

**Hearing
Before the
United States
Commission on Civil Rights**

POLICE PRACTICES

**HEARING HELD IN
HOUSTON, TEXAS**

**JUNE 12, 1979, AND
SEPTEMBER 11-12, 1979**

Testimony and Exhibits

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Staff Director*

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Tuesday, June 12, 1979

The U.S. Commission on Civil Rights convened, pursuant to notice, at 9:15 a.m., in Krost Hall's auditorium, Bates College of Law, University of Houston, 4800 Calhoun Street, Houston, Texas, Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Frankie M. Freeman, Commissioner; Manuel Ruiz, Jr., Commissioner; Murray Saltzman, Commissioner; Louis Nunez, Staff Director; Frederick Dorsey, Special Counsel; Gail Gerebenics, Assistant General Counsel.

PROCEEDINGS

CHAIRMAN FLEMMING. This hearing will come to order.

The Commission on Civil Rights, pursuant to its statutory authority, determined in the spring of 1978 to conduct a study of police practices in order to appraise the laws and policies of the Federal Government and to gather data and information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution in the administration of justice.

As a part of that study, the Commission decided to come to Houston to do an indepth analysis of the practices and policies of the Houston Police Department. To that end, Commission staff have been engaged in a field investigation here in Houston since early March. That investigation is ongoing.

At today's hearing, the Commission will be receiving into its formal public record available documentation from the community of alleged instances of excessive or unnecessary use of force by Houston police officers. Questions addressed to witnesses will be designed solely to clarify the content of the documents. Testimony relating to issues raised by the documents will be taken at our next public hearing.

In addition, the Commission will be receiving into its public record, from the chief of police, various materials relating to the administration and functioning of the Houston Police Department and to its policies and actual practices. Again, questions will be designed to explain

and to clarify the content of the documents submitted. Testimony relating to issues raised by the documents will be taken at our next public hearing.

Commission staff have been interviewing persons throughout the city—from the community, all levels of government, and within the department itself—gathering information and documentation relevant to the question of police conduct here in Houston. Commission staff will continue that work, analyzing the information received today, and will remain in the field to follow up on questions raised by it.

At our next public hearing which is now scheduled for September, we will take testimony from a number of community leaders; individuals from the city, State, and Federal Government and Federal Government officials and individuals in the department, with respect to the issues identified and investigated during the course of the field work. Only after that hearing, when the concerns and the efforts of the community and the city, including specifically the department, have been fully aired, investigated, and understood, will the Commission's work here in Houston be complete.

The focus of the Commission's overall study has been fourfold: to ascertain the nature and extent of the police misconduct, specifically the excessive or unnecessary use of force; to identify formal and informal policies and procedures relating to police conduct and discipline; to identify the officials and agencies legally responsible for investigating and resolving allegations of police misconduct; and to evaluate the availability and effectiveness of existing systems of accountability, both internal and external.

It is important to note that its purpose has not been to identify, investigate, or to resolve individual allegations of abuse. The Commission is not an enforcement agency. Its mandate is to evaluate the enforcement efforts of others, to assess the adequacy of existing laws and policies, and to make recommendations for needed changes in them.

As mentioned earlier, the Commission's work here in Houston is only a part of a larger project focused on the study of police practices generally. The first phase of the project, completed in Washington, D.C., in December 1978, consisted of a consultation at which noted authorities and spokespersons appeared and discussed significant issues with respect to police conduct and accountability.

The second phase took us to Philadelphia where Commission staff undertook a field investigation similar to that underway here in Houston. Two hearings were held there; a hearing to receive documents in early February, and a hearing on April 16 and 17, 1979, at which time community leaders, government officials, and department representatives testified before the Commission about the practices and procedures of the Philadelphia Police Department.

In the final phase, the Commission will put together the information which it has gathered in a final report which will contain its findings and recommendations for changes in the Federal laws and policies. That report will be submitted to the President and to the Congress.

At this point, I would like to ask my colleague, Commissioner Freeman, to give a brief summary of the rules of the hearing—of the Commission governing a hearing of this nature.

COMMISSIONER FREEMAN. Thank you, Dr. Flemming.

At the outset, I should emphasize that the observations I am about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a further understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present. In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized. Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses even though those witnesses have been subpoenaed to testify in public session.

An executive session is the only portion of any hearing which is not open to the public. The hearing which begins now is open to all.

All persons who are scheduled to appear have been subpoenaed by the Commission. All testimony at the public session will be under oath and will be transcribed verbatim by the official reporter.

Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections. Should any witness fail or refuse to follow any order made by the Chairman, or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. attorney for enforcement, pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which in the discretion of the Commission may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses.

Let me emphasize that we consider this to be a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

Copies of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases, the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming, or the Commissioner presiding in his absence, will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. attorney when required. The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders are also to be obeyed.

This hearing will be in public session today, Tuesday, June 12, 1979, beginning at 9:15 a.m.

CHAIRMAN FLEMMING. Thank you very much, Commissioner Freeman.

Before asking counsel to call the first witness, I want to call attention again to one portion of my opening statement. In that statement, I said that the Commission today will be receiving into its formal public record available documentation from the community of alleged instances of excessive or unnecessary use of force by Houston police officers.

Questions addressed to witnesses will be designed solely to clarify the content of the documents. Testimony relating to issues raised by the documents will be taken at our next public hearing. The same procedure will apply relative to testimony which may be received from the chief of police.

Counsel will call the first witness.

MR. DORSEY. Jenifer Schaye.

[Jenifer Schaye was sworn.]

**TESTIMONY OF JENIFER SCHAYE, ROMAN CATHOLIC SISTER,
CONGREGATION OF THE SCHOOL SISTERS OF NOTRE DAME**

MR. DORSEY. Ms. Schaye, if you would, would you state your full name and your title, organizational affiliation for the record, please.

MS. SCHAYE. My name—my full name is Sister Jenifer Schaye. I'm a Roman Catholic sister, member of the congregation of the School Sisters of Notre Dame. I come before this Commission with legal counsel, the Public Interest Advocacy Center, a nonprofit corporation organized under the laws of the State of Texas.

MR. DORSEY. You are accompanied today. I wonder if we could have each of the persons accompanying you identify themselves for the record, please.

MR. REYES. My name is State Representative Ben Reyes. I'm a member of the Texas House of Representatives representing—State representative of district 87.

MS. SCHAYE. Mr. Reyes is the chairman of the board of the Public Interest Advocacy Center.

MR. LEE. My name is El Franco Lee. I'm also a State representative of district 88 and a board member of the Public Interest Advocacy Center.

VICE CHAIRMAN HORN. Okay. Could I have the spelling of that? I couldn't hear.

MR. LEE. E-l F-r-a-n-c-o L-e-e.

COMMISSIONER FREEMAN. Are you a member of the board?

MR. LEE. Yes, ma'am.

MR. CAMPOS. My name is Mark Campos. I'm director of the center.

MR. DORSEY. Ms. Schaye, if you would, at this time I would ask if you would briefly describe the Public Interest Advocacy Center and give us, if you would, the purposes for which it was organized and a brief statement, if you would, of its history.

MS. SCHAYE. Yes, sir.

As I stated before, the Public Interest Advocacy Center is a non-profit corporation organized under the laws of the State of Texas.

The Public Interest Advocacy Center in October of last year received a grant from the Law Enforcement Assistance Administration. That was a grant in the sum of \$138,000. That grant was awarded through the anticrime funds of LEAA and gave us a charge which had three goals in it. Those goals were—are: consumer protection and aid to senior citizens and those persons in our community who are physically disabled.

Secondly, we are to assist those persons recently released from Harris County jail. We are to assist them in the manner of job placement and refer them to job agencies here in our city.

Our third goal is that we are to assist those persons who allege that they have been victimized by the police of Houston. Our manner of assistance to this third category of persons is that we help them to pursue their complaint through the administrative processes set up within our city and within our police department. We are not involved in litigation on any issue.

MR. DORSEY. Thank you.

You were subpoenaed to submit certain documents. At this time I would ask you if you are prepared, at this time, to submit those documents?

MS. SCHAYE. Yes, sir, we are.

MR. DORSEY. For the purposes of following through the documentation, I would like to deal with them in three different categories.

The first category that I would like to deal with is the listing of complaints which I understand you have available.

MS. SCHAYE. Yes, sir.

MR. DORSEY. Would you please identify the documents. I would ask that at no time you indicate any names with respect to any information that I'm referring to.

MS. SCHAYE. Did you say to delete names?

MR. DORSEY. Yes.

Would you identify those documents which you are submitting with respect to the listing of the complaints?

MS. SCHAYE. The first document that we submit at your request is the index and synopsis of all cases that—of all police abuse cases that the Public Interest Advocacy Center has assisted in since January 15, 1979. Do you want us to bring that up to you?

MR. DORSEY. If you would present those to the clerk, I would appreciate that.

MS. SCHAYE. Do you want us to explain that or—

MR. DORSEY. Yes, please.

Ms. SCHAYE. We have here listed in alphabetical order all the cases that we received. There are 25 cases. They range in seriousness from harassment to shooting. They range in our involvement from a telephone conversation to our involvement representing the person before the grand jury.

MR. DORSEY. With respect to those, that list, do those individuals listed represent personal contacts, first person contacts between your organization and the individual affected?

Ms. SCHAYE. Yes, sir, they do.

MR. DORSEY. With respect to the compilation of that list, is that a matter in which the individual came to the organization or the organization initiated the contact? Or does it vary?

Ms. SCHAYE. No, sir. We never did solicit any of these. These persons—we checked how they heard about our center. They heard about it perhaps in the media that first surrounded the center, or they have heard about it through the community. Our offices are located in two different spots in the community.

MR. DORSEY. So these represent individuals who initiated contact with the center?

Ms. SCHAYE. Yes, sir.

MR. DORSEY. Okay.

Now, with respect to those, was the compilation logged in some way, or was the compilation after the fact? In other words, when a person initiates contact, is that contact noted in some record or file?

Ms. SCHAYE. Yes, sir.

We have with us today, though you didn't subpoena them specifically, all the files. And in those files is what we call a contact sheet that details every time we have spoken with the person. It's a log.

MR. DORSEY. And with respect to these 25, I believe—is that correct?

Ms. SCHAYE. Yes, sir.

MR. DORSEY. What is the time period that that represents?

Ms. SCHAYE. It goes from January 15 to the present day.

COMMISSIONER FREEMAN. What year is this?

Ms. SCHAYE. This year, ma'am, 1979.

MR. DORSEY. Okay. Within the category of listing of complaints, is that conclusive of the data that you are submitting at this time?

Ms. SCHAYE. We also have a synopsis of each case besides the listing.

MR. DORSEY. Okay. Was that already—

Ms. SCHAYE. That is also in that same folder, yes, sir.

MR. DORSEY. With respect to that particular compilation, is that compilation then in any way disseminated, distributed, or referred?

Ms. SCHAYE. No, sir.

Disseminated to other persons beside yourselves?

MR. DORSEY. Right.

Ms. SCHAYE. No, sir.

MR. DORSEY. Has that been referred to the department?

MS. SCHAYE. Yes, sir. There are about, I believe, six of these cases which have been referred to the internal affairs, in one of which the internal affairs has completed their investigation. The others, the internal affairs investigation is presently pending. The others have not yet reached the internal affairs. They're not at that stage.

MR. DORSEY. I'm sorry.

As to the 25—

MS. SCHAYE. Yes, sir?

MR. DORSEY. —am I to understand that six have been referred?

MS. SCHAYE. Approximately six. I would have to go through and check it.

MR. DORSEY. Okay.

And does the file indicate—

MS. SCHAYE. Yes, sir, they—it does.

MR. DORSEY. I gathered from what you indicated that there is the possibility that others of the 25 not yet referred will be referred; is that correct?

MS. SCHAYE. Yes, sir.

MR. DORSEY. Is it intended that at some point all would be referred or not?

MS. SCHAYE. No, sir. Some of these 25 cases after investigation—contact with the client, gathering the evidence, talking with witnesses—we advised the client that they in fact did not have a complaint that could be pursued with internal affairs and on our advice, those files have been closed.

VICE CHAIRMAN HORN. How many cases were there like that? Do you know offhand?

MS. SCHAYE. I think, sir, there were about three or four of these.

VICE CHAIRMAN HORN. Out of the 25?

MS. SCHAYE. Yes, sir.

MR. DORSEY. Those—that would also be indicated in the list?

MS. SCHAYE. Yes, sir, it is.

MR. DORSEY. I think it would be helpful—I'm doing this category by category. Ordinarily I would complete my questioning and defer to the Commissioners. Since we are going category by category, however, I would like at this time to ask if the Commissioners have particular questions with respect to this category of documents?

CHAIRMAN FLEMMING. Are there any additional questions relative to this particular point?

VICE CHAIRMAN HORN. I have none.

MR. DORSEY. With respect to item 2, that is to say, other categories. I have subdivided them into two sections. The first of which I would like to deal with, if we could, is the deadly force study which, as I understand from news accounts, has been released.

MS. SCHAYE. Yes, sir.

MR. DORSEY. I wonder if you—first, I would ask if you have a copy of that study with you at this present time?

MS. SCHAYE. Yes, sir. We have a copy of the completed study. We've also brought for you the basis of the study which is newspaper accounts and the Xerox of those newspaper accounts in our own working files that went into the study.

MR. DORSEY. I would ask at this time if you could give that material to the clerk for annotation into the record? If you in fact—how many copies do you have with you?

MS. SCHAYE. I have two more.

MR. DORSEY. If I could have one so that—

MS. SCHAYE. Sure.

MR. DORSEY. —I could follow along with you, I'd appreciate it. Thank you.

First of all, I guess I'd like to have you describe the study. That is to say, the methodology, its purpose, and its findings.

MS. SCHAYE. If you don't mind, I'd like to begin with its purpose.

Because we were commissioned to negotiate and to help better police-community relations in this community, we felt that that was impossible to do unless we clearly define and describe the problem as it existed in Houston or as it did not exist. But certainly we could find in the study and the research that we did in the first month at the center no record, no clear delineation of what the problem is in our city. So our purpose in doing the study was to, in fact, define whether there was deadly force used, abuse of deadly force in our city excessive.

And we began at that point. We thought that we would want to do a complete study in order to be fair to the community and to those persons who police our community, so that at the same time that we began to research through the newspapers of our community, we read the *Post* and the *Chronicle*, which are the two major newspapers in Houston, for the 9-year period beginning January 1, 1970, going through 1978. We intended to cover the decade. We had all the studies on microfilm. We considered that that wasn't good enough, we might miss data. So we recorded all the microfilm on Xerox, and then worked from those Xerox files so that we would not—we were trying to eliminate any subjective account by a staff member of a given incident.

At the same time we were pursuing our own research what the newspapers had recorded. What we were looking for in that instance was those times when a Houston policeman judged it necessary, in the pursuit of his duty, to fire his weapon.

MR. DORSEY. His service—

MS. SCHAYE. We tried—pardon me?

MR. DORSEY. I'm sorry.

MS. SCHAYE. We tried to describe in detail those incidents.

MR. DORSEY. Okay.

So that if I understand correctly, there were—the research was with respect to two newspapers?

MS. SCHAYE. Yes, sir.

MR. DORSEY. And originally the research was with respect to microfilm?

MS. SCHAYE. All the—well, the newspapers were recorded on microfilm in the Houston Public Library.

MR. DORSEY. Okay.

And I didn't understand the followup to that.

MS. SCHAYE. We went from the microfilm. They recorded the date of the article, the newspaper out of which it came. They then went and got a Xerox copy of that article. So they did that for every newspaper article that recorded deadly force used in Houston.

MR. DORSEY. And if I understood what you said correctly, your search was related solely to on duty, that is, line-of-duty shootings; is that correct?

MS. SCHAYE. No, sir. Every time a Houston policeman fired a gun, whether he or she was on or off duty.

MR. DORSEY. Okay.

Was a distinction drawn in statistics between on and off duty?

MS. SCHAYE. Yes, sir. There is a graph in the book that indicates that.

MR. DORSEY. Okay. With respect to off duty, is a distinction drawn between line of duty and nonline of duty? That is to say, for example, accidental shootings or—

MS. SCHAYE. Yes, sir, there is. Sometimes—I may call your attention to the fact that sometimes accidental shootings happened even with Houston policemen on duty.

MR. DORSEY. I understand that.

MS. SCHAYE. Right.

MR. DORSEY. What I was trying to—

MS. SCHAYE. I understand.

MR. DORSEY. —determine is whether or not you distinguished between those which were—those shootings which were “in the line of duty,” whether on or off duty officially, from those which were not “in the line of duty.”

MS. SCHAYE. We didn't make a delineation to that. We have the off-duty officer shootings. We have the accidental shootings. We have in our files recorded those off-duty officers who were also involved in accidental shootings. We don't have a graph like that in the study.

VICE CHAIRMAN HORN. And accidental shootings are strictly those that are not purposeful—

MS. SCHAYE. Yes, sir.

VICE CHAIRMAN HORN. —the gun might have discharged the holster because it rubbed against something?

MS. SCHAYE. Yes, sir.

VICE CHAIRMAN HORN. All right.

MR. DORSEY. Okay. What was the period of time during which the study was conducted?

MS. SCHAYE. It began the latter part of January and ended about a week ago.

MR. DORSEY. In terms of after you had the accumulated data—

Ms. SCHAYE. Yes, sir.

MR. DORSEY. —the raw data, what if any analysis was completed and by whom?

Ms. SCHAYE. It was very—at the same time that we're doing the study, we were trying to pursue the entire file of police shootings in Houston for that period of time, 1970 through 1979. We requested under the Texas Open Records Act the police department's account of those times when policemen in Houston were called upon to fire their weapon.

So, because they did not—they have not yet responded positively to that request, we have not done a definitive analysis of those statistics which we have placed in the deadly force study. It's pointed out in our introduction and also in our conclusion of the study that we really cannot at this time do a definitive analysis, because we of all people realize that our numbers are incomplete. Newspaper accounts don't cover the entire spectrum.

MR. DORSEY. Okay. But with respect to those newspaper accounts, what was the analysis—

Ms. SCHAYE. We've drawn certain conclusions, if you'd like for me to read those conclusions.

MR. DORSEY. Well, actually what I'm—

Ms. SCHAYE. They're in the study.

MR. DORSEY. If I could back up for a second. What I'm really after right now is more in terms of methodology, okay? Were correlations drawn, for example—

Ms. SCHAYE. Yes.

MR. DORSEY. —were—okay.

Ms. SCHAYE. Yes.

MR. DORSEY. That's—

Ms. SCHAYE. Yes, they were.

MR. DORSEY. That's what I want you to say right now.

Ms. SCHAYE. As many different categories as we could think of as we looked at the data that was coming though. And the categories listed are in—that we worked with are in the first part of the book in the table of contents.

MR. DORSEY. I see.

Ms. SCHAYE. And those categories are described in that table of contents.

MR. DORSEY. Are the statistics drawn, for example, against the population size or size of department was related in that way? In number per 100,000?

Ms. SCHAYE. Our preliminary conclusions indicate the size of the department as related to the number of instances. But I must say that we did not try to draw any definitive conclusions or to run any statistics because we realized that the study is incomplete.

MR. DORSEY. Okay. I believe that within the study you have categories confronting and nonconfronting?

MS. SCHAYE. Yes, sir.

MR. DORSEY. What do they relate to?

MS. SCHAYE. What are they in relation to?

MR. DORSEY. Yes, what is the distinction?

MS. SCHAYE. Confronting?

MR. DORSEY. Right.

MS. SCHAYE. Confronting, those times when a person faced a Houston policeman face to face.

MR. DORSEY. Oh.

MS. SCHAYE. In its given situation, you might have had confronting fleeing on foot and fleeing in an auto.

MR. DORSEY. So—okay. So, confronting means face to face?

MS. SCHAYE. Yes, sir.

MR. DORSEY. That's it. Okay.

MS. SCHAYE. Head-to-head confrontation.

MR. DORSEY. With respect to the deadly force study, Mr. Chairman, I would ask if the commissioners at this time have a question that they want to address with respect to this.

CHAIRMAN FLEMMING. Any Commissioner have a question?

COMMISSIONER SALTZMAN. Was this study filed?

MS. SCHAYE. Yes, sir, it was. Last Thursday.

COMMISSIONER SALTZMAN. Was the police department cognizant to this?

MS. SCHAYE. Yes, sir, it was.

COMMISSIONER SALTZMAN. Was there any response from the police department?

MS. SCHAYE. The only response that we received was what we read in the papers. No personal response yet.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Clarify the confronting again. You say that's face-to-face contact, can include fleeing?

MS. SCHAYE. No, sir.

VICE CHAIRMAN HORN. That's what I thought.

MS. SCHAYE. In a given incident, perhaps an individual faced the policeman, a weapon was discharged. Then the individual ran, and that's recorded that he ran or she ran. Maybe then they got into a car; that's recorded.

VICE CHAIRMAN HORN. So we've got three basic categories?

MS. SCHAYE. Yes,

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. With relation to the basic categories, are they divided into adults and juveniles?

MS. SCHAYE. Yes, sir, they are.

CHAIRMAN FLEMMING. Counsel may proceed.

VICE CHAIRMAN HORN. Wait a minute. What's your definition of a juvenile?

MS. SCHAYE. Well, sir, the law changed in Texas in the mid-seventies, and part of that time a juvenile was any person under 21, after that, any person under 18.

VICE CHAIRMAN HORN. And you adjusted it accordingly?

MS. SCHAYE. Sir?

VICE CHAIRMAN HORN. You adjusted it accordingly?

MS. SCHAYE. Yes, sir, I did.

MR. DORSEY. Okay. Finally moving to the second subsection of item 2, if you could—

MS. SCHAYE. If you don't mind, Mr. Dorsey, can I ask you—would you like our microfilm, our Xeroxes of the microfilms?

MR. DORSEY. Yes, please.

MS. SCHAYE. Okay.

MR. DORSEY. With respect to the second subsection, would you identify please, so the documents that you are submitting in response to 2b, which relate to the Texas Open Record Act?

MS. SCHAYE. Yes, sir. We're submitting to you the formal request, the entire open records file that we have. That file was begun in February of this year. I believe the exact date was February 15. It's a formal request under that act by Mr. Mark Campos, the executive director, to Chief Caldwell, chief custodian of the records.

And from that, if you want me to, I can—there's been enormous correspondence between our agency and the police department. There is also in that file an attorney general response to our request for an attorney general's opinion.

MR. DORSEY. Okay.

But that package includes the totality of your correspondence with respect to the Texas records—Texas Open Records Act; is that right?

MS. SCHAYE. Yes, sir, it does.

MR. DORSEY. Okay.

MS. SCHAYE. It also includes our working file, the statute, and so forth.

MR. DORSEY. I wonder if you would, if you'd submit that to the clerk again.

What is the current status of that request at this time?

MS. SCHAYE. We have—when we asked the attorney general's opinion, the attorney general said he was unable to give us an opinion.

I think I have to back up a minute, to make this coherent to all of us.

There was a point in March where the police department through their legal counsel, Mr. Dennis Gardner, said that he did in fact agree with us that those things that we had requested were not exempt under the act. However, it would cost \$1-1/2 million and 36 man-years to compile it.

We asked for a breakdown in the cost analysis. The legal department blocked it. Before they could give us a cost analysis, we would have to post a bond. We neglected to see that, or we did not see that

provision necessitating a bond in the Texas Open Records Act. Therefore, we requested an opinion of the attorney general at that time—that was in March of this year—asking if we did in fact have to post a bond. If records were public, why couldn't we have access to them.

The attorney general's response was that those records—maybe they were public—he didn't comment on the public nature of the records. His comment was that he could not give an opinion to us because we were not a governmental agency, and under the Texas Open Records Act, he's only compelled to give opinions to a governmental agency.

He did, however, point to two current Texas cases and to the regulations of the board of control which determines cost of copying and cost of access to those records which have been deemed public.

The board of control's regulations seem to indicate to us that we could in fact have access to those files. And at that point, which is where we are right now, on May 21, there's a letter in the file from myself to Mr. Dennis Gardner citing the board of control's regulations and asking that we have access to the files.

MR. DORSEY. Okay. So that—

MS. SCHAYE. There has been no response from Mr. Gardner.

MR. DORSEY. So that at this time it is pending; is that correct?

MS. SCHAYE. We're in—

MR. DORSEY. It's not conclusive at this time?

MS. SCHAYE. No, sir. Our next step will be to file a writ of *mandamus* as required by the statute.

MR. DORSEY. As I understand, your organization has also attempted to track the processing, the complaint-processing mechanism within the department. And as I understand it, you have documents to submit which indicate that tracking that you have accomplished. Do you have those with you at this point?

MS. SCHAYE. Yes, sir. That tracking is contained within the 25 police files that we brought to you today.

MR. DORSEY. I see. So within those files—

MS. SCHAYE. Yes.

MR. DORSEY. —that material is contained. Okay.

How is that particular information compiled?

MS. SCHAYE. Contact, client contact. Pursuing the complaint with the client, reporting what happened at any given meeting.

MR. DORSEY. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Further questions?

COMMISSIONER RUIZ. I have a question.

You mentioned that the attorney general first stated that the documents were not exempt?

MS. SCHAYE. No, sir, I'm sorry, that wasn't clear. He didn't give an opinion at all in the exemption status. He said that he was unable to give any type of opinion because we were not a governmental agency.

COMMISSIONER RUIZ. When the question of a bond was submitted, was there an estimate as to the size of the bond that was required of you?

MS. SCHAYE. No, sir. The bond as I understood it would have been the same bond that we would have been required to give had we said we wanted copies of all the records, and the price was set at a million and a half.

MR. DORSEY. Could you hold for one moment, please.

MS. SCHAYE. Sure.

MR. DORSEY. We have technical difficulties. We need to change the tape.

COMMISSIONER RUIZ. When reference was made to costs, was there any estimate made as to what those costs might be?

MS. SCHAYE. Sir, when we asked for an estimate of what the costs might be and the breakdown on the 1-1/2 million—

COMMISSIONER RUIZ. A million and a half dollars?

MS. SCHAYE. Yes, sir, 1-1/2.

When we asked for a breakdown on the \$1-1/2 million, the response was that no breakdown would be compiled for us unless we posted the bond.

COMMISSIONER RUIZ. No further questions.

CHAIRMAN FLEMMING. Counsel—pardon me. Commissioner Horn.

VICE CHAIRMAN HORN. Repeat to me what that board of control decision was.

MS. SCHAYE. The board of control states that you cannot charge for access to the public records. Their regulation is that you cannot charge for access to the public records. I could cite to you if you want me to the exact board of control's language.

VICE CHAIRMAN HORN. Well, I'm assuming you're furnishing that—

MS. SCHAYE. Yes.

VICE CHAIRMAN HORN. —in the files?

MS. SCHAYE. Right.

VICE CHAIRMAN HORN. That will be sufficient.

Have you ever checked to see if the Texas attorney general has given an opinion to a nongovernmental agency?

MS. SCHAYE. Yes.

CHAIRMAN FLEMMING. Counsel may proceed.

In order that the record is made straight, when the documents are furnished in response to counsel's request, which in turn are in response to the subpoena, they are being provided the clerk, and without objection, they will be entered at the appropriate point in the record as an exhibit.

MR. DORSEY. At this time, with respect to the documents that we have discussed, I would ask that they be admitted into the record at this point. I would further ask that the Commission recommend that the Commission find that the witness has complied in full with the terms of the subpoena.

COMMISSIONER FREEMAN. Have all of the documents been received?

Ms. SCHAYE. May I ask—

Mr. DORSEY. Those that we have requested, yes.

Ms. SCHAYE. We have—our understanding of part b of your Roman numeral number two was that there were other things you might want. We brought with us the correspondence between our agency and the chief of police. We also brought with us the organizational structure of the Public Interest Advocacy Center and those policies that we follow, the policies and procedures we follow when a person enters our agency and asks for assistance in a police abuse case. Would you like those, too?

Mr. DORSEY. Yes, please

Ms. SCHAYE. Also there's the 25 files themselves have been compiled for you.

Mr. DORSEY. I would ask that my recommendation be amended to include the additional data.

CHAIRMAN FLEMMING. All right. Without objection, that will be done, and without objection, the Commission will find that the subpena has been complied with.

Mr. DORSEY. I have nothing further at this time, Mr. Chairman.

CHAIRMAN FLEMMING. We appreciate very much your being here and appreciate very much you providing us with this information.

Ms. SCHAYE. Thank you very much.

CHAIRMAN FLEMMING. Thank you very much.

VICE CHAIRMAN HORN. I would just like to say, Mr. Chairman, if that man-year estimate is correct, it shows very high-paid records retrieval—a roughly \$45,000 per person on retrieval. I'm thinking of applying for the job.

CHAIRMAN FLEMMING. Counsel will call the next witness.

Mr. DORSEY. Johnny Mata.

[Johnny Mata was sworn.]

TESTIMONY OF JOHNNY MATA, DISTRICT EIGHT DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Mr. DORSEY. Could you please state your full name for the record and your position with the League of United Latin American Citizens.

Mr. MATA. Okay. My position with the League of United Latin American Citizens is that I'm the elected director for district 8, which encompasses 14 counties and Harris County being one of them.

The League of United Latin American Citizens is, of course, an organization, a national organization established to deal with discrimination in regard to Hispanics, inclusive of criminal justice.

I am very proud to say that we are now celebrating our 50th golden anniversary here in Houston, and you're invited.

Mr. DORSEY. Okay. I'm sorry. I do need to do this for the record. Would you state your full name for the record.

Mr. MATA. Johnny Mata.

Mr. DORSEY. Thank you.

MR. MATA. M-a-t-a.

MR. DORSEY. Thank you.

You were served with a subpoena which requested certain documents in your possession. I ask you if you do have those documents with you at this time?

MR. MATA. Yes, I do.

MR. DORSEY. I'm going to, if I may, deal with the documents by category as I did earlier. And I would ask first of all if we could deal solely with the activities of LULAC with respect to the accumulation of data on complaints. Could you describe the activity of your organization with respect to accumulating data on complaints with respect to police conduct?

MR. MATA. On May 8 and May 9, as you know, we had the death of Jose Campos Torres in Houston, Texas. Our LULAC district office was flooded with telephones and calls in regard to the death of Jose Campos Torres while in the custody of the Houston Police Department.

Initially, what we had been doing in the past is that LULAC normally handles discrimination complaints of all types, inclusive of police brutality cases. However, after the death of Jose Campos Torres, we had to sort of beef up the staff and have it to cope with the rash of requests as to what we were going to do.

We also met with the family of the deceased, Jose Campos Torres, and we also had a meeting at Guadalupe Church on May 12, 1977, in conjunction with other organizations, where we had in excess of 500 people.

MR. DORSEY. But if you could direct—

MR. MATA. I'm going to that now.

MR. DORSEY. —the answer just to—okay.

MR. MATA. We also established a hotline to deal with alleged complaints of police abuse. At the initial stage, it was not a structured type of thing or complete documentation was done till just recently. I have before me about 18 police complaints which some were referred to our attorney. Some were referred to the Justice Department whether it be in Washington or in the Houston area. I have a list of those complaints.

MR. DORSEY. I'm sorry. Could I back up? That was 18; is that correct?

MR. MATA. Yes.

MR. DORSEY. Okay. And you have those with you at this time?

MR. MATA. Yes, I do.

MR. DORSEY. Okay. I wonder if you would submit those to the clerk.

MR. MATA. I beg your pardon.

MR. DORSEY. Could you submit those to the clerk at this time?

MR. MATA. Most definitely.

MR. DORSEY. With respect to those particular complaints, what was the period of time during which they were compiled?

MR. MATA. The ones that you have that I have submitted would basically run from the year of '78. When the Torres Campos case—I was in charge of the affirmative action and civil rights violations, and I was not elected till, you know, I believe in '78 in April. And so, from the previous administration I had to make some changes, and it was very necessary to establish the log that you have.

There were other complaints that were called in. And of course those complaints basically went directly to the Justice Department where we were trying to screen complaints to check the validity of it because at the time the atmosphere was very tense and LULAC did not want to—we, along with other organizations, were trying to pool or create a better environment than the tension that was already developing in the community.

MR. DORSEY. Okay. If I could get some clarification with respect to the document that has been submitted. You referred to a log. Included in the material submitted, is there a log or index of complaints?

MR. MATA. The log itself basically will take you—gives you the name, the address, phone, and type of complaint, the action and disposition.

And normally one of the things that had—as you know, we have logs that have other cases, but the followup was basically the action taken—meaning, like if it went to the Justice Department or what have you. There are still disposition situations where possibly followup as clients and all of that had not been thoroughly completed.

MR. DORSEY. Okay.

Will the log indicate—

VICE CHAIRMAN HORN. Excuse me. What date did the log begin? I still haven't heard the date.

MR. MATA. I believe I have stated, given about May or June of '78. It's documented on the record.

MR. DORSEY. Will the log indicate the date which the complaint was taken by the organization?

MR. MATA. Yes. The complaint—the log has the date and the name and so on, on it.

MR. DORSEY. Okay.

MR. MATA. On the complaint that it was received by our office.

MR. DORSEY. Okay.

So that the 18 complaints were compiled between approximately April and May of '78 and the current time; is that correct?

MR. MATA. Yes.

MR. DORSEY. Okay.

Now, the log represents original contacts, or not, of people actually involved, or could they represent second party referrals?

MR. MATA. I would say that to the best of my recollection that the majority—I would basically would rather answer it could be 50-50. Sometimes it's a case that the complainant could have been in jail; it was probably one of the family.

MR. DORSEY. With respect to instances in which the individual affected is not the individual who initiated the contact with your organization, will the file indicate whether or not a followup with the individual affected was made?

MR. MATA. Would you mean in the instance where a case was referred like to the Justice Department?

MR. DORSEY. No. For example, if the case was referred by a relative—

MR. MATA. Right.

MR. DORSEY. —the relative called and not the individual, will the file indicate whether or not there was direct contact with the individual?

MR. MATA. In some cases, yes; in some cases, no. Like I said before, it was an area that was established under a great mass of confusion, and I would rather say that it could be both.

MR. DORSEY. Okay.

Now, with respect to the contact initiated, is the contact in person, on telephone, by letter, or is it a combination of all of those?

MR. MATA. I would say that the majority of the contact that the league established was normally done by phone, and then some of the contact were referred to legal counsel which they themselves personally might have discussed with the client, possibly provided their recourse of action.

In some instances where we deemed that the action appropriate would be to send them to the Justice Department, there was no contact, personal contact with that individual.

MR. DORSEY. Okay.

You indicated earlier that an attempt was made to screen complaints with validity. Of the 18 cases, do they all reflect the disposition? That is to say, will they reflect whether they were referred to the Justice Department or reflect whether or not they were referred to the police department or reflect whether or not you considered them to be invalid? Will that file reflect that?

MR. MATA. I think that in use of common judgment, and it could have been—you know, we had in several instances different people. We used the judgment of the benefit of the doubt, and we left that discretion to the Justice Department.

MR. DORSEY. So that all 18 were referred to the Justice Department?

MR. MATA. No. I said that on the log it stressed the action taken. I could not—

MR. DORSEY. But the log indicates the action taken?

MR. MATA. The log will normally indicate basically the action taken. So it's not a—it's not a log of all of those cases. There's a variation of actions taken, and I could not answer that.

VICE CHAIRMAN HORN. Well, just to get that nailed down. In response to the previous witness, where the statement was made that

there were 25 cases in total since January 15, '79. And on some of the cases it was stated that the center had advised the clients they did not have the case, and the witness thought there were perhaps 4 or 5 out of the 25 or roughly 20 percent. I take it you don't—you did not advise any of these 18 complainants, after looking into it, that they did not have a case? I'm not quite clear on what's been said here.

MR. MATA. Well, my—I think, if I recall, previously I said that we have eight complaints—

VICE CHAIRMAN HORN. You had 18.

MR. MATA. Eighteen complaints, and the initial complaints that we utilized judgment in the sense that I would say that if somebody said that there were pushed or an area that it did not appear that it was indicative of a civil rights violation, I also stressed that judgment would utilize. So in response to your question, I would respond that the basic kind of complaints that on the information obtained did not merit that. They can be advised, or they could have been advised that they could go to the Justice Department and let the FBI make that determination.

VICE CHAIRMAN HORN. Well, but, of the 18 complaints, do you have a personal judgment as to how many were credible?

MR. MATA. I personally don't. I can only—

VICE CHAIRMAN HORN. Do you think all 18 were?

MR. MATA. Let me explain to you. The league as a service organization is volunteers. The situation that we were thrust on was a situation that the action was being taken out of the district office in regards to staff that were being utilized and deployed in different other projects and that we basically, because of the concern of the community to establish some kind of outlet—I will not sit here and say that we thoroughly screened that. We were just utilizing as an immediate resource for the community to have as an avenue.

VICE CHAIRMAN HORN. Okay. Okay, that's a very good phrase for it. In other words, it was a transmission point?

MR. MATA. Right.

VICE CHAIRMAN HORN. And you then referred these cases to where you thought it was appropriate?

MR. MATA. Right.

And it was also served as an immediate information center to advise complainants and not so much as to—in the case of the Torres case, as you know, the courts finally determined that there were some violations, and we were using the best avenue and that was an information-type thing in providing all the assistance we could with the resources that we had at the time.

VICE CHAIRMAN HORN. All right. Do we know from the records you have submitted as to what agency these 18 were referred and do we have any idea on your submissions—since I don't have them before me—as to what happened or nothing happened, or were they—

MR. MATA. Right.

VICE CHAIRMAN HORN. —referred to another agency?

MR. MATA. It appeared—and what I was driving at a little while ago was, is as district director we have numerous councils within my district and people working in different projects. And I cannot tell you exactly what had transpired on each individual case, because as a director, it's very difficult for me to answer that.

I will say this; that the league being a national in the State, this was sort of like restricted into the Houston area.

I have here within my own district numerous other municipalities that it's not only the Houston problem we're talking about, you know.

VICE CHAIRMAN HORN. Well, of the 18 cases, are all of those pertaining to the jurisdiction of the Houston police?

MR. MATA. Those were basically in the Houston area. In some of these other areas that I'm talking about, the system has changed in an area that you will find—of course it's already been submitted to the Justice and others—along with this document, I will also submit the one that MALDEF [Mexican American Legal Defense and Education Fund] sent to the Justice Department.

So what I'm saying to you is that the league, as established under our constitution, has the responsibility of working with other organizations and government and others. But as it presented the situation, it can be here as a followup that some of these cases might appear on some of these records at a later time, and I cannot tell you that until the followup comes up from legal counsel, and I'm advised.

VICE CHAIRMAN HORN. I don't like to press this, but I think it only fair since this is a public hearing, it be clearly known whether the 18 pertain to the activities of the Houston Police Department.

MR. MATA. Oh, yes, that's what I stress. That 18—

VICE CHAIRMAN HORN. In other words, all 18 that you submitted do pertain to the jurisdiction of the Houston police record.

MR. MATA. Those were—

VICE CHAIRMAN HORN. Just a minute ago you said “basically,” and basically isn't all.

MR. MATA. Yes. Those are restricted like I said to the jurisdiction that we're talking about.

VICE CHAIRMAN HORN. Very good.

MR. MATA. These others are—like I said, I have 14 other counties; I have other complaints.

VICE CHAIRMAN HORN. Right. I understand that. I just want to make sure what the public—

MR. MATA. Yes, sir.

VICE CHAIRMAN HORN. —impression is of the complaints your hot-line received.

MR. MATA. No. Those are restricted to the Houston—

VICE CHAIRMAN HORN. Eighteen, Houston police?

MR. MATA. That's correct.

VICE CHAIRMAN HORN. Okay.

COMMISSIONER SALTZMAN. May I pick up on that? I'm not perfectly clear.

All of these 18, they were referred to LULAC or what other agency?

MR. MATA. Okay. Number one, the complainant called the LULAC district office.

The district office through all that length of time documented the cases—I mean, you know, recorded the logs, and the class of actions I stated a while ago is very—we did not have a uniform pattern. Some were referred to the FBI. In certain instances it could have been that I know that in my district that I had submitted certain cases directly to the Justice Department.

COMMISSIONER SALTZMAN. Do your records show—

MR. MATA. It's documented on that record right there, and I think I responded to the Commissioner.

COMMISSIONER SALTZMAN. I'm sorry.

MR. DORSEY. If I may, I would like to move to the second category. You were requested to submit memoranda, letters, and minutes of meetings with respect to communications with and about the Houston Police Department practices and procedures. And I wonder if you have those documents with you at this time?

MR. MATA. Yes, I do. We had previously—we had had correspondence to the district office, and I have them here on file.

MR. DORSEY. I would ask that—you do have those—I would ask that you give those to the clerk.

MR. MATA. Yes.

Also in response to—I jotted down I believe on December 19, 1978, a meeting was held with Chief Caldwell at Ripley House with some of the presidents of the Houston area concerning, you know, police relations which this was an area that we were talking about in regards to communications talk which after this had transpired, a visit to—

MR. DORSEY. Let me back up for a second.

The meeting to which you refer are the minutes in the document which you—

MR. MATA. No.

MR. DORSEY. —provided?

MR. MATA. I said those were correspondence, letters.

MR. DORSEY. Okay.

MR. MATA. This is the copies of notes of a meeting that we had with the Police Chief Caldwell on December 19, 1978.

MR. DORSEY. Okay. If that could be submitted for the record—

MR. MATA. There it is.

MR. DORSEY. —we would accept that at this time. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Any further questions?

[No response.]

CHAIRMAN FLEMMING. That's all, counsel.

MR. DORSEY. Mr. Chairman, I would ask that the information supplied by Mr. Mata be accepted into the record at this point, and I

would further recommend that Mr. Mata be found in compliance with the subpoena issued by this Commission.

CHAIRMAN FLEMMING. Without objection, the recommendation is approved.

MR. MATA. Commissioner?

CHAIRMAN FLEMMING. We appreciate very much your being a witness.

MR. MATA. I have had additional documents that were meetings and reports. See, that was not—as far as the district office, and here it could have—it might reflect we have a report to our State executive board concerning criminal justice that I feel that will include some of the reports that we talked about. We have some reports from the district in regard to '77 as it deals with the meetings prior to the Torres case, and we also have some State correspondence reports in regards to the relationship of our State office and also some police chief meetings on a State level and a local level as far as establishment of policies and goals to improve these conditions that I think are pertinent in this matter, and I think they need to be entered in the record.

MR. DORSEY. I would ask the Chairman if the Commission would accept those additional documents into the record also.

CHAIRMAN FLEMMING. Without objection, that will be done.

Again, thank you very much.

MR. MATA. Thank you very much.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MR. DORSEY. Steven Shiflett.

[Steven Shiflett was sworn.]

TESTIMONY OF STEVEN H. SHIFLETT, PRESIDENT, HOUSTON GAY POLITICAL CAUCUS

MR. DORSEY. Would you state your full name for the record and your organization affiliation and title.

MR. SHIFLETT. Steven Howard Shiflett, president of the Houston Gay Political Caucus.

MR. DORSEY. Mr. Shiflett, you are accompanied today. I would ask if the individuals accompanying you would identify themselves for the record.

MR. SHIFLETT. Larry Bagneris, vice president of the Houston Gay Political Caucus and board member of National Gay Task Force, founding director of the Chicano Gay Caucus in Houston.

Phyllis Frye, member of the Gay Political Caucus.

VICE CHAIRMAN HORN. Could you spell the names on that, please.

MR. SHIFLETT. B-a-g-n-e-r-i-s.

VICE CHAIRMAN HORN. B-a-g-n-e-r-i-s?

MR. SHIFLETT. —n-e-r-i-s.

Yes, sir.

VICE CHAIRMAN HORN. All right. And the other name?

MR. SHIFLETT. F-r-y-e.

MR. DORSEY. Mr. Shiflett, you were served with a subpoena and requested to submit certain documents. At this time I would ask if you have those documents with you?

MR. SHIFLETT. Yes, I do, as ordered.

MR. DORSEY. Would you please describe the documents you brought in response to the subpoena. Specifically, first if you would, the documents with respect to indexing various materials. Could you describe that for the Commissioners?

MR. SHIFLETT. Appendices one that I have submitted to you involve cases of excessive force, perjured testimony, and conspiracy against the gay community, verbal harassment, murder coverup.

MR. DORSEY. Do you have those documents with you?

MR. SHIFLETT. Yes, sir, I do.

MR. DORSEY. I wonder if you would submit those to the clerk.

As I understand it, you also have with you an index or list of complaints as a result of operation and documentation?

MR. SHIFLETT. That was the documents I just presented to you.

MR. DORSEY. Okay.

With respect to those particular documents, can you indicate the time period in which they were accumulated or compiled?

MR. SHIFLETT. Yes, sir. Let me preface remarks and say that the Gay Political Caucus has always been involved in documenting since its inception 3 years ago. However, we found reason to systematize that documentation and elevate our documentation efforts in the recent increase of harassment towards our community in the last year. Consequently, operation documentation was instituted in December of 1978, and since that time I have now gathered over 100 cases as I have just stated earlier.

MR. DORSEY. Okay.

What is the manner by which the documents—the documentation is compiled? What is the system?

MR. SHIFLETT. Our system is twofold. First of all, we offer a referral service to cooperating attorneys to our community citizens. If they call the Gay Political Caucus office, they get referred to one of our cooperating attorneys who in fact offer us that documentation for the purpose of this hearing. Otherwise, we have gone back to our constituents through advertising and ask for comments and documentation of events that occur prior to the documentation program that began in '78 in December.

MR. DORSEY. Okay.

With respect to the documentation which results from the referral service to attorneys, does the documentation come from the attorney or from the individual affected?

MR. SHIFLETT. I have both.

MR. DORSEY. Does the documentation reflect which was the source?

MR. SHIFLETT. Which was the source—

MR. DORSEY. Your source.

MR. SHIFLETT. —of documentation?

MR. DORSEY. Right.

