justice Project. My preliminary conclusions, though conservative, are not promising. The structural change from the OPS to the IPRA has not increased IPRA's impartiality, which I attribute to three factors. First, public perception of the IPRA and its ability to hold police officers accountable is low, leading to low public participation in the accountability process. High levels of participation are necessary for the institution to succeed. Second, despite innovations to the investigative process, such as subpoena powers, the residual OPS culture and lack of resources for investigators compromise the quality of investigations. As of 2014, an increasing number of former police officers staff IPRA's higher ranks, potentially threatening the impartiality and independence of the organization (Mitchell). Third, due to a lack of communication and a refusal by the Chicago Police Board, which adjudicates IPRA recommendations, to engage in critically constructive dialogue with the public and police officers, there is a disconnect between policy and practice. These factors undermine innovative changes to establish more accountability in police behavior within Chicago.

The case of Matthew Clark and Gregory Malandrucchio, two University of Chicago affiliates who were allegedly beaten by officers of the CPD, will illuminate how weaknesses within the IPRA process are undermining accountability. Their story will serve as an anecdotal thread to showcase weak points of the process itself. Until city and CPD leaders make a clear commitment to police accountability, the IPRA will remain a vestige of its predecessor. Unless a clear deterrent is imposed on the

CPD that mandates strict disciplinary action for abuses of power, the IPRA will remain a weak institution.

Approach

Lack of access to critical information makes evaluating the IPRA as an institution difficult. The proceedings of Chicago Police Board hearings and the reports of non-sustained cases¹ are not available to the public even with a Freedom of Information Act request (Hong). Given these conditions, I will draw my conclusions from interviews with IPRA investigators, a police officer, lawyers, complainants, and community activists, bolstered by the limited statistics released by the various departments. Whereas Futterman et al. examined the OPS in the context of Diane Bond's encounter with the police (Futterman, Mather, and Miles), this essay will evaluate IPRA through the lens of Clark and Malandrucchio's civil litigation (*Clark v. Chicago*). I seek to understand why police accountability and police culture are unchanged under the IPRA. The interviews should be taken for what they are: individuals' subjective views of their own experiences. As such, I use them anecdotally to contextualize the statistics. However, the interviews offer qualitative insights that are not available in IPRA or Chicago Police Board reports. These statistics and interviews, placed within the larger framework of municipal institutions and compared to peer cities, support a preliminary diagnosis of the problems hindering police accountability and hint at incremental policy changes that might help streamline the process. To do so, we must answer the following questions:

1. What challenges prevented the OPS from holding members of the Chicago Police Department accountable?
2. How did changes in the IPRA address these issues?

1. The IPRA will close a case ("non-sustained") due to lack of evidence to support allegations of police misconduct.

3. What are the current policy outcomes of such changes as indicated by the statistics?
4. Do these outcomes suggest a pattern towards greater, diminished, or unchanged accountability?
5. If towards diminished or unchanged accountability, what factors continue to compromise efforts to improve the system?
6. What policies could the IPRA adopt from other cities to promote police accountability?

By following the general complaint process at IPRA until it reaches the disciplinary stage with the superintendent of police or the Chicago Police Board, my research uncovers some of the obstacles that might compromise the integrity of the total oversight process.

Creation of the Office of Professional Standards

Chicago's struggle with police brutality is not a new phenomenon, as seen in the violent confrontations of Haymarket Square in 1886 to the Democratic National Convention in 1968. Since the 1968 convention the oversight apparatus to monitor police brutality in Chicago has changed from decade to decade and exists currently as the Independent Police Review Authority (IPRA), which works with the Chicago Police Board and the police superintendent to bring accountability to the police department. Prior to the IPRA, oversight was left to the Office of Professional Standards (OPS), an internal police agency that investigated allegations of misconduct filed by civilians.

From its conception in 1974 to its restructuring into the IPRA in 2007, the OPS has had its fair share of notoriety, such as the Jon Burge torture controversy in the 1970s and 1980s (Saunders) and the 2007 dissolution of the CPD's corrupt Special Operations Section, which

dealt primarily with gangs (“Miedzianowski”). At the time, the public was unaware of these bold misuses of police power due to poor oversight of police activities. The 1990 discovery of the Burge tortures uncovered the use of electrocution, suffocation, and strip searches during police interrogations (Conroy, “House of Screams”). Narcotics were planted on unsuspecting victims, who were mostly minorities from the city’s South Side, which led to numerous false convictions (Saunders). Innocent men and women were subject to another kind of law and order during the reign of terror by Burge and his group of rogue officers. Confessions were forced from suspects not by formal interrogations but by fear of torture. Over fourteen hours, Andrew Wilson was “smothered with a plastic bag, beaten, kicked, held against a hot radiator, and forced into confessing to the double cop-killings” (Saunders). The Illinois Supreme Court overturned Wilson’s death-sentence conviction on the basis that he had involuntarily confessed to the killing due to torture.² Burge himself was convicted of obstruction of justice and perjury on June 28, 2011 (Walberg & Lee); he was sentenced to four-and-a-half years in prison and released from home confinement in February 2015 (Gorner).

Another example of police brutality during the OPS era was the “Skullcap Crew,” a group of police officers that patrolled the Stateway Gardens public housing project on the South Side. The crew was notorious for routine pat downs and inhumane acts against African Americans (Futterman, Mather, and Miles). The 2004 civil case of fifty-year-old Diane Bond alleged that five officers forced her to “show them her genitals, beat and choked her, put a gun to her head, threatened to pull her teeth out with pliers and plant drugs on her, desecrated her religious items, assaulted her with racial epithets, beat her teenage son, and forced her to watch as they made her son beat a middle-aged neighbor” (*Bond v. Chicago*).

These cases were exceptional, yet policy changes enacted in response to these extreme cases should have made the accountability and

2. Wilson was subsequently reconvicted and sentenced to life in prison (Conroy, “Persistence”).

disciplinary institutions in Chicago more formidable and responsive to police corruption overall.

From OPS to IPRA

The switch from the Office of Professional Standards to the Independent Police Review Authority was meant to address the criticism that the OPS was deferential to the Chicago Police Department (“Our Structure”). Prior to 2007, OPS’s operations were folded into the structure of the police department. Schematically, this type of structure is categorized as “citizen inclusive” (Liederbach et al. 359). In this type of system, civilian employees of the police department conduct investigations into allegations and complaints of police misconduct.