MR. SHIFLETT. Yes, it does. The cover letters for the cases are from each individual attorney and characterized as such.

MR. DORSEY. Okay.

With respect to those from the individual attorneys, does it reflect whether or not your agency had any direct contact with the individual?

MR. SHIFLETT. Does it reflect whether we referred that client to the attorney; is that what you're asking?

MR. DORSEY. Well, what I'm basically asking, is to back up, with respect to this category, does the documentation you submitted reflect whether or not the individual indicated to your organization that complaint?

MR. SHIFLETT. If the individuals have offered their documentation for use in today's hearings?

MR. DORSEY. Sure.

MR. SHIFLETT. Is because our organization has worked with them in doing so.

MR. DORSEY. Individuals.

MR. SHIFLETT. Yes.

MR. DORSEY. With respect to those which were the result of the advertising, did they represent individual contact with the individual affected, or do they in some cases reflect second or third party information?

MR. SHIFLETT. Never second or third party information. They always involve a personal interview with myself or coordinator of operation documentation.

MR. DORSEY. Okay. So all 100 cases represent some contact between the organization and the individual affected?

MR. SHIFLETT. There are probably some that don't reflect that because they're older than when operation documentation began.

MR. DORSEY. Okay. But the 100 cases, are those operation documentation or do they include more than operation documentation?

MR. SHIFLETT. They include more than operation documentation.

MR. DORSEY. Okay.

Within the 100, is it clear which are within the operation documentation and therefore have original contact?

MR. SHIFLETT. The ones that don't are marked. The ones that do, don't say that. Does that make sense?

MR. DORSEY. Right.

MR. SHIFLETT. Okay.

MR. DORSEY. So that if they do, then it will be—

MR. SHIFLETT. You will know it.

MR. DORSEY. —reflected on the documents?

MR. SHIFLETT. Right.

VICE CHAIRMAN HORN. Maybe I missed something. How many have had the personal contact, and how many have had not?

MR. SHIFLETT. I couldn't begin to give you a number breakdown there. It's just going to be each individual case. As you read it, you will see if it's been referred to.

VICE CHAIRMAN HORN. Do you think three-fourths of the 100—

MR. SHIFLETT. Oh, yes.

VICE CHAIRMAN HORN. —have had personal contact?

MR. SHIFLETT. Oh, yes.

VICE CHAIRMAN HORN. So, we're quibbling about 10 to 15 percent?

MR. SHIFLETT. For sure.

VICE CHAIRMAN HORN. I'm just trying to get proportions.

MR. DORSEY. Okay.

The cases which you have received, the 100 cases, have the files been an indication of what you did with the case—I mean whether it was referred or not and to whom?

MR. SHIFLETT. Well, let me explain that.

MR. DORSEY. Good.

MR. SHIFLETT. Our attorneys have advised us that depending on the case, do they refer them to the FBI, the internal affairs division, or other agencies. We've been advised that sometimes cases are not referred to the internal affairs division because that filing of a complaint becomes a flag in the system by which police officers can protect their own interests and change offense reports or make files disappear, as is the case in a couple of our brutal cases here that I have documented.

MR. DORSEY. So that—can you indicate which if any of the 100 cases were referred to the Justice Department or the police department?

MR. SHIFLETT. I don't know that that's in the documentation, no. I can get that information by contacting the attorneys on interested cases.

MR. DORSEY. Good.

I would, Mr. Chairman, with the consent of the Commissioners ask that that information be submitted for inclusion in the record to complete that particular document.

CHAIRMAN FLEMMING. Without objection, that will be done.

MR. DORSEY. Okay.

I believe you indicated that operation documentation has been an ongoing interest to the caucus for 3 years, but that it has been increased in emphasis and the degree of organization.

MR. SHIFLETT. Yes, but—

MR. DORSEY. Is that an ongoing interest and activity? I mean, is this considered to be a process that you're going to be engaged in for some time?

MR. SHIFLETT. If the problem continues as is evidenced from indication—from problems referred to me last night by telephone, yes.

MR. DORSEY. Okay.

MR. SHIFLETT. We just had two more cases.

MR. DORSEY. In point of fact, this information, you intended to continue to compile this information.

MR. SHIFLETT. Yes, sir. As a matter of fact, we intend on systematizing it more whereby the information you're asking for today will be included, and we won't have to go back and do homework.

VICE CHAIRMAN HORN. Well, now, as I understand counsel, the earlier testimony was that since December 1978 operation documentation has occurred, and that most of the cases of the 100 cited, you've had personal contact. So we're talking roughly about 5 months.

I'm trying to get the number of incidents in relation to a time period. Some you said were earlier cases.

MR. SHIFLETT. Yes, that we have gotten from attorneys that we've been cooperating with since our inception.

VICE CHAIRMAN HORN. Right. But am I correct in assuming that most of these cases have occurred since December 1978? So we're talking about a 5-month period, 5-1/2 months, which would leave us to believe that for your particular group, you're talking about 85 to 90 cases having occurred in less than half a year?

MR. SHIFLETT. Well, when we announced the program in December of '78, automatically many responses came from the month or two right before that month.

VICE CHAIRMAN HORN. Well, all right.

MR. SHIFLETT. So it could include like 7 or 8 months.

VICE CHAIRMAN HORN. So you're talking about 8 months at the most?

MR. SHIFLETT. Yes, sir.

VICE CHAIRMAN HORN. I'm just trying to get a proportion again.

MR. DORSEY. I have no further questions at this time.

CHAIRMAN FLEMMING. Are there any additional questions?

COMMISSIONER FREEMAN. I have one question.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Does the documentation reflect any trends? Whether there are any periods of incidents involved in the number here?

MR. SHIFLETT. Yes ma'am, they do.

COMMISSIONER FREEMAN. I have no other questions.

CHAIRMAN FLEMMING. Any further questions?

VICE CHAIRMAN HORN. No questions.

MR. DORSEY. At this point, I would like to recommend to the Commission that the documents submitted by Mr. Shifflet be accepted into the record and that Mr. Shiflett be found in compliance with the subpena.

CHAIRMAN FLEMMING. Without objection, the recommendation from counsel will be approved.

MR. SHIFLETT. Commissioner, I have another appendices that was requested, and that is a memoranda and recordings of meetings with our city officials that have proven that we have not had any—we have

exhausted our remedies, avenues of remedy in Houston, Texas. Can I submit them also for the record?

MR. DORSEY. Mr. Chairman, I would recommend inclusion of this documentation.

CHAIRMAN FLEMMING. Without objection, they will be entered into the record at this point.

Thank you very much.

MR. SHIFLETT. Thank you.

CHAIRMAN FLEMMING. I am about to recess the hearing to 1 o'clock, but before I do, for the benefit of those who were not here at the opening of the hearing, I would just like to repeat a few statements I made at that time. I said then that at today's hearing the Commission will be receiving into its formal public record available documentation from the community of alleged instances of excessive or unnecessary use of force by Houston police officers.

Questions addressed to witnesses will be designed solely to clarify the content of the documents. Testimony relating to issues raised by the documents will be taken at our next public hearing. In addition, and this will take place today at 1 o'clock, the Commission will be receiving into its public record, from the chief of police, various materials relating to the administration and functioning of the Houston Police Department and relative to its policies and actual practices.

Again, questions will be designed to explain and to clarify the content of the documents submitted. Testimony relating to issues raised by the documents will be taken at our next public hearing.

The Commission has voted to return to Houston on September 10, 11, and 12. Two of those days will be set aside for our next public hearing on these matters.

At that time, we will take testimony from a number of community leaders, individuals from city, State, and Federal Government, and officials and individuals in the department with respect to the issues identified and investigated during the course of the field work. That field work will continue following these hearings.

Only after that hearing when the concerns and the efforts of the community and the city, including specifically the department, have been fully aired, investigated, and understood will the Commission's work here in Houston be complete.

The hearing is now in recess until 1 o'clock.

Afternoon Session, June 12, 1979

CHAIRMAN FLEMMING. The hearing will come to order.

For the benefit of those who were not here at the morning session, I am going to repeat just a few sentences from my opening statement from this morning so everyone will understand the procedures.

Those who were here this morning know that we did receive some documentation from the community, but some questions were asked relative to that documentation, but no testimony relating to issues raised by the documents was taken.

This afternoon, we will be receiving into our public record, from the chief of police, various materials relating to the administration and functioning of the Houston Police Department and to its policies and actual practices.

Again, questions will be directed designed to explain and to clarify the content of the documents submitted. Testimony relating to issues raised by the documents will be taken at our next public hearing.

I indicated at the close of our session this morning that the Commission will return to Houston on September 10, 11, and 12. During 2 of those days, we will hold our next public hearing. And at that time, we will take testimony from a number of community leaders, individuals from city, State, and Federal Government and individuals in the department with respect to the issues identified and investigated during the course of the field work.

Only after that hearing when the concerns and the efforts of the community and the city, including specifically the department, have been fully aired, investigated, and understood, will the Commission's work in Houston be complete.

Counsel will call the next witness.

MR. DORSEY. Harry D. Caldwell, chief of police.

[Harry D. Caldwell was sworn.]

**TESTIMONY OF HARRY D. CALDWELL, CHIEF, HOUSTON POLICE
DEPARTMENT**

CHAIRMAN FLEMMING. Thank you. We appreciate you being here.

MR. CALDWELL. Thank you.

MR. DORSEY. Mr. Caldwell, before referring specifically—

I'm sorry. Would you state your full name for the record.

MR. CALDWELL. Yes, sir. H. D. Caldwell.

MR. DORSEY. Thank you. And your title, official title, please.

MR. CALDWELL. Chief of police in Houston, sir, at this time.

MR. DORSEY. You are accompanied today. I wonder if counsel would please identify themselves for the record.

MR. COLLIE. I am Robert M. Collie, Jr., I'm city attorney of Houston.

MR. GARDNER. And I'm Dennis Gardner. I'm a senior assistant city attorney.

MR. CALDWELL. Counsel, may I further point out that numerous members of my staff are present because of the copious amount of documentation requested provided by the committee. It was necessary for much staff work to be conducted, and that it may be necessary in terms of authentication of documents to call on various members of

my staff that are present. And if it requires them being identified at this time, I'd like to take the opportunity to do so.

MR. DORSEY. I do not believe it will be necessary, but in the eventuality that it is, I will ask them to come forward and identify themselves.

MR. CALDWELL. I see, sir.

MR. DORSEY. Before we get to the matter that we're currently here for, I would like to officially take cognizance of the cooperation by the department, and you specifically, Chief Caldwell, with respect to submission of numerous documents prior to this time, recognizing that the compiling of the information which you have already submitted to the Commission has required considerable resource and time, and you have in fact made numerous members of the staff available to our staff for purposes of investigation. I would like to recognize that on the record at this time.

MR. CALDWELL. I thank you, counselor.

MR. DORSEY. Rather than go through the numerous lists of documents, I would generally thank you again for your cooperation.

Turning to the matter of the Commission's subpoenas issued June 1, I would like to at this time read into the record an understanding which I have as counsel to the Commission, with your consent. With respect—and if I may, I will identify the subpoenaed items numerically as they appear on the subpoena served. With respect to that subpoena, it's my understanding that there will be one modification of the subpoena which I am to present to the Commissioners at this time for their ratification, and it relates to items 9 and 10 of the Commission subpoena. With respect to those two items, current 9 and 10 will be modified so as to eliminate subcategories numbers 1 through 20 under 2 of item 9.

MR. CALDWELL. That's my understanding, counsel, in which I'm in perfect accord.

MR. DORSEY. That that will be replaced by a category already described?

MR. CALDWELL. Yes, sir. That's my understanding, counsel. And again, I'm in perfect accord with this proceeding.

MR. DORSEY. Then the—

CHAIRMAN FLEMMING. Pardon me. Counsel, would you identify that again?

MR. DORSEY. Okay.

On page 5 of the subpoena under Roman numeral—

CHAIRMAN FLEMMING. Do you have a question?

COMMISSIONER FREEMAN. Yes. Except that you say the category already described where?

MR. DORSEY. The category that is described—this sheet that I now have with me, it has previously been described to counsel of Mr. Caldwell. It will replace item 9 to subsection 1 through 20.

At this time I would pass that memorandum among the Commissioners while I continue my presentation, if I may.

VICE CHAIRMAN HORN. While substituted for number 10 also; is it not?

MR. DORSEY. Yes. Number 10 would become subsection 3.

CHAIRMAN FLEMMING. Counsel, this is a document for the Commission to consider. Why it may be better to give each member of the Commission a chance to consider it—

MR. DORSEY. Yes.

CHAIRMAN FLEMMING. —before you continue.

MR. DORSEY. Oh, fine.

In order to clarify the record, let me indicate what the substitute language is. There's some confusion.

The substitute language is simply to eliminate the current 1 through 20 and to add the category. And the category is as follows: any officer identifiably involved in two or more shooting incidents resulting in injury or death. That's the only modification.

VICE CHAIRMAN HORN. Well, I have some questions of this, Mr. Chairman. I think we ought to decide whether we recess and discuss this. I am hoping that the wishes of the Commission—but I will be glad to raise the questions now.

CHAIRMAN FLEMMING. Do you have any—

MR. DORSEY. I would prefer a recess.

CHAIRMAN FLEMMING. What?

MR. DORSEY. I would prefer a recess.

CHAIRMAN FLEMMING. Do you have anything further that you want—

MR. DORSEY. I gather that Commissioner Horn wants to resolve that issue. So I would prefer to resolve that before we go forward.

CHAIRMAN FLEMMING. Okay. The Commission will take a short recess in order to consider this matter.

CHAIRMAN FLEMMING. The hearing will come to order.

I recognize counsel.

MR. DORSEY. Mr. Chairman, excuse me. It's taking me a minute or two to get my notes in order.

Mr. Chairman, for the purpose of clarifying the record from where we left, I would like to resolve any confusion with respect to the enumeration of the items of the subpoena. Let me for the record indicate exactly what it is under subpoena at this point, and what it is we are referring to with respect to modification.

Roman numeral 1, all listed sections of the rules manual, including revisions, additions, changes, and amendments.

Roman numeral 2, general orders which relate to the following subject areas: revisions, additions, or amendments. They include the policies and practices with respect to the administration of the department, specific areas enumerated therein.

Roman numeral 3, special orders, administrative notices, bulletins, departmental orders, memoranda, memoranda updates relating to section two that was just previously noted.

Roman numeral 4, records of complaints received 1977 to the present and logs with respect to 1975 to the present and related materials.

Roman numeral 5, any guide, checklist, or manual used by the homicide division in conducting its investigations.

Item 6, records, documents, reports, writings relating to the investigation of internal affairs, and where applicable, the homicide division, from a sampling since 1977.

Roman numeral 7, records, documents, reports, and other writings relating to the investigation by internal affairs, and where applicable, homicide division. Also of a sampling of specific class one matters since 1977.

Item 8, reports, documents, records relating to internal affairs investigations and homicide division investigations relating to class one complaints since 1977.

Item 9, I am requesting to be amended to make Roman numeral 10 subsection 3 of Roman numeral 9 which relates to reports, records, and documents with respect to specific investigations as listed.

And within subcategory 2, I am requesting the addition of the specific category which I referred to earlier, and the deletion of the items 1 to 20 which give reference to named individuals.

I believe that clarifies the point of the modification.

CHAIRMAN FLEMMING. The members of the Commission have considered this recommendation. We have considered it particularly in light of the mandate placed upon us by the Congress to make sure of the fact that in our procedures we do not do anything that would tend to defame, degrade, or incriminate any person.

The thrust of this recommendation for a change in the wording of one of the subpoenas is to eliminate names and to substitute language which in the judgment of the Commission will achieve the same objective. Therefore, we are concurring in the recommendation of counsel on that particular point.

MR. DORSEY. Mr. Chairman, I am further making a recommendation with respect to compliance with regards to subpoenaed material. Before doing so, again in the interest of clarifying specifically for the record the cooperation and submission of materials to the Commission, I would like to list the categories of material specifically which are already in the Commission's possession by the submission of Chief Caldwell.

On November 13, 1978, Chief Caldwell submitted to the Commission certain documentation with respect to the police department as follows:

Sections from the manual of the Houston Police Department which indicate innovative procedures and policies dealing with the receipt, classification, and processing of complaints of police misconduct;

Summaries—item 2, summaries of the Houston Police Department disciplinary action taken since creation of the internal affairs division;

Statistical information—3, I'm sorry—statistical information with respect to the internal affairs division for the period 1977–1978;

Item 4, statistics on the number of complaints received by the FBI's Houston Field Office 1977 and 1978;

Item 5 is again a section from the police department manual relating to specific policies of the department;

Item 6, sections again from the Houston Police Department with respect to policies and procedures as are item 7—as is item 7;

Item 8, job descriptions for the position of director of psychological services for the Houston Police Department;

Item 9, documents setting forth the operational concepts of field training and evaluation program;

Item 10, documents proposing Spanish-language and Mexican American culture training for Houston law enforcement officers;

Item 11, Houston Police Department guidelines for the administration personnel review committee; and

Item 12, a number of civil rights suits filed against the Houston Police Department since January 1977.

In addition, Mr. Chairman, as of June 6, the following additional information has been submitted by the department:

Table of context, contents—I'm sorry—on the rules manual of the Houston Police Department;

Houston Civil Service Commission rules for the administration of that system with regards to fire and police departments;

Houston Police Department organizational chart;

Houston Police Department annual reports from 1971 to 1977;

Total expenditures of the Houston Police Department for the years 1970 to 1979;

Listing and description of the Federal grants received by the Houston Police Department through Law Enforcement Assistance Administration and the Office of Traffic Safety of the U.S. Department of Transportation;

Houston Police Department equal opportunity program;

Statistics on the number of police officers receiving departmental approval to hold second jobs;

List of subjects taught by the police academy;

Profile of the academy classes by race, ethnicity, and sex for the years 1975 to 1978;

Field training and evaluation program manual;

Houston Police Department Academy's manual of cadet regulations;

Breakdown of inservice training instructors and students by race, ethnicity, and sex for 1978;

List of inservice training courses offered in 1978 with breakdowns;

Monthly disciplinary reports from January 1978 to April 1979;

Table of temporary and indefinite suspensions with breakdown for violations between 1975 and 1978;

Recommended organization and standard operating procedures for the Houston Police Department, Internal Affairs Division;
 Internal Affairs Division statistical data, 1977 to 1979;
 Map of Houston police master districts;
 Copy of current recruiting brochure;
 Copy of the Houston Police Department employment qualifications;
 Houston Police Department employment application forms;
 Age and experience profile, Houston Police Department;
 Personnel ordinance adopted by city council denoting number of authorized positions and salary levels for the Houston Police Department;

A listing of the Houston Police Department computer system application capability and types of reports generated from each application.

As I indicated earlier on the record, Mr. Chairman, the time and effort which went into the compilation of this data, all of which was supplied voluntarily and all of which was compiled and supplied specifically at the request of Commission staff represents a considerable cooperative effort on the part of the chief.

With respect to the subpoenaed documents currently the subject of this proceeding, I would first like to—I'm sorry. I have already identified the various items of that subpoena.

With respect to that subpoena, I'm recommending that the Commission consider and approve the following guidelines for the review of that information on the part of Commission staff with respect to this particular hearing and this particular investigation and study. And if the Chair would approve, I would like to read that into the record at this time.

CHAIRMAN FLEMMING. You may proceed.

MR. DORSEY. Recognizing that certain rules and regulations of the police department are tactical in nature, the public disclosure of which could compromise the police function sought to be served by the rule or regulation in question, it is agreed that the following portions of the Houston Police Department rules manual, general orders, special orders, and bulletins may be reviewed by the Commission or its authorized staff members, but the materials will not be released to the Commission for inclusion in the record of the hearing.

I should preface this, if it is not clear, Mr. Chairman, that the entire statement which I am about to read into the record relates specifically to the documents I enumerated within the subpoena.

CHAIRMAN FLEMMING. That is all of the documents covered by the subpoena today.

MR. DORSEY. It is further agreed that the Commission or Commission staff may summarize the material so as to extract the essence of the rule or regulation into question, but the specific tactical details of the rule or regulation will not be disclosed.

It is agreed that the chief of police and his designated representative will have the opportunity to review all Commission and or staff notes,

summaries, or other materials gathered by the Commission under this section of the agreement.

Prior to their inclusion in the official records of the Commission, should the chief of police determine that such notes, summaries, or other materials contain specific tactical details of any rule or regulation, disclosure of which would seriously compromise the police function sought to be served by that rule or regulation, he may inform the Commission that such information will not be released for inclusion in the record.

Item 2—I should—I'm sorry. Let me back up.

The paragraph which I just read relates to items Roman numeral 1, 2, and 3 of the subpoena. With regards to items 4, 6, 7, 8, and 9, as amended, the following pertains: it will be agreed that the city will not release custody of any materials to which access is provided under this section of the agreement, and that all notes, memoranda, or data of any kind made or gathered by the Commission or its staff pursuant to this agreement shall be subject to the review by the chief of police or his designated representatives prior to their inclusion in the record of the proceedings.

Should the chief of police determine that any of the notes, memoranda, or data of any kind gathered by the Commission or its staff about any individual from the materials presented for review under this section of the agreement identifies officers, complainants, or witnesses in any way to anyone other than the department, he, that is, the chief of police, may inform the Commission that such materials will not be released for inclusion into the record.

It is agreed that all summaries or other memoranda of internal affairs division's records will in no instance identify the complainant, witnesses, or officers concerned either by name or by any other device by virtue of which the identities of the person involved will be determined except by the department.

That is the guideline for review of subpoenaed information which I am recommending to the Commissioners at this time.

However, I would ask at this time, if that is the understanding of Chief Caldwell and his counsel.

MR. CALDWELL. Counsel, may I ask my attorney to make a point in regards to the stipulation.

MR. DORSEY. Sure.

MR. COLLIE. Mr. Dorsey, as we have previously discussed, I understand a couple of things about this that I would like to clear in the record.

One, we understand that there will be no judicial action taken to enforce the subpoena after the adoption of these guidelines; is that the correct understanding?

MR. DORSEY. With the assumption of good-faith compliance with the previous provisions of the agreement, that is correct, yes.

MR. COLLIE. Further, we understand that there will be no additional subpoenas for the production of documents or records that will be issued, again assuming good-faith provision of the materials set out in this subpoena under the guidelines.

MR. DORSEY. That is my understanding also, correct.

MR. COLLIE. And finally, we understand that the purpose for which the subpoena has been issued is consistent with the remarks of the Chairman at the outset of this morning's session regarding the purposes of the hearing on the Houston Police Department; is that correct?

MR. DORSEY. Yes. The Chairman has on several occasions during the day specifically eluded to the purposes of the hearing and the presence of the Commission in Houston. That does represent the basis of the subpoenas, and that does represent the basis of the guidelines also.

MR. COLLIE. With those three understandings, then the guidelines are satisfactory to the city and the department.

MR. DORSEY. Mr. Chairman, I recommend the adoption by the Commission at this time.

CHAIRMAN FLEMMING. The Commission during the recess did give consideration to these guidelines, but one shouldn't think that we took as long as we did just to consider the one issue involving the subpoena. But we were informed that we would be presented with these guidelines and would be asked to pass on them. So we decided that it would be wise to consider them during the same recess.

This morning in my opening statement, I did stress this: I said the focus of the Commission's study—and this refers not just to our study in Houston, but to our nationwide study—has been fourfold. To ascertain the nature and extent of police misconduct, specifically, with the excessive or unnecessary use of force; to identify formal and informal policies and procedures relating to police conduct and discipline; to identify the officials and agencies legally responsible for investigation and resolving allegations of police misconduct; and to evaluate the availability and effectiveness of existing systems of accountability, both internal and external.

I said this morning, and I'd like to underline at this point, that it is important to note that its purpose is the purpose of our overall study, which has not been to identify, investigate, or to resolve individual allegations of abuse. The Commission is not an enforcement agency. Its mandate is to evaluate the enforcement efforts of others, to assess the adequacy of existing laws and policies, and to make recommendations for needed changes in them.

You will recall that later on in the statement I indicated that when our study is completed we will develop a report; we will agree on findings and recommendations; and we will submit them to the President and to the Congress.

Also my colleague, Commissioner Freeman, in making a statement relative to our rules and procedures underlined on a number of occasions the mandate that has been placed upon us by Congress to avoid doing anything that will defame, degrade, or incriminate any person.

The guidelines which have been presented to us which have been agreed to by the city of Houston are consistent with the overall objective of our study and are consistent with our mandate to go out of our way to avoid defaming, degrading, or incriminating any person. And as counsel has indicated, if these guidelines are administered in good faith, and if there is a lack of any arbitrary or capricious action, there isn't any question in our mind but that they will yield the kind of information, the gleaning, in order to carry forward our study not only here in Houston, but also our nationwide study.

In light of those considerations, the members of the Commission have voted to concur in those guidelines.

Counsel?

MR. DORSEY. I have no further questions at this time except to ask Chief Caldwell if the agreement as has been described and has been alluded to by counsel will be complied with as indicated by the agreement.

MR. CALDWELL. The answer to that of course, counsel, is, yes.

I would ask, if it would be in order, that I request at this time that the record be kept open to allow me to submit certain documents, at least five specific documents, in addition to the ones that I have submitted. If I might delineate these, I would request permission to submit a copy of the PIAC grant—the Public Interest Advocacy Center grant—requiring that complaints to them be submitted to me within 48 hours for investigation.

I would like to also be allowed to submit those portions of the Texas Open Records Act that govern my conduct as chief of police in terms of access by persons to official police reports.

Thirdly, I would ask that I be allowed to submit a cost analysis for the research of the 1.5 million offense reports containing the data requested by the Public Interest Advocacy Center showing what we estimate the cost of research and authentication of \$1.5 million documents in question.

I would like to ask that we be able to submit documents reflecting the submission of data to the Public Interest Advocacy Center for that period of time that we have kept those records reflecting the data that they requested from June '77 to date.

And further that I be allowed to submit into the record the official documents regarding the number of meetings that have been held with my assistant chief, R.G. McKeehan, in his capacity as liaison to the homosexual community in soliciting their complaints, and other documents necessary for any rebuttal of any data submitted during the second phase of the Commission's hearing.

MR. DORSEY. At this point, Mr. Chairman, I would ask that information and documentation be accepted by the Commission into the record, and I would ask if approved by the Commission for the clerk to pick up that information.

CHAIRMAN FLEMMING. Without objection, the documents identified by the chief of police will be received and inserted in the record at this particular point.

MR. CALDWELL. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. And I would like to ask my colleagues of the Commission if they have any questions.

Vice Chairman Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No questions, thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. No questions.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. No questions.

CHAIRMAN FLEMMING. All right.

You have no further witnesses to call?

MR. DORSEY. No, Mr. Chairman, I would ask at this time that the Chair recess the hearings until further notice—It will not adjourn, I can assure you that.

MR. COLLIE. Mr. Dorsey, has the Commission officially found Chief Caldwell in compliance?

MR. DORSEY. I'm very sorry. I apologize. I apologize.

Mr. Chairman, based on the agreement which I read into the record, the consent of Chief Caldwell as indicated on the record, and the vote of the Commissioners as indicated on the record, I would ask that the Chair find that Chief Caldwell is in compliance with respect to the subpoenas issued on June 1 as indicated by the guidelines in the record at this time.

CHAIRMAN FLEMMING. Without objection that recommendation is approved.

VICE CHAIRMAN HORN. That's under the assumption the documents will be furnished.

CHAIRMAN FLEMMING. Yes.

MR. CALDWELL. I thank you, sir.

MR. DORSEY. Thank you, chief.

CHAIRMAN FLEMMING. All right. This hearing is now in recess until a time that will be set. As I've indicated earlier, either September 10 or 11.

[At 3:15 p.m., the hearing was recessed until September.]

UNITED STATES COMMISSION ON CIVIL RIGHTS

Tuesday, September 11, 1979

The U.S. Commission on Civil Rights convened, pursuant to notice, at 9 a.m., in Krost Hall's auditorium, Bates College of Law, University of Houston, 4800 Calhoun Street, Houston, Texas, Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Frankie M. Freeman, Commissioner; Manuel Ruiz, Jr., Commissioner; Murray Saltzman, Commissioner; Louis Nunez, Staff Director; Eileen Stein, General Counsel; Gail Gerebenics, Assistant General Counsel

PROCEEDINGS

CHAIRMAN FLEMMING. I ask the hearing to come to order, please.

The United States Commission on Civil Rights, pursuant to its statutory authority, determined in the spring of 1978 to conduct a study of police practices in order to appraise the laws and policies of the Federal Government and to gather data and information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution in the administration of justice.

The focus of the Commission's study has been fourfold: to ascertain the nature and extent of police conduct, specifically, the excessive or unnecessary use of force; to identify formal and informal policies and procedures relating to police conduct and discipline; to identify the officials and agencies legally responsible for investigating and resolving allegations of police misconduct; and to evaluate the availability and effectiveness of existing systems of accountability, both internal and external. It is important to note that its purpose has not been to identify, investigate, or to resolve individual allegations of abuse. The Commission is not an enforcement agency. Its mandate is to evaluate the enforcement efforts of others, to assess the adequacy of existing laws and policies, and to make recommendations for needed changes in them.

As a part of its study, the Commission decided to come to Houston to do an indepth analysis of the practices and policies of the Houston

Police Department. Commission staff have been engaged in a field investigation here in Houston since early March.

At this public hearing, which will be in session today and tomorrow, beginning at 9 a.m. on both days, we will take testimony from a number of community leaders; city, State, and Federal Government officials; and individuals in the department. The hearing today and tomorrow is for the purpose of eliciting testimony concerning the practices, policies, and procedures of the Houston Police Department. In addition to examining the internal workings of the department, we will also be hearing testimony on various perspectives of the nature and extent of the problem and the external remedies available to victims of misconduct.

The Commission's work here in Houston is only part of a larger project focused on the study of police practices generally. The first phase of the project, completed in Washington, D.C., in December 1978, consisted of a consultation at which noted authorities and spokespersons appeared and discussed significant issues with respect to police conduct and accountability.

The second phase took us to Philadelphia where Commission staff undertook a field investigation similar to that underway here in Houston. Two hearings were held there, a hearing to receive documents in early February and a hearing on April 16 and 17, at which time community leaders, government officials, and department representatives testified before the Commission about the practices and procedures of the Philadelphia Police Department.

The third part of the study, which brings us to Houston, consists of our hearing held here on June 12 of this year to receive into the Commission's formal record documentation from the community of alleged instances of excessive or unnecessary use of force by Houston police officers. At that time, we also made arrangements with the city of Houston to review all materials subpoenaed from the police department.

In the final phases, the Commission will put together the information which it has gathered in a final report, which will contain its findings and recommendations for changes in Federal laws and policies. That report will be submitted to the President of the United States and to the Congress.

At this time, I would like to ask my colleague, Commissioner Freeman, to give a brief summary of the rules which will govern this hearing.

COMMISSIONER FREEMAN. At the outset, I should emphasize that the observations I am about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for

testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence or testimony.

When we use the term "executive session," we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present.

In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well publicized. Therefore, the Commission, when appropriate, convenes in executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses even though those witnesses have been subpoenaed to testify in public session. An executive session is the only portion of any hearing which is not open to the public.

The hearing which begins now is open to all. All persons who are scheduled to appear have been subpoenaed by the Commission. However, beginning at 2:30 p.m. tomorrow, September 12, we will hear testimony from persons who have not been subpoenaed, but each will be permitted to speak for 5 minutes on the subject of police practices in Houston. Those persons who wish to testify may sign up with the staff in the hall outside of the auditorium before 8 p.m. tonight. However, those wishing to testify must speak only about practices of the Houston Police Department and may not give any testimony which may tend to defame, degrade, or incriminate any person. On a first-come, first-served basis, those persons meeting the aforementioned qualifications will be given 5 minutes to speak tomorrow afternoon.

All testimony at the public session will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the

hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman, or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. attorney for enforcement pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which, in the discretion of the Commission, may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

Copies of the rules which govern this hearing may be secured from a member of the Commission's staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Chairman Flemming, or the Commissioner presiding in his absence, will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. attorney when required. The Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedures, and their orders are also to be obeyed.

This hearing will be in public session today, September 11, and tomorrow, September 12, beginning both days at 9 a.m.

CHAIRMAN FLEMMING. Thank you, Commissioner Freeman.

At this time, it is both an honor and a privilege to recognize the Honorable Ben Reyes, who is a State representative and who is also a member of our Texas State Advisory Committee. He is here today in that latter capacity in order to make a statement in behalf of the Texas State Advisory Committee.

Mr. Reyes, delighted to have you with us.

**STATEMENT OF BEN REYES, TEXAS STATE REPRESENTATIVE, AND MEMBER,
TEXAS ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS**

MR. REYES. Thank you, Mr. Chairman.

Chairman Flemming and members of the Commission, citizens of Houston: Let me first welcome this Commission to our great city. We consider it a very great city, and we consider it our city because we have worked very hard and very long in this city to make this city, I think, what it is and to strive in the future to try to make it an even better place for not only you to visit but for our children to live in.

It is our pleasure to host you again today. It is certainly a tremendous opportunity for people in this community to understand about some of the functions of this government, about some of the functions of such an important commission as the Civil Rights Commission, and it's personally an opportunity for me that I cherish and I will certainly, for a long time, remember, because as a minority member of the Texas House of Representatives, as a minority member of the city of Houston, I think that we are finally seeing government as we've always thought it to be in this country.

We are in a position, I think, now to sit down and say to the people that run this country, "These are our problems; these are our suggestions for solutions to those problems; take them back to Washington with you and try and help us."

Let me say that Houston is one of the richest cities in the country, in the world. One of the cities that probably has more to do about the energy problems in this country than any other. It's a very rich city, a very wealthy city, a very prosperous city; but yet there are people in this city who today don't have running water, don't have indoor toilets, who today are suffering from the lack of this great educational system, the lack of participation within the system, who are suffering even from those very, very basic rights to survive in a peaceful community. We in not only the minority community but in the city of Houston understand our responsibility about the rights of people in this city and in this country. We cherish those responsibilities as we cherish those rights.

We suffer over them. Our people have suffered over them for a long time. Some have given their lives; some have lost their lives. I only hope that you understand that along with our responsibilities and along with our cherishing those responsibilities and those rights, you also have a great responsibility to a lot of little people: the little black lady

in the fifth ward that didn't have any education, that's sitting out there suffering from a number of problems, but still has hope in her mind, hope in her life, that right will prevail; the little Chicano kids in Magnolia that are not in school because of different laws in Texas; the hundreds and hundreds of undocumented children that are out on the street today rather than being in school; and, yes, those children to come in the future that are going to suffer from the lack of educational opportunity, from the lack of civil rights.

All of those look to you and weigh a very high responsibility on your shoulders. They ask and look toward you for help. It's difficult to speak for all of them, but I hope that you'll look back into your past, because I know all of you have suffered at one time or another, and find the time that you suffered the most, that you hurt the most about people, and I hope that you understand that that's where I'm at today because too many of our people in this great and prosperous city are suffering today. They look to you for relief; they look to you for direction.

I have a very personal, a very selfish concern because I am the father of four children, very young boys, and they live in the same neighborhood that I was raised in and they will be raised in that same neighborhood. I am concerned for their educational abilities, for their educational needs, for their rights, and for their safety. I hope that certainly you as human beings and you as parents and you as grandparents will understand what I am suffering, what our people are suffering at this time.

I hope that when you make your report that you understand that there's a lot of little people out there that aren't here today that are looking to you for some help. It's ironic, very ironic at this very minute the great city of Houston, a few miles away from here, is adopting what I call a sham of the representation plan for single-member districts for the city, a plan that dilutes the minority voting strength in the worst possible way—at this very minute adopting a plan that minimizes the political impact on this city of the minority communities.

We have a very subtle approach to our problem in this city, one that certainly you have heard a little bit about and certainly you have participated in, but one that only people like yourself and only people like the people at the Justice Department will be able to resolve. I hope that you understand that your responsibilities are certainly as great and as pressing as those that we think represent the minority community in this city.

I wish you all the best. God bless each and every one of you, because I know you have a hard job to do. Just understand that there's a lot of people out there that are not only looking forward to the relief that you can provide and the help that you can give, but also that are out there pulling for you, hoping you the best as individuals because we know that what you do is certainly not only a sacrifice to yourself and to this community, but to your families.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your being here and we appreciate your comments very, very much.

Counsel will call the first witnesses.

MS. STEIN. Rev. Bill Lawson, Father Jack McGinnis, and Daniel Bustamante.

Is the Rev. Bill Lawson here?

[No response.]

MS. STEIN. Mr. Chairman, Reverend Lawson has not yet arrived; may I suggest we go ahead and see if—

CHAIRMAN FLEMMING. I'll ask the witnesses to stand, please, and raise your right hands.

[Jack McGinnis and Daniel Bustamante were sworn.]

TESTIMONY OF JACK MCGINNIS, CATHOLIC PRIEST, MEMBER OF THE BOARD, PUBLIC INTEREST ADVOCACY CENTER (PIAC); AND DANIEL BUSTAMANTE, MEMBER, LA RAZA UNIDA PARTY

MS. STEIN. May I ask each of you to state for the record your name and organizational affiliation, if any, beginning with Father McGinnis.

FATHER MCGINNIS. I'm Father Jack McGinnis. I'm pastor of Our Lady of Saint John's Catholic Church, member of the board of Public Interest Advocacy Center, and prior member of the police—Coalition for Responsible Law Enforcement.

MR. BUSTAMANTE. My name is Daniel Bustamante. I'm a member of La Raza Unida Party. I've been involved with the Institution For Better Law Enforcement in Harris County Police Minority Coalition.

MS. STEIN. Thank you very much.

Father McGinnis, based on your involvement with the situation, how would you characterize the state of police-community relations in Houston at the present time?

FATHER MCGINNIS. I would say at the present time that there are weaknesses in the status of police-community relations, particularly at the local level in the substation police officer contact and relationship with people of communities, especially minority communities in which they work.

I do feel there are steps towards improvement. I believe such organizations or groups as the Public Interest Advocacy Center, the Mayor's Advisory Council, and others are steps in the right direction. I think the police administration has tried to be honest and make steps, but there's still a great deal of resistance to more open communications with people in neighborhoods on various issues and various police practices.

MS. STEIN. What is the nature of the weaknesses that you referred to?

FATHER MCGINNIS. I think, basically, as we see it in our neighborhood, the neighborhood in which I live, is the communication with the

local police substation. When a person has been the subject of any kind of abuse or verbal abuse or harassment or anything of that nature, it's impossible for that person to receive any kind of hearing on a local level, at a substation level. It is very difficult for a person to feel secure in approaching the police department at all because of fears of recrimination and fears of things that may happen to their families.

So in that—at that level there's still a great deal of weaknesses in communication.

Ms. STEIN. Do you find that problems of harassment or other types of police abuse are fairly frequent?

FATHER MCGINNIS. I find that harassment is frequent in our neighborhood at various levels, especially when a police officer has been involved in a case of use of deadly force or allegations of brutality. We've had experiences now—in two cases primarily—where harassment has been very obvious and open; harassments of the families who have filed or might have filed cases of suits against police officers or against the police department. It has been very extensive in one particular case and it's very frightening.

Ms. STEIN. Have you observed that such cases affect disproportionately any particular age group or economic group or racial group?

FATHER MCGINNIS. My experience has been primarily with black and Mexican American people in Houston in this regard, and I think I can honestly say that it has disproportionately been directed toward black and Mexican American groups, very obviously. Those are the cases with which I'm most familiar. As I hear what's happening around Houston and as I hear from other people, it seems to be disproportionate to those minorities—those particular minorities.

Ms. STEIN. Referring now to the incidents of abuse themselves rather than the problems with the complaint system and obtaining the redress, have you observed any improvement or any worsening of the situation during the time that you've been involved?

FATHER MCGINNIS. I've observed improvement in some areas. I've observed improvement in the general attitude of the administration of the police department.

See, I think I'd like to turn to the history prior to 1977 and after 1977. Since 1977 there have been tremendous improvements in opening up and being—the administration being willing to listen in a lot of instances, and yet we still encounter a great deal of resistance.

It seems that the police department, the administration, and probably justifiably so from their point of view, are very threatened by any criticism, by any press, by any open question of whether or not the police department or police officers are conducting themselves properly. And yet we have the attitude of the administration that they have been firm in their discipline of police officers that have been abusive.

In many instances, so I would say generally—I guess if I could very honest—I would say certain improvements since 1977, but you still have a ways to go. That's why you're here and that's why I'm here.

Ms. STEIN. Have you seen any instances of measures taken either by individual police officers or by the department to cover up or to justify actions that appear to be incidents of misconduct?

FATHER MCGINNIS. Yes, I have.

Ms. STEIN. What sort of things occur in that type of case?

FATHER MCGINNIS. One very obvious thing has been when a police officer—I'll take particular examples of the Dimas Benoit case in 1977, in March, and the Carlton Alexander case in November of 1978. Carlton Alexander was shot and killed on our church property.

Ms. STEIN. Could you just describe briefly the facts of those cases?

FATHER MCGINNIS. Okay. In regards to your question, it was one thing that happened in both cases, the police department very quickly revealed to the press and to everybody who seemed to be available the prior records of the two people involved. Everything was—that they had ever been involved in in terms of law violation or whatever—was dug up and made public and obviously, right away to me, in an effort to discredit the person who was involved rather quickly. In the Alexander case it was very curious that day after Mr. Alexander was killed—

Ms. STEIN. Again, please, could I interrupt you and ask you if you would mention just a sentence about what occurred so that everyone will know the incident you're talking about without, of course, mentioning the names of any officers involved?

FATHER MCGINNIS. Yes. Carlton Alexander was a young man 20 years old who was stopped—you want a description of that incident? That what you're asking for?

Ms. STEIN. No, just what—

FATHER MCGINNIS. For background.

Ms. STEIN. —what occurred there that you perceived as being misconduct.

FATHER MCGINNIS. That instant revelation of his prior police record seemed to be an attempt to discredit him quickly to justify the action of the police officer in shooting him. The police officer claimed that he thought that the man had a gun. The internal affairs division investigated it rather thoroughly and yet he was exonerated, and there had been serious questions about the case. I'm not sure exactly—

Ms. STEIN. That's fine. That puts us in the picture.

FATHER MCGINNIS. Sure.

Ms. STEIN. And you said that in—that—

FATHER MCGINNIS. Another—excuse me, another—I'm not sure whether you want this right now—another thing that happened in that case and the Benoit case is a very obvious, anonymous, I suppose, process of harassments of the families, and I'd sure like to elaborate on that, if not now, later.

Ms. STEIN. Well, without—again without mentioning the names of any person involved, could you say what type of conduct occurred that appeared to be harassment?

FATHER MCGINNIS. In the Alexander case, the day after he was killed, two police officers came to his home with a warrant for his arrest. It was extremely traumatic to his family just the day after he was killed by a police officer to have two police officers come to the home with a warrant for his arrest. The department, in their records, seemed to indicate or believed that the arrest [warrant] had been issued prior to the incident and that the officers who delivered the warrant were not aware of his being killed, and yet it was very traumatic and very disturbing to the family.

The family was in the process of deciding whether or not they would file a lawsuit against the police department, a damage suit, or civil rights violation complaint. They tell me that about 2 weeks later police officers came to their home about midnight and picked up two—two or three of Alexander's brothers and took them to the police for questioning in some event they could not have been involved in and then released them.

I'm not aware of any other obvious harassment, but those two incidents were extremely damaging to the family and caused a great deal of fear to go on.

I have an opinion about that. I don't believe that's stated administration policy to do that. I believe it's an anonymous thing that a few police officers might decide to do and go out and do, but I don't see a very effective process of accountability for stopping that. I could elaborate some more on the Benoit case if you want, too, of harassment.

Ms. STEIN. Well, I would like to ask you, you mentioned complaints to the internal affairs division of the police department and investigation by them. Do you—have you had an opportunity to form an opinion about how effective the internal affairs division is in investigating and making—coming to conclusions about conduct of this type?

FATHER MCGINNIS. I feel this way. I feel their investigations are very thorough. I have a fear that their investigations could become—well, maybe that's not what you are asking me.

I have no solid evidence as to the effectiveness of any internal affairs investigation. I just haven't had access to that. I know that the Public Interest Advocacy Center has and they are going to testify to that later and I'd rather leave that testimony to them. I can only say that I do know that the investigations in many cases have been very thorough, and that's about all I can really say about it for the cold hard facts and experience on this.

Ms. STEIN. Would you—you said that you had instances concerning the Benoit case that appeared to you to be harassment?

FATHER MCGINNIS. Since March of 1977 when Dimas Benoit was arrested at his home by police officers, there has been the most devastat-

ing, damaging harassment of a family that I've ever encountered in my life. I've sat by and watched a family almost be destroyed emotionally, psychologically, by the kind of harassment that they've received.

It has ranged from insults in public places where police officers might have met some of the family and delivered some kind of insulting remarks, very well known to that incident to police officers. Police officers will drive by their house in a paddy wagon or in a police unit—that's off street, it's not a thoroughfare—they continue to do that even to the very recent past, to drive up and down very slowly to frighten the family. Police officers have come to their home at 2 o'clock in the morning knocking on the door, saying that they received complaints that they were playing their stereo too loud, and they don't have a stereo. They've tried to go to the local substation and file complaints, grievances, and were told, "Do you have a badge number? Do you have officers' names?" It's a frustrating, impossible thing for them to really act against.

There has been many instances where police stop—come by the house and their car would be parked in the front and would tell the daughter the car was parked in the wrong place. And there are just a lot of cases that could be documented. That was when I became so very aware of that kind of harassment.

I was harassed in a very subtle way because of my involvement in that case, also. I had a benefit performance to raise some money for our projects and it was sponsored by local trades organizations. And prior to the benefit they received, they said, an estimated 150 phone calls from people, some of whom identified themselves as police officers or families of police officers, saying that they should not support something that I was involved in.