Liederbach et al. studied a midwestern internal investigation agency (almost identical to OPS) to determine how prevailing biases, organizational structure, and transparency of techniques and outcomes limited the quality and compromised the integrity of investigations:

The data used for the present study were collected from the internal affairs division of a large metropolitan city located in the Midwest, hereafter to be referred to as “Midwest City.” Midwest City can be described as extremely diverse in terms of the racial and economic composition of its residents. In terms of racial composition, slightly less than half of the population is white and over one third of the residents are African American (Liederbach et al. 359).

The low sustained rates³ of the police review board of the so-called Midwest City are a concern. A majority of complaints involved allegations of verbal harassment or minor injuries; few cases involved serious injuries

3. Sustained rates refers to cases with sufficient evidence to support allegations of police misconduct.

or brutality. When a third-party witness could not confirm the complainant's or the officer's statement, cases were considered inconclusive and designated as "not sustained." In other not-sustained cases, investigators obtained sufficient evidence to rule that the complainant had submitted a false affidavit (Liederbach et al.). More not-sustained cases were judged inconclusive than were rejected due to false affidavit. This can be explained by many factors, one of which is the subjectivity inherent in investigations and the way investigators interpret events, given that, more often than not, probable-cause determinations favor police officers rather than complainants who are seeking to have their grievances addressed.

The most common criticism of civilian investigation agencies are the low sustained rates. Sustained rates serve as proxies for the quality of investigations and the overall integrity of an agency's process. Intuition suggests that the lower the sustained rate the more questionable the integrity of the institution, either due to the poor quality of investigations or the existence of structural barriers to the complaint process. In many critical newspaper articles, lawyers who have worked with the OPS and the IPRA point to low sustained rates to claim that these organizations are inept. Futterman et al.'s study of the OPS related low sustained rates to a certain level of dysfunction within the oversight system (Futterman, Mather, and Miles). Over six years, from 1999 to 2004, the study noted a 90 percent drop in the sustain rates for charges of civilian abuses; brutality cases also dropped from 5 percent in 1999 to a half of a percent in 2004 (Futterman, Mather, and Miles).

However, the dynamics of oversight are more complex and sustain rates reveal only a superficial understanding of oversight agencies. As Liederbach et al. concluded, sustained rates are "not a valid measure of the overall integrity and effectiveness of a complaint review process" but are "more indicative of the inherent limits of police complaint investigations" (370). From one point of view, these rates could be explained by an agency's increased efficiency and productivity and a progressively more accountable police department. We should not disregard sustained rates, but conclusions drawn from them should be contextualized with

the results of agencies in other cities or approached with an understanding of how an institution functions within a city's wider culture of police accountability. Futterman et al.'s study contextualizes OPS sustain rates by comparing them nationally to peer institutions and found that on average, complaints were 94 percent less likely to be sustained in Chicago. What makes these rates even more alarming is how sustained cases survived the disciplinary process. Under the OPS, the Chicago Police Board reduced or reversed the disciplinary recommendations that OPS investigators made in the majority of sustained cases, thus making the rate for cases that meet their disciplinary recommendations even lower than the sustained rates of the agency itself. Futterman et al. concluded that OPS' method of investigations did not foster a culture of accountability (289).

In light of mounting criticism of OPS' failure to keep the CPD truly accountable, Mayor Richard M. Daley created the IPRA in September 2007 with expanded powers and reorganized under the mayoral office rather than the police department. IPRA's mission is to maintain "the highest level of integrity while conducting objective, thorough investigations, [and] striving to reach a sound and just conclusion" with an aspiration to "promote cooperative relationships of trust and responsibility between citizens and the police" ("About IPRA"). The hope was that a regime change would facilitate a new attitude within the oversight apparatus and produce higher levels of accountability.

Under the executive jurisdiction of the mayor's office, the IPRA gained an extra layer of autonomy to conduct investigations. In her thirty-five years at the OPS and now the IPRA Coordinator of Investigations Andrea Stoutenborough noted that OPS' culture prevented investigators from conducting investigations with full autonomy. The police superintendent would occasionally dictate which files should be pursued thoroughly and which ones should be neglected, preventing the chief administrator of OPS from exercising power independently. "There has definitely been a change," Stoutenborough said, referring to a more independent agenda at the IPRA to "investigate into what really happened" (Stoutenborough and Amezaga).

The IPRA in the Context of Los Angeles and New York City

Police brutality is not unique to Chicago. To better understand police accountability in Chicago, we will explore two other large metropolitan cities: Los Angeles, with a population of 3.7 million, and New York, with a population of 8.1 million (U.S. Census). Both cities have struggled to find a system to cope with police corruption and provide adequate police oversight. Both have had their own episodes of police brutality, such as the beating of Rodney King in 1991 and the acquittal of several officers, which led to the Los Angeles Riots of 1992. The case of Abner Louima in 1997 in Brooklyn catapulted unjust police practices into the national spotlight due to the graphic nature of the abuses. Louima, thirty years old, and several other patrons were breaking up a fight at a nightclub in East Flatbush (Chan). Another confrontation broke out after police arrived and Louima was identified as an assailant and arrested. Police Officer Justin Volpe beat Louima, who was handcuffed, with a nightstick, subjected him to a strip search, kicked him in the testicles, and sodomized him with a broom handle. Louima's injuries left him hospitalized for two months (Chan).

Police Accountability in Los Angeles

In Los Angeles County law enforcement is divided into the Los Angeles Police Department (LAPD) and the Los Angeles Sherriff's Department (LASD) (*Roster*). Oversight is also divided into two separate agencies: the Board of Police Commissioners for the LAPD and the Office of Independent Review (OIR) for the LASD. Interestingly, one of OIR's attorneys, Ilana Rosenzweig, became the chief administrator of Chicago's Independent Police Review Authority in 2007 (Gennaco; Huffstutter). She is also a member of the Board of Directors of the National Association for Civilian Oversight of Law Enforcement ("Board of Directors"). Understanding Los Angeles' oversight apparatus will provide insight

into the future of the IPRA and the projected improvements and failures of its current policies.

The Los Angeles County Board of Supervisors created the OIR in 2001 in response to the Rampart Scandal of the 1990s, which uncovered widespread corruption in the Community Resources Against Street Hoodlums antigang unit (“Executive Summary”). The OIR is a civilian oversight agency with autonomy from the LASD. It is comprised of six lawyers with backgrounds in police accountability and civil rights. Working closely with the Sheriff Office’s Internal Affairs Bureau, the OIR conducts inquiries into misconduct and recommends policies to improve officer performances without sacrificing an officer’s autonomy to enforce the law. At the heart of OIR’s reform policies was a “listening and learning first” approach that focused on working with various units, employees, and executives to understand the problems facing the LASD before implementing policy changes. The notion of “getting it right” was central to developing credibility with officers of the Sheriff’s Department and to pinpointing systemic issues based on feedback from those who know the system best (Gennaco iii).

Full access to documentations and LASD personnel were among the innovative aspects of the OIR in 2001 (Gennaco). Ample resources (six attorneys and an extended staff) permitted quality investigation and thoughtful policy recommendations to the LASD. The first annual report noted the undivided support of the sheriff and Board of Supervisors—this constructive relationship and lack of tension stands in stark contrast to the institutions in Chicago. This commitment to independent inquiry and cooperation into LASD’s misconduct is one of the main reasons Los Angeles has seen a noticeable change in citizen-officer interactions in the last fourteen years.

“Back then not only was the force riddled with racism, it operated as a quasi-autonomous paramilitary law-enforcement agency accountable to no one, least of all the civilians it was supposed to be protecting,” recounted Connie Rice, a civil-rights lawyer in Los Angeles (“Rodney King”). The political pressure of city leaders and mounting activist

pressure from local communities, such as Korean Americans, whose businesses were damaged during the riots that followed the Rodney King beating, finally compelled the police force to become accountable. The fairly sanguine climate that exists in Los Angeles today is an amalgamation of all these factors.

Police Accountability in New York City

New York City, on the other hand, has a system closer to Chicago's, although there are distinct differences. Recent changes have altered the oversight apparatus in New York ("APU and Police Discipline"), and the ramifications of these policy changes are still in debate. In New York City, both the Civilian Complaint Review Board (CCRB) and the police department are involved in the oversight process. The CCRB was created in 1950 in response to the lobbying efforts of the Permanent Coordination Committee on Police and Minority Groups, a partnership of city organizations. From 1950 until 1987 the CCRB was staffed by three deputy police commissioners *within* NYPD who conducted investigations of civilian complaints. In response to criticism that urged for a structural change of the board into an independent entity, in 1986 the city council passed legislation that appointed citizens to serve alongside nonuniformed police officers. The 1993 Tompkin Square incident, in which protestors of a NYPD-imposed curfew were subjected to police brutality, resulted in the conversion of the CCRB into a government entity staffed by civilians and separate from the police department. Additionally, the CCRB was given the power to subpoena evidence for investigations. Significant policy changes were hampered by a lack of financial resources until the Abner Louima incident in 1997, when CCRB's budget was increased and it hired additional investigators to handle large caseloads. The CCRB is currently the largest civilian oversight agency in the country ("History").

On March 27, 2012, the New York City Council delegated new powers to the CCRB. Previously, officers accused of misconduct were

tried by the police agency, which lead to a conflict of interests. CCRB's lawyers can now prosecute police officers found culpable of the complaints filed against them. Police department employees still serve as judges in misconduct cases and the police commissioner still retains power to veto the judges' recommendation, but the commissioner must now disclose the rationale behind his decisions. Also, the CCRB retains the right to appeal the commissioner's decision. The city hopes the new policy will increase transparency and create an incentive for NYPD employees to work toward accountability rather than cover up misconduct. Specifically, this policy seeks to address the statistic that of the 2,078 recommendations for disciplinary action from 2002 to 2010 only 151 officers were disciplined (Baker). As we will see, Chicago faces similar if not lower statistics for the number of officers who are disciplined based on IPRA recommendations.

Some doubt that this seemingly progressive piece of legislation will be effective. Robert Gangi, a director of the Urban Justice Center, in a letter to the *New York Times*, voiced skepticism that tangible change will actually result from this policy change. Gangi pointed to New York City's systemic problems of stop-and-frisk policy and the "dubious integrity of the crime data," which he believes fosters "harsh and arbitrary conduct by police on the streets" (Gangi).

The problems of New York City's police accountability apparatus can also be observed to a greater extent in Chicago. Hence, the progress made by New York City can serve as a rough template for fixing Chicago's own broken system.

The IPRA Process: Weaknesses and Innovations

On February 7, 2010, two University of Chicago affiliates, Matthew Clark, a graduate of the Booth School of Business, and Gregory Malandrucchio, a PhD candidate in history, claimed they were assaulted at a North Side restaurant by Chicago police. Malandrucchio unintentionally obstructed a plainclothes officer's exit from the restaurant, several plainclothes officers followed Clark and Malandrucchio to a parking lot, and the two were beaten repeatedly and left semiconscious. Despite the arrival of uniformed police officers not long after the altercation, nothing was done. Malandrucchio and Clark suffered nose fractures. Clark sustaining a concussion, needed three stitches to his lower lip, and suffered a forehead laceration. Malandrucchio suffered comparable injuries.

Following an IPRA complaint, both have noted the difficulty in collaborating with the CPD and the city in identifying the plainclothes officers. After a three-year ordeal, the city settled their civil suit for one hundred eighty-five thousand dollars (*Clark v. Chicago*; "Legislative Information Center"). None of the individuals responsible for the beating were charged or prosecuted, and the City of Chicago has not acknowledge the victims' claim that their assailants were police officers (Clark and Malandrucchio).

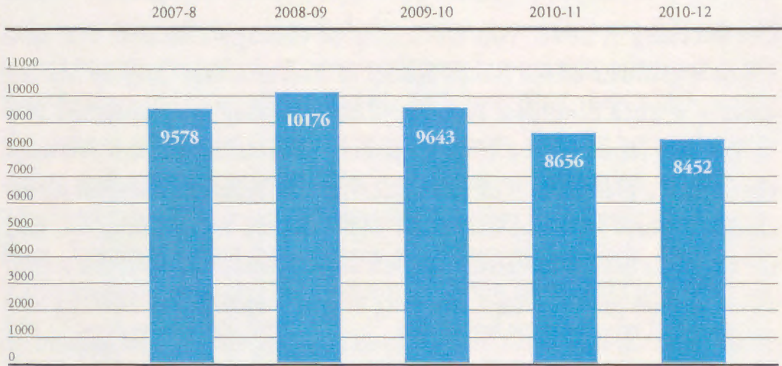
I will use their story to demonstrate the inherent flaws in the oversight system and will touch briefly on the failings of the court system to addressing the grievances of police brutality victims.