That's not a departmental policy. I'm convinced of that, but it was one of those organized, unorganized anonymous types of harassments that they're very good at, and I feel that nobody has really much control over it at all. I consider that to be very dangerous and it is frightening. That kind of harassment continues.

MS. STEIN. Other than measures to obviously curtail harassment like that, are there measures, in your opinion, that the police department could take—that the administration of the police department could take to make the complaint process easier and to make people less fearful to use the complaint process?

FATHER MCGINNIS. Yes. There are couple of measures that I would suggest at this time: One would be better training of the police officers who are working in high violence, high crime, and thus in the usual minority neighborhoods, to be aware of the total population, not just the criminal population. Because I understand the police department has some sort of a rotation process whereby officers are changed generally from area to area at different times, so none remains in a particular—especially high crime areas very long, but I don't know of any—the extensive or indepth preparation for an officer to work in a

neighborhood like that. And one of the things I've observed is that most officers who come into neighborhoods like that are tense, are frightened, and also they almost have to consider everybody to be a criminal or potential criminal, and that's not the truth.

I believe that some training in terms of preparing—most of the officers are not minority because we don't have enough minority officers to staff those neighborhoods; some are. I think more extensive and in-depth training in preparation of police officers to work in those neighborhoods is absolutely necessary.

I also think some improvements on kind of on-the-street community relations where the police officer can come and establish a rapport with the noncriminal element of the neighborhood so they can work together.

See, in my neighborhood you have a lot of people who are concerned with the violence of crime, also, and who feel so frustrated because there's so much violence and crime committed against them that they're afraid to—they're afraid even many times of calling the police because they're afraid of the attitude or the excessive use of force or whatever. So it is very frustrating that there's no relationship there between the police department and what I would call the non-criminal neighborhood or population in the neighborhood.

To answer your question, those are two things that I can certainly suggest we need—we need a lot of improvement on. I think, also, in a sense, nonuniformed, nonpolice personnel to be available to receive complaints from people. There's an unbelievable psychological fear of going to the police station and making a complaint, and it stops 90 percent of the people, I'm convinced, from going. So if some system could be set up whereby these complaints could be made to other than uniformed police officers, it would be a great deal of improvement.

MS. STEIN. Thank you very much, Father.

Mr. Bustamante, what is your perception of the state of police-community relations in Houston, especially with regard to the Hispanics?

MR. BUSTAMANTE. I feel at the current time there has been a false impression that's given to the public. We're a lot better off than we used to be, because a lot of people who called themselves leaders of organizations have taken different approaches in working with police departments and trying to foster a better relationship. But the reality, the way I see it on the streets with—the people are subject to arrests and police that are subject to different types of police officers, the attitude still exists that the police are the bad guys and they are "out to get them." This attitude has existed in this community for as long as I've been here, which has been 10 years, and I've seen no real improvement on the street level, where actually my concern lies, and the relationship between Chicanos and the police community.

MS. STEIN. What type of problems have you encountered or are you aware of on the street level?

MR. BUSTAMANTE. Well, professionally, I'm a program director of a drug abuse rehabilitation center here in the community in one of the larger Chicano centers. And I have had, myself, to deal with police that have arrested clients that have come into our premises, which is a federally-funded agency, sought out people that they were looking for, arrested them. I've had members of my staff arrested for trying to reason with a police officer and tell them that either a fight that was taking place prior to their arrival had already been taken care of, or things of this nature.

I have seen many of the people in and around my community who don't belong to any church, don't really go to school, don't belong to any organizations come to me repeatedly with complaints of abuse, either while they're in the process of being arrested or while they are in cells or where they're being held or whatever they do to interrogate them in the police station. And these types of complaints I have been getting for quite a number of years, and there has been no decrease in that type of complaints from particularly young people but also a lot of adults.

MS. STEIN. What is the reaction of the community to these problems?

MR. BUSTAMANTE. Well, there's, I think, two different reactions. Like I said, there's a lot of leaders in our communities who are trying to develop a better relationship with the police department to try to improve the situation, and that one of the reactions has been, "Well, the police are out here to help us. We have a lot of problems with crime ourselves. We need more police," and that attitude has, I think, taken a lot of attention and publicity in the city.

The other attitude has been from the other extreme, or the other side said, "Look at these people. Who are they trying to fool? Things are not really any better; things are really the same as they always have been."

The chief doesn't really have control over his officers, and I think the problem really lies between the police that are on patrol and the people on the street, whether they're on the street—for whatever purpose they are on the street for. And I think that attitude still exists, that the police are not the good guys in this community—by the people that I deal with, anyway, on a day-to-day basis. And that atmosphere provokes a lot of things to happen.

You know, if a policeman stops a person on the street, which is very common, and asks them some questions that person may feel are out of line, things tend to get out of hand many times. And the police, I think, lack a great deal of respect for community people or people that are not really in any position to defend themselves. And that attitude exists—and it is a very dangerous attitude—because I think that the publicity that has been given to a lot of these efforts has given the people the false impression that things are getting better. I feel this is extremely dangerous because we're not only losing sight of the real

problem, but we're also giving a false hope to a lot of people that isn't really there.

Ms. STEIN. You are a member of a committee called the Harris County Minorities and Law Enforcement Coalition; is that right?

Mr. BUSTAMANTE. Yes, I am.

Ms. STEIN. Could you tell us what the purpose of that organization is and how it came to be formed?

Mr. BUSTAMANTE. The purpose of, to paraphrase it, to foster better relations between police and minorities communities in this area. The way that it came about was back in the spring there was a conference held in San Antonio between police chiefs of the different parts of the State, members of the various minority organizations, and the purpose of that conference was to try to come up with some sort of plan or outline in which to create a mechanism for bringing about change in those relationships.

I think this particular effort in Harris County was a followup by the people who attended that conference from the city along with members of the Community Relations Service, Justice Department, to develop an ongoing mechanism to deal with.

I might add that I was not invited to the conference at San Antonio. I think that I was deliberately overlooked. That has been my experience in trying to deal with this area. The people that are invited to participate are a very select few, and many times you have to struggle to get on there to have a say-so, to be heard, to bring your concerns up.

And I think again people are given a false impression that may be their leaders'—that they have a large constituency—or given the impression they have the support of the total community. And it has been my experience that the majority of Chicanos in this community are not represented either by my organization or any of the other organizations that have been involved with these types of efforts.

Ms. STEIN. Why do you feel you were overlooked or you would be overlooked?

Mr. BUSTAMANTE. I have been quite outspoken and critical of many of the organized efforts. I felt many times they dragged their feet, not really confronted issues that needed to be confronted, not really looked deeply enough for whatever reasons. They have to try to take it very softly, and at the time I felt that the situation was such that some very strong definitive action needed to be taken, because in the long run there's the respect that is not there for police for the communities, or community for the police, was going to get a lot worse. And situations like the one that occurred here a couple of years ago in the Moody Park area, it is very possible to have it happen again because the very reasons for that situation occurring still exist and there is still a lot of resentment, particularly young people's, in this community.

Ms. STEIN. Is it too early to assess the effectiveness of the coalition or whether it is encountering problems in doing its work?

MR. BUSTAMANTE. Well, I would say that as far as the Chicano groups that are in attendance, there has been little response; there has been very few people that attend. I think at each meeting we have a great majority that each of the chiefs of police or their representative.

Members of organizations that are in attendance, I think, tend to change from meeting to meeting. I think a lot of people attend out of courtesy. A lot of people attend out of curiosity, but there has not been a real desire, on the part I've seen, of the minority communities to really participate in force. For some reason or another, not all the Chicanos groups are represented, not all the black groups are represented. There's all the inner differences, political and social differences, but at this particular level I would feel that people would put aside such things. But I haven't seen a great response from organizations.

MS. STEIN. Thank you very much. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Father McGinnis, you gave certain examples of harassments. I would like to know if those examples—and then you also referred to the situation as it existed prior to 1977 and since 1977. Did the examples you described occur during the past year?

FATHER MCGINNIS. Yes.

COMMISSIONER FREEMAN. They occurred. Now, in the examples of harassments, you stated on two occasions that—you said, "This is not department policy. I am convinced of that." On what basis do you make that statement?

FATHER MCGINNIS. Well, I just find it hard to conceive that an order would come from the chief's office to harass a family. If that's true, then, you know, I'm just naive enough not to think that wouldn't happen.

COMMISSIONER FREEMAN. Have the examples of harassments been brought to the attention of the department?

FATHER MCGINNIS. Yes.

COMMISSIONER FREEMAN. It is not the department's policy, and therefore, I would like to know if you know what has been done with respect to those examples that were brought to their attention?

FATHER MCGINNIS. Nothing has been done. The Benoits were told that if they had badge numbers and names of police officers then they might be able to do something, but they had no solid evidence of who was doing the harassment so they were just turned away.

COMMISSIONER FREEMAN. Now, you have described a situation in which there have been allegations of violation of policy which have been brought to the attention of the chief, or the department, and yet there has been nothing—nothing, and according to your testimony—which has been done to eliminate the harassment activities?

FATHER MCGINNIS. Right.

COMMISSIONER FREEMAN. Mr. Bustamante, your testimony—you said that the allegations are—it is your opinion that the chief does not have control over his officers. Was that statement based upon the examples of harassment and the failure to do anything about those examples?

MR. BUSTAMANTE. I think that is based on my own perception of what I see day to day in this community. I have noticed a lot of police officers whose attitude I don't see as acceptable for a police officer, and I question how these people become police officers. A lot of them have been on the force for quite some time. I feel the police department in Houston is very much controlled by a very unofficial system that has—I don't know who is in charge of what, but they respect a lot of people who are not designated police officers. And I think there's a lot of tendency among themselves to take decisions that normally wouldn't be taken by the chief. I feel that the chief, in doing what he can, has done a good job. But that has not affected the total police force, because I feel there are people on that force who are sick individuals who have no place in this community.

COMMISSIONER FREEMAN. So that is your testimony: there are individuals who are members of the Houston police force who ought not to be members of the police force?

MR. BUSTAMANTE. Yes, ma'am.

COMMISSIONER FREEMAN. And this is known to the department?

MR. BUSTAMANTE. I don't know if it is known or in what manner it is known, but I feel these people continue to be on the force. Many times, repeated types of misbehavior takes place on their part, and there is really no mechanism to get them out. There is no mechanism that I know of to select people, either to get some kind of psychological evaluation of the people coming into the force to see if the types of hatreds or bias towards minorities or any type of particular group exists. That doesn't exist that I know of, and I think these people are definitely on the force.

COMMISSIONER FREEMAN. Mr. Chairman, I have other questions, but I will defer them until we receive the testimony from the Houston Police Department.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I understood Father McGinnis to state that a nonuniformed person should receive citizen complaints in the field instead of a fully dressed uniformed officer with a gun and with a billy club. Did I understand your testimony?

FATHER MCGINNIS. That was more a figure of speech, Commissioner. I know the internal affairs division—I think so. What I really meant was maybe someone other than police department—other than a police officer or nonpolice officer personnel working for the police department.

COMMISSIONER RUIZ. Have you observed complaints made in the field by citizens?

FATHER MCGINNIS. Yes.

COMMISSIONER RUIZ. Relative to police officers?

FATHER MCGINNIS. How do you mean "observed?" Been there—

COMMISSIONER RUIZ. Have you seen, have you been present at any time that a complaint has been made by a citizen?

FATHER MCGINNIS. Yes.

COMMISSIONER RUIZ. Relative to police officers?

FATHER MCGINNIS. Yes.

COMMISSIONER RUIZ. I understand that only a formalized written complaint duly notarized by a notary public is the only kind of a complaint which is given any official recognition by the Houston Police Department.

FATHER MCGINNIS. That is right.

COMMISSIONER RUIZ. Should not this person then, nonuniformed person also be a notary public?

FATHER MCGINNIS. That would be a good idea, yes.

COMMISSIONER RUIZ. Now, what if this nonuniformed person is a notary public, but doesn't speak Spanish?

FATHER MCGINNIS. That is one of the very obvious fallacies or weaknesses in the whole complaint process, is the lack of officers who speak Spanish.

COMMISSIONER RUIZ. So here we have a policy from above that in the community level is almost impossible to adhere to?

FATHER MCGINNIS. Not really almost. It is for many of the citizenry. It is impossible to get to the police department, to the internal affairs division, for some people. It is impossible to get there. Notarizing of papers is practically impossible. It is not impossible, but it is practically impossible for some people.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Bustamante, can you identify a person in the police department who works or assumes the responsibility for dealing with the problems to which you have referred?

MR. BUSTAMANTE. I have made various complaints, either because of my program or particular situations, too, in letters to the chief of police. I have made them directly to people taking those requests over the telephone, but I cannot identify or name a person other than the chief. I know he's got—

COMMISSIONER SALTZMAN. It is not the name. What I'm asking you, has the police department been able to project into the community in an effective manner what the resources are for citizens so that they are—it is clear in their mind who is in charge, who they can go to? It is clear for purposes of redress to either you as a community leader. What are the sources for redress—not specific names?

MR. BUSTAMANTE. I don't feel they're communicating specifics. I wasn't aware they have to be notarized, which was mentioned. I am a notary public; I wasn't aware that these things must be notarized. That is not coming out. There is no identifiable person—aside from the internal affairs division, I guess—that what people could ask for; there is no identifiable procedure that I know of.

COMMISSIONER SALTZMAN. So in terms of the community at large, it isn't clear what you can do in order to open lines of communication with the police department?

MR. BUSTAMANTE. No, sir, not to my knowledge.

COMMISSIONER SALTZMAN. How about the area that you referred to, that you are suggesting, if I am clear, that there is sort of an informal kind of influence acting upon the police department, which is not susceptible to the influence of the formal structure and the chief of police, which has a profound impact on how actually, in reality, police behave on the streets, and that informal influence is perhaps a dominant influence. Am I getting that from you?

MR. BUSTAMANTE. I would tend to say that, yes, sir, I would. I feel that many officers on the street, once they get out there on the street, are on their own, and it is either them or their partners that make all the decisions as to what to do when a situation occurs. I feel many of these officers themselves resent the chief of police and resent many of the things that he's doing to foster a better relationship. I think many times they totally disregard whatever directives or orders they are given.

I have had occasion many times to try to reason with police officers, in what I feel is a reasonable manner, in trying to impress upon them that I also have a concern and I'm also concerned about what has just occurred, say, with young people, and I feel that it can be handled in a different manner instead of intimidation, instead of arresting and harassing young people who later are going to hold these resentments against these police officers. And that's the way situations have always occurred here; that resentments build up over a period of time and a confrontation occurs and in which the individual who is going to be arrested are both infuriated as to what happens; things happen very quickly.

I feel informal types of structures, informal type of—with respect to young officers, whatever level of patrol, sergeant level, which is—I think what I'm talking about is really, really a very powerful thing in this community, and they can do pretty much what they please. And if the chief doesn't find out about it, they can keep on doing it as long as they don't get caught.

COMMISSIONER SALTZMAN. But if the chief of police of the formal structure is made aware of these informal facets to which you refer, the operation of the police department, can the formal structure operate to influence the behavior of that informal structure?

MR. BUSTAMANTE. I'm not a behavioral scientist. I'm not really in a position to answer that. I would hope that it would.

COMMISSIONER SALTZMAN. Have you seen instances where the police hierarchy have become aware of abuses through the activities of this kind of informal influence on—in the police department and have been able to exert steps, to take steps to bring any changes?

MR. BUSTAMANTE. Yes, I think the cases you are familiar with of police abuse in this community—a lot of them are prime examples of what I'm talking about. Without mentioning any case names, I think all the abuse cases that have come to trial, I think many of them have been that kind of situation where the officers took it upon themselves to decide what needed to be done, what type of punishment needed to be rendered, without going through legal procedures. And I think those officers are no longer on the force, but I haven't really seen any formal response to the situation.

I think there's a lot of things that happen within the department. I think there's organization of police officers that are very, very powerful politically and economically, and they have great say-so as to what takes place within that department.

COMMISSIONER SALTZMAN. Father McGinnis, you have studied the criminal justice process?

FATHER MCGINNIS. Yes, I have.

COMMISSIONER SALTZMAN. Under what auspices?

FATHER MCGINNIS. I've been involved with people who are involved in the criminal justice process and that's been basically my study, from firsthand experience, for about 15 years. I haven't studied formally in school, but I have studied it by being involved a great deal.

COMMISSIONER SALTZMAN. And you have—are you able to respond to the first question I asked of Mr. Bustamante? Is it clear to you to seek redress—where in the police department is vested the avenue for redress as a community leader who is experienced in this area?

FATHER MCGINNIS. The only avenue is the internal affairs division, and it is clear to me where to go.

COMMISSIONER SALTZMAN. Is it clear to members of your parish?

FATHER MCGINNIS. Not unless I make it clear to them.

COMMISSIONER SALTZMAN. So there has been no outreach attempt to communicate between the formal structure and the citizenry in an effective way so that they feel there is a channel open to them?

FATHER MCGINNIS. When it was set up originally in 1977, the process was publicized, and I haven't seen it publicized in the press, in the media.

COMMISSIONER SALTZMAN. With respect to community groups that you work with—question for both of you—should there be an interest in that group to communicate with the chief or his representatives? Have you undertaken such an effort and what has been the response?

FATHER MCGINNIS. In some levels we've undertaken such an effort. The response has been favorable, willing to be, willing to—to cooperate in most instances. And I think Mr. Bustamante and I, we're both feeling much the same way, that much of what is frightening is not at the level of administration; it is on the street. It is the anonymous activity. is anonymous in the sense of what a police officer decides that he can or will do.

It just sends a pulse of chilling fear through me to realize that if a police officer decided that he wanted to execute me, he probably could and be exonerated in the present process, because they have, I think, done that in some instances. That's what frightens me the most.

I'm convinced that Chief Caldwell and many of his staff at the top are trying to be very honest. At times I can't quite agree with them. We have it out and we agree to disagree. What frightens me is what happens out there on the street whether the police officer who, as Daniel said, as we all know, has a tendency to violence, a tendency for all sorts of things that the process doesn't check well enough.

One suggestion I would make at this point, also, would be that the divisional process—the divisional organizations of the police department might need to be reevaluated and they'd be broken down more, not so much into areas of responsibility like traffic violation or narcotics or whatever, but maybe into certain areas with more internal affairs division officers in those areas monitoring—not just investigating abuses—but monitoring the activity of the individual police officer.

I don't believe there's a great deal of that. The department may testify such, but I'd like to see more monitoring of the activity rather than just investigating after the fact. I'm sorry if I didn't answer your question exactly, but I wanted to say that.

MR. BUSTAMANTE. I just want to say I do feel that the chief and his staff have made themselves available to try to seek ways, but my frustration lies in the fact that I'm not dealing with the chief on the street. He's not there all the time. I think it is the patrol officer and the sergeant at that level where the problem occurs.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Just one question, Father McGinnis. I was interested in your comment on the monitoring effort; it is an interesting idea. Have you presented that idea to the police authorities? Had they recommended a way rather than just dealing with individual specific complaints?

FATHER MCGINNIS. As I recall, yes, we mentioned that in our mediating negotiating process that we were involved with the Community Relations Service as a possibility of internal affairs. When internal affairs was early, you know, just getting started, We had to kind to see what they were all about. This is done in other police departments throughout the country, especially, I am told, the monitoring aspect of the internal affairs is very effective. But to answer your question, we did bring it up early on. I'm not sure whether the chief has discussed with anybody since, the possibility of that.

MR. NUNEZ. Thank you.

CHAIRMAN FLEMMING. I think this question has been answered, but I just want to make sure. I'll address it to both witnesses: to the best of your knowledge, has the police department at any time recently put out a pamphlet which outlines the steps that a citizen should take if that citizen desires to file a complaint against a police officer?

FATHER MCGINNIS. I have not seen such a pamphlet.

MR. BUSTAMANTE. I have not seen it either.

CHAIRMAN FLEMMING. One other question and I address to both witnesses: you have commented on the attitude that newly assigned police officers often have toward the community, an attitude, Father, that you described as one of fear. Does there exist within the community either individuals or organizations that are prepared to work with the newly assigned officers in order to make it possible for them to have a better understanding of the people in the community, the life of the community, and so on?

MR. BUSTAMANTE. I would think there do exist quite a few individuals that are prepared to undertake whatever is necessary to eliminate this problem from our communities.

FATHER MCGINNIS. There doesn't exist at this time in my general neighborhood any activities to that—in that direction. I would like to do that.

CHAIRMAN FLEMMING. May I express to both of you our appreciation for the testimony that you have given. It has been very helpful to the Commission. Thank you very much.

Counsel will call the next witnesses.

MS. GEREENICS. Johnny Mata, Jenifer Schaye, Steven Schiflett, El Franco Lee.

CHAIRMAN FLEMMING. Members of the panel will please stand and raise your right hands.

[El Franco Lee, Johnny Mata, Steven H. Schiflett, and Jenifer Schaye were sworn.]

TESTIMONY OF EL FRANCO LEE, TEXAS STATE REPRESENTATIVE; JOHNNY MATA, DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), DISTRICT EIGHT; STEVEN H. SCHIFLETT, PRESIDENT, HOUSTON GAY POLITICAL CAUCUS (GPC); AND JENIFER SCHAYE, ROMAN CATHOLIC NUN AND LEGAL COUNSEL, PUBLIC INTEREST ADVOCACY CENTER

MS. GEREENICS. Beginning with you, Mr. Mata, would each of you please state your full name and organizational affiliation for the record?

MR. MATA. My name, Johnny Mata; I'm director of the League of United Latin American Citizens, district 8.

MS. SCHAYE. My name is Jenifer Schaye, Roman Catholic nun. I'm here in the capacity as legal counsel for the Public Interest Advocacy Center.

MR. SCHIFLETT. I'm president of the Houston Gay Political Caucus.

MR. LEE. El Franco Lee. I'm a member of the State House of Representatives, State of Texas.

MS. GEREENICS. Thank you. Beginning with you, Ms. Schaye, would you very briefly describe the purpose of the Public Interest Advocacy Center as it relates just to police practices?

Ms. SCHAYE. The Public Interest Advocacy Center was funded by the Law Enforcement Assistance Administration [LEAA] and began operation in January of this year. Our specific role in relation to police practices is that we assist clients who come in seeking assistance as they pursue their complaint through the administrative processes that are set up in our city. The complaints are complaints concerning police abuse of them; it may range from harassments to murder.

Ms. GEREENICS. Could you more specifically expressly describe the actual procedure in filing or processing complaints?

Ms. SCHAYE. Certainly. When a client comes into our office, our process is that we interview that complainant. We advise them of their possible remedies in this city. If they care to then pursue their complaint, we advise them of the procedures that internal affairs will require, and we assist them in preparing that notarized statement for internal affairs. If they also wish to file complaints with the Federal Bureau of Investigation and with Harris County district attorney, we assist them in that complaint process, also.

Ms. GEREENICS. What is your relationship with the internal affairs division of the Houston Police Department? Do you accompany the people there? Do you have any kind of ongoing person?

Ms. SCHAYE. We employ two paralegals and two social workers. And that person who is the case worker generally accompanies the person when they present the complaint. Or maybe if it is more convenient for the person, since internal affairs is located in the center of downtown and many people work, the staff person will present the complaint to internal affairs.

I should advise you that we have within our grant and do follow that we advise internal affairs within 24 hours that a person has come in our office seeking assistance. After the complaint is presented, which is generally the next 48 hours, we advise internal affairs that the complainant, as well as a staff member, as well as myself, we would be happy to come down to internal affairs for an interview at a time that's convenient for all the parties concerned.

Ms. GEREENICS. What sort of file do you do on those complaints?

Ms. SCHAYE. Our particular followup?

Ms. GEREENICS. Right.

Ms. SCHAYE. We follow the process of helping the client to gather the evidence as it pertains to his or her particular complaint. That's all. We don't litigate on the matter, only police complaint.

Ms. GEREENICS. Could you briefly explain the ongoing project that—any ongoing projects your center has in relation to studies?

Ms. SCHAYE. We're also commissioned not only to assist persons presently involved in police complaints, but also to develop alternatives to possible abuses that we might view in our city as we proceed forward on this grant. And in light of that objective, what we did was we surveyed the use of deadly force in our city for this decade. At that time, we used the *Chronicle* and the *Post*, two major newspapers in

Houston, and basically read 9 years of newspaper accounts of police use of deadly force.

On June 5 of this year, we released that deadly force study and it is—we consider it a very preliminary study.

MS. GEREENICS. What sort of studies do you intend to do in the future?

MS. SCHAYE. Well, we're hoping to supplement the deadly force study by our open records request that we have made to the chief of police as chief custodian of the records.

We realize that the newspaper misses many accounts when the citizen and the police encounter each other in a deadly force incident. However, at the present time, the police and administration of the police department has not seen fit to honor our request for that information.

MS. GEREENICS. Thank you.

MR. MATA, as a member of the newly formed PACCI, which for clarity I think, is Police Advisory Committee for Continued Improvement, and I believe you are also a member of the Harris County Minorities and Law Enforcement Coalition, could you briefly discuss your role in both of those organizations?

MR. MATA. Well, we have basically become involved in it. I believe at this stage both organizations have not defined the total role of their participation. I would like for the record to bring out that, you know, we have heard a lot of responsibility from the police chief to that, and the role of these organizations, particularly the Harris County coalition—I believe one of our intentions from the State meetings that we had in LULAC with other—IMAGE [Incorporated Mexican American Government Employees], G.I. Forum, and others in our decision to go beyond the steps of just police departments. I think you have heard testimony that police chiefs sometimes don't have full control of police officers.

One of the things that is very important, hopefully, that these vehicles will address themselves—I have here the documents of the Torres case, the judge that violated the Federal statutes. We're looking at what the courts and what the Federal and the State laws are not doing, because in a lot of instances police officers that do violate the law on police brutality, only the police departments are held accountable, but there are higher authorities that are left clean; they're not even mentioned, and I cannot grasp why. This is our participation, hopefully, that the involvement of the LULAC with these two major organizations, with police as well as other officials, whether it is the DA's office or others, the Justice Department.

This is not to say the justice hearing—these attacks are not vigorously prosecuted when it goes to the court and State and Federal, and you have all white jurors; we feel these are changes we need to talk about.

MS. GEREENICS. Thank you.

Mr. Lee, could you briefly tell us about the public open session that you and, I believe, Representative Leland shared in July of this summer?

MR. LEE. Yes. The notion of the panel was prompted by the limited participation in the Civil Rights Commission hearing in June. Prior to that, it had some involvement relative to police department and minorities in higher positions of the department and the total recruitment or hiring of minorities in the police department.

Out of concern for the limited participation in June's hearing of the Commission, it was our notion that—to find out whether that was—was it not a problem in black community particularly because of the limited participation or was it some other variables involved that caused that participation to be so low.

Our findings came up to be it was other variables: one being that since—a strong sense of fear, of redress, in coming forward; also a strong sense of not really having—through that vehicle, not being viable toward solving the problem of police harassment or misconduct. And that was alluded to time and time again throughout the hearing that we conducted by each of either the victims or witnesses of incidents. That shed more light on why the participation was so low in open forum, such as this one.

MS. GEREBENICS. Do you have any plans to continue any kind of monitoring effort within the black community?

MR. LEE. I think until there is a formal system by which we can record in the proper manner, in an empirical manner, the incidents of police misconduct, my office will continue to do with the limited resources and the—that type of recording regardless of Commission's decision. Because I found from the interviews that I've had in the past, due to a lack of compiled information, there isn't a real—there isn't a source to go empirically and show the history or what is going on in Houston, and to my surprise that is a fact of life.

MS. GEREBENICS. Based on that testimony that you heard and your own personal knowledge of Houston, what would you say is the perception in the black community of police-community relations in general?

MR. LEE. My impression is, judging from the cases that we heard—I really strongly feel like those cases can be multiplied by some multiple—there still exists a strong sense of fear and not an impartial recourse to turn to for an equitable solution or justice.

In that light, I would like to suggest that we take another look at the system by which the internal affairs department handled and demonstrated historically in their past rulings and decisions what—how impartial are they.

The question raised in my mind is how impartial is internal affairs in making rulings in specific cases? Most of the cases that came before the committee, the panel, were referred finally to them, the internal affairs department and the ruling always—most of the time went in the

direction of the police chief or police officers that were involved in the incident.

MS. GERE BENICS. Mr. Schiflett, I believe that you have additional documentation to supplement that which you presented to the Commission in June; is that correct?

MR. SCHIFLETT. Yes, we have some additional documentation to submit today, just a couple, feeling we have provided the Commission with the majority of the necessary documents in June's hearing.

MS. GERE BENICS. Could you, today, expanding on those documents, tell us a little bit of the nature of police misconduct relative to the gay community as you perceive it?

MR. SCHIFLETT. We feel that the Houston Police Department continues to pursue policies, practices, and procedures of widespread arbitrary and unreasonable physical abuse, verbal abuse, selective enforcement of the law, arbitrary deadly force, and conspiracy to libel lesbian or gay citizens as evidenced by our documentation.

In June—testimony provided to this Commission in the June 1979 hearing supported these statements to the best of our ability. At this time I would like to submit to you additional documentation that also supports these. We feel like we know that the Houston Police Department policy is not to enforce the law differently to homosexuals or heterosexuals, according to Chief Caldwell at a February 1979 membership meeting of the American Civil Liberties Union (ACLU) board meeting that I attended. However, the patterns and practices of HPD as evidenced by our documentation clearly point toward officers on the streets and in the jails defining policies and the law on the scene in a manner that results in physical abuse and selective enforcement of the law. We feel that this is symptomatic of deeper problems: one, deficiencies in field command; and two, condoning of acquiescence in and approval of such patterns and practices at many levels of the HPD.

Therefore, we claim that these patterns and practices deny gay persons in Houston:

(a) The right to be free from the denial of life and liberty without due process of law as guaranteed by the 14th amendment to the Constitution of the United States;

(b) The freedom of speech, the right peaceably to assemble, and the right to petition their government for a redress of grievances as guaranteed by the 1st and 14th amendments to the Constitution of the United States;

(c) The right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures as guaranteed by the 4th and 14th amendments to the Constitution of the United States;

(d) The right to be free from cruel and unusual punishment as guaranteed by the 8th and 14th amendments to the Constitution of the United States.

We submit also that the nature of the problems of harassment and physical abuse occur in the jail and in the streets in the Montrose area where gay men and women live in high concentration. Such abuse has been unwarranted and beyond the level of force reasonably necessary to serve legitimate ends, in my opinion, and has amounted to arbitrary and unreasonable force which shocks the conscience. Such practices, policies, and procedures manifest themselves in the following manners:

Public intoxication—there are unwarranted and wholesale arrests without probable cause when a gay person leaves a gay establishment where, in the past, HPD routinely stakes out. We call this “bird dogging” our establishments. Subsequent to the arrest, our protestations are responded to with physical abuse.

One must be “endangering themselves or others” to be considered publicly intoxicated according to the law. This is never required to be proven in court. Consequently, harassment arrests continue under HPD’s own interpretation of this law.

Indecent exposure and public lewdness—I preface my remarks to say that I am not making judgment on these types of cases, but selective enforcement of these ordinances continue to chip away at the people’s right to privacy. HPD apparently condones such practices by their continuing to implement these laws selectively in areas that are not popular. Consequently, the entire community can be affected in more reputable areas where privacy is the issue, i.e., homes and private clubs.

On routine vice patrol, officers kneel to look through air conditioning vents, climb to look over booths in adult bookstores, peer through racks in curtained booths that they believe renders the booth public rather than private, thus giving them alleged probable cause to investigate suspected vice activity.

The HPD is infringing on civil liberties in areas that are not popular when they could be concentrating on real as well as high priority crimes. Deputy Chief Bankston, in a rare example of candor, told leaders of the gay community he had never heard of a public lewdness arrest in a gay establishment which resulted from a civilian complaint.

Driving while intoxicated [DWI]—gays are followed from known gay establishments. The police look for single drivers. In Montrose, we are pulled over for improper changing of lanes, for lack of safety, or failure to give proper turn signals. The officer invariably suspects intoxication and the suspect is taken in. If gays refuse the breathalyzer, we are filed on for DWI and coerced into taking the test with the threat of taking away the driver’s license. For some reason, gays rarely pass the breathalyzer. The due process requirements are clearly denied gay citizens in this instance.

Solicitation of prostitution—plainclothed vice officers approach gays in the Montrose area and solicit a discussion about sexual activity with the offer of payment. Our documentation indicates that we are not the perpetrators in these instances; under the law it does not matter, how-

ever, because as long as we agree to discuss the matter, an arrest occurs. Officers arrest gays for crimes which would not exist if the officer did not deceive those arrested with their disguises, i.e., plainclothes costumes.

Assault—this is frequently used as an add-on charge resulting in multiple charges against persons who have not committed any violation to justify the charge, or it is used to give color to the HPD's explanation for physical abuse of gays in their custody. The cover charges or trumped up multiple charges associated with physical abuse have the effect of intimidating potential complaints about such abuse and have the effect of punishing noncriminal conduct. In the courts, dropping the assault charge is a bargaining lever to get gay victims to agree not to press their complaints any further.

Homosexual conduct, section 21:06 of the State penal code. The mere presence of this law provokes the attitude in law enforcement people that it is legal to discriminate against homosexuals, in my opinion. This law is wrongfully used to arrest gays for nonsexual physical contact in public when in fact the law states that "a person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex." The wrongful use of 21:06 has no application to circumstances resulting in the arrest, i.e., kissing in public.

City ordinance 79-3—arbitrary selective enforcement of the after-hours dancing ordinance was used on August 31, 1979, at gay discos, an ordinance that has not been enforced since February of this year because Chief Caldwell said he did not have enough staff. Involved parties are seeking injunction relief this week in State district court.

Other manifestations of arbitrary and unreasonable use of force documented through our operation documentation program include the following:

- Physically abusing arrestees and prisoners who are accused of assaulting or resisting HPD officers;
- Physically abusing prisoners who are handcuffed or otherwise under police control;
- Physically abusing arrestees and prisoners to intimidate them, to provoke protestations by the arrestees in order to justify HPD's ensuing physical abuse;
- Conducting illegal search and seizures;
- Detaining persons without proper cause or for excessive periods, denying access to counsel or medical services;
- Arbitrary and capricious use of deadly force beyond which is reasonably necessary to serve legitimate ends, specifically shooting nondangerous, nonviolent fleeing criminal suspects in a circumstance where apprehension reasonably could be effected without the use of deadly force and without any threat to the safety of the officers.

A summary of attempts to alleviate the problems as provided you in the last hearing begin with the Gay Political Caucus and Mayor Hofheinz in 1976. He facilitated the first meetings between HPD and

GPC, and during his administration as field operations commander, Assistant Chief McKeehan was assigned as HPD's liaison to the gay community. Since that time, many meetings with him have taken place and he has assisted our community in temporary administrative relief on certain situations.

The meetings with Assistant Chief McKeehan have made us learn that the problems we define and alternatives we suggest cannot be accomplished by McKeehan. Policy changes and new policy must come from the chief of police. Our attempts to work with Chief Bond resulted in the rubber stamping and filing away a request for human sexuality training implementation. Our attempts to meet with Chief Caldwell in the past have been in vain until last week.

On the more positive side, Assistant Chief McKeehan, in a request to establish more rapport with street-level officers, assigned Lt. Joe Kunkel as liaison to the gay community. He has helped us successfully arrest antigay assailants. Moreover, in response to growing tensions between HPD and the gay community, McKeehan attended a GPC meeting this April only to say that hiring gays on HPD force would have a disruptive effect and felt that it was asking a lot of a police force to hire gays when it had only been hiring blacks for 12 years and women for 3. Since then, our community challenged HPD to a softball game which was accepted and to a degree lessened some anxieties.

Before city council we have appeared only to hear that they claim no jurisdiction in this area. We have met with Mayor McConn twice in the last 17 months, and our documentation will show no evidence of action on his part to assist us until August 9, 1979. I testified before Congressman John Conyers' Legislative Subcommittee on Crime and Civil Rights in May in hopes of educating Congress about Houston's problems.

Recent involvements to continue to seek administrative relief and to seek other avenues of remedy include the following:

- Held a July 23 meeting with Mayor McConn; see evidence of agenda.

- Coalescing with other Montrose groups to enhance our efforts on like issues;

- Presented our dilemma to our city councilman, Macey, PACCI representative, and Lt. Joe Kunkel at a violence in the community seminar, August 28, 1979;

- Extended an invitation to Mayor McConn to meet on our turf at a general membership meeting of GPC;

- Requested another meeting with Chief Caldwell that was finally granted on September 7;

- Hosted a meeting with Detective John Donovan, homicide division, newly appointed liaison due to the nine unsolved gay murders this year; summarize his comments about problems he has getting cooperation due to lack of trust in HPD and fears of reprisal.

—Met with Assistant Attorney General Drew S. Days on September 7 to discuss their involvement in monitoring HPD's patterns and practices and to determine how GPC could also work within the Department of Justice;

—Initiated phase II of operation documentation to deal with discrimination toward women, blacks, and Hispanics within our community.

Recommendations:

1. Injunctive or declaratory relief from some statutes for victimless crimes in the spirit of the Wolfenden report, specifically Texas Penal Code 21:06, homosexual conduct.

2. First amendment protection of speech, which includes freedom of expression, should be further construed by agency determination of rules, regulations, Federal legislation, and court decision to include the following:

—Freedom to express intimate love, care, and concern between consenting adults without regard to their sex.

3. Request that EEOC list sexual orientation as a classification under which discrimination would be prohibited.

4. Recommend that Congress pass the Weiss-Waxman bill to amend Title VI of the 1964 Civil Rights Act.

5. Recommend that qualified openly gay citizens be hired onto the HPD.

6. Recommend that the Justice Department do a trend analysis of their files of complaints of police abuse since the Joe Torres drowning.

7. Recommend training on human behavior, human sexuality, and alternate lifestyles be required, especially if Federal funding is involved.

8. Install cameras in the infamous elevator of HPD's jail.

9. Recommend city of Houston charter change that would offer some jurisdiction and administrative powers to the city council.

10. Recommend that exclusionary rule be supplemented by judicially required police policymaking, tort liability of governmental agencies for police abuses, provisions for minimum liquidated damages, and restrictions to the clean hands defenses. We submit this recommendation based on *Mapp v. Ohio*, 1961, that State's exclusionary rules does not allow evidence to be entered into court if secured in violation of the fourth amendment. Therefore, in harassment-only cases, it is not a deterrent force. Foote, *Tort Remedies for Police Violations of Individual Rights*, 1955.

11. Recommend that police policymaking be subject to judicial review and should be generally known to eliminate various interpretations with policy at the beat level where it is now involved against us.

12. Recommend street-level, officer-citizen interface seminars to become ongoing in the gay community for educational purposes.

13. Recommend to the President that an Executive order is needed to ban discrimination in all Federal Government employment and federally-contracted employment based on sexual orientation.

14. Recommend that this Commission study all the testimony and make a determination whether or not there is enough permissible evidence of violations of the following laws and regulations:

- 13th amendment;
- Equal protection clause of 14th amendment;
- Title VI of the Civil Rights Act, 1964;
- Regulations of the Justice Department;
- Omnibus Crime Control and Safe Streets Act of 1968, section 518;
- Regulations of the Law Enforcement Assistance Administration;
- State and Local Fiscal Assistance Act, 1972, section 122;
- Public Works Employment Act, 1976, section 207;
- Regulations of the U.S. Department of Treasury.

That would warrant your recommendation to the Justice Department that a full investigation be held and/or a Justice Department suit be filed seeking declaratory and injunctive relief from widespread and severe interference with Federal mandates, statutory requirements, and established national policies.

15. Recommend that a fully staffed and funded citywide operation documentation program be implemented to monitor and document allegations of police misconduct. In my meeting with Drew Days, Assistant Attorney General, he invited documentation of this nature as the people need a vehicle like operation documentation to assist them in gathering such data to entice or justify the Department of Justice's involvement.

16. Commission on human relations for city of Houston.

17. Harassment critics under HPD invert accord to a media connection Monday of this week. Ask Caldwell if true.

MS. GEREENICS. Mr. Schiflett, could I just interrupt to ask, is that a prepared statement?

MR. SCHIFLETT. Yes, it is. I have it.

MS. GEREENICS. Could we have the rest of it submitted for the record? I would like to discuss with you, generally, attempts that you and your organization have made either formally or informally with the department or city administration to alleviate some of these problems.

MR. SCHIFLETT. I respectfully request the permission to continue and give examples of the manifest physical abuse in the police department because I think that pertains to the nature of the—

MS. GEREENICS. Mr. Chairman?

CHAIRMAN FLEMMING. We would appreciate—the purpose of setting up a panel is to give the members of the panel the opportunity to respond to questions on the part of counsel and on the part of the members of the Commission. And if you do have a prepared statement there, we would be very glad to accept the statement, make it a part of the record, and consider it in connection with our evaluation of the total situation, but from here on out, I would appreciate your responding to the questions of counsel.

MR. SCHIFLETT. Okay.

CHAIRMAN FLEMMING. And submit the rest of the statement for the record.

MR. SCHIFLETT. Surely.

MS. GEREBENICS. Could you discuss the attempts your organization has made either informally or formally to meet with city officials on these various issues and problems?

MR. SCHIFLETT. Surely. We began attempting to deal with this problem in 1976 under Mayor Hofheinz's administration. We provided you with an overall view of this with documentation in June. Mayor Hofheinz was responsible for facilitating the appointment of Field Operations Commander and Assistant Chief McKeehan as liaison to the gay community. Since that time, many meetings have taken place with him, and he has assisted our community in temporary administrative relief.

The meetings with Chief McKeehan have made us learn that the problems we defined and the policies that we suggest not—cannot necessarily be implemented by him, but they have to come from Chief Caldwell.

Our attempts to work with Chief Bond resulted in rubber stamping and filing away requests for human sexuality training and implementation; our attempts to meet with Chief Caldwell in the past have been in vain until last week. And on the more positive side, Assistant Chief McKeehan in a request to establish more rapport with the street-level officers and assigned Lt. John Cuwain as a liaison to the gay community.

Moreover, in response to growing tensions between the HPD and gay community, Chief McKeehan attended a gay political caucus meeting recently only to say that our engagement had a very disruptive effect on the force and felt it was unfair to ask the police department to hire gays when, in fact, there had only been blacks for 12 years and women for 3. I have evidence of that comment to enter.

MS. GEREBENICS. What was the caucus' role in securing representation on the newly formed police advisory committee. What do you see as the future of that committee?

MR. SCHIFLETT. We feel like when the original group was proposed that we were wrongfully left out; however, that was not something we had anything to do with, or the city officials had anything to do with. Consequently, I approached city council and requested an appointment for that position, feeling that when any community has 10 percent of its population experiencing a problem of police department like we are, that we should deserve representation on this committee. At that point in time, Mayor McConn quoted—I will submit evidence—he doubted we would be appointed.

Since that time we lobbied him. Recently, we had a meeting with Mr. McConn on July 23, which I will submit to you today, and on August, I think, 7 we were advised that we would be appointed.

My concern is that we are vulnerable to the mayor's appointment: consequently, it may have a quieting effect on the appointees and it needs funding, not city funding, but autonomous funding to put action and teeth into the committee's work. If the committee can enhance the employment of the chief's directives and policies that deal with jail conditions and select enforcements and harassments on arrest, I will be more than cautiously optimistic about their committee.

MS. GEREENICS. Mr. Chairman, I would like to ask all of Mr. Schiflett's materials he brought today be submitted into the record.

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point. You want it marked as an exhibit?

MS. GEREENICS. Yes.

CHAIRMAN FLEMMING. This will be Exhibit No. 1 marked.

MS. GEREENICS. Mr. Schiflett, did you have anything else to recommend?

MR. SCHIFLETT. We have some recommendations if you'd like to hear some of them.

MS. GEREENICS. Briefly?

MR. SCHIFLETT. Briefly, most significant recommendation is that after the meeting with the Assistant Attorney General Drew Days last Friday we realized the community needs a vehicle by which to gather documentation on violations by the police department, so that we'll have access to remedy by court. And we feel that an operation documentation citywide, well-funded, would be in order.

MS. GEREENICS. Thank you very much.

Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Lee and Ms. Schaye, my questions relate to the Public Interest Advocacy Center, and I believe it was your testimony that you have documentation of incidents that occurred since you appeared before this Commission in June. I have—is that documentation available?

MS. SCHAYE. Yes, ma'am, I have it with me now. We presented to you, in June, 25 cases. We have had 12 additional cases that are in process now and we have those cases with us to present and to offer for the record.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to request that that documentation be received at this time.

MS. SCHAYE. If I may, ma'am, we also have with us the amended file on our open records file. We presented to you an open records file in June. We've added things to that file. We have an amended file of correspondence with the chief of police and also an amended listing and synopsis of all the cases we handled as well as a summary of the deadly force study which was submitted in June, and we—

COMMISSIONER FREEMAN. You are prepared to submit at this time?

MS. SCHAYE. Yes, we have all of these materials at this time.

COMMISSIONER FREEMAN. I would like to suggest we enter it into the record.

CHAIRMAN FLEMMING. Without objection, the materials identified will be entered in the record and identified as Exhibit No. 2.

COMMISSIONER FREEMAN. Mr. Lee, do you have documentation based upon the hearing which was held in July?

MR. LEE. Yes ma'am, I do.

COMMISSIONER FREEMAN. Is that with you and available to be produced into the record?

MR. LEE. It is.

COMMISSIONER FREEMAN. Mr. Chairman, I would like to request that that documentation be received and identified as Exhibit No. 3.

CHAIRMAN FLEMMING. Without objection that will be done.

COMMISSIONER FREEMAN. I would like to ask each of you with respect to the incidents which have occurred—and I have assumed they have occurred this year, 1979—if those incidents were brought to the attention of the Houston Police Department, each of these incidents were brought to the attention—

MS. SCHAYE. About 60 cases have come in our office since January. For one reason or the other—maybe a person called on the phone didn't pursue it—those cases were not brought to the police department; the 37 cases that we presented this Commission have been brought to the Houston Police Department and have in one way or the other been involved in the internal affairs department. We have not experienced, as some people on this Commission that have testified to you this morning, a receptive attitude from the Houston police. The attitude that has been presented to our clients as they have described it to us, to ourselves personally, has been one of arrogance and absolute dislike of what we're about in the community.

COMMISSIONER FREEMAN. Is it your testimony that 37 complaints have been—which have been previously screened by you—have been presented to the police department and no action has been taken?

MS. SCHAYE. There has only been action on 2 complaints of those 37. I understand that what has been explained to us many times has been that if we carry on a very thorough investigation in internal affairs—we submit to this Commission that the investigation is not thorough, but rather one that speaks of a closed shop. That's our experience.

COMMISSIONER FREEMAN. You have the names of the victims?

MS. SCHAYE. Yes, ma'am, I do.

COMMISSIONER FREEMAN. Has any other activity been engaged in by the Public Interest Advocacy Center with respect to those complaints?

MS. SCHAYE. Yes.

COMMISSIONER FREEMAN. Have you referred them to the Department of Justice?

MS. SCHAYE. Yes, ma'am. There have been several of them that have been referred to the FBI. We have, I think, on two or three occasions, met extensively with the Harris County DA. Harris County district attorney has recently set up a civil rights section and I think it

went into play September 1; so our dealings have not been with that civil rights section, but rather with the department—with the district attorney's office as a whole and Mr. Vance himself.

COMMISSIONER FREEMAN. Mr. Lee, with respect to the documentation which you received at your hearing, would you indicate to this Commission what happened to that? If that was brought by you to the attention of the Houston Police Department and what happened?

MR. LEE. Commissioner, it was my intention to compile data from the hearing that we held and in turn submit it to this Commission as well as necessary followup to submit individual cases as needed to the PIAC agency for handling.

COMMISSIONER FREEMAN. Is it your testimony then that the information which was received at your hearing was not transmitted to the Houston Police Department?

MR. LEE. That is correct. The hearing was held and none of that information to date has been submitted to the Houston Police Department, although there was a representative of the department present and who recorded the entire proceeding.

COMMISSIONER FREEMAN. Did the representative of the police department indicate that any action would be taken from the information specifically?

MR. LEE. There was not any testimony gathered from that representative. He was only there as an observer and also to record.

COMMISSIONER FREEMAN. Has there been any communication from any member of the Houston Police Department, from the chief on down, with your organization in connection with the allegations which were made at the hearing?

MR. LEE. Not that was brought to my attention as chairman. The one correspondence that I got from the chief himself was a hand-delivered letter stating regret for not being able to participate in that particular hearing because of prior commitments. And that was the reason for the representative from the internal affairs division who, in turn, recorded the proceeding, but no testimony was taken from that individual.

COMMISSIONER FREEMAN. Do you have an opinion as to whether the police department has any information concerning—or had any prior information concerning the alleged incidents?

MR. LEE. I have reason to believe that most of the incidents that were reported to us had gone through the channel or the process of the police department, ultimately ending up in the internal affairs division. The testifying witnesses and victims themselves were asked systematically had they gone through that process and their response was, yes, affirmative that they had been through internal affairs and they were asked whether any followup will be done from that point. It—most cases ultimately ended up in internal affairs department.

COMMISSIONER FREEMAN. Then the testimony at your hearing from the victims was that of individuals who had, following the incidents, submitted a complaint to internal affairs?

MR. LEE. No, ma'am, it was—the victims, as I understood their statements, were automatically referred to internal affairs and not a complaint as such. Those same victims—you might can ask some of them the question tomorrow because I understand some of the same people will testify. As I recall the incidents, itself, automatically went to the internal affairs, and it wasn't a process of complaint from—formal complaint from the victim because I think the first attempt for any documentation from victims was that particular hearing, to my knowledge.

COMMISSIONER FREEMAN. Isn't the substance of your testimony that when there is an allegation of mistreatment, that there is no remedy or no recourse on behalf of the Houston Police Department, and that is a present situation?

MR. LEE. Beyond the internal affairs, Madam Commissioner, there was no recourse, regardless of what the ultimate decision was in those instances, and that was the extent of any meaningful recourse by the victims to have an equitable hearing. That is why I suggested that it may need to be a more—if you can be more—impartial body within that structure, or an impartial body period, who can have the freedom of making an equitable and just decision when ruling in various cases of the nature that we heard.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Father McGinnis in substance—I believe you were here when he testified—said that the anonymous activity of the policemen on the street is frightening. He could as well—this is in substance—“execute me without my bringing that officer to justice.”

Now, to me, the word “anonymous” means secret activity. There seems to be a common thread between this panel and the prior panel with relation to the lack of direct control over the man on the beat by those who set policy.

Miss Schaye, it is my understanding that about 97 percent of the police officers in today's police force were on the force in 1977 at the time of the Campos Torres death. Do you believe that Chief Caldwell needs the help of some outside independent citizens' group that could assist the chief in ferreting out your communications with the community, what has been characterized as secret activity or anonymous activity?

MS. SCHAYE. Sir, I think he needs that help desperately, because no matter what he said on paper, no matter what policies are put forth for internal affairs or any other police practice in this city, they are not being carried out on the streets in this city.

Time after time, persons walking into our office say, “This happened to me,” and it doesn't matter that there is a policy against speedy chase, for instance, in Houston, that there are not supposed to be eight police cars following an individual on a freeway. A boy was killed June 20—I forget, I don't want to be quoted, exact date, but in June of this year because eight police cars chased him on the freeway.

It doesn't matter that the chief says that once a person is in custody that person is not to be abused, because I would submit to this Commission this is a 60-pound, 13-year-old boy, an epileptic whose shoulder was broken, whose arm was broken in several places by Houston policemen after he was in custody. We don't justify those types of actions, no matter what good policy is written, no matter how many good proposals we have. When this occurs to a child in the streets in the cities of America, I think it is devastating.

COMMISSIONER RUIZ. As I understand the testimony thus far given, if an obviously open matter, not secretive or a anonymous matter, requires the need for a notary public and a writing before it can be classified as a complaint, I think we're in deep trouble here.

MS. SCHAYE. Sir, I would point out to you that we've had complaints that are notarized that have never been assigned a complaint control number. I personally have sat down with a lieutenant in internal affairs and said, "Why can't my clients see a copy of his notarized complaint that he submitted to you?" And that was refused.

COMMISSIONER RUIZ. Now getting away from internal affairs; yes, Mr. Mata.

MR. MATA. I kind of want to add to that because I have a lot of respect for the Commission. You all have done a wonderful job. You came here to ask us a lot of questions. I was hoping we could come here and give you a overview of what we feel the problems are and what kind of recommendations we would like to give to you.

I would like to add just exactly what you asked, that the LEAA money, which is Federal Government, has spent millions and billions of dollars in the community for hardware to combat crime, but the humanistic type of thing—that we have seen very little money in the civil rights enforcements—for that for the Justice Department has been given—added more money and added more staff on the FBI for investigation and vigorous prosecution.

The States, under Title VI, revenue sharing, all of the laws have not enforced the civil rights statutes, and we're talking about a remedial thing and we're going to be doing it 2 days from now and the reports are going to Congress.

I would like for us to get to the heart of the problem, to the Federal statutes, what the State government is not—what the State or legislation—so that whether it is the police chief—or anybody before a police officer even thinks of committing any violation of any human rights, that he will pay dearly on the prosecution. But it disappoints me to continue to hear nothing but rubber Band-Aid approaches, whether we're talking about the war of poverty or whether we're talking about the discrimination of employment where there's a lack of it in the Federal and State statutes. I think, until we look at—you know, well—who stepped on whose toes, but let's look at the very gross prosecution and legislation and give more money to the Justice Department to do the prosecution like they should be doing.

COMMISSIONER RUIZ. In substance, Mr. Mata, then, as I understand what you've said, is a lot of this money is going into the wrong purposes and it is your suggestion that some of this money go in for purposes of prosecuting people that violate the law even though they wear the uniform. Is that in substance what your recommendation is?

MR. MATA. That is correct. And in addition we want to talk about Moody Park. We want to talk about police brutality, but let us look at other ramifications which create tension in this city. You know, inadequate housing in the Hispanic communities, inadequate education—which receives millions of dollars—lack of culture awareness in the area where there is police department, the numbers of police, Hispanic police and black officers in the police department, yet we go back to the State laws and I'll give you an example: Galveston, Texas, is 50 miles from here; they have a Mexican American police chief, a black captain; and yet in the Houston Police Department we're stranded with the percentage of blacks and minorities which is very nil.

The promotional opportunities that come up—and I cannot see that the State statutes are so different 50 miles from here that we can have a Mexican American police chief and in Houston, Texas, we don't even have, I think, a captain or—I don't know, we might have a lieutenant—and the fact is that we need to put some brown and black faces on all levels of the police department. But just let's not hold the police departments accountable for what the Federal law, judges, and other people are not doing. They are not holding what the Federal courts are saying: you are supposed to give prison to these people; instead, they're given a probation sentence.

And then some Federal judges will say it would be a hardship for the families and the police officers to go through the same trauma in the prosecution, but who has said that of the number of deaths of Hispanics in the State of Texas and throughout the Southwest? Who is asking the questions about the mothers of these individuals that have died at the hands of police officers?

MR. SHIFLETT. May I add something, please? I would like to suggest that the real pervasive discrimination that permeates the Houston Police Department, not just the blacks and Hispanics, but women and gays as well, is evidence that it not only hurts the people, but it hurts the police department's efforts in getting its job done. Just recently, meeting with Detective John Donovan of homicide who has nine unsolved gay murders in the last year in the Montrose area, he told me he does not get cooperation out of gay citizens because they fear reprisal and they do not trust the police department.

COMMISSIONER RUIZ. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Mata, I think I understand your testimony. You're saying that such groups as PACCI are not effectively operating to ameliorate the situation, that it is more important to enlarge, enhance, improve the investigation and the vigorous prosecution; isn't that—

MR. MATA. Most definitely. I think that, you know, we all have been children at times and we have seen child behavior from the beginning. I sometimes think parents are more lenient for some children; where others, who are disciplined, have been taught behavior patterns that we have accustomed ourselves to.

It is no different whether it is in a hospital institution by the nursing care on the human side or the police department, in that you know the penances are there, you know why he isn't passing a red light in the city of Houston, we know what the consequences are and that's what I'm talking about. Until you deal with that element, you know, you cannot hold accountable just the police chiefs. And I'm not defending police chiefs—some of them are just as guilty as people in the street—but I'm giving you that as an example, that it lies beyond sometimes police departments; that's what I'm trying to say.

The fact is, if we're going to have a hearing, let's get down to the gist of the problem because these reports are going to go to the Congressmen and to the President, and we're going to deal with those persons that are representative because LULAC is a national element that has an impact.

COMMISSIONER SALTZMAN. MS. SCHAYE?

MS. SCHAYE. Yes, I do. Thank you. I submit to you, sir, that it won't matter what State and Federal laws we write if they're not effective on the streets. Texas presently, after this legislative session, has one of the strongest civil rights statutes in these United States. Policemen can be prosecuted for felonies in Texas; however, it is our experience in working with 37 cases through the internal affairs process, only one of which made it to the court, so we're dealing with on-the-street types of problems and administrative problems. In that light, we have to look at our police department. We have to say, what about the people that are effecting what the law says? We can't rest everything in the courts. I personally feel the grand jury in Harris County is abusive to the citizen, but most people don't make it to the grand jury in Harris County.

I'm presently dealing right now with the murder case that's been pending since June 30 of this year. That boy's life hasn't been presented to the Harris County grand jury. There has been coverup; there has been discourtesy; there has been lack of response to complaints, so we can't just rest on the courts. We have to take a composite picture of what's occurring inside our city.

MR. MATA. I wanted to clarify. The fact is that the job hasn't been done higher and it doesn't mean to preclude for us not to deal with police department.

We have psychological testing that we need to institute to detect racism, you know. We talk about it, but I don't see it. We talk about other avenues within the procedure. I think that any organization that is nonprofit and chartered for the—for whatever—whether the league or anybody else—to do a job should get cooperation from any public

official. And the fact is that if a police department has nothing to hide, then it should open the door and be cooperative. And then if a person has not violated the law on a police officer, then that person should be put right in its rightful place in society.

We do have policemen and women that are good, but it's unfortunate that we have a lot of bad ones that came in, because there was no psychological testing or any tools to detect that attitude that prevails in society.

COMMISSIONER SALTZMAN. What can PACCI do? Is there any—

MR. MATA. I can only tell you what the league tells you it intends, because I'm only one person in that group. I'm only one person in the Harris County organization, but I can tell you basically, if we in this room and all organizations make up our minds to do something together, I think we can resolve those problems.

MS. SCHAYE. I would like to speak to the issue of PACCI as an outside group. Public Interest Advocacy Center is the only group in this city funded by Federal monies to assist persons claiming police abuse. They—this group was not invited to join PACCI, and we can construe and sit here all day and determine why that is so.

The ACLU, which has done much good work in the city of Houston prior to any of us walking into any door of this area, was excluded from PACCI, which I think really needs to be delved into. Who excluded those people?

There is another group that I don't think you've mentioned—maybe you don't know about—of Harris County police chiefs throughout Harris County who are involved in looking at the community-police question.

There are groups excluded from that group. The Community Relations Service of the Justice Department made some attempt to include the broad spectrum of the community, but I personally sat in a meeting, Commissioner, where people were excluded. It was obvious there was a hidden agenda; the fact that it is not brought forward in the press and so forth doesn't really matter because those of us who were there saw it occur. It's there.

COMMISSIONER SALTZMAN. Representative Lee, in your role as a State representative, could you respond to what has been said here, whether or not you think the State legislature has the role in providing the vehicle for redress that can be effective? For example, your testimony indicated the black community feared reprisals and therefore does not come forward to testify. Can the State legislature enhance the solution of some of it or the remedies?

MR. LEE. I think, from a legislative standpoint, legislation has its limits. It is extremely hard to legislate a law where the problem is that implementation of existing law or eliminating antiquated laws that does not apply in a given situation. That was one of the variables that we were strongly considering in going into the hearing as to the viability of needed legislation along the lines of recruitment.

We heard in the '66 legislative session bills that addressed itself to giving the mayor appointive powers to heads of—chief of the police department and eight other heads, the chief and his assistants. There was strong opposition, of course, to that piece of legislation.

I personally feel I'm not so sure that will answer the question, because you have a—if I may relate to the department as an organizational structure looking at it in a business sense—you have a mid-management area in the department that remains ongoing, and you have a formal organization that is strong and in every organization you have an informal organization which is, in some instances, even stronger.

It was evident to me from testimony given to the bill, relative to giving the mayor appointment powers at that time in the session, that the informal organization is extremely strong. Regardless of what policies are made, if you don't have then any implementation of those policies or good-faith effort toward implementing those policies, you've got a problem.

For an example, there's been quite a bit of talk about recruitment and hiring of minorities, black particularly, and if you look at the comparison of numbers, which I don't know the exact numbers, but they vary disproportionately to the population and demographic makeup of the city. When you look at that, you wonder, will all these people be disqualified? I really don't buy the argument of the image that the police department would have a negative effect necessarily on the black community, because I think economics is a much higher priority, being that we have some of the highest unemployment in pocket areas of the city. In my district the unemployment exceeds the average that is shown by the State and by the city by quite a bit. It was, at some points in time, as high as 13 percent.

I question whether the esoteric perception of the police department would override the necessity of a job, and it does present a real job when you look at all the benefits that one has in the police department. I question the good-faith effort along the lines of, if not recruitment, but the actual hiring of quality people. I'm not saying pick up folks off the street and hire them to be enforcers of the law. I'm saying quality people.

With that in mind, if the Commission permits, I had a closing statement that I'd like to read into the record that would amplify what I just said.

CHAIRMAN FLEMMING. I'm sorry, our time is just about up on this panel. We'll be very glad to take that statement for the record and members of the Commission will read it and weigh it very carefully. I want to give Mr. Nunez an opportunity to see if he has any questions to ask, and then I do need to proceed to the next panel.

MR. NUNEZ. Just one question I hope you can all answer very briefly. If you had the power, what single action would you take to alleviate the problems that the police are facing in their contact with the community? Very briefly.

CHAIRMAN FLEMMING. Well, may I underline that because we've got just 2 or 3 minutes. Just one suggestion in addition to the suggestion. Many of you made suggestions along that line already, just one additional suggestion so that I can keep a schedule.

MR. LEE. Very briefly, in a few words, I see it as coming up with an equitable recourse in the existing system, and that, as it may, internal affairs coming up with a more equitable internal affairs or impartial body.

MR. SHIFLETT. Now that he stole my answer—education, because education on street levels—

MS. SCHAYE. I think there needs to be accountability by all policemen in Houston no matter what their particular job.

MR. MATA. Put more money in the Justice Department and let them do their job.

CHAIRMAN FLEMMING. Justice Department?

MR. MATA. That's what I said.

CHAIRMAN FLEMMING. I just want to say, in one of your earlier comments, you identified the fact that undoubtedly we would be making recommendations relevant to Federal laws and the operation of Federal departments. If you or any of the other members of the panel have any specific recommendations to make to us along this line, give us a brief memorandum on it because we'll be more than happy to consider it, but I don't have time to get into.

MR. MATA. I accept that. I feel we can submit some recommendation on those lines.

CHAIRMAN FLEMMING. We'll be very happy to have you do it, and any of the other members of the panel, also. We appreciate your coming here. We appreciate the testimony you've given and the additional records that you have submitted.

MS. GERE BENICS. Mr. Chairman, could I ask that Mr. Lee's closing statement be entered as Exhibit No. 4 in the record?

CHAIRMAN FLEMMING. Yes, it was going to come into the record really not as an exhibit in this case, but just as a part of his testimony as though he had given it right at this point in the record.

Counsel will call the next witness.

MS. STEIN. We'll like to call Andrew Jefferson, Robert Carp, David Bires, and Dick DeGuerin.

CHAIRMAN FLEMMING. I ask the members of the panel if they would stand, please, and raise their right hands.

[David Bires, Robert Carp, Dick DeGuerin, and Andrew Jefferson were sworn.]

TESTIMONY OF DAVID BIRES, ATTORNEY; ROBERT CARP, ASSOCIATE PROFESSOR, POLITICAL SCIENCE DEPARTMENT, UNIVERSITY OF HOUSTON;

**DICK DeGUERIN, ATTORNEY; AND ANDREW JEFFERSON, ATTORNEY AND
FORMER JUDGE**

MS. STEIN. Beginning with Judge Jefferson, for the record would you please state your names and occupations?

JUDGE JEFFERSON. My name is Andrew Jefferson; I practice law in Houston, Harris County, throughout the State, in this part of the country.

MS. STEIN. Dr. Carp, would you state your name and occupation?

DR. CARP. My name is Robert Carp; I'm associate professor, political science, here at the University of Houston.

MR. BIRES. David Bires, I'm a lawyer here in Texas.

MR. DEGUERIN. I'm Dick DeGuerin. I'm a lawyer.

MS. STEIN. Thank you very much.

Judge Jefferson, could you describe for us the duties and functions and powers of the grand jury system under Texas law?

JUDGE JEFFERSON. Yes, ma'am. I will do so briefly.

The grand jury is charged with the responsibilities of hearing matters presented to it. It has some independent authority, at least in theory, and that is, it need not wait for somebody to come in and present a matter. Theoretically, it can investigate on its own initiative and consider matters that are brought to its attention through its own resources. But whatever matters they hear, the grand jury is to determine whether probable cause exists in believing that an offense has been committed and that the particular person who is a suspect at that point violated the law. It is a probable cause assignment to determine the probabilities and determine whether a matter should be brought to trial on the basis of an indictment presented in the district court and, in some rare instances, at the county court level.

MS. STEIN. Is it necessary for the district attorney to concur with the judgment of the grand jury that probable cause should exist in order for an indictment to be issued?

JUDGE JEFFERSON. No, ma'am.

MS. STEIN. Could you describe for us the process by which grand jurors are selected in Texas?

JUDGE JEFFERSON. In Texas we have, by statute, I believe, a process that calls for the appointment of a grand jury commission by the State district judge. The grand jury commission consists of, I believe, not less than three nor more than five people. The grand jury commission then is charged with the responsibility of proposing or nominating to the district court, I believe, not less than 15 nor more than 20 persons from whom 12 grand jurors will be selected.

The grand jury commission is selected, handpicked, if you wish, by the district judge who is empaneling the grand jury. The grand jury commission, in turn, handpicks the 15 to 20 people who make up their list of nominees, which list is submitted to the district court.

Now, as I recall the procedure, once the grand jury commission meets and makes its recommendations, I believe the clerk then opens

what is, up to that point, a sealed envelope and then learns the name of the nominees. A summons is then sent to these persons and they are ordered to appear in court on the day the grand jury is to be empaneled. The first 12 people who appear and qualify under the statutes serve as the grand jury for the particular term for which they are empaneled.

MS. STEIN. Does this system, in your opinion, result in a typical cross section of society being selected for grand jury service?

JUDGE JEFFERSON. In Harris County, it is my belief that since 1974 we've had grand juries on the average that represent a cross section of the identifiable, cognizable groups in this community. There had been a few—I understand this last year there was one extraordinary grand jury that had nine or more black members on it, and I referred to that as kind of a poetic justice over a period of time.

MS. STEIN. And when you say that, it does represent a cross section?

JUDGE JEFFERSON. In my opinion.

MS. STEIN. In terms of racial and ethnic groups?

JUDGE JEFFERSON. Yes, in my opinion. You see what happens now is, since maybe—I guess you're aware of a decision I rendered in 1974, where I dismissed indictments against defendants in a criminal case, when I was sitting as a judge at the 208th district court, because the evidence in that case convinced me that Mexican Americans had been systematically excluded from the grand jury system that produced the indictment then under review. But my personal observation since that time is that in Harris County I believe that grand jury commissioners are being told to get a grand jury that represents a cross section of the racial groups, the men and women, economic groups.

I recall at one point on one of my commissions I had a student with a view toward getting young people on the grand jury. And I think we're seeing—we've seen a black foreman; you know, we've seen—there was a time when we thought you'd never see more than three minority-group members on a grand jury in Harris County because you have to remember it takes 9 of the 12 to indict, for 4 of the 12 can tie up any inquiry or prevent the voting of a true bill.

The observation for years was that minorities never occupy more than 3 seats out of every 12, so you had always the 9 going for an indictment, but that is not uniformly true any more. You see cases where you had as many as four and I told you about the extraordinary case, at least nine blacks on the jury.

MS. STEIN. What sort of training and orientation do grand jury members receive to help them perform their duties?

JUDGE JEFFERSON. None, nothing special; grand jurors at some point get the tour of the county jail, and I think they have lunch with the sheriff. I think they were invited to take a trip up to one of the units of the Texas Department of Correction. The district attorney would lecture or visit with a grand jury on the first day or so to give them an idea of what the procedures are all about and what they are called

upon to do. Beyond that, you depend on the common sense and the educational background of the person who has been selected as a grand juror.

MS. STEIN. Do you believe that grand juries are able, under the present system, to exercise independent judgment about whether a true bill should be issued or not?

JUDGE JEFFERSON. To the extent that any human being is able to discharge his or her responsibility, yes. You see a strange dynamic at work on grand juries, and I think you have to study them one after the other in order to understand it fully. But I've served as a grand juror; I've served as a grand jury commissioner; I've served as a State prosecutor and a Federal prosecutor presenting cases to grand juries and then as a judge selecting commissions selecting the grand juries. I think by now I have an idea of what the dynamic is all about.

What happens is that you catch a couple of people who come to the grand jury assigned with a special attitude. They're going to be real diligent; they're going to inquire deeply into matters presented to them, and in the first couple of days you have 12 people sitting around the room and you get 1 or 2 people who are asking a lot of questions of the prosecutor.

You remember also in the State system you don't have the witnesses come in the grand jury room and raise their hand and are sworn to tell the story of how it happened.

As an ordinary matter that happens in special instances. Most of the special assistants assigned to that stack of files sit there and review the file, file after file after file. He's got a lot of volume at the State level, unlike the Federal level where the volume is different.

After a couple of days of, say, 10 of the grand jurors hearing 2 of the grand jurors raise hell about anything and everything, there develops a kind of group dynamic that scorns those who raise questions because they are preventing the others, who are going to vote for a true bill to follow the recommendation of the prosecutor anyhow, from getting to lunch or getting back to their regular duties. So after, say, a week or two, these grand jurors who are raising the questions can read the signs and they say, "Well, you know, I know what the general feeling of this group is; they know what my feeling is; and I think I've raised enough Cain. I'm just going to vote not for the true bill."

If that's the attitude that the grand juror has—or in an extraordinary case a grand juror may raise additional questions—but this is what happened over a period of time: You're coming in and you count noses and after a while you know where you stand; you either have the votes or you don't. Even the most conscientious person gets tired of beating his or her head against the wall where the majority, nine or more, are voting against such person.

I think all people who are called upon to serve with the result—who end up serving on a grand jury, after having been selected through the

system, are reasonable, intelligent people who can vote in the way they think is right under the circumstances, to the extent they understand what their duties are. And that is to determine probable cause.

MS. STEIN. It is often stated that Harris County grand jurors are reluctant to vote indictments of police officers accused of brutality and misconduct. Do you agree with that statement?

JUDGE JEFFERSON. Well, in the State system I think that's true, and that's why we see instances where most often when indictments are returned against police officers, it is a Federal grand jury that returns that indictment. I think here you beg the question: What are the differences between the State grand jury as selected and the Federal grand jury as selected? Federal grand juries are selected in a manner more nearly akin to the selection of the trial jury. In, I think, pre '66, before the Fifth decided something called *U.S. v. Rabinowitz*, there was a key man system in the Federal court where you handpicked the Federal grand jurors pretty much the way you handpicked the State jurors, and so the Federal system was the blue ribbon—blue ribbon type grand jury that was socially acceptable and something about which you bragged throughout the community if you were called upon to serve as a Federal grand juror.

Now I think the social status attaches more to the State grand jury than to the Federal grand jury by reason of the type of social grouping that you develop through this very highly selective process that starts with the judge, to the commission, to the grand jury, that State grand jury not being selected like the Federal grand jury. So at the State system you have a much more conservative type grand juror who tends more often to identify with the law enforcement effort and is less inclined to blindly believe a complaining party and who is more likely to examine more closely what it is that the policeman is accused of having done.

That's not to suggest the Federal system won't do more, but in the Federal system it is more likely that the attitude of the prosecutor's office will affect the flavor of the process to the extent that the prosecutor can better persuade a juror whose mentality is more like that of a trial juror than like the country club type that is probably a grand juror, and that's the kind of personality I think you get at the State level.

That doesn't suggest that you can't have a different result at a State level, but my observation at this point is that the reason you have to depend on the Federal Government is because of the nature of the animal on the State side.

MS. STEIN. Your impression would be that the State grand juror is more independent and less inclined to follow the recommendation of the prosecutor? Was that your testimony?

JUDGE JEFFERSON. In this kind of a case, I think the prosecutor's recommendation carries less weight than the general attitude of the State grand juror, that of a business person, conservative person, a per-

son with assets to protect, a person who is more likely to identify with victims of crime generally and with a law enforcement effort than with someone whose crime followed and claiming police brutality. That's my assessment of the situation.

MS. STEIN. Thank you, Judge Jefferson.

JUDGE JEFFERSON. Yes, ma'am.

MS. STEIN. Dr. Carp, would you begin by telling us about the ongoing study that you have been making of the Harris County grand jury system?

DR. CARP. Beginning in the early 1970s I conducted a series of studies that has taken between 1969 through 1978 in trying to determine the composition of Harris County grand juries. In doing this, I have conducted mail questionnaires sent to former members of grand juries; I've interviewed quite a number of them. I have sat on a grand jury myself and kept rather meticulous records as to how we handled our cases, how much time was spent on discussing cases, the times when we agreed with the prosecutor or disagreed. And I've also participated in several grand jury challenges where I've had the assistance of other persons in trying to keep up to date on the composition of Harris County grand juries.

MS. STEIN. We've heard the system by which Harris County grand jurors are selected. Did your findings and conclusions tend to indicate that the jurors represented a cross section of the community in Harris County?

DR. CARP. That's not really the sort of thing you can give a flat yes or no answer to. In terms of the racial composition, the evidence looked, superficially, very good, especially since about 1974. I was a participant in the ruling that Judge Jefferson made and I think his ruling did have an impact. So at the present time, according to the data we have through 1978, blacks are slightly overrepresented on grand juries and Mexican Americans are represented approximately in the same proportion that they are in the population. So on this cognizable class, this superficially looks very good. The problem with this is, however, that I think the evidence is overwhelming. We have some pretty good empirical data that the blacks and Mexican Americans on grand juries are not representative of their respective communities because the way the system works the commissioners tend to select very elite members of the minority community.

The empirical evidence I'm talking about here is that the average income and education of the minority-group members are actually higher than those of the Anglos, which is really striking because that isn't the way it is out in real life. The blacks and Mexican Americans who serve tend to be social workers, pastors, restaurant owners, persons who are—there's no question their skin is black and brown, but one could argue that their ties with the ghetto are at least one or two generations away.

In terms of sex, prior to 1974 about 22 percent of the grand jurors were female, even though 51 percent of the county was female. Since '74 this has improved. At the present time, through 1978, about 35 percent are female; but that's still a disparity of 16 percent. So on that issue, I would say it is not a very good cross section.

In terms of the education and income, there's a great disparity. The average incomes of persons serving on the grand juries are somewhere between two and three times the median family income in Harris County. So what this means is, racially, on the superficial level, you're pretty good. You're kind of safe from a court challenge. I think they're still terribly vulnerable on the cognizable class of sex; 16 percent is enough for a very good court challenge, if someone cared to make it, given the ruling of the Fifth Circuit. The other cognizable classes, in terms of education and in terms of income, don't have as much support in the courts and there's a question, even in the courts, as to whether they are truly cognizable classes.

My personal opinion is that they are; and, if that is so, then they are not adequately represented on the grand jury. The typical grand juror is an upper middle-class individual about 20 years older than the average person in the community and clearly the elite in the community, in the best sense of the word, or I don't say that in a disparaging sense, but they are very much the upper status elite.

MS. STEIN. What did you learn about the average amount of time that the grand jury spends on each felony case presented to them?

DR. CARP. It varies enormously with the type of case. We can give an average figure, and I won't go into the methodology of doing this, but the average amount of time spent is about 5 minutes. As averages do, they sometimes tends to be misleading because we, in our particular grand jury, we must have spent as long as 20 hours on one case that eventually resulted in a misdemeanor indictment; and in other cases we voted on it in blocks of 50 or 60 at a time; bad check cases, for example, where all they needed was a receipt indicating that information had been mailed out informing the person that they had passed a bad check, so that we—the prosecutor told us that he had the return receipt from the post office, so we just voted on them in a stack of 60. So the average amount of time spent on that indictment was, I don't know, maybe 2 or 3 seconds. So it varies enormously, but about 5 minutes as an average, but it varies greatly with the type of case involved. Generally speaking, the more serious type of cases, there will be more time spent.

MS. STEIN. Was witness testimony ever taken before you when you were on the grand jury?

DR. CARP. That is strongly discouraged by the prosecutor's office. In our grand jury, I think 1 percent of the cases had a witness. The reason that is discouraged, there's a great backlog of cases and the general attitude of the prosecutor, not without some merit I think, is that our job is not to try the cases; that they will get a chance to have

witnesses—and their attorney—to testify in court and that our job as the grand juror—and I'm speaking not just from my own personal experience but with interviews from a quite a number of grand jurors at this point—their job is to take the evidence that the prosecutor has available and then make a decision of probable cause, and the calling of witnesses just results in the kind of a minitrial. And the argument is they will have their day in court later on and that you really shouldn't be calling witnesses except in extraordinary circumstances. So I would say it is very, very unusual to have witnesses, although certainly not unknown.

MS. STEIN. Would you characterize the relationship between the grand jury and the district attorney as one of independence or dependence?

DR. CARP. I think the grand jury is overwhelmingly dependent on the district attorney for a variety of reasons. The grand jury receives no training at all, as Judge Jefferson indicated, as to what their duties and responsibilities are. Even persons who should supposedly know something about this—I know when I went on the grand jury, I teach in the judicial area and we had a law professor here at Bates College of Law, so you think, "Well, if anybody should know what the grand jury is supposed to be doing, we would."

I could have told them a good deal of history of the grand jury and a good deal about what its functions are in practice. I had really no idea as to what we could do on a day-to-day basis. Could we call witnesses on our own without the request of the prosecutor? Could we indict on a lesser indictment than one suggested by the prosecutor? I hadn't the faintest idea.

So what happens is—the saying that knowledge is power is the key to this—the only place that the grand jury can reasonably turn for advice and information is the prosecutor. And in our case, whenever we needed information, we had to ask the district attorney about what our duties and responsibilities were.

I think this handicaps the power of the grand jury to be independent. They don't really know—in the 3 months that we served, the definition of probable cause was never even explained to us. I think I knew what it meant, but I'm not sure about the other majority of the grand jury members.

This thing like this, if you have to go to the prosecutor for information, there's a natural tendency not to tell the grand jury any more than they have to know, at least to make them overly independent.

MS. STEIN. Based on your observations, have you found the grand jurors reluctant to indict in cases of police officer misconduct?

DR. CARP. I really can't give you an honest answer on that question, because we had only a couple of cases on the subject and I didn't conduct any extensive research on that particular question. I can add this, which may be of some use, but only in this sense, that in a couple of cases that we had where there was some question about the propriety

of police activity all the members of our grand jury—and I think this is true of the grand juries in general—being upper status members of society, people who are nicely dressed, who talk well, who wear a suit and tie to work, and these are not the sort of people who are likely to be harassed by police officers, they are not likely to—just the term “police brutality,” if you say this to the average member of the upper level in society, they assume that this is always a charge that an obviously guilty person makes, when he hasn’t anything else to call for, he can shout “police brutality.”

This may be true in a large majority of cases; my personal opinion is this may be an effective device when guilty, if you haven’t got anything else going for you, you can always shout “police brutality” or “police harassments,” but occasionally there’s truth in it, and yet to the average upper status member who serves on a grand jury, they have no firsthand or even secondhand contact with this, so that they just don’t want to hear about this. It’s just doesn’t go on because it doesn’t go on with them personally; it doesn’t go on with their family, friends, or associates in church.

So having no contact with this, I think, makes them somewhat less than responsive whenever this is brought out; not that it’s not true all the time, but automatically a gut reaction against the use of the term “police brutality” or “police harassment,” they don’t know anything about it first- or secondhand.

Ms. STEIN. Thank you very much.

Mr. Bires, as a practicing attorney, what has been your experience in dealing with the internal affairs division of the Houston Police Department? Have you had any dealings with that division?

MR. BIRES. I’ve had a couple of instances in which I either went with a client to internal affairs or advised a client to go to internal affairs or followed up on an internal affairs investigation. I’ll break it down in terms of each of those events.

In the situation in which I went with a client to internal affairs, the matter that he was complaining of was a very serious one. He had been shot in the back in an alleged scuffle that arose after he was accosted by some un-uniformed, undercover, later determined to be narcotics officers over less than an ounce of marijuana. The individual was shot, hospitalized in critical condition. He didn’t choose—several charges were filed against him— several criminal charges were filed against him: possession of marijuana, driving while his license was suspended, evading arrest; I think four criminal charges were filed.

He chose, for whatever reasons, not to pursue any action against the police at this time. This is back in November, I believe, of ’77. At a subsequent time, I received a phone call from him one day and he was sitting in a FBI office. He had decided some 18 months later that he couldn’t live with himself for not bringing this matter to somebody else’s attention and he, on his own, had gone down to the FBI and made a statement. They advised him to go to the internal affairs division and make a report.

He was somewhat apprehensive about going to the same police who had shot him to complain about this, and this—subsequent to his having been shot, there was the Torres case, the Webster case, there was the Joyvies case, all of these spectacular cases which had come to national attention, and I don't know if that played a part in motivating him to make this appearance or not, but he did say he just felt like this was wrong.

Anyway, I accompanied the man to the internal affairs division. We went into a small room. We met a detective. My first question was, "Officer, how long have you been with this division?"

"Well, I've been here for 4 months."

"Well, where were you before you were here?"

"Well, I was in burglary and theft division."

"How much longer do you have to be here?" I think he stated something like a couple more months or so. I don't know exactly what his term there was.

The reception was chilly. The first question was—and I'm not saying it was an improper question because the—first, "Well, how come you've waited 18 months to come and tell us about this?"

That's a good question. He says, "Well, I've just gotten around to it. I just couldn't live with this anymore. I wanted to tell you about it."

The officer left the room and I think I commented to the police officer that I wasn't aware there was an IAD in existence at the time that this occurred. I think it had just been started. The officer came back in the room after being absent, and says, "Oh, yes, we've investigated this matter. We took statements from all of the officers involved. This is in our inactive files and we have a policy of not taking a complaint if it is more than 6 weeks old."

So essentially, I offered to this policeman the statement—a copy of a statement which this gentleman had already given to the FBI and that was the end of that. We were politely excused and that was the extent of it. Nothing further has come of that situation.

On another occasion, I was asked by the mother of a juvenile to check into her son's having been brutalized by a couple of policemen; and I did make some inquiry, talked to the officers who were involved. It didn't go much further than that. I did advise that she should go ahead and report this to IAD.

I did not personally go with them in this particular instance. Again, though, the reception was a chilly one as I heard later.

Finally, there was a situation in which apparently IAD had taken it upon itself to investigate a situation where a woman was charged with an assaultive offense. They determined she was an officer in the armed forces and, I guess as a kind of a prophylactic move, sent a team down to interview her, took some videotape of her, interviewed with the officers who had arrested her. And I subsequently had occasion to speak with the officers, not with regard to complaining about what they did,

but to simply see what their attitude was towards this individual and talk to them since they were potential witnesses in the criminal case filed against them.

When I called the officers—and I called them at their substation, asked to speak with them—the officer got on the phone. I identified myself, told him why I was calling, that I'd like to talk with him. I was immediately put on hold. A sergeant came on the phone, very [unintelligible], very annoyed by the fact that I had called, indicated to me that was I aware or was my client the one who had filed the IAD complaint against these officers, and did I know that this was pending, blah, blah.

I sure didn't; one, we had filed no complaint against anybody. I wasn't even aware that they had been complained of, but because of this, the fact that IAD had taken the initiative to check into it, the officers were extremely hostile. They wouldn't even talk to us about the facts of the case that I was interested in.

So it appears that the blue uniformed policeman on the street has a natural knee-jerk hostility to any inquiry from IAD. I don't know whether anything of substance ever comes of any of those reports. I know—well, I think Chief Caldwell has indicated that he's fired a policeman for improper conduct after an IAD investigation. I think that was reported in the press, but I know that the officers on the street resent IAD interference. And on the other hand, I know that the people who work for IAD are just working policemen from other working divisions and when their short term in IAD is over with, they're going to have to go back to some working division and, who knows, the person they heard a complaint about may be sitting behind a desk the next week.

I think the psychology and I think the dynamics that exist under those circumstances runs against any sort of effective inquiry or effective enforcement through that sort of procedure.

Don't misunderstand me. I think it was a laudable step, a step in the right direction for Chief Caldwell to take the initiative and to institute internal affairs, but I think that the manner in which internal affairs is currently structured doesn't conduce to serious investigations of complaints. And I think that the officers who are called upon to do that duty resent it, feel that it is a burden, an oppressive task. They don't want to have to be the person that talks against a brother officer. I think that's just human nature.

MS. STEIN. Thank you very much.

Mr. DeGuerin, do you have—turning to the question of prosecution of police brutality cases—do you have, based on your experience as on attorney, any perception of whether the district attorney's office pursues these investigations and prosecutions as vigorously as they do other types of criminal cases?

MR. DEGUERIN. Definitely not. It has been my experience that prosecution of a police officer charged with an offense is reluctant at

best. I think a perfect example of this—and I speak only of the method in which the case came up and not about the merits of the case because I do represent the Torres family—but in that case, it was a month and a half before that case was ever presented to a grand jury. It was only presented to the grand jury after the Harris County Criminal Lawyers Association called to the public's attention the amount of time that had gone past without any sort of prosecution and offered to become special prosecutors in that case.

Compare that with a case that arose at almost the same time in which a Mexican American killed a police officer. That man was indicted within 48 hours for capital murder of a police officer; within 12 hours of the time that incident occurred, the defendant's mug shot was in the hands of some 500 officers on duty. He had not been arrested at the time that the killing took place, was for, oh, about 36 hours until we surrendered him, a fugitive.

The response of both the police department and the district attorney's office, comparing those two cases, is typical. Both of those cases were sensational cases and it is difficult to judge the entire operation of the district attorney's office or the police department by sensational cases, but they point up that comparison that I think is very illuminating.

Ms. STEIN. Thank you. I understand that you have also been involved in bringing civil litigation against—in cases of police deprivation of civil rights. Could you tell us a little about the success you have had in doing that and what problems you found to be involved in that type of case?

Mr. DEGUERIN. Again, I cannot comment on the specifics of any case. There are several cases that are pending: The Webster case, I represent the Webster family; the Torres case, I represent the Torres family; several other cases in which people have been shot, hurt very seriously by the police, and I cannot comment on the specifics of those cases.

Generally, though, we found that we have to sit back and wait until either the district attorney's office or the U.S. attorney's office completes their prosecution of the cases. In fact, in the Torres case, we were ordered not to proceed with discovery matter, depositions, until the criminal cases were concluded.

So as far as the courts are concerned, we really haven't been able to test the theory under which these cases are being brought; that is, that it is a police practice, whether actually written or not, that violations of the civil rights of our citizens were poorly investigated and poorly prosecuted, so that it has created an atmosphere where an officer feels secure in violating someone's civil rights, feeling that he will not be prosecuted, feeling that, if he is prosecuted, it will only be a half-hearted attempt.

Ms. STEIN. Thank you very much.

Mr. Chairman, I have no further questions at this time, but if time permits at the close of the Commissioners' questioning, I'd like to have a moment or two.

CHAIRMAN FLEMMING. Judge Jefferson, I was very much interested in your comparison of the grand jury process at the State level and the Federal level and some of the conclusions that you have reached growing out of your own experience both in the State and the Federal. I gather from your testimony that you feel that, as we take a look at this basic problem that we're looking at, not only here but in other parts of the country, it is very important to consider the Federal role and to consider whether or not the Federal role is being discharged in an effective manner. I'm just wondering if you'll be willing to elaborate on that a little because, as you appreciate, our findings, our recommendations are addressed primarily to the President and to the Congress.

JUDGE JEFFERSON. I think, as a practical matter, it all depends on where you are in the scheme of things. Certainly, you represent the public interest. You're not on the side of prosecutors, nor are you on the side of defense counsel. In the public interest, it makes sense to find out what the truth is, what happened. It makes no sense to come to the process with a preconceived notion that policemen are not going to be indicted no matter what the facts show. I think to the extent that you find the best institution, one to investigate, and again to reflect on and then decide what should be done about the situation, then that is what the Commission should be looking for.

There is a feeling—and I support it—that if you have something on the order of a Torres case or any kind of a situation where a member of a minority group or someone who identifies with some other unpopular group or cause, anytime you have somebody who belongs to that group, people who are supportive of people in that group are going to want the Federal authorities to look into it. And that is for the reason that there is a belief that local people are provincial. They look out for local interest. One of the local interest is keeping peace, keeping things quiet, and so the sooner something goes away the better.

So you find the tendency on the part of those who have to make choices, whether we go to the Federal authorities or the State authorities, we tend to prefer the Federal authorities because their interests are less provincial and more general, so there's a greater likelihood that a full and adequate investigation is going to be made, won't be a coverup, if the facts demonstrate that actions should be taken, prosecutorial or otherwise, then something is going to be done. Beyond all that, I don't think any recommendation you make will have any effect on what the people in Texas do with their system. So you might as well talk to the system with which you have some influence, and that is the Federal system.

I don't know very many things that can be done to improve the system itself, that is to say, the scheme by which the investigation is to be done. You've got the FBI to do that, and you hope you get the right agent or agents on the case who care enough about their sense of professionalism to find out what the facts are, treat the case as if it were the Lindbergh kidnapping case, with the same kind of attention.

You hope you get a prosecutor who—of course, as you know, the way the civil rights presentations work, in the ordinary case an agent can't file a complaint in the Federal system without going through an assistant U.S. attorney and getting authority to file a complaint.

In the civil rights field, the role of the local prosecutor, the assistant U.S. attorney, is limited in the sense that the local assistant U.S. attorney cannot on his or her own authorize the prosecution. That decision is reviewed by somebody in the Civil Rights Division in the Justice Department in Washington.

At least that is the system under which I worked and I don't think it's changed a whole lot, but when the prosecution is authorized by someone in the Civil Rights Department of the Justice Department, the responsibility for the presentation of that case to the grand jury and to the trier of fact falls with the local prosecutor's office, local U.S. attorney, except in the extraordinary case where someone from Civil Rights will assist.

I'm certain that, for an example, the southern district of Texas, through which U.S. attorney, Mr. Canales, would want its budgetary requests given serious consideration in view of the rather heavy civil rights docket that they carry. I know U.S. attorneys make recommendations. The Department considers them, and a decision is made as to whether they're going to get new positions for new people to do the work that has to be done.

So I would hope you would urge the people in the budgetary process to give more than knee-jerk consideration to these requests, depending on the historical background out of which they're made. And of course, the FBI has its budgetary requests that would kind of be taken together with that of the U.S. attorneys and the Department of Justice as a whole. But I think the system is there. I'd prefer the Federal over the State for the reasons I've given, and I don't see anything wrong with the system with one outside exception. That is kind of a footnote. As you know, the prosecutor is the only lawyer who is authorized to be in the grand jury room aside from the occurrence where a lawyer is a witness. You tend to have a one-sided presentation. We in this community, I think, have been encouraged to the extent that the U.S. attorney's office has become involved in presentation of police brutality cases. We do not know how many cases are not presented; we never know about it, never hear about it.