Intake: A Case of Work Overload

The IPRA took in an average of 9,301 complaints from 2007 through 2012 (Rosenzweig, *Annual Report 2007–2008*; *Annual Report 2008–2009*; *Annual Report 2009–2010*; *Annual Report 2010–2012*). Of those complaints, the IPRA retains less than one third for future investigation. It dismissed some complaints due to inadequate information submitted

Table 1: Number of Intake Cases, 2007–2012

Independent Police Review Authority, Chicago, Illinois



by the complainant, while the rest fell under the jurisdiction of the police department’s Internal Affairs Department (IAD).

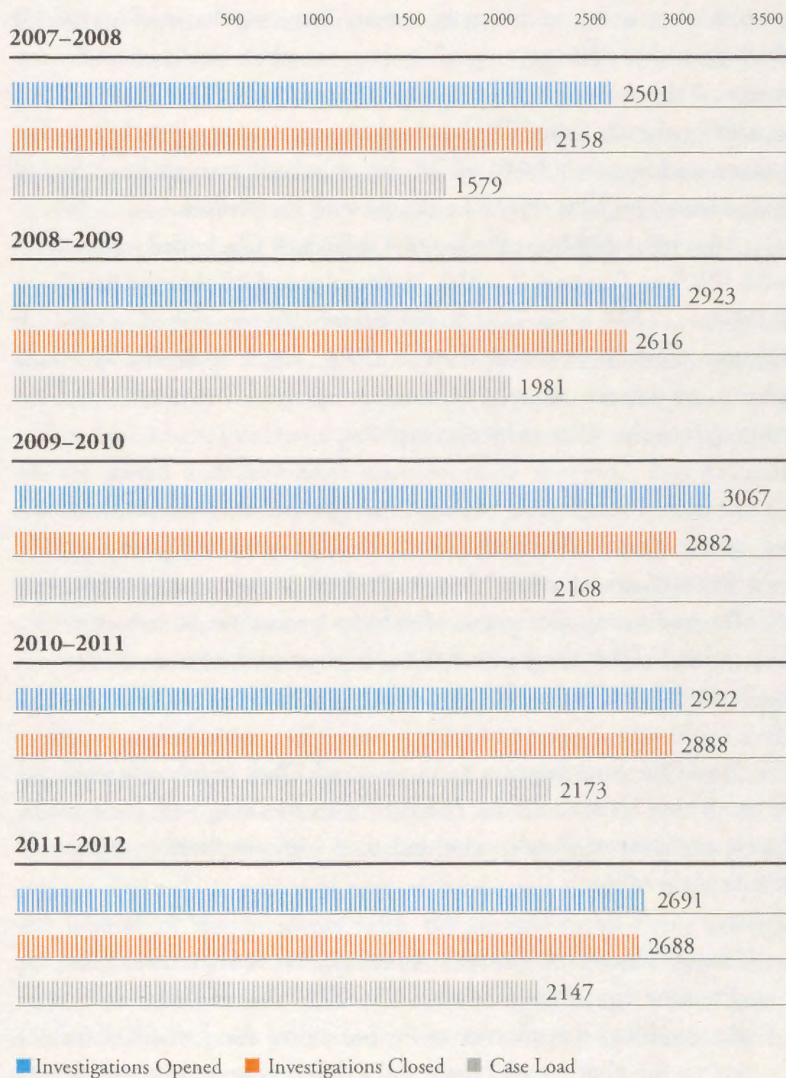
Complaints can be filed in one of five ways:

1. By phone—complainants can call one of two phone numbers which are staffed twenty-four hours a day, seven days a week
2. In-person at IPRA headquarters at 1615 W. Chicago Avenue
3. In-person at a police district station, which forwards the complaint to the IPRA
4. By letter addressed to IPRA’s Intake Section
5. Online at IPRA’s website, iprachicago.org (Rosenzweig, *Annual Report 2009–2010*).

Complaints are assigned a case-log number and, based on the nature of the complaints, fall either under IPRA or IAD jurisdiction. The IPRA

**Table 2: Numbers of Investigations
Opened and Closed and Caseload, 2007–2012**

Independent Police Review Authority, Chicago, Illinois



sends a notification letter within two business days of submission to a complainant with the investigator's name and the case-log number (Rosenzweig, *Annual Report 2009–2010*). By taking advantage of technology that was not available to the OPS, the IPRA has widened complainants access to the intake system. Ensuring that staff is available 24/7 also adds efficiency, especially in cases where evidence and interviews are time sensitive (Rosenzweig, *Annual Report 2009–2010*). What cannot be gleaned from IPRA's annual reports is the quality of the intake process and its subtle flaws, which can only be known by interviewing individuals who have chosen to engage with the process.

After returning from the hospital, Matthew Clark filed a complaint with IPRA on February 7, 2010: "I was so pissed off that the first thing I did was call 911 again," Clark said. After being transferred to the 14th District police station and then to IPRA, Clark spoke to an intake person, who spent ninety-nine minutes trying to dissuade him from coming into the office to file a complaint:

Over and over again they told me, "You really need to think about what you're doing here. I wouldn't come in today. It's a very serious accusation." And I told them, it's not an accusation. I'm just stating the facts of what happened to me. Somehow at the end of the whole process I had been convinced to not come in that day (Clark).

The IPRA intake person had convinced Clark to take the weekend to think over his accusations; however, after speaking with his mother, Clark was convinced otherwise and filed his complaint in person at IPRA's main office:

I hadn't slept since Saturday morning because I was awake for the entire time. I was awake the rest of the time and went down [to the IPRA] that afternoon. The individual that had talked to me on the phone wasn't there and a different investigator took

my statement. But when they came down they said, "I thought you were coming in tomorrow" (Clark).