Part of what happens in this kind of a case is that the would-be victim or the alleged victim comes from what we regard as a very unrelia-

ble group of society. Many times it is somebody who has been to the penitentiary. It is somebody with a long rap-sheet. It is somebody that even a prosecutor with the best of intentions, you know, doesn't believe a jury is going to believe, so you have to weigh all of this. A prosecutor has a term that is very, very quaint and we say this—at least maybe I coined this; I don't know, I like to claim it—"This case lacks prosecutive appeal." That means nobody is going to convict based on the testimony of this fellow. That's a judgment call that somebody makes. We don't know how many cases there are. But if we had a grand jury system that permitted a lawyer for the alleged victim in the police brutality case to be there in the grand jury room to make certain the presentation was balanced, I'd feel a whole lot better about it, because you can't know what goes on in there because there's a rule of secrecy that applies to everybody except the witness, and witnesses don't talk a whole lot when they leave the grand jury room.

So that would be my only suggestion in improving the system; so open it up to the lawyer being in there representing both sides of the controversy, so that both of the controversies are represented.

CHAIRMAN FLEMMING. As far as—the laws under which the system operates are all right?

JUDGE JEFFERSON. They're fine.

CHAIRMAN FLEMMING. Would you think we might look into the question of the U.S. attorney being given a greater delegation of authority to act in civil rights cases?

JUDGE JEFFERSON. I like that, too, because I'm practical enough to know we're not going to always have a Tony Canales in the southern district of Texas. We're going to have some fellow one day I'm not too sure of, and I'd just as soon have those of fellows who have the protection of distance and who are in Washington make those decisions.

CHAIRMAN FLEMMING. You like the check and balance?

JUDGE JEFFERSON. I like for Tony Canales to have a lot of leeway, but I don't think we're going to give him any special treatment; to the extent that we do, we may have to change the whole system.

COMMISSIONER FREEMAN. I've listened to this discussion. There's one thing—I'm troubled, however, by what is potentially a very explosive situation. If as you say, judge, the persons who are the victims represent a part of this society that nobody will listen to, and, if the grand jury is composed of people who are not representative of the community and if the police department does not respond even when it knows of complaints of harassment, then when the bubble bursts, and it will because nobody will listen, then where will any of us be?

I would like to know if each of you would have any specific recommendations to make about what can be done to have the composition of a grand jury more representative of the community?

JUDGE JEFFERSON. Let me react to that to start with. As a matter of intellectual honesty, I cannot sit here and accept fully the preface you've made to your question, although it is a mighty powerful

question, the kind a lawyer likes to ask in leading form, but the matter of victims in these cases belonging to that subcultural and despicable group that nobody believes, that is, in my opinion, true generally. There are some Rudinski cases, cases where there's no question about—

COMMISSIONER FREEMAN. But statements have been made.

JUDGE JEFFERSON. But that represents a problem evaluating the worth of a case in a prosecutor's sense. Dr. Carp and I, I don't think, are in disagreement on the second point you made, and that is grand juries don't represent the community in which they are selected. I think in Harris County, as the law now stands, that our grand juries are representative, that is, separate, identifiable, cognizable groups represented on our grand juries. As he pointed out—

COMMISSIONER FREEMAN. That is not correct.

JUDGE JEFFERSON. Ma'am? In my opinion, the grand juries in Harris County are representative to the extent that the law now requires certain groups to be on grand juries. Dr. Carp referred to the case where I presided and dismissed a series of indictments. In that case, once I dismissed the indictments, I think it was the same case, the defendants were reindicted, new motions to quash or dismiss the indictments were filed, and the approach on the second round was "Yes, you know, we've got blacks and you've got browns. They are the wrong blacks and wrong browns." And it became a fascinating splitting of hairs—concern—although, as a matter of philosophical interest, I understood what it means to—whether you've got somebody from the La Raza mentality or the PASO mentality or the LULAC [League of United Latin American Citizens] mentality or somebody who doesn't join groups at all, but the law just hasn't gone that far now. We haven't gotten to an ideal situation, where everybody somehow can get on, where the gays are represented, where the people under \$10,000 a year in family income are represented and so forth and so on. But to the extent that the law now requires certain groups to be represented, I think they are in Harris County, but that doesn't mean lawyers will not try to continue to get the groups enlarged so that more groups are represented.

Of course, the last point in your question was the police department will not respond. I can't accept that. I think the police department is going to respond to a complaint. The question is whether what they do is adequate under the circumstances, and that's what we're all here to try to find out, I hope.

COMMISSIONER FREEMAN. We received testimony earlier about lack of response, and your testimony is that the police department does respond.

JUDGE JEFFERSON. When something happens and somebody calls the police department in Harris County, Texas—in Houston, I guess we're focusing mainly on HPD—my feeling is that somebody from the police department is going to show up sometime and ask what happened.

And that's not my concern; my concern isn't with somebody showing up; it is what they do when they get there, whether the investigation is adequate enough or whether or not an objective review is going to be given to the case so somebody make the right prosecutorial decision.

COMMISSIONER FREEMAN. That's what I meant in terms of response, sir. What remedial action is taken to assure that the incident will not occur again, will not be repeated?

MR. DEGUERIN. May I respond to that, Ms. Freeman?

JUDGE JEFFERSON. Since he interrupted, I'd like to come back to it, but I do have a response. Go ahead.

MR. DEGUERIN. I don't believe the fault lies with the grand jury. The people that are called for grand jury service are honest, decent people. They want to do a good job. The problem lies with the police department and the district attorney's office. The grand juries, no matter how honest they are, are totally indoctrinated. The list of what goes—a grand juror goes through, what Judge Jefferson started out this whole section with, is indicative of that.

The sheriff holds a coffee or a tea for them, takes them out to lunch; the police department gives them a tour of their facilities; Texas Department of Correction feeds them steak. They are indoctrinated by the district attorney's office; they are brought into the fold—"We're here to work with each other"—and with that response, with controlling their access to information almost totally, the finest of minds will eventually be won over. It is not a problem of composition of the grand jury; it is a problem of police practices and the district attorney's office. It is not a problem of response to complaints; they are responded to. It is a problem of the quality of the response to those complaints.

I mentioned how spectacular the Torres case was. The police response, the district attorney's response to that, they had no choice but to respond. They were given a dead body. There was tremendous news coverage of it. There was nothing they could do but prosecute the case and even then they were reluctant. What really matters though, and what this Commission should be more concerned with is the everyday disregard of our citizens' rights, the people that are arrested every day and perhaps knocked on the head or perhaps shoved around or perhaps insulted or perhaps treated too rough or perhaps handcuffed too hard or perhaps actually hurt. A fellow the other day—2 weeks ago was shot in the back while being arrested for a speeding ticket.

Now, the reason that that is happening is because there's no response to that. These everyday violations of civil rights simply aren't responded to, because the public isn't informed about it. The district attorney's office doesn't want to prosecute, and the police department certainly doesn't want to investigate their own officers.

One of our Justices of the Supreme Court said many years ago that the real danger to our liberties is not from aggression beyond our shores, but from a slight gradual encroachment of our civil rights. It is this everyday violation that we should be more concerned with.

Without some oversight, without some method other than the district attorney's office, other than internal affairs to investigate these on a day-to-day basis and to do the vigorous investigation, a fair investigation, and without any preconceived notions, the same thing is going to continue.

COMMISSIONER FREEMAN. This is what I was saying, that this is the situation that is very troubling and it is very explosive and is very dangerous.

MR. DEGUERIN. The best protection a citizen can have against this happening to him, Miss Freeman, is to be white and in your forties, to be well dressed, and to be in a nice car. Generally, that person is not going to be run afoul of the law, but if you're not all of those things, it is going to happen to you and it happens every day.

COMMISSIONER FREEMAN. You mean, I'm in trouble.

CHAIRMAN FLEMMING. I think—Judge Jefferson, did you have a point that you wanted to make?

JUDGE JEFFERSON. I wanted to respond to the basic question that Ms. Freeman had asked and the one by which Mr. DeGuerin had made his comments. How do you prevent this horrible thing from happening? How do you answer the question that brought you here? The earlier panel had its comments on that. I had felt that the single most important issue in the whole package is the matter of recruitment. How do you keep out people who are insensitive to the rights of others, and how do you cause to be recruited those people who at least are neutral on the question whether it makes a difference whether you are black or white or whether you live in the right part of town or not? I believe the police academy and police department have tried through the years a number of techniques, at least here in Houston, including the employment of a psychologist to talk to people about the various groups in our society.

I frankly don't think that works. I think there are very, very many similarities between the average police officer and the average person who appears on a criminal docket. Many times you find both those people come from the base socioeconomic background. One simply opts for a life of law enforcement and, in some instances, the other opts for a life of chance, taking on the wrong side of the law. You'd be surprised as to the kind of understanding both of these elements have out in the street; they understand each other real well, and they know that in their own way of thinking it is all a game and, when you get caught, one of the risks you face is to have your head beaten because, you know, if you don't talk right and act right and give the man the right answers, you're in trouble.

Now do you erase educational requirements from high school to a year in college? You might. But you certainly have to take some steps to avoid recruiting, that is, letting into the house some guy who has all—or woman—who has all the tendencies of a bully that might be employed in assaulting people or robbing people, but instead are going to be employed in the name of the law.

There are bound to be psychologists and people in the country who can tell you how to recruit better. They devise these tests for every other purpose, to tell you whether they are job related or predict success on the job. This is another requirement then. I can't imagine an area where we feel better knowing that the people who have been recruited to do the job cannot only type, but have got sense enough not to mistreat their fellow man or woman.

Now, this is a sensitive area I'm about to get in now, but at 1:30 this afternoon you're supposed to hear John Holmes, the Harris County district attorney, and you're supposed to hear from the chief of his civil rights unit, Terry Wilson. I don't know how much information you got in your file about these two gentlemen, but you ought to direct some questions to each of them about their own personal long-standing racial attitudes and, if you don't, you will not have done your job. And when you get to answers from these two men and their statements of a change of heart over the years and a recognition that history has passed them by, you are going to ask yourself, "Do we have two people here who will follow the pattern of Hugo Black and never sin again, or do we have two sources of potential problems?" That ought to be of concern to you because they are two people who decide on the State side whether anybody is going to be: one, investigated and, two, prosecuted, if prosecution is dictated.

In the Federal system, I don't think either one of these men would hold jobs like this, not the way we do it now. That's why I trust you so much better than the State people.

[Applause.]

CHAIRMAN FLEMMING. Mr. Bires, I interrupted you.

MR. BIRES. I was going to interject something here. Dick had commented that you can't blame grand jurors; they are inundated with the white-hat syndrome. "Don't worry folks; come on over here; we're all going to do our job, and we're going to stamp out crime. We're going to take these people, and we're going to see to it that we successfully prosecute. We've got the sheriff who takes care of you; we've got the district attorney come and talks to you; the cases are presented by an assistant DA. Don't be bothered by these live witnesses who are going to confuse you. They are going to get their day in court." But the problem is when it comes to their day in court, there is still the push and shove from the prosecutor and from the judge to hurry up, move along.

Now Judge Jefferson touched on something. I would like to see some balance in the grand jury presentations, too. I would like to

begin with grand jurors being given some orientation by defense lawyers, given some idea of what the grand jury function is from the defense point of view. They don't receive that at the present time, or I think—I understand it that a lawyer who has occasionally done some defense work and was himself a grand juror or grand jury chairman, foreman, may now be involved in that little tea process, but I don't think that they're getting any exposure to what the grand jury function is as seen from the defense side to give them somewhat more objectivity.

But I think finally, really, if we want to achieve that balance, let's do away with the grand jury system. Let's do away with this system that is dominated by the prosecution, that is controlled by the prosecution. Recently, in Harris County we had a grand jury that wanted to take some action against some police officers, and what they met with from the district attorney's office was determined resistance. What they met with was claims, "Well, you just can't do this," or, "We don't know how to do this," where they had to hire an independent lawyer to come in and draw up the indictment they wanted to return.

I think we ought to go ahead and forget about the grand jury, as being any sort of effective tool for effective law enforcement, because it is not. We should supersede and present all and have a meaningful preliminary hearing; let that be the weeding-out process, in an open courtroom with both sides represented, and not with some assistant DA coming in and saying, "Indict these 40 cases today because we say you should"—that's what it boils down to.

Finally, Judge Jefferson touched on a very important point and that is the people on the street and the people in the uniforms are pretty much the same people. They are the high school bullies; they are the authoritarian personalities; they are the people who do like to shove others around and, yes, they do understand each other, and until we quit allowing men who want—men and women who want to exert authority over others to wear badges and carry guns, we're not ever going to stop people from abusing other human beings.

Certainly, the folks that live over here on southwest Houston in their little plastic bubbles, who go to church every Sunday, who drive a nice car and wear a nice suit and are also treated with respect by a police officer and they treat that police officer with respect. Over here in the fifth ward and fourth ward, various other places where folks are used to getting down, when a policeman arrests them and this fellow who doesn't have much education and much discretion starts getting a little lippy, starts shooting off his mouth, he will get his head strung because it is expected.

What we've got to do is either not hire the people who knee jerk and beat heads because that's the accepted thing to do, or else we've got to condition it out of them, and I don't think we can condition it out of them.

[Applause.]

COMMISSIONER RUIZ. Attorney Bires has just suggested we do away with the present grand jury system insofar as police is concerned. Now I'd like to handle that because it brings out fundamental defects in our current system that Judge Jefferson stated there's little we can do to improve the structure on the State level. And other witnesses have said police misconduct is predicated upon a social standard of honest, elite, grand jurors who have no experience in the community, grass roots, or imposed by the indoctrination of the prosecuting attorney and those in charge of enforcing the law and order and not necessarily the civil rights laws.

State Representative Franco Lee described the difficulty of implementing legislation to make top policy a reality on the street and on the beat by way of the grand jury system.

Now in California, police immunity for negligence does not exist, and a victim of police misconduct may recover damages for negligence, since intention is not required like under the civil rights laws.

As president of the Criminal Lawyers Association, Mr. Bires, is there anything similarly pending before the State legislature in Texas? There is a lot of recent case law in California that I know of and it may be worthwhile checking because you're the man that says eliminate the system and substitute it with something else that may be practical. Now is there anything like that pending at the present time in Texas?

MR. BIRES. In Texas, at the present time, there is probably no more sacred cow than the grand jury system. Destroying that sacred cow—I don't mean for policemen, I mean it across the board, I think is a bankrupt, worthless system that we ought to get rid of, but—

COMMISSIONER RUIZ. You don't necessarily have to get rid of the grand jury system to have a law passed for negligence.

MR. BIRES. I understand. I think we've got to get into the esoteric discussion of the sort of mentality that exists in California as opposed to the sort of mentality that exists in Texas. In Texas, one, I think it is—we did manage to pass some civil rights legislation, but to see that civil rights legislation effectively carried out, that is, to see a prosecution for violation of civil rights in a Texas courtroom, that would be a wondrous sight because, frankly, you're dealing with attitudes and a mentality of sort of a frontier justice. There still is permeating the society and people in Texas, perhaps not minorities, but the idea that you're somewhat—perhaps across the board—that we're all the second cousin to Wyatt Earp and still a little bit of cut and shoot around here, and until we overcome that mentality, I don't see one, there is not any such legislation pending in Texas. The idea of holding a policeman responsible for civil damages for negligent acts, I don't think that could possibly gain any ascendancy in our legislature. It is not there and it is not going to be there, and even if it was there, the folks from this State aren't going to convict and aren't going to award damages. That's my humble opinion.

COMMISSIONER RUIZ. Thank you.

MR. DEGUERIN. May I comment on that briefly?

CHAIRMAN FLEMMING. Yes, surely.

MR. DEGUERIN. More than making an individual officer liable, which can be done in Texas in the State courts, we need to make the cities liable. In Houston, for example, there has been a history of absolutely no action taken by the city council or the mayor against the police department. Every complaint that has ever been made before the city council has been totally ignored. We've given them the opportunity on many occasions to investigate police actions, and until it starts coming out of the city pocketbook when you got a judgment against an officer for shooting someone, for hurting someone that he shouldn't have, then you're not going to get the sort of reaction from the city fathers that will somehow filter down to the police department. The police department here is totally autonomous; they answer to no one except the chief of police.

The mayor's office, the city council simply, historically, has never reacted and won't react until the city can feel it somehow and feel it the quickest in the pocketbook.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Judge Jefferson, are you familiar with what goes on in the streets of Houston between the police and the community, minority community in particular?

JUDGE JEFFERSON. Not on a firsthand basis. I have my ideas about it, but that's—that begs the question. Part of the problem and the source of the problem we have is, What happens? There are two people on that spot. One has a blue uniform on and the other one is about to be accused of something for a violation of the law, and there are seldom other witnesses except for other police officers. There are passers-by, like cab drivers and folks like that, or wrecker drivers, but most often there are two people there; I'm not one of them.

COMMISSIONER SALTZMAN. Let me put it another way. Are you familiar—acquainted with the attitudes of the minority community in Houston with respect to their attitude relative to the treatment of them by the police department?

JUDGE JEFFERSON. I have my own personal perception of what group attitude is. I'm a lawyer and I have to be very careful with these words. I can't represent to you. I can't tell you how black people in Houston feel about any subject, but I can tell you what my perception of what that belief is.

COMMISSIONER SALTZMAN. I would like to know what you know or feel or have an impression of the dimensions of the problem in the city of Houston from the point of view from the minority community.

JUDGE JEFFERSON. I think the black community, like the white community, we don't like folks jumping on us for legal basis. In that sense, we're the same as anybody else. We want to be protected by the police department because we've got property and most often when crimes against property are committed. I think the minority community suffers

to a greater extent, at least out of proportion to numbers in the community from both crimes against property and perhaps crimes against persons.

Given our murder rate I think that's true. When we call for the police, we want a quick response. But when the police come, we want them to be professional; we want them to understand the difference between the victim and the perpetrator of the crime.

COMMISSIONER SALTZMAN. I understand this, judge, but I'm—

JUDGE JEFFERSON. I'm not trying to get to your point then. Why don't you lead me a little bit.

COMMISSIONER SALTZMAN. The point I'm trying to make or ask or inquire about is, as a prominent person in the State of Texas, do you feel there is a serious problem in the city of Houston with respect to police misconduct?

JUDGE JEFFERSON. I think, as an issue, there is a serious problem with it, as an issue. I've got to be intellectually honest enough to say the problem is we have to have a system that investigates a complaint adequately. Nobody in his right mind has any business, in my opinion, assuming something happened, although a complaint says it happened. On the other hand, we shouldn't assume that it didn't happen because the policeman says it didn't happen, although I've got to recognize the existence of the presumption of innocence, even in those circumstances. We have to have some machinery that we can rely on that will give us a fair investigation of what it is that did happen. Report to us so we can decide with one or more of our institutions whether any trials have come out of the occurrence and then try the case on the basis of the rules we all know about.

At other times, I have recommended that the minute there is some physical contact between the citizen and police officer, who is also a citizen, that everything ought to stop; that the police officer should not continue to make that investigation and decide, for an example in a driving-while-intoxicated-case, and "I've stopped this guy; he's given me some lip; I pop him in the face, now I'm going to charge him with driving while intoxicated, take him down to the county jail, lock him up, and he'll have to make bond and his case will come up in due course."

My point is, the minute there's physical contact—of course, I guess that's a problem, too, deciding whether there was—that officer has to stop and call in somebody at a higher level to come in, take up the investigation from that point on so that the process becomes, to the extent that it can be more objective, more objective.

COMMISSIONER SALTZMAN. I'm not a lawyer, sir, so I'm trying to lead you as best I can. In that investigatory response, is the present IAD vehicle the best kind of vehicle, or what other vehicle is there or should there be to achieve what you are directing us towards?

JUDGE JEFFERSON. No, sir, the internal affairs division of the police department cannot be the best investigative arm. I think the chief will admit to that. Internally, you've got to have something.

If we were talking about money instead of lives, this would be easy for us to understand, sometimes that's true throughout our lives. We tend to understand financial matters a whole lot better than we do human matters. There's not a person here who would accept the word of an internal auditor in matters financial. We always go to the outside auditor to find out what happened to our money because we trust outside folks coming in looking over the shoulder of our inside bookkeeper.

So all that IAD is is an inside bookkeeper. We need the outside auditor, and I'm not impractical enough to suggest it ought to be a citizens' review committee, because we're not to have one of those, the term defeats itself. But I think we can have an improved form of the grand jury system where you have lawyers from both sides with subpoena power to get the whole story told and maybe the improvement on the system by which we select grand jurors to make them pretty much like we do over in the Federal system. But until that comes along, I'll be satisfied with putting some more money in the Federal system and making sure we have very good people to implement the laws.

MR. DEGUERIN. May I briefly comment? I agree totally, internal organization investigating the very officers that are doing the investigating simply can't work. We've got to have some independent committee, whether it is a civilian review board—and the very term causes every chief, including Chief Caldwell, to raise a hackles—or some other method by which we can have independent people, citizens, investigating serious accusations against police officers. Even lawyers who have been investigating themselves for many years have finally realized that. We've passed a bill this year getting citizens, nonlawyers, on the grievance committee. We needed it for a long time; we've got it now.

But every time the suggestion is made to any police chief in Houston—"We need someone other than you, chief, to investigate the complaints against your police officers"—every chief, including Chief Caldwell, and I think he's the finest chief we've had in a long time, every chief says, "No." It is a knee-jerk reaction and the reason is they don't want someone from the outside looking in on their business, but we need that.

JUDGE JEFFERSON. Let me add this: ordinarily, what happens is the chief or someone associated with the department will say, "You know, we like our internal security or internal affairs approach to investigating, but if somebody other than a policeman needs to look into it, then the grand jury is the institution that should be used." Of course, that's the point at which I think we can make hay because we simply say, "Okay, the grand jury as a concept is acceptable to us, too; surprise, surprise! But let's improve on it for this particular kind of investigation so that we will not have another one-sided investigation where the only people represented in the grand jury room are one, grand jurors, and two, prosecutorial types or police types."

CHAIRMAN FLEMMING. I express to each member of the panel our gratitude for your coming here, sharing with us the experiences that you've had, and the insights you have as far as this very important issue is concerned. We're very, very grateful to you. Thank you very, very much.

MS. STEIN. Before we recess, Dr. Carp has written and published two articles on the grand jury system, which are in the possession of the staff. I wonder if they could be received in the record as Exhibit 4, please.

CHAIRMAN FLEMMING. Without objection they will be received in the record at this time as Exhibit 4.

I have one announcement that I would like to make so that there isn't any misunderstanding. This morning Commissioner Freeman, in discussing with you the rules and procedures for this hearing, said that we, as is our custom, would provide an opportunity tomorrow afternoon for persons who had not been subpoenaed to present testimony to us under the 5-minute rule. She indicated that persons who were interested in taking advantage of that opportunity should so indicate to the staff by 8 o'clock tonight. You will note on the agenda for the hearing that the hearing adjourns at 4 o'clock tomorrow. The presentation of testimony under the 5-minute rule begins at 2:30.

It is obvious that the maximum number of people that we can hear under the 5-minute rule is 17. That allows just a few minutes for people to come back and forth. It was my understanding that already 17 have signed up to be heard tomorrow afternoon. Consequently, we will not be in a position to listen to additional persons. However, if there are others who have wanted to be heard under those circumstances, we invite and urge them to prepare a brief written statement relative to their views, and we will accept those statements for the record and will consider them as we evaluate the evidence and the testimony that is presented to us in connection with the Houston investigation.

Commissioner Freeman thinks I should underline the fact that we can hear the 17 and that is all in order to comply with our adjournment time, and I have to do that because I have members of the Commission who are catching planes and so on to other parts of the country, but those 17 we will hear; anyone else may file a written statement. And, again, Commissioner Ruiz reminds me you should also keep in mind the fact that in presenting any written statement, keep in mind our rule growing out of the law under which we operate, there must be nothing in that statement that would defame, degrade, or incriminate. Thank you.

We are now in recess until 1:30.

Afternoon Session, September 11, 1979

CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next witnesses.

MS. STEIN. I would like to call John B. Holmes and Terry Wilson. If you'd take your places and remain standing for a moment.
[John B. Holmes and Terry G. Wilson were sworn.]

TESTIMONY OF JOHN B. HOLMES, JR., DISTRICT ATTORNEY, HARRIS COUNTY; AND TERRY G. WILSON, ASSISTANT DISTRICT ATTORNEY AND CHIEF OF THE CIVIL RIGHTS DIVISION

MS. STEIN. Mr. Holmes, would you state your name and your position with the State, please?

MR. HOLMES. My name is John B. Holmes, Jr. I'm district attorney of Harris County.

MS. STEIN. And prior to that, what was your position?

MR. HOLMES. First assistant district attorney of Harris County.

MS. STEIN. Mr. Wilson, will you state your name and your position?

MR. WILSON. My name is Terry G. Wilson. I'm assistant district attorney and presently I'm chief of the civil rights division of the district attorney's office.

MS. STEIN. Thank you very much.

Mr. Holmes, I'd like to begin with some general questions about the policies and procedures followed by your office with respect to presenting cases to the grand jury. What is your policy with regard to making a recommendation to the grand jury as to whether they should return an indictment or should no bill the case?

MR. HOLMES. It is our policy that we make a recommendation.

MS. STEIN. In every case?

MR. HOLMES. Yes.

MS. STEIN. What is your policy, if any, with respect to presenting cases to a second grand jury if the first grand jury does not go along with the recommendation to indict?

MR. HOLMES. That requires the approval of the district attorney to do that, and the only event in which, to my knowledge, that has been approved has not been approved at all by me or by my predecessor. The general rule is that we will not do that, except in those cases where we feel there is evidence that has been developed that was not presented to the grand jury for whatever reason, either it wasn't in existence, or it wasn't known, and then in that event we go back to the same grand jury, if the grand jury is still in term.

MS. STEIN. Is this—you're saying, if new evidence is found or received?

MR. HOLMES. No, I'm saying if it comes to our attention, additional evidence that was not presented to the grand jury when they first considered the case, and if that evidence, we feel, would have affected the outcome of their decision, then we take it back to them, but it requires the approval of the district attorney.

MS. STEIN. I see. And do I understand you correctly that it would not be your practice in the absence of new evidence to go to a second grand jury because the first grand jury found contrary to your recommendation?

MR. HOLMES. No, that is right.

MS. STEIN. Thank you.

MR. HOLMES. That rule has been in existence for as long as I can remember, and that certainly will be the rule under my administration.

MS. STEIN. We heard testimony this morning from Dr. Carp, who has done a study of the grand jury system here in Harris County, and he said his findings indicated that the average time that is spent by a grand jury on a felony case submitted to them was 5 minutes. Would your experience tend to indicate that he is correct, or would you disagree with that?

MR. HOLMES. You mean in the deliberation portion or the presentation—

MS. STEIN. No, the presentation plus deliberation.

MR. HOLMES. I think the presentation portion of it, depending on the case, is accurate. I don't know about deliberations. We very rarely will stay around to determine the outcome of it.

MS. STEIN. So it would not be easy for the assistant to know how long was taken by the—

MR. HOLMES. Unless he had a particular interest and for some reason wanted to stay and find out what they did. And it has been my experience that they deliberate on the entire group of cases presented. Whenever they feel like they want to stop and deliberate, why, they do so.

MS. STEIN. Okay. In your opinion as district attorney, which jurisdiction, Federal or State, has the primary responsibility for prosecuting police officers in cases of alleged civil rights or criminal violations?

MR. HOLMES. State.

MS. STEIN. And what would be your reason for feeling that way?

MR. HOLMES. I believe in local prosecution.

MS. STEIN. Are you satisfied with the prosecution record of the Harris County district attorney's office in this regard?

MR. HOLMES. Yes.

MS. STEIN. Do you feel that the statutes available to you under which to prosecute permit—are sufficient to deal with the types of alleged misconduct that are brought to your attention?

MR. HOLMES. I did not, prior to the present session of the legislature, know; I do now.

MS. STEIN. Could I ask you what you felt were the limitations that you had to work with prior to the present session, and then I will ask you about the bill that was passed in the most recent session of the legislature?

MR. HOLMES. Well, just basically, there seemed to be no recognition in Texas law of the responsibility or the higher duty owed in situations where persons are in custody. I will use, for example, the Jamail case, if I may, for an example. In that circumstance, that allegation—

MS. STEIN. Sir, that will be fine to use it as an example, but let me caution you not to refer by name to any of the accused officers.

MR. HOLMES. Rest assured I will not do that.

That first came to our attention in March, March the 3rd—got a letter here somewhere—March 3rd of 1978. It came to my attention, and frankly we assumed the allegations were true, that is, the use of shock baton. I think under Texas law we would have had a grade of assault, certainly, in my judgment, an insufficient penalty range, an insufficient degree of substantive offense for what I felt like was a crime that deserved more attention. I felt like the Texas law wasn't adequate to deal with it.

MS. STEIN. Would prosecution under the official oppression statute have been possible in that case?

MR. HOLMES. Yes, but as you know, it is a misdemeanor.

MS. STEIN. How has the—I assume when you say that presently you feel you have the statutory tools necessary, that you are referring to the recent enactment of senate bill 546; is that correct?

MR. HOLMES. Yes.

MS. STEIN. How has that changed the situation from your point of view?

MR. HOLMES. Well, I think that the punishment range is more realistic in light of the offense. It appears to give the peace officer the same status that the citizen has when dealing with a peace officer. That is, a citizen is subject to more a severe penalty when he abuses a peace officer, and it certainly raises the penalty for the offense if the peace officer commits the offense on one who is in his custody. And as I view it, it is a more realistic punishment fitting the offense.

MS. STEIN. As I understand that law, it would apply only to the violation of civil rights of persons who are in custody at the time of the violation.

MR. HOLMES. That is true.

MS. STEIN. Do you regard that as a problem, an undesirable limitation on the type of police conduct that is indictable under that statute?

MR. HOLMES. Well, it appears to stop short of the philosophy upon which this law was founded, and that is, one who is abused by an officer should have the same privileges that the officer has, that is a higher degree of punishment if in fact they are adjudged guilty of that offense. In those cases where they are not in custody, certainly that would be an exception. However, in most situations involving the confrontation of a citizen and a police officer, we know the courts are very quick to jump on the fact that a person is in custody so that you could take a position, in the proper case, that a person, even if his freedom of movement has been interfered with in any degree at all by an inquisitive police officer and thereafter abuse followed, I think the law could very well take the position that he is in custody for purposes of senate bill 546.

MS. STEIN. But it would not apply, I take it, to a chase situation or a situation where the person's movement has not been arrested or brought under custody?

MR. HOLMES. It would not; that is correct.

MS. STEIN. Am I also correct that it would not apply to reckless or negligent conduct by a police officer as opposed to an intentional violation of law?

MR. HOLMES. That is true.

MS. STEIN. Do you regard that as a defect in the bill?

MR. HOLMES. Perhaps. Negligent conduct and reckless conduct indicate standards of duty, and I think perhaps in the situation of the in-custody confrontation by the police officer, the police officer owes the citizen a higher standard of duty than an ordinary one-on-one situation between citizens.

MS. STEIN. To the best of your knowledge, has your office ever prosecuted under the official oppressions statute for a police brutality case?

MR. HOLMES. I'm not sure. We have a situation that is—I believe was set today, as a matter of fact, involving a Houston police officer and some—

MS. STEIN. I return to the official oppressions section of the code; did you realize that in—

MR. HOLMES. Yes, I understand that.

MS. STEIN. All right.

MR. HOLMES. And we, at a very early stage in that investigation, wrestled with several different pleadings as to which we felt best fit what we thought we could prove and, frankly, I'm not certain whether we went with that count or we two-counted, I don't know, but that was considered in that particular case. Other than that, I know of none personally, no; that is not to say, of course, that aren't some. I just don't know.

MS. STEIN. Do you weigh in deciding whether to take a prosecution or did you—prior to the enactment of the recent civil rights statute—the fact that the punishment was only a misdemeanor? Would that weigh in your mind against prosecuting at all?

MR. HOLMES. No, I don't think against prosecuting at all. I think it weighed in my mind personally as to whether or not it was a prosecution by the State or the Federal jurisdiction. For example, on March 7, 1978, I sent a letter to Mary Sinderson, U.S. attorney, with regard to allegations of the Jamail situation because, frankly, I did not feel the statute was adequately equipped statutorily to deal with that.

MS. STEIN. Because of the level of punishment that would be—

MR. HOLMES. Not just that. That was a primary factor. Another consideration is we had 10 persons who wanted immunity to come forward, and we were not in a mind to do that.

MS. STEIN. Am I correct that it's the policy of your office to present all cases of death caused to a citizen by a police officer to the grand jury?

MR. HOLMES. Yes.

MS. STEIN. Can you explain the reason for that policy?

MR. HOLMES. I never have frankly considered it to change the policy. The policy was in existence at the time I joined the office. It is my understanding it was a policy that was in existence even prior to Mr. Vance's taking over as district attorney. I intend to continue that. I think it is healthy. I think it is good to have the evaluation and analysis of 12 individuals in any case of that magnitude.

MS. STEIN. Are there other types of cases which you would present to the grand jury with a recommendation that they not return an indictment?

MR. HOLMES. Yes, I've done that on occasion.

MS. STEIN. What would be the reason for doing that as opposed to not presenting the case at all if it was your opinion that an indictment was not called for?

MR. HOLMES. Well, in the cases that immediately come to mind is the very difficult time explaining to the complaining party that the circumstances did not justify an indictment. And in order to placate someone who is insistent that we are not following a law, I have gone into the grand jury and allowed those persons to testify and bring whatever witnesses they want and still recommend no bill after hearing it all.

MS. STEIN. So you would generally do that in a case where the complainant was pressuring for presentment?

MR. HOLMES. I recall several of those, yes. One recently—none involved an assaultive type offense. They were—with one exception—they were all offenses involving property, except we had one individual that was involved in assaultive offenses. None of those involved police officers.

Ms. STEIN. We heard some testimony this morning indicating the opinion of some persons that the district attorney's office is pretty much in total control of the grand jury and their recommendations are almost always followed. Do you agree with that?

Mr. HOLMES. Yes, I think our recommendations are followed. I would not agree that we're in total control of the grand jury. That, I think, depends on what context you use that in. We consider ourselves and the law consider ourselves as advisors to the grand juries on questions of law, and we do that and certainly we don't want any case indicted that there is no reasonable possibility of conviction on. The defendant, of course, has got to go through all the problems; we got to go through all the problems, an unnecessary burden on the system, and where we feel the facts and the law do not merge, we recommend it. But certainly the grand jury hears the facts and they're the ones that make the determination as to whether or not to indict. I've had many grand juries choose not to follow my recommendation.

Ms. STEIN. Would it be possible for you to estimate on a percentage basis how often this happens, that the grand jury does not follow the recommendations of the district attorney?

Mr. HOLMES. For me, personally, it would be a small percentage. I can't speak for the office, but I have never been in a position in the office where I regularly presented cases to the grand jury. In the special crimes bureau we handle our own cases before the grand jury and in trial, and on those occasions I would go into the grand jury and take a position one way or the other; and I recall several of those occasions. Percentagewise, I wouldn't be able to give you a very meaningful estimate.

Ms. STEIN. What is the approximate caseload of your office?

Mr. HOLMES. About 700 cases per court, three prosecutors per court, so whatever that works on the 18th district courts.

Ms. STEIN. Would that include felonies and misdemeanors?

Mr. HOLMES. No, that would only be the felony cases. Misdemeanor division probably handles 30,000 a year and January 1, there will be 10 courts handling those misdemeanor cases, three prosecutors to a court.

Ms. STEIN. How many attorneys are in your office?

Mr. HOLMES. I beg your pardon?

Ms. STEIN. How many attorneys are there staffing your office currently?

Mr. HOLMES. We have 145 positions, of which not all of them are filled at this time. I think we have three or four vacancies.

Ms. STEIN. It has been pointed out that because of the—your role in prosecutions, you necessarily have a very close working relationship with the officers on the police force, and it has been suggested that that creates a built-in conflict of interest with your office with respect to presenting police cases of alleged police brutality. What would your response be to that suggestion?

MR. HOLMES. Well, I suppose my philosophy is not only something—it got to be right, it has to look right, and I can understand the concern of persons who are on the outside of the criminal justice system seeing prosecutors putting police officers on the stand one week and the next week having them sitting at counsel table as defendants. However, as a lawyer, I personally feel that that does not enter into consideration of either the charging or trying function. I personally have been responsible for trying—indicting police officers on numerous offenses. There are other people in the office that have. I do not believe that is a valid criticism of the system, particularly in light of the fact that it is nothing unique to Harris County, Texas. That is done throughout this country, and I think it is done properly and I think the inference that we do not discharge our duty in that regard is not well taken, by me, anyway.

MS. STEIN. In the time since the prosecution of the Torres case, how many prosecutions have been brought by your office against Houston Police Department officers in cases of alleged brutality?

MR. HOLMES. I do not know.

MS. STEIN. You don't know?

MR. HOLMES. No.

[Discussion followed off the record.]

MR. HOLMES. Mr. Wilson told me about the Sinclair case that I now recalled. That's pending—I'm sorry, it was a case—police officer shooting. It is my recollection we recommended a no bill on that case and a true bill was returned. It was tried about a month ago and he was acquitted.

MS. STEIN. In the time since the Torres case, the Federal U.S. attorney's office has obtained indictments in several cases of alleged police misconduct. Can you explain in each case why your office—not in each case, but in general—why your office did not seek indictments or did not obtain indictments in those cases?

MR. HOLMES. Well, in the Jamail case, the reason we didn't was because we had referred it to the U.S. attorney. I did not believe that the laws that we had were good enough, if you will, to begin a prosecution in that case.

MS. STEIN. Could I interrupt just for a moment?

MR. HOLMES. Yes, ma'am.

MS. STEIN. It is my understanding that prosecution would have been possible under both the State and Federal acts; one doesn't preclude the other, and I wonder if you considered that alternative or if you have a policy that you will not prosecute in cases where the U.S. attorney's office is prosecuting?

MR. HOLMES. We have kind of a loose policy, nothing set in concrete. It is my understanding that neither jurisdiction engages in dual prosecution. In my opinion, it is not an efficient expenditure of the public funds.

Frankly, if you have a person who violates the law, I don't care which penitentiary he goes to, whether it is U.S. or local; and I think that is a—at least that is—I understand that is the position the Federal jurisdiction takes as well.

I recall when the Torres matter occurred, I was sent over to the police department and spent 12 hours over there on that investigation, and it was my recommendation at that time that it be handled as a Federal matter, primarily because, again, I did not feel that any jury would consider that those officers intentionally did what we knew they did. That was discussed, and it is my recollection that Mr. Vance had some communication with the Justice Department in that regard, and whether or not that was successful—ultimately, obviously, it was—but exactly what we felt was a valid consideration in the trial of that case as a local matter occurred. They were adjudged guilty of a misdemeanor.

MS. STEIN. Bearing in mind that the elements of the Federal offense are somewhat different from the State offense, if there should be an acquittal in Federal court after Federal prosecution, would your office then consider the possibility of bringing State charges?

MR. HOLMES. Probably not, no.

MS. STEIN. Why is that?

MR. HOLMES. I think it is a little unfair, whether he is a police officer or anybody else. If you have the same fact circumstances that are presented to a jury on either side, and you have—just like bank robbery, the law clearly says you don't have any problem with regards to prior adjudication there, certainly between Federal and local, but it has been a policy of the U.S. attorney and our office, although kind of not an inflexible policy, that we just don't engage in that.

I don't see any useful purpose to be served. That was discussed in one of the recent convictions on the Federal side because we had some State perjury and that was discussed with the Federal authorities. And I feel like we reached a mutual understanding that we would not proceed locally. With regard to the Jamail acquittal, I mean we would be using the same facts that they used; I don't think that justice is served by that.

MS. STEIN. I think I interrupted you right after the Jamail case and you were going to refer to the other cases.

MR. HOLMES. All right. The throw-down gun cases, if you will. I forget the style of the cases, but it is pretty hard to conjure up an offense there. For example, one of our division chiefs worked on the Webster case and certainly we had an assaultive offense; certainly we had the fabrication of physical evidence, a misdemeanor offense. The grand jury prosecution of that matter—I feel that justice was thwarted there because of the action of the officers, and frankly we just did not. I felt like we went to the logical ends of investigation by inquiring of the Alcohol, Tobacco, and Firearms Division of Treasury the source of the weapon, and we felt like they had done the best job they could. What

we should have done, of course, and what Lupe did was go out and go further.

Ms. STEIN. Lupe? You're referring to an assistant U.S. attorney?

Mr. HOLMES. Yes, I'm sorry, Mr. Salinas.

Ms. STEIN. Just for the record.

Mr. HOLMES. Frankly, if there are other cases, refresh my memory because—I'm speaking of the throw-down gun cases in Joyvies and Webster.

Ms. STEIN. Do you feel that a more thorough investigation would have been justified in your office since the existence of the gun, the identification of the gun?

Mr. HOLMES. As I said, hindsight is 20/20. Sure, the gun was discovered, but let's suppose Mr. Salinas had gone out and there weren't any records available and it ended there, and then hindsight said we were justified in stopping with the ATF report. I think, if the inference is that—if there is anybody up there less dedicated than Mr. Salinas, I think that's unfair.

Ms. STEIN. Can you tell us approximately when the new civil rights division was established in your office and what the purpose of its establishment was?

Mr. HOLMES. After the revelations with regards to the throw-down gun cases, it became obvious that we needed to become more active in the investigation of police shootings. At that time Mr. Vance directed that the three division chiefs, the persons who were in charge of the prosecution in the felony courts, handle those cases. A procedure was evolved whereby the police agencies were asked to notify our 24-hour office, the central intake division, of any police shooting, either where the officer is the shooter or where he is the victim.

At that time central intake was to immediately notify one of the three division chiefs, whoever was available, and they would either respond or not respond immediately to the scene, based upon their understanding of what occurred; but immediately thereafter, the next working day, if it was at night, or that day, if it was daytime, they were to get with the investigating agencies and coordinate and assist in the preparation of the evidence and the investigation and for the ultimate presentation to a grand jury.

Between the time that was evolved and then July 10 of 1979, there were approximately 57 such incidents. These were handled by three of our senior prosecutors. The—obviously it was cutting deeply into their time and the obligations they were created to perform other than that.

I had an occasion to work with Senator Ogg on the senate bill 546, and the suggestion was made that we create a separate division to handle not only the inquiries that would be called for by virtue of 546, but also to assume the duties that were being handled by the division chiefs. So on July 10, 1979, the civil rights division was created.

Ms. STEIN. How many members of staff are assigned to that division?

MR. HOLMES. The commissioner's court authorized an investigator, a senior prosecutor, and a secretary. Additionally, we called upon our own staff to put an additional prosecutor in there because we did not feel like the prosecutor that was funded was adequate.

MS. STEIN. Thank you very much.

MR. WILSON, I take it you're the senior prosecutor that was just referred to; is that right?

MR. WILSON. Apparently, yes, ma'am.

MS. STEIN. I understand that the civil rights division, as it's presently set up, contemplates your investigating and dealing with incidents that arise out of both the shooting of police officers by citizens—by civilian citizens—and the shooting of civilian citizens by police officers.

MR. WILSON. Yes, ma'am, that's correct.

MS. STEIN. Do you feel that there is a conflict of interest there or a problem that would—do you feel that a person can undertake both of those responsibilities without a conflict that would hamper their performance of their job?

MR. WILSON. Yes, ma'am, I do, and for a variety of reasons. First, I feel that by being assigned to this division, I was not assigned to be on some particular side. I was not assigned to be on the side of someone who was shot by the police or on the side of the police officer who shot someone or vice versa; I was assigned to investigate particular types of cases that have some specific interest to the law enforcement community as well as the community at large. My function is not to find someplace where a police officer did wrong or not to find some civilian who did wrong against a police officer, but rather to investigate certain enumerated situations and find out the true facts in those situations, and if those facts show a violation of the law by either party, to prosecute that case. I see no conflict in doing that.

Additionally, from a practical standpoint, it has been my experience that often in the shooting situations, where someone is shot by a police officer or a police officer is shot by someone, that there are persons on each side of the spectrum who are shot. Therefore, it would seem inappropriate to me to have a division or a personnel assigned to investigate the shooting of a police officer and have that person merit the same conducting an investigation and as well as have myself or personnel from my division present investigation in a shooting by the police officer; it would seem to be a waste of manpower. But my primary answer is, I see no conflict. I am charged with one duty and that is to do justice under the facts as they exist, whatever side is wrong.

MS. STEIN. What are the procedures that your office has adopted with respect to investigating these cases?

MR. WILSON. The shooting situations?

MS. STEIN. Yes.

MR. WILSON. Essentially, the procedures are that we have contacted and are attempting to work with all of the various police agencies here in the Harris County—there's 20 some—26 or 23 or some odd number

of them—and request their assistance in immediately notifying our division in the event of a police shooting situation where either a policeman is injured or injures someone else while on duty, and if they notify them immediately, they in turn notify myself immediately.

Our procedure then is that I make a decision as to whether or not we will respond to the scene of such shooting and begin our investigation at that time or begin the investigation the next morning when we start getting reports in. Generally speaking, we respond to the scene of such shootings, begin our investigation at that time, and continue it all the way through. That investigation is conducted by myself, by Mr. Joe Castillo, who is an assistant district attorney working with me, and Mr. John Pettamule, who is an investigator assigned to me. We will, between the three of us, conduct that investigation with the assistance and in conjunction with the police departments involved.

In that regard, I have so far experienced outstanding cooperation from the police departments I've dealt with in this area. We will work with the homicide division of the Houston Police Department or the assigned detectives doing the investigation for whatever police agency it is.