As required by the ordinance, an IPRA investigator took down Clark's statement. "The investigator was perfectly fine in the interview process," Clark said. However, it was "disturbing" that two uniformed police officers were called in to photograph his injuries (Clark). For Clark to interact with police officers immediately following the assault was an insensitive policy practice on the part of the IPRA. Having victims come in contact with individuals they associate with the assault was one aspect of the interview process that Clark felt lacked consideration for the fragile mindset of victims of police brutality.

Many victims of police brutality are unaware of the process that is available to them to address grievances, or a culture of intimidation dissuades individuals from coming forward. As such, the full extent of a police department's unlawful policy practices are underestimated. "People are scared and they don't want to come forward," said Amanda Antholt, a civil rights attorney with Smith, Johnson & Antholt, LLC. Where most people are afraid to hold police officers accountable for their choices and actions, Antholt argues that the few individuals who are willing to come forward with their claims should not be met with skepticism and intimidation by the IPRA that signals "we're not an open agency, we're not on your side" (Antholt). The concern that individuals might file superfluous or false claims should not manifest itself in a chilling effect that causes individuals to second-guessing their decision to file a complaint, as was the case with Clark.

Other individuals have revealed inconsistencies in IPRA's intake process. For a short period of time, technological glitches would switch the address of the incidence with the complainant's home address, resulting in numerous complainants who did not receive notification letters, according to Tracy Siska, director of the Chicago Justice Project (Siska). IPRA's poor communication is brought up continually by complainants.

Heavy caseloads and staff vacancies also hamper the quality of investigations. An IPRA quarterly report released on April 16, 2012, indicated forty-eight investigators, six investigator vacancies, two supervising investigator vacancies, and one vacancy for the director of public affairs (*Quarterly Report*). Each investigator had a caseload of about sixty-four cases annually. One of the primary concerns voiced by Coordinator of Investigations Andrea Stoutenborough was the pressure on staff to process large amounts of complaints and to launch extensive investigations for the cases retained by IPRA (Stoutenborough). The number of investigator vacancies is also notable. IPRA faces high levels of attrition at all levels of the organization. Because the director of public affairs position was unfilled the “IPRA simply did not have sufficient resources to publish an annual report in 2011” (Rosenzweig, *Annual Report 2010–2012*).

When studying IPRA’s process, there are many variables that can affect the number of complaints filed, such as public perception of the agency. Do people in Chicago regard the IPRA as a legitimate institution? OPS’ troubled track record undermines its credible as an independent oversight agency, and thus, people have sought alternative legal paths, such as civil suits against the city, to resolve their grievances. Is the IPRA on the same road to becoming a hollow institution as the OPS? This point is of great importance because full public participation is a necessary first step if the city is to achieve accountability and a functioning system.

Compromised Investigation

A common criticism, mostly from lawyers, point to IPRA’s low sustained rates compared to other agencies, such as the CCRB in New York City. Lawyers have been among the most vocal groups about the OPS and the IPRA, which they criticize for inaccessibility to complainants, a tendency to give the benefit of the doubt to police officers, and the integrity of its investigations. Amanda Antholt of Smith, Johnson & Antholt, LLC, and Heather Donnell of Loevy & Loevy raised these

concerns during our interviews. Loevy & Loevy is one of the major civil-rights law firms in Chicago (“Why Loevy?”), and Donnell was Clark and Malandrucco’s attorney. Both lawyers criticize the IPRA for low sustained rates, which are lower than the OPS. “They just have a pattern of low sustained rates,” said Donnell, who also pointed to the fact that few police officers are ever disciplined, even when the IPRA sustains complaints (Donnell). However, low sustained rates are symptomatic of deeper problems within the agency and are not themselves the actual problems. A proper diagnosis must examine the minute details that can potentially affect the integrity of certain cases, from the start of an investigation to the end, when the investigator reaches a conclusion based on all the evidence.

According to IPRA annual reports, a large portion of closed investigations involved allegations of excessive force and verbal abuse where conflicting testimonies between complainants and police officers could not be confirmed or denied by unbiased third-party witnesses or evidence. In these cases, investigators often give police officers the benefit of the doubt. Even where investigators have video evidence, a police officer detaining an individual with excessive force may be vindicated by information that is not shown on tape, if, for example, the complainant had displayed dangerously belligerent behavior to the officer or others.

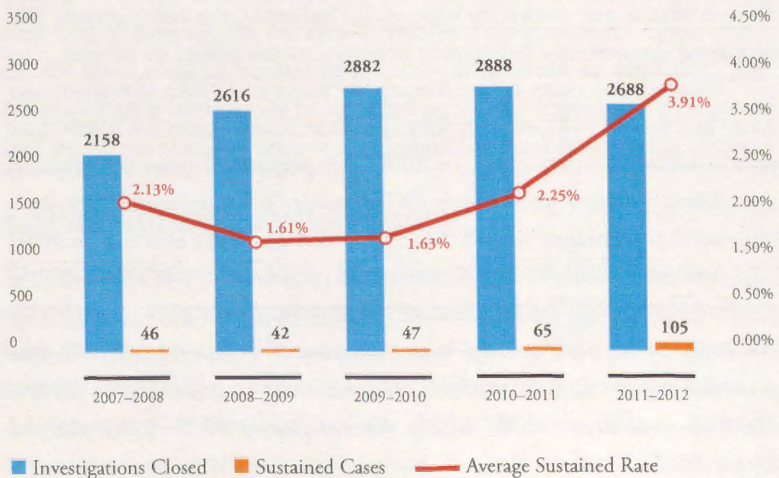
These closed cases help account for some of IPRA’s low sustained rates, but do not fully explain why IPRA’s sustained rates are lower than peer agencies in other cities. In 2007, 4.5 percent of cases investigated and closed by New York City’s CCRB were “substantiated.” The substantiated percentages were 3.7 in 2008, 4.4 in 2009, and 6.3 in 2010 (“Bi-Annual Reports”). IPRA’s sustained rates were 2.1 in 2007–2008, 1.6 in 2008–2009, 1.6 in 2009–2010, 2.3 in 2010–2011, and 3.9 in 2011–2012, with an average sustained rate of 2.3 percent in the five years for which data is available (Rosenzweig, *Annual Report 2007–2008*; *Annual Report 2008–2009*; *Annual Report 2009–2010*; *Annual Report 2010–2012*).

Chicago’s sustain rates may be low compared to its peers because the IPRA, which was established in 2007, is a relatively new institution. Also, some civilians and police officers are skeptical of IPRA’s claim that it maintains “the highest level of integrity while conducting objective, thorough investigations,” in the police review process (“About IPRA”). This skepticism has undermined IPRA’s efforts to communicate trust to communities that historically have been most affected by police brutality and abuse of power.

According to Donnell, “people think that IPRA doesn’t take civilian complaints seriously” (Donnell). Antholt pointed to biased investigations: “IPRA will want to take multiple statements ... that are extremely tedious with clients but are more general with cops” (Antholt). The opposite was true for Malandrucchio, the other victim in the restaurant incidence. After Clark had filed his complaint with the IPRA in person, Malandrucchio, as both a victim and a witness, was required to file a

Table 3: Percentage of Sustained Cases, 2007–2012

Independent Police Review Authority, Chicago, Illinois



statement. As part of its mandate, IPRA is required to contact the complainant for a detailed statement of their complaint as well as a signed affidavit (Rosenzweig, *Annual Report 2009–2010*). For weeks, Malandrucchio was not contacted by the IPRA, which the IPRA refutes. According to the IPRA, it made numerous attempts to telephone Malandrucchio without success, but he found no calls from the agency in his telephone records (Malandrucchio). “There was a whole thing about having Greg deliver a statement and they said they gave him multiple calls...[but] that they couldn’t get through to him,” said Clark. “It just created an environment of distrust” (Clark).

Siska feels that the approach that the IPRA has taken to lower the caseload by discouraging complaints is ill conceived and has negative repercussions for the oversight process as a whole: “Their intake process shouldn’t be filtering cases. Their job in the intake process is to take it in and to find out what the allegations are” (Siska). As Antholt suggests, the IPRA could earn legitimacy as an institution by encouraging complainants to come forth who have truly been aggrieved by police officers rather than making the process a hostile one from the onset (Antholt).

Innovations in Investigations

IPRA’s subpoena power is among the most notable innovations to the investigative process since the transition from the OPS. With the possibility of imposing legal penalties on witnesses who may play a critical role in an investigation, the IPRA can now more effectively get witness statements. Audio recording of CPD interviews and translations of foreign-language interviews also provide “the most accurate record of a statement” as a matter of reference (Rosenzweig, *Annual Report 2009–2010*). One of the more innovative techniques has been the analysis of officers’ and complainants’ histories to look for past patterns that might be relevant to the investigation at hand. This data can only be used in accordance with the provisions the Fraternal Order of Police’s union contract, which might limit IPRA’s powers in the long run (Siska). IPRA

access to GPS records of police patrol cars allows investigators to reach the location of an incident quickly and collect evidence. Gathering physical evidence can be time sensitive as video records on a private property may be erased weekly and the accuracy of eyewitness accounts erodes over time.

Despite these efforts to improve the quality of investigations and to streamline the process, investigators continue to be overwhelmed by their caseloads, which forces investigators to prioritize certain cases over others, even when it means risking the quality and accuracy of investigation results. The IPRA appears to have a good training program to ensure that investigators are up-to-date about interrogation techniques and evidence gathering through simulated scenarios and extended workshops on the complexities of different types of investigations. However, investigators revealed to Siska and Antholt off-the-record that heavy caseloads often forced them to lie about their efforts to contact witnesses during investigations. "Many investigators have expressed, 'I have too many cases,' and have instead been turning out investigations that are not properly investigated and not being followed through" (Antholt). "There are investigators who have told me that they would often write down that they went to a witness's residence for a statement and wrote down that no one answered the door but had in reality not done any of that" (Siska). Despite IPRA's efforts to provide extensive training in conducting quality investigations, Siska stressed the need to hold investigators accountable for the quality of their investigations: "The problem is that the City Council needs to set up and enforce performance markers on IPRA" (Siska). Often times, the compromised quality of these investigations have lasting effects when cases are presented to the Chicago Police Board, and panel members are forced to rely on shoddy investigation.

The IPRA also seems to be fixated on numbers, whether the number of cases closed annually or the number of cases sustained, perhaps catering to a public that views sustained rates as a measure of agency productivity. Data is a rudimentary indicator for understanding the

IPRA and should not eclipse the more nuanced aspects of the complete investigation process. To fairly and appropriately examine IPRA's performance, we must consider its innovations and shortcomings in the context of other institutions, such as the Chicago Police Board.

The IPRA and the Chicago Police Board: A Failure to Discipline

The Chicago Police Board is an "independent civilian body" that oversees activities of the Chicago Police Department ("Chicago Police Board"). Comprised of nine civilians appointed by the mayor and approved by the City Council, the board hears and decides disciplinary action against officers accused of police misconduct. Allegations are referred to the board if the police superintendent disagrees with the recommendation of an IPRA or IAD (Internal Affairs Division) investigation (Rosenzweig, *Annual Report 2009–2010*). The board has the power to act on or reject such recommendations. Additionally, the board is required to hold monthly public meetings where citizens can voice their concerns. It also nominates candidates for superintendent to the mayor. Current members include individuals who are well connected in the political machine of Chicago, with considerable political and economic clout ("Leadership").

Of particular interest are the duties of the board to review and act upon IPRA or IAD recommendations concerning police officers charged with serious allegations of misconduct, and its role as a liaison between the institutions involved with police accountability and the members of the public. Police misconduct cases fall under the board's jurisdiction if one of the following scenarios occurs:

1. The police superintendent discharges or suspends a police officer for more than thirty days.

2. A police officer requests a review of a suspension that lasts between six and thirty days.
3. The chief administrator of the IPRA and the police superintendent disagree on whether to recommend disciplinary action ("Allegations of Police Misconduct").

Under the first scenario, the board must decide whether a police officer is guilty of the charges and has full discretion to determine the penalty, based on the severity of charges and the officer's disciplinary history. Officers are suspended without pay until the conclusion of the case; officers determined to be innocent are reinstated and awarded full pay for the time of suspension.

The board's monthly public meetings could be a significant component in ensuring the efficacy of police oversight. These meetings are formatted as an open panel where police officers and members of the public can question the nine-member panel; those with questions are required to sign up as speakers the day before the public meeting ("Public Meetings"). Meetings last thirty minutes to an hour, depending on the number of speakers. They are held in different communities from month to month to encourage as many community members as possible to participate.