In the smaller agencies we may be more actively involved than we will in some of the larger agencies that have more manpower, but we will conduct that investigation then, including the interviewing of the witnesses, independently of the police agency, preferably that night, if we make the scene, or that day, if it happens at day. It has been my experience that none of these things happen during the day when I'm awake, only at night.

MS. STEIN. May I ask what your relationship has been between your unit and the U.S. attorney's office civil rights unit?

MR. WILSON. I have met with Miss Sinderson on one occasion since the formation of our units. We met and discussed a few generalities, as far as our policies and procedures go, and each informed the other that as soon as we had the time we wanted to get back together and go over it in more detail.

MS. STEIN. Okay. We heard some testimony this morning indicating that in the opinion of some attorneys, the district attorney's office discourages grand juries from returning indictments in cases of police brutality or police misconduct as alleged. What would be your reaction to that?

MR. WILSON. My reaction to that is we encourage indictment in any case where we feel we have a probable violation of the law, whether or not it is a police officer as a prospective defendant or civilian as a prospective defendant.

I was in a couple of weeks ago and requested no bills and the grand jury followed my recommendation on several homicides. In none of these cases were police officers involved; they were civilians shooting each other. In those cases, one of them in particular, I feel we had a—what, in my opinion, was probably a murder case. We did not,

however, have any evidence to support that opinion. Until we have evidence to make a triable lawsuit, I do not intend to recommend a true bill, just for the exercise of going to court.

MS. STEIN. Then you do not—it is not your perception that the office differs in any way in whether its policy about recommendation of a true bill or no bill when a police officer is the defendant from other types of cases?

MR. WILSON. Certainly not. In fact, we are probably more careful in those situations because of the public viewing of what we do, as well as operations such as this hearing, to make sure that whatever we recommend is supported by the evidence.

MS. STEIN. Do you know of any—can you recall any cases where the grand jury has not followed your recommendation where the potential defendant was a police officer in an alleged case of brutality?

MR. WILSON. Yes and no. I can recall a specific incident in which I presented both sides of a matter where police officers were shot at and shot someone, and they followed my recommendation partially and did not follow it partially.

MS. STEIN. Which way?

MR. WILSON. I recommended in that particular instance, because of the physical evidence and support thereof, a true bill for the person shooting at the police officers initially. The grand jury refused that true bill and no billed all parties involved. We spent some four or five sessions in the grand jury in connection with that.

MS. STEIN. Is there any other case you recall where the grand jury—

MR. WILSON. Where the police officer was a potential defendant? No. I have had several occasions, but not as many occasions as I have had to present cases where police officers were not involved. I have no circumstance where I've requested a true bill of a police officer and that has been denied me.

MS. STEIN. Or vice versa?

MR. WILSON. Or requesting a no bill and having a true bill, no.

MS. STEIN. Thank you very much.

I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Mr. Holmes, in response to a earlier question, you indicated that you had 145 positions in your office. How many of those positions are occupied by attorneys?

MR. HOLMES. We have more than 145 positions, I'm just speaking of—

CHAIRMAN FLEMMING. Just of the attorneys.

MR. HOLMES. Yes, of the lawyers.

CHAIRMAN FLEMMING. What is the breakdown of the 145 as between minority groups and whites?

MR. HOLMES. We have 20 women.

CHAIRMAN FLEMMING. Twenty women?

MR. HOLMES. Yes, sir, that are assistant district attorneys. I think we have about 15 blacks and about 12—10 or 12 Latin Americans. We

have—we had one guy who purported to be an Indian. I can't think—I can't think of any other nationalities that we have.

CHAIRMAN FLEMMING. How long have the persons associated with minority groups that you've identified been associated with the office? I mean, just order of magnitude; is it fairly recently, over a period of the last few years, or what?

MR. HOLMES. I think the one that had been there the longest has been there since the early sixties and he passed away this summer. I think the next one in seniority was hired in '71 or '72, and the rest of them are after that period of time. That's with regard to blacks. With regards to women, we've got one woman who has been there forever. I really don't know how long they've been there, sir. A lot of the women are younger and I would say the ones that I see frequently around the office have been there since '74-'75.

CHAIRMAN FLEMMING. What policy do you follow in terms of involving members of minority groups who are on your staff when those who are alleging, for example, police brutality belong to one of those minority groups?

MR. HOLMES. I don't believe I understand the question. I'm sorry.

CHAIRMAN FLEMMING. Well, if you've got a situation where a member of a minority group is alleging police brutality—

MR. HOLMES. Yes.

CHAIRMAN FLEMMING. —do you make any effort to involve the member of your staff who comes from that same minority group in connection with the consideration of that case?

MR. HOLMES. We have in the past. I recall there was an investigator, a black investigator, assigned to the grand jury where years ago the—not years ago—2 or 3 years ago, the grand jury section was the one that handled all types of allegations of abuse; that was the investigator assigned to the grand jury. Now we did not single out and pull a woman out to go investigate a woman or vice versa, no, sir.

CHAIRMAN FLEMMING. What efforts have you made, or your office made, to keep in touch with representatives of minority groups within the county, in terms of their feelings, relative to the way in which the office is being conducted?

MR. HOLMES. Well, personally, since taking office I have communicated with one black group. Their primary interest seemed to be in minority hiring as opposed to abuses. I understand that the Public Interest Advocacy Center has been communicating with Mr. Wilson, and on one occasion I knew they were coming up and I offered to sit in with them. My understanding from Mr. Wilson was they wanted to talk with Mr. Wilson.

CHAIRMAN FLEMMING. Do you or Mr. Wilson meet regularly with representatives of the various minority groups so that they can discuss with you matters that are of concern to them, so that you, in turn, can discuss with them whatever policies you may be following or implementing at a given period of time?

MR. HOLMES. I can't speak for Mr. Wilson. I have not done that, not for any lack of desire to accept that. I was only sworn in September 5 and have not had the opportunity to make such contacts.

CHAIRMAN FLEMMING. Mr. Wilson—

MR. WILSON. I have no such present scheduled regular meetings, no, sir.

CHAIRMAN FLEMMING. As far as both of you know, that has never been the practice in the past, either? I mean, say, within the last 5 years.

MR. HOLMES. I don't know. I feel that Mr. Vance was responsive to the people that had complaints, be it in hiring or abuse by police officers, because from time to time I would see people in his office that I have seen on the list of persons testifying before you.

I was not a party to those meetings and can't represent to you why they were held, but I have seen him meet with people. Now whether it was in that regard, I just don't know.

CHAIRMAN FLEMMING. Are you aware of tensions between representatives of the minority groups and your office?

MR. HOLMES. In our office?

CHAIRMAN FLEMMING. No, and your office, not in your office, between representatives of minority groups within, say, the city of Houston and your office?

MR. HOLMES. I have not had any members of minorities communicate with me about such practices. I can probably infer from the media coverage that there is some discontent with regards to previous methods of handling police shootings before grand juries. I'm certainly willing to talk to anybody about how that has been handled in the past and how it would be handled in the future.

CHAIRMAN FLEMMING. In other words, you would be willing to meet with the representatives of any minority group to discuss with them any questions that they would want to raise with you relative to that issue or relative to other issues involving complaints that are made of police brutality.

MR. HOLMES. Sure. You bet you. Anybody that infers or insinuates to the contrary just hasn't tried. That's all I can say to that. I'm willing to sit down with anybody. Got an appointment on Tuesday with a black lawyers' association about another minority area problem. I'll sit down with anybody, any responsible person.

CHAIRMAN FLEMMING. You would meet with the representatives of these organizations of minority persons?

MR. HOLMES. Certainly.

CHAIRMAN FLEMMING. To discuss their concerns?

MR. HOLMES. Sure.

CHAIRMAN FLEMMING. I think I'm correct then in response to an earlier question—I think counsel asked how many prosecutions of Houston Police Department officers have been brought by your office on police brutality and citizen death by police shooting incidents since

the prosecution of the Torres case. As I recall it, you said you did not know; am I correct?

MR. HOLMES. I'm aware of one; that's the only one I know of, yes, sir.

CHAIRMAN FLEMMING. You only know of one since then?

MR. HOLMES. Yes, sir.

CHAIRMAN FLEMMING. Could you—I appreciate the fact that this goes back to—and I make a request of this kind—includes the period of time when you were not district attorney as well as the period of time that you have been district attorney, but is it possible to determine the number of presentations that have been made in the last 2 years, let's say, to a grand jury of alleged police brutality; and then is it possible to break that down by white and minority groups and then, one further, in connection with that, is it also possible to identify the outcome of the presentation?

MR. HOLMES. Yes, it is possible.

CHAIRMAN FLEMMING. I'd appreciate it very much if you would compile that information so that it could, without objection, be inserted in the record at this particular point.

MR. HOLMES. May I add, sir, that is going to require a physical examination of every murder case and every case, I suppose, because you could have assaultive offenses to the grand jury over that period of time. They have never been kept by a category of police brutality; they are kept by the name in a grand jury minute book docket and then we have to go back from microfilm records, construct the interior of the file, including the offense report which will indicate the race of the deceased or the victim, the officer or the individual involved.

CHAIRMAN FLEMMING. If you do go back to identify that a particular case was presented, then that file would yield this additional information?

MR. HOLMES. Yes, that's true.

CHAIRMAN FLEMMING. That I've requested.

MR. WILSON. It would require review of approximately 36,000 to 40,000 cases, though.

CHAIRMAN FLEMMING. Let me suggest then that I will ask counsel to talk with you further in terms of the order of magnitude—

MR. HOLMES. Fine.

CHAIRMAN FLEMMING. But I would like very much to have that information for a significant period of time, significant enough so that one could legitimately arrive at conclusions based on that factual information.

MR. HOLMES. We would make those records available to your staff.

CHAIRMAN FLEMMING. Okay. What kind of records do you keep on cases where there is alleged police brutality, but where you have decided not to make a presentation to the grand jury?

MR. HOLMES. We keep a complete file, including witness statements, offense report, if any, work product of investigators, whatever went into the case.

CHAIRMAN FLEMMING. Then I'd like to make, for a period of time to be determined as a result of consultation between counsel and you, a similar request relative to the decisions that were made not to present a case to the grand jury.

MR. HOLMES. Okay.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Holmes, as the district attorney, and in recollection of our concern to serve the public interest with regard to the whole national issue, and here specifically in Houston, of police misconduct, what do you consider the best way to handle allegations of police misconduct, bring them to effective, objective investigation, and when appropriate, prosecution?

MR. HOLMES. Exactly the way we've entered into doing it: receive the person who is making the allegation; obtain all the details and circumstances surrounding the event; try to obtain witnesses that he may know about; talk to those witnesses, obtain their view of what occurred; in other words, investigate the allegation that's being made and examine those allegations in light of the evidence that we have and determine whether or not there is an offense.

COMMISSIONER SALTZMAN. So you feel the present system here in Houston is effective and is working well?

MR. HOLMES. Yes, I think it will be after July 10, and I think it has worked well since July 10.

COMMISSIONER SALTZMAN. There were deficiencies before—

MR. HOLMES. Pardon?

COMMISSIONER SALTZMAN. There were deficiencies in the system before then?

MR. HOLMES. Well, the deficiency that the mind envisions with regards to police officers investigating themselves, as I said earlier, not only has something got to be right, it's got to look right, and there is a concern about persons investigating themselves and I think it is a legitimate concern.

We have it in the bar; we have our grievance committee system. We've got lawyers investigating lawyers. While for the most part I think those obligations are discharged with responsibility, there is, certainly, the appearance of their not being able to be so discharged.

COMMISSIONER SALTZMAN. The public interest advocacy group, have they presented complaints to your office?

MR. HOLMES. Yes.

COMMISSIONER SALTZMAN. How many of those complaints have been acted upon?

MR. HOLMES. May Mr. Wilson answer that? I have not had any contact from them and he is the one.

MR. WILSON. My dealings with the Public Interest Advocacy Center have centered around shooting incidents that occurred prior to the time that I became chief of this division. Before that time, I was chief prosecutor in district court and in connection with those duties han-

dled some police shooting situations. My contacts with them have been on the shooting situations. Since our office started July 10, we became fully operational, if you would, September 1 when the statute went into effect. I received no brutality complaints from the Public Interest Advocacy Center.

I have had a meeting with a member of their staff concerning our complaint procedures and described those procedures to him, but have had no further contact since that time.

COMMISSIONER SALTZMAN. Mr. Wilson or Mr. Holmes, would the present system be enhanced by the creation of some other new vehicle within the police department other than the IAD or some process within the police department that you would recommend?

MR. HOLMES. I don't—you mean just create a new division to investigate these matters?

COMMISSIONER SALTZMAN. Well, the IAD, you feel, isn't an appropriate vehicle; but in terms of supervision, not necessarily investigation and achieving accountability within the police department, do you have any recommendations? The allegations were made that on the street there is very little control—supervisory control of the individual. One word used was "autonomous police officers." Is there something within the police department that you would recommend to achieve—

MR. HOLMES. If I may, before I answer too much further, may I correct something? It occurred to me, I do not think the internal affairs division is doing a bad job. I did not mean to lead you to believe that. On the contrary, I think they're doing a good job.

COMMISSIONER SALTZMAN. I wasn't evaluating their job, rather was what you are saying, as I understood it, was that the police department ought not to be investigating itself.

MR. HOLMES. That is the criticism, and I think it is a criticism that can be valid because of the built-in lack of confidence that can be developed from that situation. I don't think it is true here in Houston that they are doing a job that doesn't command confidence. I think IAD is doing a good job; nevertheless, the confidence is nevertheless not there. What is the answer, Create a superagency that administers that?

COMMISSIONER SALTZMAN. Well, I assume in terms of investigation you have created a department that hopefully can be responsive to that issue.

MR. HOLMES. Well, even that department is subject to some doubt or criticism as reflected in your own report. I mean, we cannot impartially investigate that because on the other hand we use police officers to prove up robberies and thefts in other cases, so that criticism is there, too.

Now if you're going—in order to completely eliminate the possibility of that criticism, it appears to me that you're going to have to eliminate police involvement; you're going to have to eliminate district attorney involvement, and as to how you fill in the gap, well, let the critics make suggestions.

COMMISSIONER SALTZMAN. Well, my original question, and if I may clarify that: accountability within the police department in terms of the officer on the street—have you any recommendation how that is achieved? Of course, allegations were made that that accountability is not present in the police department at this time.

MR. HOLMES. To be fair, I do not feel qualified to comment on whether it's adequate or inadequate. As we view police officers' activity, we view it from the accountability of the law and not of the department.

I myself have filed complaints on police officers, for the office, with their supervisors based on accountability that I felt they had violated, not of the law, but of the contact with people that I know they had contact with that I thought was wrong, but it wasn't—it was a breach of what I thought was basic human dignity that occurred and not something that the law condemns as punishable by criminal offence. And that was none of my affair, other than as a citizen.

I wrote a letter to the person's supervisor and response was taken place, but whether or not it happened because, you know, Assistant District Attorney John Holmes is raising Cain instead of average citizen John Jones, I don't know; I don't have any experience in that regard, sir.

COMMISSIONER SALTZMAN. No further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Wilson, you referred to police shootings that occurred prior to the time you received the present position. Were those police shootings in which there were allegations from citizens that police had shot them?

MR. WILSON. Yes, ma'am.

COMMISSIONER FREEMAN. What was the outcome of that investigation?

MR. WILSON. The particular one I had reference to, all parties were no billed by the grand jury. The physical evidence indicated there were shots fired by both sides.

COMMISSIONER FREEMAN. So, there was no—the physical evidence, was that physical evidence that was—

MR. WILSON. It was in the form of—

COMMISSIONER FREEMAN. —submitted by whom?

MR. WILSON. It was in the form of a bullet wound to one person who was in the hospital and in the form of a shot-out police car window and door on the other end.

COMMISSIONER FREEMAN. The complaint was made by the person who was in the hospital?

MR. WILSON. Well, the police officers complained about the man shooting at them and he complained about being shot, yes, ma'am.

COMMISSIONER FREEMAN. And that is the only incident that you have investigated?

MR. WILSON. No, ma'am.

COMMISSIONER FREEMAN. Mr. Holmes, I would like to pursue the questions that were made by Chairman Flemming concerning the staffing of your office. You have a total of 145 attorneys. What is the total of all staff employed by the district attorney's office?

MR. HOLMES. About 285, something less than that.

COMMISSIONER FREEMAN. 285. Of those—first of all, you have 145 attorneys of whom 120 are white and—no—yes, that is right—15 blacks, 10 to 12 Latin Americans, and that remains 120 white.

MR. HOLMES. I can furnish you the exact figures.

COMMISSIONER FREEMAN. Of the 20 females, are any of them black or Spanish American?

MR. HOLMES. We have some Latin American females.

COMMISSIONER FREEMAN. Attorneys or assistant attorneys?

MR. HOLMES. Yes, ma'am.

COMMISSIONER FREEMAN. Have any of the minorities or females had the assignment of making a presentation to the grand jury?

MR. HOLMES. Yes, ma'am.

COMMISSIONER FREEMAN. With respect to allegations of police abuse?

MR. HOLMES. Yes, ma'am.

COMMISSIONER FREEMAN. What was the result with respect to that?

MR. HOLMES. I don't have any idea.

COMMISSIONER FREEMAN. Will that result be reflected in the submission which you make to this Commission in response to the Chairman's request?

MR. HOLMES. I'm going to make those records available. The records would reflect what happened, yes, ma'am, as to whether or not—I have no reason to doubt that the records wouldn't—they show who went in there, what assistant DA and what case it was and the grand jury agenda number and, if it is a no bill, it is filed under that number; if it is a true bill, it is filed under the defendant's name.

COMMISSIONER FREEMAN. Of the 280 employees, 145 were attorneys and the other 135—how many of them are investigators?

MR. HOLMES. About 36.

COMMISSIONER FREEMAN. Of those 36, will you give us the classification by race and sex?

MR. HOLMES. I don't—

COMMISSIONER FREEMAN. How many investigators are female?

MR. HOLMES. We have one female investigator.

COMMISSIONER FREEMAN. How many are black?

MR. HOLMES. There are four or five. May I furnish you those, specifically?

COMMISSIONER FREEMAN. Will you submit for this Commission a breakdown, cross classified by race and sex, as to every category of the total staffing of your office?

MR. HOLMES. Certainly.

COMMISSIONER FREEMAN. Do you know if your office has been charged with racial discrimination with EEOC or any other agency?

MR. HOLMES. It has not been.

COMMISSIONER FREEMAN. It has not been.

MR. HOLMES. Well, I feel like I would be informed if it has. I have not been so informed. We have an EEO officer in the part of Jim Larkin.

COMMISSIONER FREEMAN. Mr. Wilson, will you give the racial breakdown of your office?

MR. WILSON. Just the personnel in my division?

COMMISSIONER FREEMAN. Yes.

MR. WILSON. Mr. Joe Castillo, who is sitting over there; my secretary is a white female; my investigator is a white male.

COMMISSIONER FREEMAN. So you have a total of four persons; three are white and one is Spanish surnamed.

MR. WILSON. That is correct.

COMMISSIONER FREEMAN. And the female is the secretary?

MR. WILSON. Yes, ma'am.

COMMISSIONER FREEMAN. You, Mr. Holmes, responded to the question with respect to tensions in the black community, or the black-brown community was interested only in employment. Was this because they were seeking to have you employ more minorities on your staff?

MR. HOLMES. That question, I assume, is directed at me?

COMMISSIONER FREEMAN. Right.

MR. HOLMES. Yes, ma'am, I think it was concern not only of that, but I met with a group about a month ago and their concern was—seemed to be more in the area of black supervisors, but of course, that was a black group so they were—

COMMISSIONER FREEMAN. Well, if they are seeking to have more black supervisors, would that not suggest to you that there is possibly concern that maybe there is discrimination either in the employment or in the promotions?

MR. HOLMES. I don't know if they're concerned about discrimination as much as they are about seeing that black persons are advanced to the position of supervisor.

COMMISSIONER FREEMAN. May I suggest—you do not know that the failure to promote on the basis without regard to race or sex is discrimination?

MR. HOLMES. Well, I don't think anyone in our office has failed to have been promoted because of race or sex. Yes, ma'am, I am familiar with both Federal and State law on that subject.

COMMISSIONER FREEMAN. Well, I would at least like to inform you that the lack of mobility, the denial of promotion opportunities is also discrimination and in violation of EEOC.

MR. HOLMES. Well, just because there's a group of persons that allege that we needed more supervisors, I think it is unfair, ipso facto, to say we're discriminating.

COMMISSIONER FREEMAN. We're not saying ipso facto. We're just saying on the basis of information you provided—being 145 attorneys, you have 20 female, 15 black, 10 to 12 Latin Americans—at least it appears on its face to be underutilization.

MR. HOLMES. I would be happy to discuss with you our hiring practices if you would like to do that.

COMMISSIONER FREEMAN. We will pursue it.

MR. HOLMES. We operate and have operated under a hiring committee. There is a committee of 10 persons who interview applicants for the office and make recommendations about who should be hired.

COMMISSIONER FREEMAN. Who is this hiring committee?

MR. HOLMES. They're made up of every assistant district attorneys.

COMMISSIONER FREEMAN. Assistant district attorneys?

MR. HOLMES. Yes.

COMMISSIONER FREEMAN. Will you provide that information to this Commission, indicating the race and sex of the members of the committee?

MR. HOLMES. I can do that by memory. We have two blacks, two women, and no Latin Americans and the rest are white.

COMMISSIONER FREEMAN. Out of a total of 10?

MR. HOLMES. Yes, ma'am.

COMMISSIONER FREEMAN. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Mr. Terry Wilson.

MR. WILSON. Yes, sir.

COMMISSIONER RUIZ. You're chief of the civil rights unit, are you not, of the office of the district attorney?

MR. WILSON. Yes, sir.

COMMISSIONER RUIZ. How long have you headed that unit?

MR. WILSON. Since its creation. It's kind of a hybrid date that we were created on. The commissioner's court authorized the positions to be created and were created effective September 1 of 1979, the time the law went into effect. Practically speaking, myself, my investigator, my secretary began operation, both doing our old jobs to some degree and the new job, on July 10, 1979.

COMMISSIONER RUIZ. You had an old job that predated the present one along the same—

MR. WILSON. No, sir, I was chief of a district court, chief prosecutor of a district court at that time.

COMMISSIONER RUIZ. When you say September 1979, you just took office, didn't you?

MR. WILSON. Eleven days ago.

COMMISSIONER RUIZ. Pardon, sir?

MR. WILSON. Eleven days ago.

COMMISSIONER RUIZ. Eleven days ago, and prior to that time, there was no civil rights unit within the office of the district attorney?

MR. WILSON. There was not an organization that dealt solely with that issue, no. Prior to that, the three felony division chiefs who are responsible for the activities of six felony courts each, that is, supervisory activities, those three persons with whatever investigative help they needed as well as, on occasions, assistance from the chief prosecutor handled the police shooting and brutality investigation matters. Prior to that, they were handled by the chief of the grand jury division.

COMMISSIONER RUIZ. How long have you been in office, Mr. Holmes?

MR. HOLMES. As district attorney?

COMMISSIONER RUIZ. Yes.

MR. HOLMES. Since September 5.

COMMISSIONER RUIZ. Eleven days, approximately?

MR. HOLMES. About 6 days.

COMMISSIONER RUIZ. What was your position before you were district attorney?

MR. HOLMES. Since 1978 I was first assistant.

COMMISSIONER RUIZ. First assistant?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. Do you know about these three felony chiefs or deputies that were just mentioned?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. When you were assistant?

MR. HOLMES. Yes.

COMMISSIONER RUIZ. As assistant DA and having knowledge of these three jobs that were just referred to and categorized, you are aware then of the activities of the district attorney with relation to civil rights in the matter of police brutality?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. Now, which of those three persons mentioned worked or had in his or her jurisdiction the question of civil rights in the matter of police brutality?

MR. HOLMES. All of them.

COMMISSIONER RUIZ. All of them?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. Did they work hand in hand with the police department internal affairs unit in the investigation of civil rights violations?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. To this extent, they were furnished the internal affairs report with statements and stuff?

MR. HOLMES. We were not limited, of course, by those, and in many cases we took additional statements other than the ones they had.

COMMISSIONER RUIZ. Let's take one step at a time. You started out by saying they were furnished certain materials from the internal affairs committee?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. Now, as a district attorney, you realize that time is of the essence in a criminal investigation? Evidence that is here today will not be there tomorrow?

MR. HOLMES. True.

COMMISSIONER RUIZ. Evidence that is available on the first day is not available on the following day?

MR. HOLMES. That's also true.

COMMISSIONER RUIZ. Now, with relation to the time lag in an investigation which has been made by the internal investigation unit of the police department, you just said that these three people wait for a report to be given to them by the police department.

MR. HOLMES. No, sir, I said they are furnished.

COMMISSIONER RUIZ. I misunderstood you; what did you say about a report?

MR. HOLMES. They are furnished the material, the work product of the internal affairs division.

COMMISSIONER RUIZ. Then they wait a minute for more materials?

MR. HOLMES. They don't wait for anything, sir; they are immediately notified when an event occurs.

COMMISSIONER RUIZ. Who notifies who first? Does the police department say to you, "There's been a shooting. We want you to come over here and investigate us," or does it say, "We're going to have an investigation and the minute we have this investigation we'll call in the DA's office to review our investigation?"

MR. HOLMES. The way it works is when the event occurs, the police department is under an internal directive—

COMMISSIONER RUIZ. Under what?

MR. HOLMES. An internal directive from their chief that was obtained by virtue of communication with Mr. Vance to immediately notify our central intake division. The central intake division is an area of the office that is open 24 hours a day, 7 days a week, staffed by assistant district attorneys.

When they are notified that such an event occurs, they are then under an instruction from the district attorney that they attempt to locate any one of the three division chiefs. Those are the persons that are responsible for the investigation of those cases. When they locate one of the three—it doesn't matter who, any of them—he then tells them what has occurred.

The division chief, based on questions both of central intake and of the agency that is called, makes the decision whether or not he actually goes out to the scene. In most of the cases, the decision has been made to go to the scene.

COMMISSIONER RUIZ. Now, with respect to the internal investigation of the police department, this is what you're talking about right now, does not—I mean, does not the police department, with respect to its internal mechanism, first begin the investigation?

MR. HOLMES. They respond first because when anything happens, that's who you call, the police.

COMMISSIONER RUIZ. All right, now, so they have first jurisdiction on this. Do you have concurrent jurisdiction? For example, the FBI has concurrent jurisdiction. Could you notify the FBI right away of any matters that happen in your jurisdiction?

MR. HOLMES. No, sir.

COMMISSIONER RUIZ. All right, fine. With respect to internal investigation of the police department, is it not true that they are the ones on the scene first and then you review what they do to find out what has happened before you conduct an original investigation?

MR. HOLMES. That's true; in most of the cases, that's true.

COMMISSIONER RUIZ. That's the way it happens.

MR. HOLMES. They are on the scene first. Yes, sir.

COMMISSIONER RUIZ. Let's assume that the internal investigation unit of the police department says, "Now, hands off, we're working on this very fast." And a week and a half later they get in touch with you. What have you done in the meantime to face that "Hands off, we are internally investigating ourselves"? What do you do?

MR. HOLMES. To start with, I don't think they have the wherewithal to say, "hands off"; and the second thing, if they said, "hands off," that would raise the hair on the nape of your neck and you would not have hands off.

COMMISSIONER RUIZ. Supposing they don't say, "hands off," but they say, "We're investigating this"? Do you go in and bust it up?

MR. HOLMES. No, we don't go in and bust it up, but we're certainly free to go in and conduct our independent investigation.

COMMISSIONER RUIZ. As a matter of courtesy, do you even wait?

MR. HOLMES. That's not true. No, sir.

COMMISSIONER RUIZ. When do you then get into it; after the investigation has been instituted by the police department?

MR. HOLMES. At the time we are notified, there has been no investigation; there has been a police response; someone has gone to the scene of whatever it is that occurred. At that time, they notify their supervisor, be it homicide or whoever it is, who in turn notifies the central intake division. If there is a delay in the time that that occurs, we want to know why. There has not been a delay in any of the cases that come to mind. It has been an immediate call to central intake. They are then under instructions to immediately call the division chief.

COMMISSIONER RUIZ. You're notified immediately?

MR. HOLMES. Yes, sir.

COMMISSIONER RUIZ. Okay, being notified immediately doesn't mean you're investigating immediately.

MR. HOLMES. That's exactly what I said with the police department: Just because it happens immediately doesn't mean they're investigating immediately. The same is true with our office, notification is not investigation.

COMMISSIONER RUIZ. We're going back on an area that neither of us were involved in, but at the time you were assistant deputy.

MR. HOLMES. I have been since 1969. I am familiar with how it worked.

COMMISSIONER RUIZ. It is your testimony that the moment internal investigation contacts you, irrespective of what they're doing, you conduct an independent investigation of your own?

MR. HOLMES. Well, I thought what I just said was we get immediate notification. The division chief who is notified makes the decision whether or not to go to the scene. That is an independent judgment called by the prosecutor who is of the grade of division chief. If he gets the information and the police lie to him, they say, "Burglar ran out of the building and turned on officers and fired four times and we returned fire, killing him."

COMMISSIONER RUIZ. I'm talking about civil rights, not killing.

MR. HOLMES. Any abuse, whatever it may be, and if the police officers put a story on the division chief, yes, he may well be deceived and say "Well, I'll check with you tomorrow." That's true, that is a possibility. Most of the cases that I am aware of, they have gone to the scene of whatever the problem is, the division chiefs.

COMMISSIONER RUIZ. It is testimony then—and I will conclude with this question—that your office at that time was immediately investigating cases contemporaneously with the investigation conducted by the police department independently of the district attorney's office?

MR. HOLMES. Yes.

CHAIRMAN FLEMMING. Thank you very much. We appreciate it.

MR. HOLMES. Yes, sir.

CHAIRMAN FLEMMING. There is just one question you can furnish us for the record: Do you have a training program for your assistant attorneys, district attorneys, which will involve them in whole area of—give them background, involve them in the whole area of the interracial relationships?

MR. HOLMES. No.

CHAIRMAN FLEMMING. Have you contemplated the possibility of having such a training program?

MR. HOLMES. No.

CHAIRMAN FLEMMING. Thank you. We appreciate it very much.

MR. HOLMES. I have a letter to deliver to the Chairman from Mr. Vance, my predecessor, if I may deliver the same.

CHAIRMAN FLEMMING. Yes, you certainly may.

Counsel, call the next witnesses.

MS. STEIN. Tony Canales and Mary Sinderson.

CHAIRMAN FLEMMING. You will remain standing and raise your right hands, please.

[J. A. Tony Canales and Mary Sinderson were sworn.]

CHAIRMAN FLEMMING. Thank you. Appreciate your being with us.

TESTIMONY OF J.A. TONY CANALES, U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF TEXAS; AND MARY SINDERSON, CHIEF, CIVIL RIGHTS DIVISION FOR THE U.S. ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF TEXAS IN HOUSTON

Ms. STEIN. Would you please state your name and positions for the record, beginning first with Mr. Canales?

MR. CANALES. Yes, J.A. Tony Canales, I'm U.S. attorney for the southern district of Texas here in Houston.

Ms. SINDERSON. I'm Mary Sinderson. I'm chief of civil rights of the U.S. attorney's office for the southern district of Texas.

Ms. STEIN. Mr. Canales, it is our understanding that one of your first acts after being appointed U.S. attorney was to establish a Civil Rights Division within your office; is that correct?

MR. CANALES. Yes.

Ms. STEIN. Can you tell us why you felt called upon to do that?

MR. CANALES. I was appointed September 15 of 1977. Immediately before—some months before that date, the so-called Torres case had—was in the news. Before coming into the position, I was briefed by, at that time the acting U.S. attorney, Mr. James Goff, and also by Assistant U.S. Attorney Mary Sinderson as to the involvement of the Torres case.

I inquired of them as to why was it, at that particular point, that the government for the United States—grand jury, rather, had not acted on the matter and they had—they both responded to me basically that under the present setup, the most—as a matter of fact, all Federal civil rights criminal prosecutions were controlled and/or handled by the Civil Rights Division in Washington.

As soon as I came on board, the first thing I did was to establish our own unit so we could go ahead and handle the thing and handle, specifically, the Torres case that was pending at that particular time.

Ms. STEIN. How many attorneys have you assigned to that division?

MR. CANALES. We started out—today there is a total of four. We started out with one, Miss Sinderson, sitting here at my right. Thereafter, through a period—a progression of time, we've been adding, first, Lupe Salinas, then Mr. Calvin Bodely, and Tom Berry, so a total of four.

I might add that I understand that in the Criminal Division of the Civil Rights Division in Washington, for the whole country we have approximately about 20 trial lawyers, so I feel I have—with 4, I have 20 percent basically from the national viewpoint.

Ms. STEIN. Does the Civil Rights Division in your office handle cases other than criminal civil rights cases?

MR. CANALES. Yes. There has been—as approximately the last 6 months, the Civil Rights Division, under Mr. Drew Days, has agreed the U.S. attorney's office can handle certain types of cases; that is, they can—the agency or their office can refer them to the local U.S. attorney on the civil side of the docket, for example, public accom-

modation cases, for example, some of the housing type of lawsuits. As a result of that, our office has already filed on the civil side two cases involving public accommodations violations that were not referred by anybody, that were discovered by our office, investigated by our office, and we have filed pleadings on those matters. We have—we are receiving at this time some referral of some cases from Washington.

MS. STEIN. Do the four attorneys who work in the civil rights section work full time on civil rights matters?

MR. CANALES. They are full time assigned to the Civil Rights Division under the supervision of Miss Sinderson. Their responsibility includes both criminal and civil. So far, I will venture to say the civil has only come in within the last 6 months, so for all practical purposes they have been criminal lawyers.

All of them have extensive background in criminal prosecution, all four of them, so they don't come from a civil docket background; they come exactly from the criminal side of the docket background.

MS. STEIN. You touched on this a moment ago, but I wonder if you could tell us more about the relationship between your office and the Department of Justice in Washington with regard to handling civil rights cases.

MR. CANALES. Well, the history of it is that—I believe in September of '76—prior to September of '76, the guidelines or the instructions from the Department of Justice, from the Attorney General to the U.S. attorneys were that all criminal civil rights prosecutions were to be controlled and investigated or handled by the Washington office. Since then, they have delegated some of that power, or if—the U.S. attorney's office—that the U.S. attorney does not need to have any type of authorization from anybody from Washington to file a misdemeanor or complaint, that is, where death does not result in a criminal proceeding. But if we're going to go by route of indictment—in a misdemeanor you have both choices, you can go by indictment or by filing an information, but if we go by indictment we have to get their approval.

So I started asking for approval and I have an understanding with Mr. Drew Days, rather an informal understanding, that we run our other shop down here, and we will present cases that need to be presented and we will certainly advise them and will certainly consult with them because they have a lot of expertise and we do not want to be case out of sight and we have a lot of experience and all the prosecution is done at our office at our insistence and we run the show.

MS. STEIN. I take it this is a satisfactory relationship as far as you're concerned?

MR. CANALES. Well, it's all my show, so I'm happy with it. I don't think they are with it; it doesn't make any difference to me.

MS. STEIN. Since assuming your responsibilities as U.S. attorney, how many police brutality cases has your office prosecuted against Houston Police Department officers?

MR. CANALES. Well, I think we've had a total of five, but only three against officers from HPD. We prosecuted in the so-called Torres case, so-called Webster case, so-called Joyvies; they had one in the valley, Thelmo—Torres case, the so-called Jacinto case, those are non-HPD. I think we returned an indictment in the valley against a deputy sheriff from Star County. I imagine we've have a total of six indictments and three of those are against officers of the HPD. The figure could be very misleading. It is only six, but each indictment has multiple defendants.

MS. STEIN. To what extent do you rely on the FBI for investigation of these cases?

MR. CANALES. Well, the FBI investigation of the case, there are our official investigators, but we have a policy that all our civil rights investigations are done by, through the grand jury. The FBI agents certainly help us obtain reports. They certainly help us identify witnesses and so forth and, on many occasions, the FBI goes ahead and makes the interview of the witness, but we still insist on speaking to the witness ourselves and we do that under oath in the grand jury. So we're at this particular point in time, we are satisfied because the FBI here at Houston, I think, is one of the few in the country that has now established a full-time civil rights section within the FBI. And you have to understand, that's a great leap in the FBI world.

We have a full-time civil rights squad supervisor. That means that while the FBI's internal section might be composed of your reactive squads to handle, for example, kidnapping, bank robbery, and so forth—you have your white-collar crimes and you have the public corruption section or whatever—now we even have a civil rights squad and that supervisor is in charge of seeing that those matters are investigated properly. They're not assigned to agents who have nothing else to do; they're not assigned to agents who have prior police background or to inexperienced agents; and because of that supervisor has to produce.

Let me just say that all these occurred as a result of what I call our post-Webster relationship with the FBI; post-Webster, we're pleased. Before Webster we had problems not only with the FBI, but with everybody in trying to do a good job investigating any type of police allegation.

MS. STEIN. Do you attribute the change in quality to the creation of the civil rights units in the FBI, or are there other causes as well?

MR. CANALES. We have terrible acoustics. I just didn't hear. I'm sorry.

MS. STEIN. You mentioned it, there is a civil rights unit in the FBI that investigates these cases; is that right?

MR. CANALES. Yes.

MS. STEIN. Is that the reason for the improvement in the FBI work or are there other reasons as well?

MR. CANALES. Well, of course, I think that that's one of them, but I think it's like any other investigative agency; they need to have somebody they can respond to. Now they have Mary Sinderson's unit, so you have now some prosecutors whose sole responsibility and duty is civil rights prosecution, so it works as a team. While many times you might have a criminal lawyer and assistant U.S. attorney who perhaps likes bank robbery cases, perhaps likes white-collar crimes, perhaps likes to handle the narcotics cases. He thinks that's the way to really get some experience and perhaps that individual doesn't want to take the time to work up a civil rights case, so here—and many times what happens is that's very frustrating to the agent. Here the agents have a group of people that are not doing anything else except looking for police misconduct and willing—willing to prosecute it.

MS. STEIN. What has been your relationship between your office and the Harris County district attorney's office?

MR. CANALES. I think in regard to the civil right cases—

MS. STEIN. I'd appreciate it if you could answer for both, if there's a difference.

MR. CANALES. Well, of course, there is a new change of administration. Now we had a good personable relationship with Carol Vance. We disagreed, for example, on the civil rights cases as to what is the best way or who should prosecute or how the matter should be investigated. Mr. Vance felt that the thing should be done exclusively in the Federal courts. I had mixed feelings about that. Some days I'd feel his position, and some days I'd feel we are the best ones to handle it. Now they have a a new civil rights section. I haven't had a chance yet to speak to Mr. Holmes about it or Mr. Wilson. I know Miss Sinderson has. We don't have a relationship, but informal relationship and we talk to each other on a case-by-case basis.

MR. Holmes—we apprised Mr. Holmes of the Webster matter. We apprised Mr. Holmes of the Joyvies matter before it all became public. We apprised Mr. Holmes of it, also, the Jacinto City, the so-called Zimmerman tapes, so it's been mostly an information type of a thing.

MS. STEIN. Has your involvement in any case of this type ever begun as a result of a referral from the district attorney's office?

MR. CANALES. Well, we had one that I—we technically called a referral, that it was really something that we all knew about, that it was developing. We all agreed at that particular time that to let Chief Caldwell—internal affairs division handle it. I believe that in the Joyvies matter we had certain information. Chief Caldwell had certain information, and everybody had the same information and we just decided at this particular point it would be best if the chief did it at that point and the chief agreed to do it. That was one referral, so-called Joyvies case.

That was a formal referral in the effect Chief Caldwell did a lot of the investigation. There was a big thick report prepared with witness statements and exhibits and so forth.

Since then, there has not been any formal referrals like that. There has been various telephone conversations. For example, telephone conversations from the DA's to the effect that "We've got a case where so-and-so—it happened last night. We want to tell you about it. And we're going to look at it and you're welcome to look at it, also"—that kind of a thing. And I think I've spoken to Mr. Holmes once about a death at the city jail, and after that, I believe Miss Sinderson has spoken to Mr. Holmes on a couple of occasions on something like that, but, again, it depends on what is a referral.

A referral like the chief gave us on the Joyvies case, no. Referrals by—we've got this case coming up; we knew about it because it came out of the paper.

MS. STEIN. The Joyvies case was a referral from the chief rather than from the district attorney?

MR. CANALES. Yes, in that particular case, I believe that has been the case, worked by internal affairs, by one of the officers, Captain McDaniel or Sergeant McDaniel—McWilliams. That incident happened so close to the Webster matter, the discovery of some or a lot of the evidence, that we were quite shorthanded in our office, and to handle another throw-down investigation in the middle of the Webster investigation was really draining our resources. And I welcomed the chief's invitation to handle it, and I said, "That's fine, go do your duty," and he did.

MS. STEIN. Other than the Joyvies case, what has your relationship been, if any, with the internal affairs division?

MR. CANALES. None. It's a very informal type of a thing. I'm talking—when you say something like that, I take it other referrals of other cases that there are—you know, we talk to each other and, you know, we have a problem right now that we're trying to resolve on the letters, on the availability of the information. We have a little problem, a little disagreement on some policy as to whether or not the reports the IAD—that is, the internal affairs division—that they obtain from police officers are going to be available to the United States attorney.

There is some conflict there between our office and the chief's office, the chief being advised by the city attorney's office, and basically it goes something like this:

A lot of those internal affairs statements that are taken by the officers are taken without advice of rights; they are taken as a result of the theory that the chief needs to obtain those statements in order to have some internal discipline, and that if the chief is to tell the officers, "Well, I'm going to give you your constitutional rights and you give me this statement," and it's going to wind up in the U.S. attorney's office that many of those officers at that particular point in time would rather take their chances and not give him a statement. So we—the chief—the chief's position might be very demoralizing and not be able to control his discipline.

Our position is, if there is a statement to that effect, we would like to know from the chief who took the statement, under what conditions, and if we need it, we're going to get it anyway by grand jury subpoena. And I don't think he can hold me to it, and he'll have to go down to Federal court and explain why he doesn't want to give them to me. But we'll get them. We haven't crossed that bridge yet but, if we want to get it, we'll get it.

MS. STEIN. What in your opinion accounts for the fact that your office successfully prosecuted at least one Houston Police Department officer in the Webster case and the grand jury at the State level had no billed in that case, I think, on two occasions?

Can you hear me? Is it difficult?

MR. CANALES. Well, aggressive prosecution. Aggressive prosecution in that we look at a case differently. We don't have such a close contact with the HPD, and we don't sit together at counsel table and discuss cases or ride with them at night in police cars with them.

Miss Sinderson reviewed the file in that Webster case. She felt there was a throw-down case; she spoke to me about it; we agreed to assign the case to Lupe Salinas, and we told Lupe we figured it was a throw-down case and he had a job to do: go find the gun. And if that meant questioning ATF, we would question AFT; if that meant question the FBI, we were going to question the FBI. Something smelled awful in that case and it had to be resolved. And we weren't going to take anybody else's answer for it. I'll go back to the aggressiveness.

The fact that in our mind we believed it was possible—it could have been a throw-down—while I think from the State's viewpoint, many believed it could not be possible for those terrible facts to occur. So one thing, of course, is one, attitude to a particular lawsuit, and then second, whether you want to do the job, and third, do you have the time to do the job?

And if an assistant U.S. attorney with all—he might have all the great intentions in the world, if he's tied up with another litigation, he won't do it. That's just human nature and I've seen it. They will get up in magistrate's court, they will get tied up going out of town or something else, so they have to be committed and that's what it takes. And we had it committed and I still have a very committed staff.

MS. STEIN. Thank you.

Miss Sinderson, your unit was responsible for presenting the indictment in that case and in trying it; is that right?

MS. SINDERSON. That's correct.

MS. STEIN. Would you agree with Mr. Canales' assessment of the reasons for the different results at the State and the Federal level?

MS. SINDERSON. Yes, indeed. I started out with less information than the district attorney had at the time that a no bill was returned, and I was convinced on the basis of that lesser information that there was something terribly wrong. In my own mind it appeared to me likely that it was a throw-down gun, but it was definitely aggressive prosecu-

tion, and just a refusal to quit, to leave it alone until it had been carried to its logical conclusion, until all the information had been checked out and until there just wasn't any more to get.

As it happened, that was an even—that was even a bigger matter than I could ever have dreamed of. It appeared that we sort of kicked over a rock and a lot of little things came crawling out that we didn't anticipate, but, in any event, yes, I would agree that it's aggressive prosecution and open-minded attitude toward the possibility.

You just have to have a recognition that police officers are human beings and are going to commit crimes like any other human beings commit crimes, and you have to be open to that possibility, that they are not superhuman, and they are not exempt from human weaknesses and foibles, and if you can be open to that possibility, then you can prosecute these matters.

Ms. STEIN. Can you give us an idea of what your total caseload is in the civil rights unit?

Ms. SINDERSON. No. In numbers, I'm terrible about numbers, and numbers are deceiving because I would estimate that we get—and this is an estimate only—somewhere between 30 and 50 new complaints on police brutality every month. We also get every month public accommodations complaints, housing complaints, voting rights complaints. We also get a miscellaneous assortment of sort of due process complaints. They are sort of hard to categorize, and we get those for 45 counties, so I have not—I'm not a numbers person. We just deal with them as rapidly as we can, but we have a large docket in terms of investigative material; in terms of cases which actually get into the courtroom, we don't have that same high proportion as you would have in the criminal division of our office, for example.

No matter how slack business is, and believe me it isn't slack, there is always at least two attorneys doing criminal work full time, and that's in the off period.

But if you get a major case like the Webster case, which we investigated for some 3 months prior to initiating grand jury. Grand jury ran from November of 1977 until indictments were returned in June of '78, and we were not fooling around. We were investigating the case. It was of huge dimension, and something like that eats up time and resources to an incredible degree. From the time that that indictment was returned until the time the case was tried in March of '79, I would say at least 70 percent of Mr. Salinas' time was spent on that case, that one case, investigating further leads, preparing it for trial, gathering evidence, interviewing witnesses. And then there were two other prosecutors who also participated in that case, and there's a considerable amount of man-hours on their part, too.

We were then in court 5 weeks. That's a huge drain on your manpower, so the number of cases that we have in court can be very deceiving, because we haven't had any that were quick. They were all extensive investigations like that.

Ms. STEIN. In bringing these prosecutions in Federal court, naturally you have to bring them under Federal law rather than the State statute?

Ms. SINDERSON. Yes.

Ms. STEIN. Could you tell us, first, what statutes, what Federal statutes you rely on, and what the difficulties and problems are involved in prosecuting under these statutes?

Ms. SINDERSON. Yes. The civil rights responsibility runs to a number of different statutes, the details of which I don't think are probably appropriate to this particular inquiry. The two statutes which relate most frequently to police brutality matters are 18 U.S.C., sections 241 and 242. We have prosecuted officers under both of those statutes, both HPD officers and officers in other agencies, but we have also had to rely upon other Federal criminal statutes in addition to those in order to adequately cover what we thought the facts revealed by way of wrongful activity.

Ms. STEIN. Do you have any suggestions for the amendment of Federal statutes that would assist you in obtaining convictions in cases of this type?

Ms. SINDERSON. Yes, I have a number of suggestions. First of all, I would like to see a great deal more variety in the offenses. Section 242, which covers, I would estimate, 75 percent, perhaps as high as 90 percent of the complaints that we receive, if they were criminal activities, would fall under that statute, section 242. That statute makes it a misdemeanor unless the victim dies, in which event it is a felony. That is an unrealistic range there. You may have injury as severe as permanent paralysis which can be prosecuted only as a misdemeanor. I feel that's totally inappropriate to that type of situation.

Another limitation about these two statutes is this: section 241, which does have a felony provision, a 10 year—it is either a 10-year felony, or, if death results, it's punishable by a term of imprisonment up to life, so the penalties are much better for section 241, but it is applicable only in situations where there is a conspiracy involving two or more persons, acting under color of law, which lets out your single officer misbehaving, and it is applicable only if the victim is a citizen of the United States. That was a provision that was put into the original statute when it was passed back after the Civil War, which is totally inappropriate to the way our society is today. It does not cover, for example, resident aliens; it would not cover a visitor from another country, who might get into some sort of encounter; and we do have those situations.

I feel that we need definitely more varieties of offenses, and we certainly need a more graded range of penalties that are geared to the severity of the injury which is inflicted upon the victim.

The alternative between misdemeanor and the possibility of life, as I've mentioned before, is not good. Without intending to convey any endorsement of any proposed legislation, I would say that the proposal

in Senate bill 1 on the new criminal code, which sets out a variety of offenses related to common law assault offenses and homicide offenses, is much more realistic and it has much more realistic penalty ranges. Something on that order, I feel, is more appropriate to the actual types of situations which do arise.

I also would recommend that there be mandatory prison sentences in connection with these offenses. I feel very strongly that an officer who has taken an oath, a public trust, to preserve and protect the Constitution of the United States and has been found by a jury to have willfully violated that oath and deprived an individual of rights which are guaranteed by the Constitution, I feel, that is of such severity and such seriousness to the concept of ordered liberty in our society that it is something which requires a very heavy penalty, regardless of the needs of the individual defendant officer. In other words, his acceptance of the public trust and subsequent betrayal of it is something which, aside from any personal considerations about him, is something which ought to be noted with a severe penalty, and I do believe that mandatory prison sentence should not be in any instance probated.

Ms. STEIN. The Federal statutes contain a very strict specific intent which it is necessary to prove; do you feel that any amendment would be possible or appropriate with respect to the degree of intent that must be proven?

Ms. SINDERSON. I really don't have any quarrel with the legal requirement that requires a specific intent, what is called in the law *mens rea*, the state of mind with which an act is committed, which makes it contrary to law instead of sheer mistake or accident. I'm not quarreling with that concept. I think that what has happened is that in some of the case law some of the language has been confusing to some of the judges, and juries are not adequately instructed, or perhaps they are using that as an excuse, I can't really say, because I can't get into anyone else's mind, but there does seem to me to be somewhere a problem that courts and juries tend to look at the conduct of a police officer and say, "Well, he was out there to make an arrest, so how could he have intended to commit a crime?"

In other words, he didn't set out to burglarize the store. He set out to do something in the beginning which was perfectly lawful, that is, to make an arrest, and it is very difficult for them to switch over then and say in the middle of doing that lawful activity, he used excessive force with an intent to impose a penalty upon that individual. It is very difficult for courts and juries to switch over and say that's criminal.

Now, what the answer is to that is, counsel, I'm not quite sure, but I don't know that there is any amendment to the statute which could cure that.

Ms. STEIN. I have one final question, Miss Sinderson. It has been suggested that one possible way of dealing with police misconduct is the establishment of a civilian review board. Do you have an opinion based on your experience about the efficacy of civilian review boards?

Ms. SINDERSON. Yes, I do have an opinion, and I am not in favor of the establishment of a civilian review board for the following reasons. I believe that putting a bunch of amateurs in a position where they are subject to the pressures of politically oriented groups to do the type of investigation which is required in a case involving police brutality or any sort of violence between officer and citizen is a mistake. I don't believe that they have the training to handle it. I don't believe that they have the resources to do the kind of investigation, and I think that it would subject the entire issue to political pressures which are unnecessary and unwarranted and not appropriate to the seriousness of the situation. So my opinion is based upon that.

I would suggest that the Webster case is a good example of that. In effect, grand juries are now served as civilian review boards and they simply did not have the familiarity with police techniques to understand what could have happened and how it could have happened and, given that understanding, to then pursue it and find out what really did happen, but it took a highly organized team of attorneys and FBI agents and the internal affairs investigators to ferret out the truth in that case. I don't see how any civilian review board would have that kind of resource available to them.

Ms. STEIN. Thank you very much.

Ms. SINDERSON. Could I make one last little comment, please, and that's about our relations with internal affairs. The original temporary internal affairs group consisted of a lieutenant and two detectives who investigated the Torres case, and I was associated with them in that case, and I—they were the same team which cooperated and worked with us on the Webster investigation, and those three particular officers I want to commend to the Commission for the thoroughness of their investigation and the professionalism which they displayed during that investigation. I still feel that it was a better situation having attorneys supervise it, but as far as the way their investigation was conducted, I do believe that they were very professional and they were very cooperative with my staff.

Ms. STEIN. Thank you very much. No further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Mr. Canales, Miss Sinderson has just given us some very significant, I think, important recommendations relative to possible changes in Federal law designed to make it possible for the Federal Government to operate more effectively in this area.

In addition to possible changes in laws, are there any other suggestions that you'd like to pass on to us which in your judgment would make it possible for the Federal Government, not only here but anywhere in the country, to operate more effectively in this particular area?

MR. CANALES. You could have all the best statutes in the world. Let's assume you have the statutes that Miss Sinderson envisions, unless the U.S. attorney in the field has the commitment or the authority

to go forward, he is not—he's going to have all kinds of problems. You have to understand this, that it is a very demoralizing situation on occasion whereby, if you have a case—take any of the five cases that we've mentioned today where we had led to indictments—for us to do the work—citizen to do all the research, the work, the whole thing, we review it, we go talk to the chiefs, we go talk to the DA, we go talk to the mayor and the United States attorney; while having all the power in the world to conduct an investigation, for example, into white-collar crime fraud, to investigate and prosecute bank fraud, public corruption, large cases on narcotics, I don't need anybody's approval; yet, if it is a civil rights prosecution, all of a sudden, I need to go to Washington to go talk to a staff attorney. And the staff attorney perhaps could be an experienced lawyer or perhaps he's not, but I've got to convince him. And that means I've got to give him all the records; I've got to give him all the grand jury testimony, and I've got to go lobby him. And after that lawyer looks at it, then he has to give it to his immediate supervisor; then on top of that, the branch supervisor—then on top of that, he has to get section chief; on top of that, the Assistant Deputy Attorney General in charge of civil rights, then the Assistant Attorney General in charge of civil rights, five layers of review.

Why is it that we investigate and prosecute cases of the civil rights nature different than the traditional other type of cases? And I have—I have returned and convicted some pretty significant cases and nowhere have I had to go back to somebody in Washington for these kinds of cases.

Now the theory was, Mr. Chairman, that in the past U.S. attorneys were very reluctant to prosecute these type of cases and, therefore, some U.S. attorneys in the past, perhaps, would deliberately not handle a case right or take it to grand jury, no billed it, and perhaps historically that's the way it was done. But today is the new times, and I have talked to many of the 94 U.S. attorneys throughout the country and they all have no qualms about themselves investigating and prosecuting the type of litigation.

So, if anything, I would like to change from my part, from the bureaucracy part, would be the part that U.S. attorney should—should be more liberal to go ahead and prosecute these cases and, if the U.S. attorney doesn't want to do it, certainly Justice has a free hand, and that's the policy we have right now.

We tell Justice, if it happens in our district we're going to prosecute it, and if we decline, we're going to tell you about it and if you want to come down here and do it yourself, you're welcome to it. Have somebody else a check and balance system—and that has been a big factor.

I wish it could change. I've spoken to the Attorney General about this. I've spoken to Attorney General Bell, I've spoken to the new Attorney General Civiletti about it, and I've spoken to the Assistant At-

torney General in charge of civil rights about it. It doesn't take a statute; it just takes implementation of a policy. The policy has been there for 20 years and it's hard to change sometimes, and I think we're changing.

CHAIRMAN FLEMMING. You recommend we pursue that idea?

MR. CANALES. I recommend that you recommend this to the Attorney General.

CHAIRMAN FLEMMING. Okay. I noted with interest your statement to the effect that when you're presenting a matter to the grand jury, you do it through sworn testimony on the part of witnesses, that you or one of your assistants are there.

MR. CANALES. Yes.

CHAIRMAN FLEMMING. Earlier today we had a suggestion made—I think it may have been made more specifically in relation to a State grand jury, but certainly might be applicable also to the Federal grand jury, that in connection with the grand jury proceeding the complainant and his attorney be permitted to be in the grand jury room.

Now how far they would be permitted to go and participate in the process and so on wasn't clear. I mean that didn't come out specifically, but has that idea been presented at any time? I would just be interested in your reaction to that idea.

MR. CANALES. The issue is whether or not counsel not for the government should be inside the grand jury and that is something, I think, the ABA [American Bar Association], for example, has now come up for a recommendation that they be allowed. The Department of Justice's position officially is that they do not believe it should be allowed, and I think every prosecutor in the country, State and Federal, will back that position that it not be allowed.

I would not like to see them either in civil rights litigation. Always there's lot of times the argument is made you're trying to do—you're trying to obtain through the criminal investigatory route matters that you want to use later on in civil proceeding. For example, I have seen that many of the criminal investigations—later on there's also a civil lawsuit. As of last month, somebody obtained \$20,000-odd judgment on civil proceeding on civil rights matter.

There's been civil lawsuits filed in the Torres, Webster, and Joyvies and all of them—and to have counsel inside that grand jury room, I don't think it would be—it would take us somewhere off the road. We need to protect the integrity of the secrecy of the grand jury and that the grand jury, us as their counsel, would see that we have no other motive except to see that justice is done. We aren't worrying about somebody's civil lawsuit down the road, and if we have counsel inside the proceedings, I believe that it would be taken more of a adversary role, and we believe we represent the victim.

CHAIRMAN FLEMMING. Could it operate as a check and balance against the situation where a prosecutor, anyplace, was not disposed to pursue very vigorously complaints, let's say—

MR. CANALES. I see that, for example, if the DA does not want to do that, perhaps counsel has done that. I have—the way to approach that—and I have had the occasion to do that myself in private practice before I was a prosecutor—that I appeared twice. I wrote letters to the foreman of the grand jury; I wrote letters to the district attorney that I wanted to appear before the grand jury and present evidence to them. That's one way it could be done and that's the way I've gotten into the grand jury, as a civilian.

CHAIRMAN FLEMMING. You were given permission.

MR. CANALES. I wrote to the foreman of the grand jury and I told him I had some evidence and I wrote a letter to the district attorney and I wanted to appear and I camped outside the grand jury door. That's one way.

The real check and balance system is the State and Federal. If the Federal don't do it, the State will; if the State don't do it, the Federals will. You've got a real problem when both State and Federal don't want to do it; of course, the third party comes in, the third checkpoint, the Washington—the Department of Justice in Washington. They will do it.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Miss Sinderson and Mr. Canales, I wanted to pursue the situation that you were describing—I'm not sure which one of you—in which the presentations of the grand jury by the State attorney—by the district attorney was less than aggressive. If we would see a situation where there have been several opportunities, or several incidents, several occasions in which there have been allegations of police abuse. They have been the—the record has been there and there has been a failure to make an adequate presentation to the grand jury.

Is there an area here in which the failure to do this would itself be in violation of a civil right and possibly an action could be taken by the Federal Government?

Ms. SINDERSON. That is a possibility, and I cannot be more specific with you on that. As a prosecutor, I am fully aware of the difficulties of trying to assert that when a judgment call is made about the advisability of proceeding, there is any implication in that—that that is a willfully criminal act.

I think that there could be situations where there is a refusal by the district attorney, in the face of evidence which is compelling and cannot be ignored, to do something about it, but if you're talking about—as for example, in the Webster case—a failure to check the gun records personally like we did, I hardly think that you can translate that failure into criminal conduct, and I think you would probably cause more evil than do good.

COMMISSIONER FREEMAN. Assuming there were 30 such cases, say, that there may be the public advocacy center had submitted 30 or 40 such cases, and there had been the same limitation in presentation or same lack of aggressiveness and that would be—could that be determined to be a pattern in practice?

Ms. SINDERSON. It's possible, and you may be heading in the area of some type of civil injunctive remedy or something of that sort, but frankly my opinion is that the district attorney is a political creature. He is responsive to the voters and probably the best and most effective remedy to that situation is the political remedy. That is not true, for example, of the police chief. He is not an elected official; he is an appointed official, so you may have a different situation.

COMMISSIONER FREEMAN. You're not suggesting an elected official is not subject to the criminal—

Ms. SINDERSON. No, ma'am, I'm not. I'm speaking in a pragmatic sense altogether, that it may be more, pragmatically, more realistic to rely upon the political remedy than to create a new one which has attendant problems, such as intimidating prosecutors from doing any kind of prosecution at all for fear they won't do it right.

COMMISSIONER FREEMAN. That's all.

CHAIRMAN FLEMMING. Mr. Saltzman?

COMMISSIONER SALTZMAN. Mr. Canales, is there, in your opinion, a great deal of concern within the minority community that adequate investigation and prosecution for police misconduct has not been true in the Houston community?

MR. CANALES. Is not been what?—the very end.

COMMISSIONER SALTZMAN. Adequate investigation and prosecution?

MR. CANALES. I am not a life-long resident of Houston; I'm from Corpus Christi, and I've only lived here for 2 years and my contacts have been very limited here to the minority community. My contacts have been, mostly, of course, representatives, some of the State officials, head of LULAC, G.I. Forum, Public Interest Advocacy Center; they come see me. To them every allegation or every new case is yet still another bit of evidence that somebody is not doing their job, so I would say that from—I think that the Houston minority feels that we have not done an adequate job at all, neither the State nor the Federals. I think, from the Federal viewpoint, I think the minority feels as far as the State—the State has done nothing.

As far as the Federal, we have tried and dropped the ball, because we have not obtained any convictions whereby police officers have gone to jail, and perhaps many members of the minority—it doesn't have to be minority, from all groups—say, "Look, if I get caught stealing something, if I get caught cheating, if I get caught robbing a bank or whatever, or perhaps any act of violence; if I shoot a police officer, I know where I'm going to go and that thing does not happen to the police officer who shoots me."

That even though we have tried hard, even though we've prosecuted and investigated and everything else, I feel the minority communities still—or the community at large is not satisfied with my services and, because we have not been able to send anybody behind bars and we haven't and—

COMMISSIONER SALTZMAN. Apparently you agree with Miss Sinderson that there ought to be a mandatory sentencing in these cases?

MR. CANALES. I might disagree there with Miss Sinderson as a general philosophy. I don't know if there should be any crime at all. I don't know—the law today is—we've cleared that through the Torres case—today if you're convicted of any crime the punishment could be life imprisonment. There's no probation in a civil rights case, except, of course, if it is a misdemeanor. Just from a philosophical viewpoint, my part—not looking just narrowly at civil rights, I just don't know that there ought to be any type of crime whereby automatic punishment is in there. I just feel that the court ought to have some leeway on the thing. I just don't think—whether it be dope, when a automatic conviction of possession of marijuana, or civil rights or anything else—I just don't believe there ought to be that harsh a punishment for any crime.

In this specific case, when you have the evidence—as we develop the evidence of an intentional conspiracy to lie, deceive, and intentionally shoot a person through the head with a .357 magnum and blow his brains out and then cover and lie and lie for months, or something like that, and they're not remorseful and they are still not remorseful about it—there has not been a single officer who has been remorseful and have said, "I done wrong." There's not a single one—every single one of them said, "I did my duty and I'd do it again if I had to," and if it wasn't—that we had to give them immunity and we have to hold their feet to the fire. If it wasn't, we'd charge them with conspiracy of silence and obstruction of justice; we would have done none of these cases. That's why I think that the community is disappointed in our office, that we had not yet managed to convince anybody, the courts to send anybody to the penitentiary.

COMMISSIONER SALTZMAN. How do you feel about your office and this reality?

MR. CANALES. I'm proud as punch with my office. We started out—

COMMISSIONER SALTZMAN. Wouldn't you prefer to be able to have a system that can be responsive to the conditions which have created that situation where you find police officers, where your officer is unable to achieve imprisonment and unable to achieve the kind of atmosphere which says, "This is improper, illegal, and will be immediately prosecuted and effectively"?

MR. CANALES. We've done that, and I think we've told Chief Caldwell and we've told everybody else that we are not bashful about prosecuting any of his officers for any wrongdoings, and we aren't bashful about indicting any of his supervisors who cover it up and who weren't at the scene and we will do it. But it still remains to be seen that—how far we go on this, but I would like to say that the whole key to all of this civil rights enforcement is to have a chief prosecutor somewhere down the line, the U.S. attorney or the local DA, to be committed to the program and, if that U.S. attorney is not committed to the program, a Miss Sinderson will not be able to get four lawyers and she will not be able to get the staff and they will not be able to

go down there and talk to the FBI and tell the FBI, you know, "We want this done" and whatever unless that person is committed or unless the local district attorney is committed. So you can have all the statutes in the world, unless your heart is in the right place, you aren't going to do it. The whole key is the two people. One, I believe, is the U.S. attorney and second is the chief of police. If that chief of police is not committed to that program, I can prosecute those boys all day and all night, but unless that chief tells them, "I'm setting the standard and the standard is there ain't nobody going to lie about reports; there ain't nobody going around and shooting or killing people," and unless he tells them and they believe him, he cracks the whip on them, we aren't never going to do.

The whole key is the chief and supervisory level of the officers. If those police officers or supervisors tolerate those police officers from lying and covering up and everything else, we'll never get to the root of it, so it all goes back, one, the U.S. attorney willing to prosecute; second, the chief of police, getting the message that he is responsible for a lot of those boys getting prosecuted, unless he straightens them out, and it is his responsibility. Chief Caldwell and I have had this conversation before and he knows it, that I view that this position is a position that is the chief of police's responsibility to see that those officers do it because we'll indict them and it will be on his conscience.

COMMISSIONER SALTZMAN. Okay.

CHAIRMAN FLEMMING. Mr. Ruiz?

COMMISSIONER RUIZ. No questions.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. One short question. Miss Sinderson, you had some grave reservations about the civilian review board and then you mentioned by analogy that the grand jury system, which is trying to do something similar, is not also very effective. What would you, on the other hand, recommend as a vehicle for dealing with these problems, aside from what is being done now?

MS. SINDERSON. Well, the policy of the Department of Justice through the Attorney General has been and continues to be that these are prime—this situation or problems with police brutality are primarily and first the responsibility of the State. I subscribe to that for a number of reasons, some of which are ideological and some of which are purely practical. But given that policy consideration with which I do agree, I think that possibly some consideration ought to be given to establishing authority in the attorney general of the State who is not—while subject to political pressures, comes from a broad enough political base that minorities could have an influence in whether or not he remained in office or returned to office, but far enough removed from local pressures that he could have the objectivity which we heard the—the lack of which we heard criticized today, and I think that is a possibility. At the present time this new civil rights statute at the State level, I believe, gives the attorney general the authority to in-

investigate but no authority to prosecute, and the attorney general in the State of Texas has no criminal prosecutive responsibilities at all, but I can't be sure that that would work. But I certainly think it would be worth a try.

Wherever it is, it is very clear to me—and I have been doing police brutality cases for about 7 years now—and it is very, very clear to me that wherever the responsibility is, the Federal Government is going—the Department of Justice is going to have to be a watchdog on it. We're going to have to continue to nip at their heels. We're going to have to continue to insist that local authority take responsibility. We're going to have to push, push, push, and at the same time be prepared for their refusal to accept that responsibility, but I never think we should let up on the pressure.

CHAIRMAN FLEMMING. May we express our appreciation to both of you being here with us. Thank you for your testimony, your responses to our questions. It's been very helpful.

Counsel will call the next next witness.

Ms. GERE BENICS. Mayor Jim McConn.

CHAIRMAN FLEMMING. Remain standing and raise your right hand.

[James J. McConn was sworn.]

TESTIMONY OF JAMES J. McCONN, MAYOR, CITY OF HOUSTON

Ms. GERE BENICS. Mayor McConn, would you please state your name, title, and years in your position for the record, please?

Mr. McCONN. I'm sorry, I didn't hear the last part.

Ms. GERE BENICS. Name, title, and years in the position for the record—

Mr. McCONN. Yes. The name is James J. McConn; I am the mayor of the city of Houston and have been since January 3, 1978.

Ms. GERE BENICS. Mayor McConn, in the past couple of years Houston has received fairly extensive publicity: a couple of years ago with its national publicized incidents dealing with police and, more recently, for the rising murder and crime rate. I was wondering if you thought either one of those had any adverse effect on the city of Houston?

Mr. McCONN. Certainly when the crime rate increases it has an adverse effect on the city of Houston, but I think maybe the two may be tied together. The adverse publicity that was received, warranted or otherwise, by the use of the Houston Police Department, I think, may have had some adverse effect on the increase in the crime rate.

Officers who are very fearful of any overt action they may take against the suspect or the criminal tend to maybe be a little less aggressive in the honest application of police work. I think there may be some tie-in or two, but certainly, there is an adverse effect on the citizens of Houston when the police department is under attack for one reason or another or when the crime rate is on the increase.

MS. GERE BENICS. Would it have any impact on, say, attracting new business or citizens to the city of Houston?

MR. McCONN. I think it could. I don't honestly think it is at that point now, but I would think that if the murder rate were to get totally out of hand that that might have an adverse effect on some corporation moving to Houston, or if Houston were to begin to be perceived as a place where crime is rampant and not attended to by its police department, I think that could very seriously affect the move in by major industries or minor industries.

MS. GERE BENICS. How do you strike the balance, and I know it is a precarious one, between the need for safe streets and protection for homes and businesses and a very tough law and order force and misconduct, all those policemen conduct, those three factors together in the interrelationship?

MR. McCONN. It is a difficult process at best, but I think that the Houston Police Department, certainly in the last couple of years, has done a pretty good job—in fact, better than a pretty good job, an excellent job of cleaning up themselves internally. Certainly, the people who just left this stand have assisted in that, in the investigation of the Webster, Joyvies cases, the Torres case, and all of the others. But I think it's worth mentioning that within the last 18 months to 2 years there has been no such allegations against the Houston Police Department.

I do not want to get into the position of criticizing those who went before me, but I think that Chief Caldwell and myself, and certainly most of the credit, by far the vast majority of it, goes to the chief, we are ever alert to what the Houston Police Department is doing and what type of an image it has with the people because I think that has a direct bearing on the crime rate.

MS. GERE BENICS. You just alluded to the U.S. attorney's office and we also heard testimony from the district attorney's office as to their investigative and prosecutorial abilities and responsibilities. I understand that you and the city council also have the power to inquire into the conduct of any department, to make investigations as to city affairs?

MR. McCONN. Let me correct you; that is not entirely true. We have no investigative authority. I as the chief municipal officer of the city of Houston do, by instructing the chief or police department to investigate something, but the council itself has no investigative authority.

We do listen to complaints of citizens who come down at the public session on Wednesday morning—had one last Wednesday as a matter of fact who alleged police brutality some 14 months ago, and the normal way of handling that situation is to take sworn testimony and refer that individual to the legal department and to send them immediately to a grand jury so that the internal affairs department at the police department looks into it. But in addition to that, so that we're not in-

vestigating ourselves totally, we immediately send it to the grand jury if the individual is willing to go to the grand jury. If he or she is not, then there's not a whole lot we can do about it.

MS. GERE BENICS. One of the fairly well-accepted facts about the department is that it is understaffed at the moment and has many vacancies. And one reason often given for that is that the police department is unable to compete salary-wise with northern police departments and, of course, private industry here in Houston. What would be your role in the budget process and have you ever specifically requested that this become more comparable?

MR. McCONN. Well, my role in the budgetary process is a major one. The budget is finally passed upon by me, but certainly salary plays a part in the inability or the apparent inability to recruit as many officers as we need, but I really don't think it is the total process.

I'm going to say that I think today it is very difficult for us to attract the good young men and women that we want in the Houston Police Department under today's circumstances of being a police officer. I can't imagine in my wildest imagination a tougher job today for a young person than being a police officer, with the pressures from both sides, frankly, pressures from the Federal Government, pressures on the officer, he or she—in what their ability to react against crime really is, and the criminal on the other end and, without wanting to inject anger or anything into this discussion, we have had police officers who have been killed by criminals.

You know, I fail to see the Justice Department or Mr. Canales' office or anybody else coming in helping us investigate that; that's just an accepted fact. Policemen get shot at, and I think there's another side to this thing and I think, frankly, we've made it almost impossible for a young person to make the decisions that have to be made now—no quarterback tomorrow morning—but now, “Do I shoot to save my own life? Do I shoot to save somebody else's life? Do I go ahead and get shot so that I don't have to go through that terrible process?” I really think that there is another side to the story that maybe has not been discussed here today.

MS. GERE BENICS. Mr. Chairman, I have no further questions at this time.

COMMISSIONER FREEMAN. Mr. McConn, you referred to the incidents of where the lives of police officers have been taken.

MR. McCONN. Yes, ma'am.

COMMISSIONER FREEMAN. In all of those cases was there any lack of prosecution?

MR. McCONN. I can't honestly say that there has been. I'm not really sure, unfortunately, of the final disposition of the Herron case. The chief may know the answer to that; I don't, right offhand.

COMMISSIONER FREEMAN. Well, the problem has been with respect to the allegation against police abuse, is a lack of prosecution, and where there is no lack of prosecution, then there would be no need

to call in anybody's assistance, but where there is a failure of prosecution, or a lack of aggressive prosecution, there would apparently be a need to call in for assistance.

Since you didn't note the difference, I just thought I would bring it to your attention.

MR. McCONN. I appreciate that. I must add though, Commissioner, I am not aware of any lack of prosecution in civil rights cases in the city of Houston. It seems that those cases that I have followed have been very well prosecuted.

COMMISSIONER FREEMAN. I have no further questions.

CHAIRMAN FLEMMING. Mr. Saltzman?

COMMISSIONER SALTZMAN. As the chief executive officer, Mr. Mayor—

MR. McCONN. Yes, sir.

COMMISSIONER SALTZMAN. —have you ever made a public statement to the effect that police misconduct will not be tolerated?

MR. McCONN. Yes, sir. I have on a number of occasions. The chief and I—Chief Caldwell and I meet rather frequently. The conversation or a meeting between Chief Caldwell and I is never held, or certainly very seldom held, where the subject of the responsibility and accountability of the Houston Police Department is not brought up because it is my very candid opinion for a police department to be effective that it must be accountable to the citizens of the community. I think that, again, forgetting what might have happened in the past, HPD I think, certainly for the last 2 years, which goes beyond my term, but very definitely for the last 18 months there has been accountability in the Houston Police Department because it is demanded by me as well as the chief.

COMMISSIONER SALTZMAN. Are there directives under your name to that effect?

MR. McCONN. I'm sorry, sir.

COMMISSIONER SALTZMAN. Any directives?

MR. McCONN. Yes, sir. There are directives to Chief Caldwell and from Chief Caldwell on down, and I'm going to get off the point a little bit.

Let me point out a problem that the police chief in the city of Houston has, whoever he or she may be, that all of the assistant chiefs, all of the deputy chiefs, and every officer in his command, under his command, is protected by civil service, and let me just imagine a situation for a moment, if you will, that he might have a deputy chief who really doesn't think as he does or as I do in regards to civil rights. There's not a whole lot he can do about it. He can't fire him; he might layer him, or he might put him on night command or he might do some of those types of things that are considered to be penalties within the department, but I feel a great deal of compassion for the chief because with the civil rights set up in the State of Texas under 1269m as it is, his hands are pretty well tied. He has a number of employees

with no-cut contracts and having done some coaching in my past, I'd hate to be faced with the position of having a team that had all no-cut contracts.

COMMISSIONER SALTZMAN. May I ask if those directives which you have issued on that subject, could your office submit them so that they might be entered?

MR. McCONN. I'm sorry, sir, I probably misunderstood your question. I didn't realize you were talking about written directives.

COMMISSIONER SALTZMAN. Yes.

MR. McCONN. Well, I'm not sure I could find written directives. I'm sure, if the chief has not testified yet, that he would agree that it is a common occurrence that we talk about that thing, but I can remember no specific instance of writing it out. I really see no need to do it.

COMMISSIONER SALTZMAN. Is there any media coverage in the press that would have reported such a public statement from you?

MR. McCONN. I'm not sure of any specific, but we frequently have news conferences and we frequently talk about the Houston Police Department, the crime increase in the city of Houston, and I'm sure that somewhere on those clips it could be picked up where we talked about accountability of the Houston Police Department and what we expect of those people.

Back during the time of the Torres trial, back during the time of Webster and Joyvies, I was quoted as saying that we were not through cleaning up the Houston Police Department. I believe that in an organization that large that—as I sit here, there are probably some individuals over there who should not be police officers, but we are hopefully ever alert in trying to discover who they are and doing what we can to neutralize them, because we can't fire them until they commit some heinous act, but that we would be able to layer them or set them in some position over there where they would not have access to the public.

COMMISSIONER SALTZMAN. If your office could locate any such clippings or any such statements, I would appreciate it be entered into the record at this point.

MR. McCONN. Be happy to.

CHAIRMAN FLEMMING. Without objection, they will be entered in the record at this point.

COMMISSIONER SALTZMAN. With respect to the civil service setup, do you feel there ought to be some changes so that when a police officer is identified as one who is, by emotion, personality, or what have you, not the quality that you want represented in the Houston Police Department, that there could be steps to remove him? Should there be some changes to that law?

MR. McCONN. Let me answer your question in a roundabout sort of way, if you will; I think that will be great, but I don't know how you're going to accomplish that. But I can see some changes that

would make it possible for a chief or a mayor or a captain to decide that Officer Jones is not qualified. To remove Officer Jones may get him to a civil rights situation that is worse than what we have.

There's a fine line drawing that has to be done in that type of situation. The civil service act was created for a good reason; it was to keep people like me from appointing my brother as police chief, for example, but I really think it's gone too far.

CHAIRMAN FLEMMING. Mayor McConn, how many department heads report directly to you in the city government?

MR. McCONN. Twenty-four department heads and 3 division heads, I believe, is the correct number.

CHAIRMAN FLEMMING. Do you follow the practice of meeting regularly with the department heads as a group? In other words, do you have anything resembling a cabinet that you meet with regularly?

MR. McCONN. Yes, sir, I do; but the cabinet is a small group of department heads. We infrequently meet with all of the department heads at one time. I have frequent meetings with some department heads, less frequent with others, depending on the sensitivity of that department to overall city government. I meet, I would guess, most certainly with the city attorney; possibly second to the police chief; third, I would guess would be the director of the department of public works, and then the fire chief and from there it becomes less frequent because there's less exposure to the public by some of the other departments.

CHAIRMAN FLEMMING. Did I understand you to say that you met with a small number as a group regularly?

MR. McCONN. Yes, sir.

CHAIRMAN FLEMMING. You meet with them individually already as a group?

MR. McCONN. I meet with a small group that includes some of my executive assistants, the city attorney, the director of public works. That is kind of the cabinet as you stated. I meet—

CHAIRMAN FLEMMING. This group does not include the police chief?

MR. McCONN. No, sir, it does not.

CHAIRMAN FLEMMING. All right. Under your form of government—this goes back to an earlier question—does the council, putting you as a member of the council—

MR. McCONN. Yes.

CHAIRMAN FLEMMING. —have under the charter oversight responsibility as far as the executive departments are concerned?

MR. McCONN. Yes, sir, but I think that the strict interpretation of the council—or of the charter, which is really what we have to go by, precludes, for example, a member of the city council getting in direct contact with a department head. It must come through my office, strict interpretation of the charter. We don't actually operate that way, but that's the charter definition.

CHAIRMAN FLEMMING. But could a committee of the council be established for the purpose of investigating one of the departments of city government, including the police department?

MR. McCONN. Yes.

CHAIRMAN FLEMMING. That could be done?

MR. McCONN. Yes.

CHAIRMAN FLEMMING. If that were done, the committee might have its own staff for that particular purpose?

MR. McCONN. Well, I'm not really sure of that, sir. I assume that they could go out and hire an outside attorney and so on, but you see, our council, as such, has no staff. Each councilman has one secretary. There is no staff for the council.

CHAIRMAN FLEMMING. Right. Outside of yourself, the members of the council do not have administrative responsibilities?

MR. McCONN. That is correct.

CHAIRMAN FLEMMING. They simply perform. So they're not full time—

MR. McCONN. No, sir, they are not.

CHAIRMAN FLEMMING. Part time in terms of their service.

To your knowledge, however, you know about your own administration, but previously the council has never exercised that kind of an oversight responsibility in relation to the police department?

MR. McCONN. Not to my knowledge, sir, not to my knowledge; it was attempted at one time by me over a former police chief, and it failed by a vote of five to four.

CHAIRMAN FLEMMING. That you initiated a move—

MR. McCONN. I tried to, yes.

CHAIRMAN FLEMMING. —to conduct an investigation and the council defeated that particular move?

MR. McCONN. Yes, that is correct.

CHAIRMAN FLEMMING. You had in mind at that particular time conducting kind of an independent oversight investigation—

MR. McCONN. Yes, sir, I did.

CHAIRMAN FLEMMING. —to get the facts.

Going to the civil service problem that you have identified, we will have some testimony from those who are responsible for the operation of the civil service. But under your civil service system, is it possible for an administrator to prefer charges against a subordinate, looking toward the dismissal of that subordinate?

MR. McCONN. Yes, it is.

CHAIRMAN FLEMMING. Is there a formal procedure set up for hearing those charges?

MR. McCONN. Yes, sir, there is; we have a three-member civil service commission that would hear the case first and then, of course, there are the courts that would hear it later if they're not satisfied with that decision.

CHAIRMAN FLEMMING. So that if a police chief felt that he had a key person who was violating the civil rights of citizens rather consistently, he could prefer charges on that particular ground?

MR. McCONN. Yes, sir, he could.

CHAIRMAN FLEMMING. Right.

MR. McCONN. But I don't know of any charges that have been filed in civil rights cases right off the bat. Frequently department heads, police chief included, will file charges or build a case for some reprimand, either time off or fire him, that goes before the civil service commission, but historically, it has not proved to be a very productive system insofar as getting rid of the people that some department heads think they should get rid of.

CHAIRMAN FLEMMING. Was the civil service system established by ordinance, city ordinance, or is it part of the same—

MR. McCONN. The 1269m that the police department and fire department operate under is by State law.

CHAIRMAN FLEMMING. State law?

MR. McCONN. State law.

CHAIRMAN FLEMMING. And it can only be changed through the State legislature?

MR. McCONN. Yes.

CHAIRMAN FLEMMING. Have any efforts been made in recent years to modernize, to bring it up to date?

MR. McCONN. There was an effort made in the last session—not by the Houston Police Department, to my knowledge, but by one of our citizens to make it possible for the mayor to appoint assistant and deputy chiefs; I think it included deputy chiefs. I, frankly, was opposed to the measure because I don't think it's the job of the mayor to be appointing deputy chiefs. I think that's the police chief's job. The mayor appoints the chief and can hold him accountable because the chief is no longer a civil service employee.

But speaking from my own background, for example, I'm not a criminology expert, nor am I an expert in any matter of police work; the chief is, and I think that the appointments of those people should be the chief's, not the mayor's. I can see some real problems, depending on who the mayor might be.

CHAIRMAN FLEMMING. Do you meet from time to time, or on a regular basis, with representatives of the various minority groups within the city of Houston?

MR. McCONN. Yes, sir, I do. I take great pride in being a very open mayor, and I meet with minority groups almost constantly—almost daily, I meant to say, and I don't limit it to minority groups. I'll meet with anybody.

CHAIRMAN FLEMMING. Have they put before you some of their concerns from time to time—

MR. McCONN. Yes, sir.

CHAIRMAN FLEMMING. —relative to police brutality and issues?

MR. McCONN. Yes, sir, they have.

CHAIRMAN FLEMMING. For example, we received testimony today to the effect that—from representatives of some of these groups—to the effect that although they felt the topside policies were good at the present time, that they hadn't worked their way down to the patrolmen on the beat, so to speak, and that the tensions between the people that they represent, the minorities that they represent, and the patrolmen on the beat were very, very severe, the way they put it. Have they shared that kind of a concern with you?

MR. McCONN. Yes, sir; yes, sir, they have. Let me address myself to that for a moment if I may.

CHAIRMAN FLEMMING. Yes.

MR. McCONN. I learned a long time ago that people can tell you anything. I can remember very vividly, as a member of the city council, when a gentleman came in and claimed police brutality. I was very taken by that, very emotionally taken, and raised all kinds of Cain about it with the police chief at that time. That was on a Wednesday morning. The following Friday morning, the gentleman held a press conference and said that everything he had said on Wednesday morning was untrue, that he had been put up to it, and that it was totally incredible.

I found myself in a rather awkward position, so I have been a little bit more guarded, perhaps, in jumping up when somebody says they have been brutalized, and we have asked every member of this community—Anglo, Mexican American, black, gay, I don't care what category you might put them in—if they have the facts and they can document a brutality case to bring it to me or to bring it to the city council, because I think I can sit here and honestly say that there is not one member of our city council and certainly not the mayor who would tolerate brutality in this community if it can be—if it can be proven.

An allegation that, you know, "He whipped me," when there are no bruises, visible bruises, is a little bit hard to take, and I just don't want to get into the position of everytime somebody claims that the officer was rude to him or to her, that we jump up and down. Document it and we will do something about it.

CHAIRMAN FLEMMING. Let's assume that a member of a minority group, a representative of a minority group, does bring to you a situation which has been documented? How do you handle it then, as mayor, once you've received that documented presentation?

MR. McCONN. It would depend on how I received it. If I received it at the council meeting, that person would be asked to testify under oath, to any statements he made would be under oath. He would then be referred to the grand jury, he or she.

If it were handed to me personally, say, in the office, or downtown, then I would contact the police chief and send whatever documentation I had to him to be run through the internal affairs division to check it out.

CHAIRMAN FLEMMING. You don't have any, or do you have any mechanism for making any kind of an independent check in that latter case?

MR. McCONN. No, sir. If it were severe enough—and I'm speculating because I have not encountered this thing—but if it were severe enough that I thought that it would not get proper attention at the internal affairs department, I might be moved to go to the FBI or to go to Mr. Canales with it; that has not happened because nobody has honestly handed me a documented case.

CHAIRMAN FLEMMING. When you say it is referred to the grand jury, what does that mean practically? Does that mean that the person is referred to an assistant district attorney?

MR. McCONN. Well, I would assume it would probably be an assistant district attorney because I doubt that the district attorney, you know, is going to meet with all of them, but it is referred, really, to the district attorney for presentation to the grand jury.

CHAIRMAN FLEMMING. Because I understand previous testimony, as far as the State is concerned, the State grand jury, they normally do not take testimony from witnesses and so on.

MR. McCONN. It really, I guess, sir, is an unintentional misquote to say it is referred to the district attorney's office for presentation to the grand jury.

CHAIRMAN FLEMMING. So really then, the city council refers it to the district attorney, and then it is up to the district attorney to determine whether or not a presentation is going to be made to the grand jury?

MR. McCONN. Yes, sir, that's correct.

CHAIRMAN FLEMMING. So that the—now, does the city council ask for any report from the district attorney on—let's say it is a pretty severe case, just for sake of illustration, and the city council is impressed with the seriousness of the case. Do they refer it and then ask the district attorney to report back to him as to his disposition of the case?

MR. McCONN. I cannot honestly remember any effort to get a report back, but let me state that any of those and all of those are sent to the police chief and internal affairs department and we do get a report back from them.

CHAIRMAN FLEMMING. But could the city council request the district attorney to report back?

MR. McCONN. I feel sure that they could.

CHAIRMAN FLEMMING. You'd have authority to do that?

MR. McCONN. Well, no, sir, we have the ability to make the request of anybody. Whether we could order the district attorney to comply is something else, but, yes, we could make the request.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Out in the communities, in the neighborhoods, the local residents are not in contact with the mayor.

MR. McCONN. Which one?

COMMISSIONER RUIZ. They're not in contact with the city council. The only indicia of authority is usually an uniformed officer wearing a gun. He represents the city, and they are rather reticent to make complaints to such an individual. From earlier testimony it appeared that, as I understood it, only a formalized written complaint duly notarized by a notary public is the only kind of a complaint which is given any official recognition by the Houston Police Department. The man on watch at night, maybe the following day, if you want to go—don't go to work, get dressed up, look for a notary public.

Now, from your point of vantage, as mayor, how could this be improved upon, this procedure?

MR. McCONN. First of all, I would have to accept the premise, and I'm not sure I understood your statement that somebody who wants to file a complaint—

COMMISSIONER RUIZ. As I understood from testimony given here earlier by witnesses, in order to file a complaint of police brutality or impropriety—

MR. McCONN. Oh, all right.

COMMISSIONER RUIZ. —by a citizen, that complaint has to be in the way of a formal notarized document and taken to the police department; that the police department in turn may then start its machinery of internal review, internal investigation, to find out whether that citizen is or is not lying or telling the truth or whether there's something to it. How could that be facilitated?

MR. McCONN. Well, I'm not sure I know how to facilitate, but there is another method that the testimony obviously did not divulge; that same citizen can come down on Wednesday morning before the city council and tell his or her story and then is sent to our legal department where he is shown the way to the district attorney.

COMMISSIONER RUIZ. For example, my name is Juan Diego and I live out in the neighborhood and I said I am told I can file a complaint, but I have to go and see the alcalde, the principal man in the city, before I can do this, or I have to go to the city council and present my complaint. That is rather discouraging.

Now, this other means that I have just referred to as a mechanism that already exists. Couldn't that be made more simple? For example—

MR. McCONN. I guess it could, sir.

COMMISSIONER RUIZ. Couldn't that be reduced to simple writing of some kind without looking for a notary public? Couldn't there be an informal complaint made followed by something else?

MR. McCONN. Sure.

COMMISSIONER RUIZ. This has me—

MR. McCONN. Sure, we could take it all the way to the—

COMMISSIONER RUIZ. The complainant is the one that initiates the situation and starts the ball rolling.

MR. McCONN. I think that practicality has to enter into it somewhere, and to answer your question, we could take it all the way

to the simple form of accepting it over the telephone, but there has to be a practical side to these matters, and I would think that if I had been brutalized by the Houston Police Department or any other police enforcement agency, that I would be willing to write out my complaint. I think that it would be advised for me, anyway, to write it out so I'd remember what happened, because my memory is not that good.

COMMISSIONER RUIZ. That's an item that I think needs a little further looking into it. We're not looking for a perfect system. We're looking for answers, and sometimes little things are important and I understand what you mean by saying, "Well, a person should not hesitate to go before a notary public and swear on an oath whether he's telling the truth." But I'm not talking about that particularly. I'm speaking about something that will make it more facile and more feasible. I know your chief of police has been making notes here during the course of the day, and perhaps there have been some suggestions made that might be of value, and I know that you're very much interested in your community and I certainly appreciate the fact that you've given us a lot of insight on what is being attempted to be done.

MR. McCONN. Thank you, sir.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. Mayor, you indicated—we know there are approximately 3,000 police. You are, also, attempting to increase the police force. Do you have a goal as to the number in your budget for how many of—you think you would want to have?

MR. McCONN. Well, not exactly, because I am convinced that we cannot do it all at one time. This year I believe—and I could stand corrected on this—the chief may know, but we authorized six classes, I believe.

MR. NUNEZ. How many conditional police officers would you estimate—

MR. McCONN. If each class were a full class, I think we could accommodate—and again I could stand corrected on this number—but I think a full class is about 72. We normally do not attract a full class. I can remember—

MR. NUNEZ. Seventy-two per class?

MR. McCONN. Yes.

MR. NUNEZ. So, four classes would give you—

MR. McCONN. Six classes would give us an additional 500 officers.

MR. NUNEZ. 500 additional police officers.

MR. McCONN. Yes, sir. It is my belief, sir, that we need a minimum of 5,000 policemen and that takes some explanation. The city of Houston is a large urban sprawl; we cover some 580 square miles. It figures we would need more police officers per thousand maybe than San Francisco does, that is contained in 49 square miles area. Our response time is extremely important to proper police investigation and citizen protection.