In theory, public meetings foster discussion between citizens and members of the board; in practice, a typical board meeting exemplifies the strained state of community relations in Chicago. Meetings are seldom well attended: in a two-hundred-seat room less than ten individuals, who assume their grievances will be addressed, may attend (Morgan). From suspended officers waiting for conclusive investigative results from the IPRA to incoherent eccentrics, meetings usually feature angry monologues rather than fruitful dialogue. Those who have received ambivalent responses from the board in the past, attend every month, hoping to get answers; they are often met with curt, silencing responses from the board.

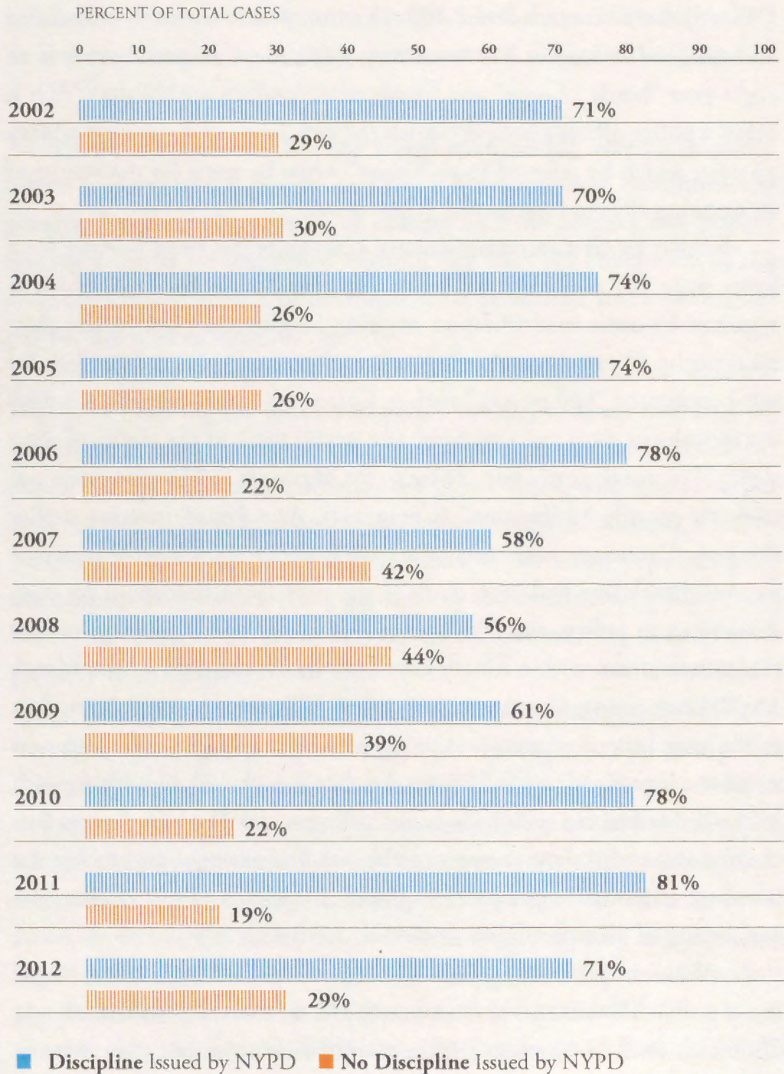
The Disciplinary Process for Police Officers

One individual who distinguished himself from others in attendance was Officer John Catanzara of the 18th District, who is currently suspended and assigned to answer 311 nonemergency calls. Catanzara's story is an eight-year "battle of egos" and bureaucratic politics within the CPD; it offers a police officer's perspective on the deficiency of the accountability process, which he referred to as "limbo" while he waits for the results of an ongoing IPRA investigation (Catanzara).

Similar to civilian complainants, Catanzara has been waiting for a letter from IPRA notifying him of the progress on his case, which is required by ordinance when an ongoing investigation last longer than six months. Catanzara and other police officers at 311—a desk duty for self-proclaimed "hell raisers," such as Catanzara—are kept off the streets for months or even years without any notification of the status of their cases: "I'm not the only one. There's a lot of people at 311 who never got their six-month notification" (Catanzara). At a board meeting earlier this year, Catanzara raised this issue with Rosenzweig, who told him that a recommendation had been made to the superintendent about his case. According to policy, the IPRA should have notified Catanzara of this recommendation within ninety days after its submission. At the March 15, 2012, meeting, Catanzara demanded: "We are way past ninety days at the very least. Are you guys going to wait two-and-a-half years and sit on the investigation like IPRA did to begin with and do nothing with it? Am I not entitled to my life back?" (Catanzara) The board gave nonchalant and ambivalent answers to Catanzara's questions, and he left the meeting, as he has in the past, disgruntled, angry, and no closer to the conclusion of his case.

When implementing policies and rules, the Chicago Police Board treats police officers and civilian employees of the CPD differently. As Catanzara said, "I have no problem with their rules but they are not evenly enforced. They pick and choose who gets dumped for what. We do the same thing but don't get punished the same way" (Catanzara).

Table 4: Substantiated Cases by Year of NYPD Closure, 2002–2012
Civilian Complaint Review Board, New York City, New York



NOTE: This chart excludes “filed” cases which result when the officer left the department.

A ten-year analysis by the Chicago Justice Project found that the board sustained 73 percent of civilian employee discipline recommendations but only 37 percent of discipline recommendations against officers, implying a degree of favoritism toward police officers (Siska and Arriazola). Even these disciplinary measures do not deter some police officers from committing acts of misconduct. Catanzara, for example, has had two thirty-day suspensions, a twenty-day suspension, a fifteen-day suspension, and five to six five-day suspensions. The Chicago Police Board has overruled recommendations for disciplinary action for police officers in over 60 percent of the cases referred to it, compared to New York City's CCRB, which "issued no discipline" in 29 percent of cases in 2012 ("Police Department Disposition").

Transparency

The 2009 Chicago Justice Project study concluded that the Chicago Police Board should be required to disclose the reasons for its decisions if it is to work fully in the public's interest: "transparency must be more than a slogan" (Siska and Arriazola 1). In 2011, the city passed an ordinance requiring board disclosure, which is an important step toward holding board members accountable for their actions.

Together with the Chicago Police Board, the IPRA is caught in a sea of criticism and skepticism. Lawyers who initially hoped that the IPRA would be a change from the OPS have expressed their disappointment:

When they first turned over and started IPRA, when Ilana [Rosenzweig] took over, I felt very hopeful and I like what she had to say, I like a lot of the changes they were making. We wanted to see if they were really going to make good on their promises. And there has been a series of incidents and rule changes that made us not trusting of them (Antholt).

Critics point to stagnant (or even lower) sustained rates in the four years since the transition to the IPRA. They also argue that former OPS investigators, with their backlog of cases in the thousands, operate with the same mentality and culture as before. The change has been “meaningless” for Siska: “If you go around minority communities, there doesn’t seem to be any more amount of trust in those communities for IPRA than there was for OPS” (Siska).

Public trust or distrust in an government agency is strongly correlated with levels of transparency. Compared to the OPS, the IPRA has increased transparency, though whether the IPRA reveals substantial information is debatable. To IPRA’s credit, its website contains a plethora of information: quarterly reports highlight the caseloads and the number of closed investigations; annual reports give a general breakdown of the different case rulings; and abstracts for sustained cases (not available during the OPS era) show what types of complaints lead to recommendations of disciplinary action. However, critics argue that this is a “pseudo-liberal” transparency that does not act in any extended way to inform the public how the IPRA truly works (Siska). And compared to the information released by the CCRB in New York City, IPRA’s reports are superficial and rudimentary.

Similar to the Chicago Police Board, which has very limited transparency and poor community relations at its mandatory meetings, the IPRA has struggled to become a trusted intermediary between the general public and the police department. As head of the IPRA, Rosenzweig has made efforts to engage with the community with techniques she used at the Office of Independent Review in Los Angeles, such as “listening and learning it first” (Gennaco iii), “Stakeholder Panels,” and “Outreach to the Public” efforts (Rosenzweig, *Annual Report 2009–2010*). Skeptics, such as Siska, continue to question the sincerity of these efforts and point to the ambivalence that many members of high-crime neighborhoods have towards the IPRA as indication that community relationships have far from improved. He suggests that these efforts are not enough to mend the fissures left by the OPS prior to 2007 (Siska).

An Alternative Method: Where Do Civil Suits Come into Play?

Many citizens assume that a civil suit will more effectively address their grievances than filing an IPRA complaint. As one lawyer observed: "If the system was better, we wouldn't have a job" (Antholt). Also, American society as a whole is litigious—many victims of police abuse seek out civil rights lawyers and profits can be made. This is not to argue that most or all victims of police misconduct consider litigation, such as those who sustained minor injuries from a rough arrest or experienced verbal or racial abuse. Despite numerous instances of police officers failing to act professionally, such "lesser" cases are often dismissed by the IPRA or courts and do not gain media attention. Cases like Clark and Malandruccho are rare. When police are verbally derogatory or inflict minor injuries to civilians, punitive measures to deter such behavior seldom occur. The systemic problem of a police culture that disregards citizens' rights goes unaddressed by both the CPD and an accountability apparatus that is supposed to work independently of the police department; there is a silent understanding that bad behavior will likely go unpunished. The end result is not a culture of accountability.

Those who undertake an arduous and long litigation describe the process as brutal. For Clark and Malandruccho, who had no criminal history and were beaten by police officers without cause, the resolution of their case after three-plus years left them disillusioned with a system that seemed to punish the victims rather than the perpetrators. They do not consider their settlement a victory: "We don't mistake this settlement for fulfillment or cause for a celebration," they wrote in a piece for the online publication, *Vice* (Clark and Malandruccho). "From the moment we walked into that parking lot four and a half years ago, the city machinery was set in motion to conceal the truth and make us go away" (Clark and Malandruccho). A threat from the city of a potential counter-suit ultimately forced Clark and Malandruccho to settle for fear that they would be liable to pay the city's six- to seven-figure legal fees. The city

also inserted a clause to make the total settlement subject to a tax, which was later dismissed by a judge. Clark and Malandrucco wrote: "We now recognize that the government's ability to silence victims is a skill that's been honed through years of experience" (Clark and Malandrucco).

Litigation is a game of endurance, which favors the city more than the litigants in terms of resources and emotional capacity. This has been exacerbated in the past two years by the city's policy of refusing to settle before trial, which was meant to discourage "people whose claims [the city] thought were illegitimate" and also discourages "lawyers and community members to continue to file legitimate claims and get paid out" (Siska). Though it is reassuring that tax dollars are carefully distributed in police misconduct cases, the size of civil settlements in Chicago, which cost the city millions of dollars annually, is comparable to Los Angeles or New York City. The reluctance to settle points to the larger issue of the large amount of police misconduct that is the cause of these lawsuits. The high number of lawsuits is one symptom of a failure in police accountability. When people pursue litigation rather than the IPRA complaint process, the police lose valuable community feedback that is needed for self-evaluation and improvement.

Conclusion

So who is to blame for the deficiencies of police accountability? For Siska "it is obviously the police department is abusing the power they have, the police board is not using the power they have, and IPRA does not understand the power they have" (Siska). I believe that in Chicago a more severe disciplinary policy would signal to the Chicago Police Department that there is low tolerance for unprofessional behavior.

For this process to work properly, full engagement with the community is also necessary. Though some efforts have been made, what distinguishes Chicago from New York and Los Angeles is the entrenched divide among citizens, police officers, members of the oversight agencies, and members of the police board that is noticeably more strained than

in other cities. Until the city gives the IPRA the political power and financial resources to conduct investigations honestly and fairly, it will continue to succumb to the faults of its predecessor. I agree with Siska that mending and developing positive community relationships are key to ensuring that people participate in the process. Creating a "restorative justice process," where officers and complainants engage in mediated discourse to address perceived misconduct, is one way that the IPRA could lower its caseload while helping citizens feel that their allegations are taken seriously and their grievances will be addressed, either through a simple apology or a warning to officers (Siska). Should an officer accumulate many complaints, the superintendent could enforce disciplinary action. This would lower IPRA investigators' workload, allowing them to devote time to serious cases. A similar model of is working in New York, where minor claims, such as verbal harassment, are reconciled through mediation ("Mediation").

Finally, in a policy that IPRA has already begun adopting, information technology is key to finding bad apples. Having an auditor and researchers looking into police department data to investigate patterns of bias or exposing informal law enforcement policy that infringes on citizens' civil rights are essential.

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