So I think that a number somewhere in the very near neighborhood of 5,000 officers would greatly assist us in reducing our crime rate and giving better protection to the citizens of this community.

MR. NUNEZ. Well, the point I'm getting at, aside from that, increasing the police force by approximately an additional 2,000 would give you a tremendous opportunity to restructure your police department. You know, you talk in terms of civil service regulations, but if you brought in an additional 2,000 police officers over the next several years, you would need the corresponding amount of supervisory personnel who supervises these additional police officers. You could mount a much more aggressive affirmative action plan.

MR. McCONN. Again, let me make an explanation on this because I've been very concerned about the fact in the hierarchy of the police department we have so few minorities, but I think, again, as a practical matter I see the reason.

Advancement is made by examination. All right, now, if we had 100 officers in theory taking the exam for a sergeant's position and because of the very low numbers in the police department of minorities, black and brown, then it figures that of the 100, maybe 85 percent are going to be Anglos, 10 percent Mexican American, and 5 percent black. What are the odds of an Anglo doing better on that exam? Forgetting all educational levels, forgetting all that, just the sheer odds of numbers, and it's going to take a long time under the present civil service setup to restructure that organization.

CHAIRMAN FLEMMING. Mayor, on that particular point, if I can interrupt Mr. Nunez for just a moment; a good many years ago, for 9 years I served on the Federal Civil Service Commission. I believe in the civil service system, but it is not an end in itself; it is a means to an end.

MR. McCONN. Amen.

CHAIRMAN FLEMMING. It is a means for hopefully getting more effective government. If the civil service system as established by the State legislature, as it operates in Houston, is making it impossible for the Houston Police Department, or other departments, to comply with the equal employment opportunity laws, Federal and State—in other words, if there's a head-on conflict there—it seems to me that some people ought to go to court and get it established that the civil service system cannot be used for the purpose of defeating equal employment opportunity.

MR. McCONN. Yes, sir, and I don't think that I said it makes it impossible. It makes it very difficult. Maybe one is the system—

CHAIRMAN FLEMMING. I can see situations where—I can see a situation where it might become virtually impossible, and I don't think administrators who really want to implement affirmative action, both in terms of recruiting and in terms of promotion, providing opportunities for promotion, should just accept the fact that they can't accomplish what they want to accomplish because of the civil service system. I think there's often a head-on clash there, and I believe that the con-

stitutional requirements that are incorporated in equal employment opportunity laws can and should take precedence.

I just have a feeling there's been a little bit too much of a reluctance over the country to say, "Well, we can't comply with the equal Title VII of the Civil Rights Act because of the fact that we're bound by the civil service system."

MR. McCONN. You've obviously heard that before.

COMMISSIONER FREEMAN. I believe that instead of any litigation, that this Commission could transmit a communication to EEOC requesting an opinion on the fact—on the testimony that was given, and I would request that be done.

CHAIRMAN FLEMMING. Okay, without objection, we'll do that. Maybe it can be of some help that way; I agree with you, too.

MR. NUNEZ. One further point on this issue: you do have this opportunity in the next 3 or 4 years, according to your budget projections, of significantly increasing the human resources, the staffing of the police department, and in that sense you are in an advantageous position. Most police departments around the country are frozen or going slightly backwards. You are going forward. As the chief executive of this city, have you given some thought of a kind of master plan or strategy for directing your police chief to do this, to look at when you in fact did have 5,000 or 6,000 police officers in this town, what would be the makeup? What would be the organizational pattern? This is a chance that you have that is unique, and I was wondering if you had given this any thought?

MR. McCONN. Yes, sir, we've given a great deal of thought, and I think the chief fully understands that in our recruiting effort we are trying desperately to build the minority members of the Houston Police Department. I'll be very candid with you. We have not had a great deal of success along those lines and I have some theories but—some theories as to why, unproven theories as to why—but we make a very diligent effort to recruit minorities into the Houston Police Department, because—as long as I am the chief executive officer of the city of Houston—I think it is imperative that we have them. So we have Mexican Americans on the force that understand the culture of the Mexican Americans when they are traveling through the area; the same is true of the black community.

I think it is—just necessarily from my 51 years of life—is wrong for only white officers to be patrolling in a black area just as I would think it would be just as wrong for only black officers to be patrolling in a white area. I think we need desperately to build the numbers of minorities in the Houston Police Department.

I happened to open a new class yesterday, and part of the reason that we're limited to those classes is the size of our facility. We are building a new academy that will accommodate much larger classes, but I welcomed a new class yesterday that had some 20 percent black representation into it. We have, if I remember the figures correctly,

only 7 percent of 66 officers were Mexican American, and some 12 to 13 percent were black and that's not nearly enough.

I noticed only one woman in that class. There were several who had been accepted, but for some reason or another only one was at that meeting, the inaugural meeting yesterday morning. That concerns me that we're not able to attract more women and more minorities into the police department. But it is not limited to minorities. We're having a problem recruiting anybody into the Houston Police Department. Last October we had a class that was cancelled. We couldn't get anybody.

MR. NUNEZ. You did mention that previously, and it is a curious fact that other other cities advertise police officers and get 5,000 applications for 100, 200 people and you said that it was not solely the pay.

MR. McCONN. No, sir, it is not because our pay has been checked against other major cities and we're in line. We may not be in line with Detroit, but neither do we lay off 1,900 officers at a time.

MR. NUNEZ. But your feeling is basically the difficulty is it's such a difficult job, hard job.

MR. McCONN. Yes, sir, a difficult job, and I think, very candidly, that among the minorities that you're joining the enemy, so to speak, because of the image that the Houston Police Department has had in the past. I don't think that same image exists today, and I think I can honestly state, as the mayor of the city of Houston, I talk to an awful lot of people from all ethnic backgrounds and I think the image of the police department has been uplifted in the last couple of years.

MR. NUNEZ. Assuming that is so, as the chief executive officer of Houston, do you feel you have a responsibility to go out to tell the general public of what you have been doing, what the police chief has been doing, and encourage greater cooperation and turn this image around—and you've been doing that?

MR. McCONN. Yes, sir, I speak to groups of all kinds, at luncheons and at other meetings, and I frequently talk about the police department and its need for new recruits and to try to enlist people like Lions Clubs and Rotary Clubs.

MR. NUNEZ. As well, you talked to the minority community?

MR. McCONN. Yes, sir, to get them to help us. I have sat down with Representative Leland and talked to him about this problem. I have talked to former State Representative Craig Washington. We're all aware of the problem, but nobody seems to have an easy answer to that problem.

MR. NUNEZ. No further questions.

CHAIRMAN FLEMMING. Thank you very much, Mayor McConn, for coming here and testifying, answering our questions.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MS. GEREBENICS. Mr. Louie Welch.

CHAIRMAN FLEMMING. Just raise your right hand.

[Louis Welch was sworn.]

TESTIMONY OF LOUIS WELCH, PRESIDENT, HOUSTON CHAMBER OF COMMERCE

CHAIRMAN FLEMMING. Appreciate you're being with us very much.

Ms. GERE BENICS. Mr. Welch, would you please state your name, occupation, and position with the chamber of commerce for the record, please?

MR. WELCH. I'm sorry, you are going to have to speak louder.

Ms. GERE BENICS. Please state your name and position with the chamber of commerce for the record.

MR. WELCH. Louis Welch, I'm president of the Houston chamber and former mayor of the city of Houston.

Ms. GERE BENICS. Mayor Welch, do you believe that either the well-publicized incidents of police misconduct in Houston or the current rise in the crime and murder rates have had any effect on Houston's economy or ability to attract new businesses or people to the city?

MR. WELCH. If there has been any, why it certainly has not been measurable. Houston is still attracting probably the greatest rate of growth of any city in the latter half of the 20th century in America.

Ms. GERE BENICS. Could you briefly describe the chamber's purposes and goals?

MR. WELCH. In one sentence, the purpose of the Houston Chamber of Commerce is to make Houston a better place in which to live, to work, and to do business.

Ms. GERE BENICS. Does the chamber have any sort of either formal or informal relationship with the police department or the chief of police?

MR. WELCH. We have a crime prevention committee which is composed of individual citizens and, of course, there is through that committee a working relationship with every division of the police department. It all still has to do with making Houston a better place in which to live, to work, and to do business.

Ms. GERE BENICS. Do you believe the business community in general has any kind of duty or responsibility to ensure that the police department is providing adequate services to all the citizens of Houston?

MR. WELCH. Not only do I believe it, I think there has been no community whose business group has been more responsive, historically, to the needs for that kind of assistance.

In 1968 there was a period of extremely high friction between police departments and minorities throughout America. Houston was the largest of the biggest cities—the largest of the big cities of America without any period of serious prolonged disorder. One of the reason for this was a program initiated by the mayor's office, prepared very largely under the tutelage of Inspector Harry Caldwell, who presently is chief of police, and Dr. Blair Justice, a Ph.D. in behavioral psychology who was attached to my staff.

They developed a confrontation program which involved every member of the Houston Police Department and members of the mili-

tant minority groups, where very heated confrontation occurred, but out of which there was an exchange of personalities, where people began to speak the same language and understand the mores of the other side. This was financed entirely by a grant raised within the business community, a committee headed by a former president of the Houston Chamber of Commerce, Mr. Gale Whitcomb, who in a single meeting raised \$100,000 just by saying, "Fellows, we need the money."

This was to pay the officers' overtime pay to engage in this very uncomfortable situation psychologically where—well, it changed the total psychology of the department. I think the chief will be happy to testify to this further.

But more recently—pardon me—prior to that time, just a few months, 1967, we were dependent solely upon ad valorem taxes in the cities of Texas for income to operate our cities, small franchise taxes on utilities and that was basically it. There were no grants-in-aid from either the State or the Federal Government, and we had a constitutional limit on the amount of ad valorem taxes to be collected.

We asked for a 1-cent city sale tax to be voted by the people of the city of Houston upon themselves in order to—we might spend it for the improvement of public safety. This was dedicated to public safety. I was mayor at the time. I ran for mayor on the ballot in November of '67 asking people, "Don't vote for me if you don't intend to support the 1-cent sales tax." Three weeks later in December—my election was in November, the run-off election such as were held, and the sales tax elections were in December—I was returned to office by 69 percent approximately of the vote citywide. I lost four precincts in the entire city; I carried a majority of all the precincts and only lost four and those four by less than a total of 200 votes, but you can tell how badly I felt in December when the city sales tax, which I demanded be—passed by even a more overwhelming majority, and it is pretty bad to be less popular than a sales tax and it was done with the support of the business community. Even the retail merchants who have to collect it said, "Yes, we're for it." We raised the money to put up billboards, out of the business community, to make sure that we maintained public safety.

MS. GEREENICS. I have this one final question. Could you envision any kind of circumstance in which the business community would exert pressure on either the mayor's office or the chief to change a policy or practice of the Houston Police Department? Would the business community ever involve itself in department affairs to that extent?

MR. WELCH. They never attempted it when I was mayor.

MS. GEREENICS. How about now?

MR. WELCH. I would not attempt it.

MS. GEREENICS. Thank you.

I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Mayor Welch, growing out of your very rich experience here in this community, are there any other observations that you'd like to make, relative to the issues that you know we've been taking a look at? You listened to our dialogue with the present mayor and so on. I'd just be delighted to have you think out loud, please.

MR. WELCH. The political support from city hall is absolutely essential to an efficient police department. There has to be some continuity in the operation of that police department, or there is a slippage of discipline and morale. When you have five acting chiefs within a period of 4 years, you cannot have the continuity of discipline and morale, and I think the problems that we're talking about are problems that grew out of that type of situation.

Whenever city hall tries to run the police station, it almost always gets in trouble, because city hall has not the expertise in the criminal justice chain. It must accept the responsibility for the efficiency of it, but when it tries to get into the day-to-day operations of it and say, "Old Joe is a good old boy, and his brother is a candidate for sergeant and let's see if we can't help him a little bit," that's when you get a bad sergeant and he later becomes a bad lieutenant. This is the sort of thing that destroys police departments, or having as the head of a police department a man who is not respected by his fellow officers is destructive to the morale and the discipline.

The only problem that Houston has had, I think, has been a slippage, in a period of time where we had five people, all of whom in good faith, I'm going to assume, only not all have escaped indictment, but that is what happened to the Houston Police Department. Again, there was a slippage of discipline and when there's a slippage of discipline, bad police officers, and there are some—you have a big enough commission, you'll have some bad commissioners—just the law of averages take care of it. There cannot be a good police department without political support. There cannot be good political support unless the business community—and when I say the business community, I'm talking about the tax-paying establishment—that demands a good police department. It has to be run in favor of the preservation of law so that order may prevail in our community, rather than as a rehabilitation unit to slap people on the wrist and say, "Don't do that anymore; we might not like it." There has to be a discipline in the department, and there has to be an equal and fair enforcement of the law.

Houston has enjoyed over the years an excellent image of its police department; it has suffered only recently. I think that the evidence is overwhelming that we're out of that period and that the present administration of the police department has the full support, political support of city hall, and that it has the business support of the community and the respect, I think, of the entire community. I think you are looking at the barn after the horse has been returned.

CHAIRMAN FLEMMING. Could you comment, or would you give us the benefit of any observations relative to the relationships between the minority groups within the community and city government and particularly the police department—again growing out of your own experience?

MR. WELCH. We tried not to recognize that there were any differences in laws. The laws applied equally to everybody. When someone applied for a position with the department, we didn't care what color or sex, what the ethnic background was. We were looking for people who believed in the establishment of order within the community and who were willing to give of themselves to preserve it.

I think we're coming to that again; I think we're very close to it again, and I again—even—well, if he weren't here, I would say some nice things about the present chief, but since he is here, I'll say I think he's doing an outstanding job. Put that down, chief, pass that on to a memo, will you?

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. The business community must be aware of the slippage of morale because of lack of continuity; would you suggest a charter amendment which would ensure some kind of continuity?

MR. WELCH. I would not.

COMMISSIONER RUIZ. Would you suggest any alternative to the sustaining of continuity which you have indicated has been the principal reason, lack of morale and slippage of morale?

MR. WELCH. I would not.

COMMISSIONER RUIZ. You would not indicate any change?

MR. WELCH. The present system cleans itself. You got a shot at that mayor every 2 years, and if he goofs, you throw him out.

CHAIRMAN FLEMMING. If I could interrupt here, I think your question dealt with continuity in the police.

MR. WELCH. My response is to exactly that question.

CHAIRMAN FLEMMING. Okay.

COMMISSIONER RUIZ. Continuity in the police chief's job.

MR. WELCH. In the police chief's job, if the mayor knows that the police chief is doing a bad job, he's going to make a change or he's going to be changed, one or the other.

COMMISSIONER RUIZ. In other words, your suggestion is that the next mayor and the following mayor will undoubtedly keep that continuity with the present setup of the police department if the police department is showing great progress?

MR. WELCH. I think that a police chief establishes his own continuity. If he does a good job, then he becomes one of the greatest assets that administration has. If he does a bad job, he's a liability and he's cut loose. I came into office wanting to keep the man who was chief of police, wanted to keep him because I didn't want to make any change. Eight months later I called him in and asked him to sign a resignation and he said, "No, why don't you fire me?" I said, "You are fired." I accommodated him instantly.

He had—his failure to enforce impartially the laws of the city was so evident to me, by that time, and to the community that I feared no political reprisal at all if I fired him, but I felt if I kept him that I would not have kept faith with the people who had elected me and I changed. The next man stayed with me for 9 years and 2 months until I left office.

CHAIRMAN FLEMMING. Thank you. We appreciate very, very much your coming here.

MR. WELCH. I was going to invite you to my house, but you know I have just had surgery.

CHAIRMAN FLEMMING. Well, that's why we're very, very grateful to you for going out of your way to come here and share your views with us. Thank you very, very much.

Counsel will call the next witnesses.

MS. STEIN. Mr. Chairman, the next witnesses are David Collier and Alvin Young. I understand that Mr. Collier is here, but Mr. Young has not arrived yet. I don't know if you prefer for us to begin with Mr. Collier or to take a short break.

CHAIRMAN FLEMMING. You can get started.

If you just raise your right hand.

[David L. Collier was sworn.]

**TESTIMONY OF DAVID L. COLLIER, DETECTIVE, HOUSTON POLICE
DEPARTMENT, AND LEGISLATIVE CHAIRMAN, HOUSTON POLICE OFFICERS'
ASSOCIATION**

MS. STEIN. Mr. Collier, would you please state your name, rank, and organizational affiliation for the record?

MR. COLLIER. Yes, I'm David L. Collier. I'm detective with the Houston Police Department, and I'm legislative chairman of the Houston Police Officers' Association.

MS. STEIN. Thank you, and could you tell us a little bit about the Houston Police Officers' Association; how many officers does it number and what is its function?

MR. COLLIER. Yes, ma'am; we have 100 percent of the police officers in Houston belong to the Houston Police Officers' Association.

MS. STEIN. Mr. Collier, do you view police misconduct as a major problem in Houston?

MR. COLLIER. No, ma'am, I certainly do not.

MS. STEIN. Do you believe that there is any problem of misconduct at all?

MR. COLLIER. Oh, certainly. I'm not going to sit here and tell you there is no misconduct. I do not think it is a major problem. I think that it is blown out of proportion by the news media; I think that the only thing that the citizens of Houston see about the police department is the things that go wrong, but you know there are many, many good things that happen, as opposed to those small things that happen

wrong, and I think we wind up in a bad light because of the coverage that we get when one of our officers does something wrong.

MS. STEIN. How do you think the rank and file officers feel about the highly publicized cases that I assume you're referring to, Torres, Webster, Joyvies?

MR. COLLIER. I don't think there's an officer on the department will condone what happened in any of those cases; however, I think that they feel that they are suffering, the innocent ones are suffering for what was done by a small minority of the officers on the department. Now in those particular cases, we're talking in the neighborhood of, what, 15 officers, which would be in the neighborhood of possibly one-half of 1 percent of the officers of our department, and you've got the other 99-1/2 percent that wind up suffering for what those officers did.

I think part of the problem is because of the news coverage that they got.

MS. STEIN. Do you think that the method of investigating the incidents of misconduct that do exist within the police department are adequate?

MR. COLLIER. Yes, ma'am, I certainly do.

MS. STEIN. Do you feel that they were adequate in the cases that you referred to?

MR. COLLIER. Well now, the cases you referred to—you're talking about the Torres and the Joyvies and the Webster cases?

MS. STEIN. Yes, sir.

MR. COLLIER. Well, I wasn't personally involved in any of the investigations of those cases and have no firsthand knowledge, but from what I understand it was or should have been.

MS. STEIN. What is your view about the internal affairs division in the police department?

MR. COLLIER. I think every patrolman has a certain fear of the internal affairs division, or any investigative body for that matter. However, I think the average policeman on the street also knows that it is necessary.

MS. STEIN. Am I correct that prior to the establishment of the internal affairs division, allegations of serious misconduct were investigated by the chief of the division in which the officer involved was assigned?

MR. COLLIER. Well, that depends now. If you're talking about a serious breach of conduct, let's say for instance that an officer shot a person, then it would be investigated by the homicide division, or an officer was accused of theft, it would have been investigated by the burglary and theft division or robbery division, auto theft, whatever division handled that particular crime.

MS. STEIN. In your opinion has there been—is there an improvement as a result of the internal affairs division being created and given this responsibility or has there been no change or what has been the result?

MR. COLLIER. Oh, I am sure there's an improvement in that you've got people down here that handle this type of investigation all the time

involving another officer, and no, I would have to say there has been an improvement.

CHAIRMAN FLEMMING. Mr. Young, you might stand and just raise your right hand.

[Alvin Young was sworn.]

**TESTIMONY OF ALVIN YOUNG, PATROLMAN, HOUSTON POLICE
DEPARTMENT, AND FORMER PRESIDENT, AFRO-AMERICAN POLICE OFFICERS
LEAGUE**

Ms. STEIN. Is it your impression, Mr. Collier, that the rank and file officers have accepted the new policies in the police department regarding the use of deadly force?

MR. COLLIER. I'm not sure they have accepted all of those policies, no.

Ms. STEIN. Can you elaborate on that any? Do you know what policies created a problem in their view?

MR. COLLIER. There are many officers who are not particularly happy with the burglar-in-the-building policy. You know, I assume you're aware of what that policy is; where, if an officer gets a call where there's a possible burglar in a building, then when he arrives on that scene he has to wait until the supervisor arrives before he can enter the building. I've talked to many, many officers who are not happy with having to wait until a supervisor gets there before they enter the building.

Ms. STEIN. What is your opinion of that policy?

MR. COLLIER. Well, I'm not on the street where I ride around anymore, so I'm not sure about that. However, you know, I do have to admit that we haven't had a officer shoot a burglar in the building since the policy went into effect that I know of. However, I'm not sure about how many burglars have gotten out the building while they were waiting for a supervisor to get there either.

Ms. STEIN. That kind of leads into my next question. I was wondering if you have an opinion about what effect, if any, of these policies have on the crime rate in Houston?

MR. COLLIER. I have no way of knowing the answer to that.

Ms. STEIN. Do you have any view as to what are the causes of the rising crime rate in Houston?

MR. COLLIER. What is the cause of the crime rate rise? No, I have no idea what is causing it like that. I know one problem is, of course, we're shorthanded. Could cause a problem in the burglaries and problems in the beer joints and these sort of things, where we don't have the manpower to get out there and police them like we should. We're definitely well understaffed.

Ms. STEIN. Would you have any comment on what the reasons are for the understaffing in the department?

MR. COLLIER. Can't get enough people to apply. Can't hire enough people.

Ms. STEIN. Is that the only reason?

Mr. COLLIER. Well, that's one of the major reasons. Of course, you know, the news coverage that we've gotten in the past year or past 2 years certainly hasn't helped much any. Like Mayor McConn said, who wants to go down there and join the other side, and that's the only side that most of the people in Houston see on the news media, in the newspapers.

Ms. STEIN. Is there any other factor that you know of that causes a relatively low rate of application?

Mr. COLLIER. Well, yes, there is another one and that, of course, is salary. You know, a young man coming out of high school, or maybe with a couple of years of college, can go out into industry and make a hell of a lot—excuse me, a heck of a lot of more money than he can make down here as a beginning patrolman.

Ms. STEIN. Do you know whether or not most police officers hold an extra job?

Mr. COLLIER. Well, of the ones that I know, which is almost probably over half of them, they hold extra jobs. I know very few that don't.

Ms. STEIN. Am I correct, Mr. Collier, that one of your—one of the responsibilities of your position with the officers' association is lobbying on legislation?

Mr. COLLIER. Yes, ma'am.

Ms. STEIN. Could I ask whether your organization took a position on the bill S. 546 in the last legislature?

Mr. COLLIER. You're going to have to explain what it is. I've forgotten the numbers now.

Ms. STEIN. That was the bill that added a civil rights—a violation of civil rights of a prisoner section to the penal code and made it a felony to—

Mr. COLLIER. The amendment to the official oppression section; is that what—the one you're talking?

Ms. STEIN. That made it a felony to violate the civil rights of a person in custody?

Mr. COLLIER. No, ma'am, we did not oppose that bill.

Ms. STEIN. Did you support it?

Mr. COLLIER. Yes, we did.

Ms. STEIN. Did you take any position?

Mr. COLLIER. Yes, we did. I met with—in the beginning of the session, there were five bills introduced which addressed themselves to the same thing. We met with all of the representatives that had those bills. If memory serves me right, it was Mr. Ben Reyes, Mr.—oh, I can't think of the representative from San Antonio—anyway there were five different representatives had bills, and we sat down and met with them and had a roundtable discussion and tried to all come to an agreement on one bill which we did do and which that bill did pass.

Ms. STEIN. One of the features of that bill is that it only applies to persons who are in custody at the time of the alleged violation of civil rights.

Mr. COLLIER. Yes, ma'am.

Ms. STEIN. Were you in favor or opposed to that qualification, if you recall?

Mr. COLLIER. I started to say I don't recall, because at the time that's what we were discussing. We were discussing abuse of prisoners and, you know, let's face it, we all sat down and agreed that the purpose of that bill was to prevent what happened in the Torres case, and you know, to be able to prosecute on a State level, you know, for the greater penalties in the Torres case—and we were only talking about people in custody.

Ms. STEIN. I believe I'm correct that the Police and Firemen Civil Service Act prohibits an indefinite suspension of an officer more than 6 months after the date of the disciplinary offense with which he's charged; is that correct?

Mr. COLLIER. There is a statute of limitations on civil service violations, yes. Of course, this doesn't have any effect on criminal prosecution or criminal violations.

Ms. STEIN. Right, but it is with regard to internal discipline, the indefinite suspension or termination of an officer; is that right?

Mr. COLLIER. Exactly. Generally, it's more in the level of violating some policy or rule of the department, and we felt—and we always have felt that, you know, if a person hasn't been caught in 6 months, don't hold it over his head forever. This could be a tool used by a supervisor; say he caught a guy out of uniform, you know, 8 months ago, but he's just kind of holding back until he has decided—"Well, you know, I'm going to get even with him; hey, what about this, happened 8 months ago." No, that's the purpose for that.

Ms. STEIN. That 6-months rule can also be a problem, can it not, in the case of a coverup of misconduct occurs and the misconduct is not discovered until more than 6 months after the date that it occurred?

Mr. COLLIER. That's true. However, the way I feel like and have to take the position that, if there was a violation of the law, it would—it is a criminal violation there, and if that person is convicted in a court of law, then the chief has the right, at that point upon the conviction, has the right to suspend that person indefinitely, fire him from the department and he can do that.

I would really hesitate to advocate changing that 6 months—possibly I wouldn't be strongly opposed to changing it to a year, but I certainly wouldn't want that to be indefinitely, just any period of time.

Ms. STEIN. Would you be in favor of a provision that would make it clear that the 6 months only began to run when the offense was discovered?

Mr. COLLIER. But how do you make the judgment on when the offense was discovered? Discovered by whom?

Ms. STEIN. Discovered by a superior officer in the police department, discovered by someone at the rank of chief or assistant chief?

Mr. COLLIER. All right, let's go to the Joyvies case or the Webster case. Was there a superior officer that knew about it prior to its coming to light otherwise? There was a ranking officer on the scene in both cases. So the 6 months would have started then.

Ms. STEIN. Rather than talk about the facts of a specific case, I'm wondering what your view would be generally about a clarification that would say that the limitations period begin to run after it was discovered by the chief or an assistant chief?

Mr. COLLIER. I'd have to give that some thought, but offhand I'll probably oppose that.

Ms. STEIN. Your organization hasn't taken an official position on that?

Mr. COLLIER. No, we certainly haven't.

Ms. STEIN. Has your organization taken a position or do you know what its position would be on a proposal we have heard discussed that would give the chief the power to appoint assistant chiefs?

Mr. COLLIER. Yes, I know how we stand on that.

Ms. STEIN. Could you tell us, please?

Mr. COLLIER. We would be absolutely opposed to that.

Ms. STEIN. Thank you very much, Mr. Collier.

Mr. Young, do you believe that police misconduct is a serious problem in Houston?

Mr. YOUNG. Definitely.

Ms. STEIN. How extensive do you believe the problem is within the department?

Mr. YOUNG. I don't know whether or not I can pinpoint the extensiveness of it. I could feel in my past experience, as a police officer for 30 years, that there is some extensiveness.

Ms. STEIN. What factors do you think tend to contribute to the type of police misconduct we've been talking about, abuse of citizens, or excessive use of force?

Mr. YOUNG. Number one, I think that would be a complacency situation involved there or apathetic situation dealing with nonpeer behavior; and that is to say that persons who have been normally involved in it, or who have been a part of it, feel that as long as I accelerate into a certain nonpeer rank that I'm not subjective as much as I would if I was outside of the rank or nonpeer situation.

Ms. STEIN. Are there any other factors that you think have a bearing?

Mr. YOUNG. I also feel that there is what I'm—what I'd like to term as a cleavage; that means that there are two types of police behavior: one is based on—I was seeking for a word—one is based on fear; the other is based on the lack of fear.

For an example, I would feel that, if I was involved in something of that nature, based on my behavior, I would be more subjective to fear

of implementing the program, because I don't have anybody that I can accelerate in the ranks to talk to or talk to my problems to. That means, if we feel that there are more minorities in the rank and file, that there would be—particularly in responsible positions—that there would be less of that kind.

But if I was on the nonpeer side of the situation, where I could talk to my nonpeer from bottom to top rank, I would no doubt feel I would have accelerated in the same rank of advocating that kind of situation.

MS. STEIN. How effective do you think the police department's internal procedures are for resolving complaints of police misconduct?

MR. YOUNG. I would probably have to look at it on the same realm as just the previous expression there. To the degree I think they do their job the way it is supposed to be done, or is that the way they are trained to do it. Again, I feel if there was some part of an acceleration in the ranks of minorities, then I'd imagine it would have an impact on the behavior pattern. Generally, I would say they are doing their job about as good as possibly could be done. You're not only dealing with just the individuals themselves, you are still dealing with nonpeer situations.

MS. STEIN. When you talk about acceleration of minorities within the ranks as being related to this problem, I'm not quite sure I understand you. Are you suggesting that the absence of minorities at higher levels causes officers to feel that they don't—won't be held to account for misconduct?

MR. YOUNG. That is my personal feeling.

MS. STEIN. I see. What were the reasons and purposes for forming the Afro-American Police Officers' League?

MR. YOUNG. More than likely that would be generally the same as forming any other law enforcement agency or individual group or what. I would probably say a ethnic group is—because we felt we weren't justifiably represented nor are we justifiably represented through the ranks.

MS. STEIN. What is your relationship with the league?

MR. YOUNG. I was formerly president until the last meeting; at least I didn't run for the office, term of office as president. I'm just a member.

MS. STEIN. For the sake of the record, what is your position within the police department?

MR. YOUNG. I'm a patrolman.

MS. STEIN. Thank you. Can you tell us what the total membership of the Afro-American Police Officers' League is?

MR. YOUNG. There are approximately 187 black officers as of now and anywhere between two-thirds and three-fourths meeting—approximately 145 to 150 officers of the department is more close to that figure for members.

MS. STEIN. Do you believe that the police department's policies on the use of deadly force are generally adhered to by the officer in the street?

MR. YOUNG. Generally, according to the policy, yes. The behavior pattern, no.

MS. STEIN. What do you mean by that?

MR. YOUNG. I mean that individuals know that they can deal with or talk with their individuals in the immediate ranks, and they, too, are a nonpeer type situation that I could talk to and, if there are any other deviation to protect that particular party, I feel that is probable.

MS. STEIN. Do you believe that fear on the part of officers at being assigned to minority areas exists? Do you think that such fear exists on the part of some officers?

MR. YOUNG. Positively.

MS. STEIN. And does that play any part in this type of interaction with citizens?

MR. YOUNG. I think that would bring about a behavior pattern of aversion or something of that degree, or it might deal with the attitudinal behavior passed down through the years; that is to say, you can pretty well abuse minority people by a majority people. They can cry and holler. They might say that you may beat the rap, but you may not beat the right kind of situation, and we have no one to turn to unless we have monetary force and we do not have that.

MS. STEIN. Can you tell us what internal procedures are followed when an officer is charged with misconduct, either excessive use of force or abuse of a citizen?

MR. YOUNG. I think the basic procedure is that the immediate supervisor officer always makes the initial investigation, similar to that of any officer who is on patrol duty at the time that investigates any type of criminal complaints, and from that—that's the basis of it all—and whatever recommendations that the immediate supervisor is responsible to—the next supervisor in the chain of command and it goes from there to the chief of police.

MS. STEIN. In your opinion, how effective are first-line supervisors in initiating disciplinary action, where appropriate, against an officer who has abused a citizen either physically or verbally?

MR. YOUNG. Would you repeat that again, ma'am, for me, please?

MS. STEIN. In your opinion, how effective are first-line supervisors in initiating disciplinary action where it is appropriate in this type of case?

MR. YOUNG. I think that most of the immediate supervisors are about as effective as they can. They do not necessarily have to do it all themselves because in the rank and file there must be some form of recommendations that is passed, and if they go up through the rank and there is something found in the file in the rank and he knows that he is subjected to the same type of policy for not doing his job, then that makes him responsible to the next supervisor. In doing so, it is almost compulsion that they have to satisfy from the basis of the complaint to the top level. And that means that they would have to do a fairly good job.

MS. STEIN. Thank you. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Young, do you have any explanation for earlier testimony before the Commission that the department has a great deal of difficulty in hiring minority members for the force? Do you have any explanation why there is such a problem in hiring, in general, and specifically, in hiring minorities?

MR. YOUNG. Yes, sir. Number one, I—we, the Afro-American Police Officers' League, has filed a class action suit against the city for employment. That portion has been heard to some degree, and there is alleged to have been a form of settlement. We feel that the system, by way it was done in the past—again, I deal with the fact that there is no black officers, or minorities if you wish, in that particular rank to deal with the problem. Except number one, what has been alleged in the suit that the department take the best applicants first and then they hold them back and when the moment approaches—the area where they would have to have so many in the class, they would then take the third best out of that last group that was filing the complaint, which is more than likely the lesser persons with lesser learning behavior patterns, and knowing this, when they are put into the areas of school—then they are dealing with the learning pattern and they cannot meet the qualifications there. That's how they come up with the statistics on that matter.

COMMISSIONER SALTZMAN. I'm not—perhaps I didn't phrase—in finding sufficient numbers of minority members to go on the force, to apply to go on the force, the police department apparently is having problems discovering adequate numbers of applicants.

MR. YOUNG. Okay, the other problem—there are three basic reasons for the other forms. The mere fact that maybe 70 or 80 percent of the individuals who make application either had some form of lack of paying their bills, of which is one of the major criteria, factors involved. The other two was dealing with traffic violations, smoking pot, and oral sex.

COMMISSIONER SALTZMAN. This has created a burden in terms of the ability of minority community members to enter into the police force?

MR. YOUNG. Yes, sir.

COMMISSIONER SALTZMAN. I see. Generally speaking, with respect to black members of the police force, is there a feeling that the department is attempting to move them upward to bring them into positions of responsibility in decisionmaking?

MR. YOUNG. I would like to revert back to the founding of the Afro-American Police Officers' League and prior thereto. In my employment, there were approximately 20 or 25 years before we first had a supervisor in the ranks and that came from a political aspect rather than—even though we were taking the same forms of examinations. That came from a political point of view, and the other was the stigma that was involved and that was the performance rating that was given to most blacks at that time and they had a lower level as compared

to whites. The performance rating is a daily performance rating, was a five-pronged, built-in system that gives you an average of—the average black officer was making approximately 25 points out of probable 30.

COMMISSIONER SALTZMAN. Can you provide us with information as to whether or not the average black officer feels a certain degree of comfort within the police department, in general, from peer officers or rather a sense of hostility?

MR. YOUNG. There is generally, I would say, a feeling of hostility.

COMMISSIONER SALTZMAN. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Young, I want to just review. The total on the Houston police force is about 3,000?

MR. YOUNG. Approximately.

COMMISSIONER FREEMAN. And of that number 185 are black?

MR. YOUNG. Approximately, ma'am.

COMMISSIONER FREEMAN. I believe you have been on the police force 31 years?

MR. YOUNG. Approaching 31 years, ma'am.

COMMISSIONER FREEMAN. Thirty years and your rank is that of patrolman?

MR. YOUNG. That is correct.

COMMISSIONER FREEMAN. Is that the lowest rank?

MR. YOUNG. Yes, ma'am, that is the lowest rank.

COMMISSIONER FREEMAN. Have you ever taken the test for sergeant?

MR. YOUNG. Yes, ma'am, I have.

COMMISSIONER FREEMAN. Does the petition that was filed by your association challenge the testing that is utilized by the Houston Police Department?

MR. YOUNG. That is correct.

COMMISSIONER FREEMAN. And you make the general allegation of discrimination on the basis of race?

MR. YOUNG. The general allegations are based on race, to some degree, but it was based on performance—examinations.

COMMISSIONER FREEMAN. And challenging the test that the exclusion—

MR. YOUNG. Yes, ma'am.

COMMISSIONER FREEMAN. Has the petition—has this been brought to the attention of the Justice Department?

MR. YOUNG. Yes, ma'am, it has.

COMMISSIONER FREEMAN. Do you have a response from the Justice Department?

MR. YOUNG. Let's see. I don't think I've got a response from either LEAA or ORS [Office of Revenue Sharing] or the Justice Department other than the fact there was an investigation made, and we don't know the disposition of the investigation.

COMMISSIONER FREEMAN. Does the Houston Police Department receive LEAA funds?

MR. YOUNG. Yes, ma'am.

COMMISSIONER FREEMAN. Could you make available to this Commission a copy of the pleadings in that case?

MR. YOUNG. I would like to refer you to our attorney. I feel relatively sure that could be possible, ma'am, very much so.

COMMISSIONER FREEMAN. I would like to request that you request it and, Mr. Chairman, I would like to ask that the pleadings be, if they are received by this Commission, that they be inserted into the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER FREEMAN. I have no further questions.

MR. YOUNG. I'll be happy to carry out the request, ma'am.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. What proportion of the black officers are patrolmen?

MR. YOUNG. I would probably say that that's probably 90 percent.

COMMISSIONER RUIZ. Ninety percent?

MR. YOUNG. Yes, sir.

COMMISSIONER RUIZ. And with respect to the length of time, would you say that the black officers have been on the police force of the city of Houston generally in excess of 10 years or less than 10 years?

MR. YOUNG. I'm sorry, I didn't quite get that, sir. Would you repeat that?

COMMISSIONER RUIZ. Would half of those patrolmen have been on the city payroll for more than 10 years?

MR. YOUNG. Probably 10 to 12 years.

COMMISSIONER RUIZ. Ten to 12 years?

MR. YOUNG. Yes, sir.

COMMISSIONER RUIZ. No more questions.

CHAIRMAN FLEMMING. Mr. Collier and Mr. Young, I suspect both of your associations would agree on the fact that one of the problems that leads to difficulty in recruiting is the problem of pay. Am I correct on that?

MR. COLLIER. Yes, sir.

MR. YOUNG. I would agree on that.

CHAIRMAN FLEMMING. Both associations would agree on that. Has either association made any studies of your pay structure in relation to the pay structure of police departments in cities of comparable size?

MR. COLLIER. We do this every year. It has been a common practice with the Houston Police Officers Association to make this study yearly. We've done this for the past 10 years. This study usually runs us anywhere from \$10,000 to \$30,000 to make this study, and we found other cities of the size of Houston were low. But, of course, when you compare us to some of the smaller cities, we're high. You've got to realize—what I think what the city fails to realize is the fact that the rate of increase in cost of living here in Houston is growing more rapidly than any city in the United States, and our salaries are not keeping up with the rate of increase.

Now there's another problem that people don't realize is that they see us get, you know, an 8.5 percent raise—that's what we're fixing to get now—and what they fail to realize is that looks great, because in most industries this is a good raise, but we are not able, during the course of the year, to get any incentive type increases like they do in private industry, like they do in other parts of the city. Once you get that 8.5 that's it; there's no other way to get a raise during the year unless you're promoted. Of course, if you're promoted, you'll get a raise, but otherwise, that's it. Just like this year we've got an 8.5 percent raise and the cost of living has gone up 12 percent and so your buying power is going down and this has been occurring over the past several years.

CHAIRMAN FLEMMING. What is the compensation for a person becoming a member of the police force for the first time? What's the—

MR. COLLIER. The entry-level salary?

CHAIRMAN FLEMMING. Yes.

MR. COLLIER. I don't know exactly. Now I think it is somewhere around \$1,100, but don't hold me to that, I'm not—

CHAIRMAN FLEMMING. \$1,100 a month, you mean?

MR. COLLIER. Yes, sir.

MR. YOUNG. That's just based on him being a—

CHAIRMAN FLEMMING. We can get that. There will be others that can give us that information.

I would like to ask whether either one of the associations finds itself in disagreement with the civil service system as it is now operating, in relation to members of the police force?

MR. COLLIER. I don't, but I suspect Mr. Young does. I agree with the civil service, but I suspect Mr. Young doesn't.

CHAIRMAN FLEMMING. I would suspect that you would agree with it, but are there any aspects of it that your association has called into question?

MR. COLLIER. No, I think that we're generally satisfied with the biggest part of it. Of course, there are some minor changes. I can't even think offhand, but as a general rule we're satisfied with it.

Now let me respond to some of the things that Mr. Young said a few minutes ago that we take issue with, that is that they say that minorities in the department are at a disadvantage in the promotional process. Well, possibly that was true—I've been there 22 years and I'm a detective, which is one rank above patrolman and I finally got there. I have a college degree and some graduate work, but I'm still a detective. So you can't go by the number of years you've been there you should be a chief or deputy chief or something.

My problem is I haven't studied and taken the test. I've taken the test, but I haven't studied. But I don't feel that there is any discrimination against anyone in the department on the promotional process because of race or any of these other factors. I feel that everybody has

the same opportunity. Now one of the things they based their suit on was the fact that the minorities were discriminated against in the efficiency ratings, the ratings the supervisor gave to the people that worked for him. Well, we took that into consideration during the last legislative session and that was one of the bills that we pushed for and got passed was to eliminate the efficiency ratings from the promotional process. It no longer is based on efficiency ratings; it is based on two factors now: seniority up to 10 points and the written examination and that's it. I don't know how much fairer you can get than that.

CHAIRMAN FLEMMING. Mr. Young, did your association favor the elimination of the efficiency rating as a factor in promotion?

MR. YOUNG. We were definitely in favor of that, sir.

CHAIRMAN FLEMMING. So you were together on that one.

MR. COLLIER. And it passed. It's law.

CHAIRMAN FLEMMING. Mr. Young, does your association question the written exam in any way, the written examination? I'm talking about the promotional one now, I'm not—

MR. YOUNG. Yes, sir, I understand. And there again, there's a twofold system because of the fact that we have a suit still pending in regards to that. If it so, I would not like to answer all of your questions on my opinion.

CHAIRMAN FLEMMING. That's all right.

MR. YOUNG. I would like to make this as an observational point. Even though there has been an implementation and the statutes have been as such that they are eliminating this performance rating, I think in terms of the damages that it has already done—of this issue up until now and think, for example, even though he's been there for 22 years, at one time I would even fear for even thinking of taking the examination, let alone talk about taking the examination, and all of a sudden in the midsixties we decided, and we had some officers who were in the ranks and bypassed and I would like to leave it at that.

CHAIRMAN FLEMMING. Okay. Mr. Nunez?

MR. NUNEZ. No questions.

CHAIRMAN FLEMMING. Well, we appreciate both of you coming here and giving us your respective points of view on these issues.

MR. COLLIER. Thank you, appreciate the opportunity to be here.

COMMISSIONER FREEMAN. I want to hope you get promoted within the next 30 years, Mr. Young.

CHAIRMAN FLEMMING. The hearing will be in recess until 7:30.

Evening Session, September 11, 1979

CHAIRMAN FLEMMING. I ask the hearing to come to order and counsel to call the next witnesses.

Ms. GEREBENICS. Robert Greenwald, Hector Garcia, Lawrence Spencer, and Craig Washington.

CHAIRMAN FLEMMING. Do you mind remaining standing and raise your right hands?

[Hector J. Garcia, Robert Greenwald, Lawrence Spencer, and Craig A. Washington were sworn.]

TESTIMONY OF HECTOR J. GARCIA, DIRECTOR, COMMUNITY RELATIONS, METROPOLITAN TRANSIT AUTHORITY; ROBERT GREENWALD, MEDIATOR, COMMUNITY RELATIONS SERVICE (CRS), U.S. DEPARTMENT OF JUSTICE, DALLAS; LARRY SPENCER, EXECUTIVE DIRECTOR, HOUSTON COUNCIL ON HUMAN RELATIONS; AND CRAIG A. WASHINGTON, MEMBER, TEXAS HOUSE OF REPRESENTATIVES

Ms. GEREBENICS. Beginning with you, Mr. Garcia, would each of you please state your name and organizational affiliation, for the record, please?

MR. GARCIA. Yes, my name is Hector J. Garcia. I'm presently the director of community relations for the Metropolitan Transit Authority.

MR. GREENWALD. My name is Robert Greenwald. I'm a mediator with the Community Relations Service, U.S. Department of Justice, in Dallas.

MR. WASHINGTON. My name is Craig A. Washington. I'm a member of the Texas House of Representatives.

MR. SPENCER. I'm Larry Spencer. I'm executive director of the Houston Council on Human Relations.

Ms. GEREBENICS. Beginning with you, Mr. Greenwald, could you very briefly, for the record, begin by telling us about the Community Relations Service and its work, particularly as it relates to its work with police practices?

MR. GREENWALD. Yes. I might call attention to the fact that I left some material for the Commission, one item of which is an article on mediation, which is one of our major activities. It was published in the *American Bar Association Journal* a short time ago.

We're essentially third-party intermediaries in the community dispute field. We provide various kinds of services, generally described as conciliation and mediation, those two terms having some noteworthy distinctions between them that most of the public are not aware of. We offer services that are designed to provide alternatives to confrontation, alternatives to litigation, and alternatives to other kinds of dispute settlement.

Ms. GEREBENICS. Could you describe for us the events in 1977 which gave rise to your presence in Houston?

MR. GREENWALD. Yes. We have been in Houston and had been in Houston on numerous occasions, prior to the spring of 1977. On this particular occasion, the one that led to our involvement in the rela-

tionship between the Coalition for Responsible Law Enforcement and the Houston Police Department, that relationship, or that visit, I should say, preceded our relationships with those two groups: namely, when the Houston Council of Organizations, a black organization, Mr. John Butler, I believe it was who invited us down because there was a good deal of discussion about a civilian review board. People were calling for that kind of a mechanism as a way to deal with police issues, and they called us in primarily to offer some technical assistance and some advice. So many people—the public is generally unaware of what they even mean by a civilian review board.

You can ask some people and they will tell you that's what a grand jury is, and you can talk to other people and they will say, no, it's strictly advisory and it has no judicial authority. So there are many different perspectives about a civilian review board and the Houston Council of Organizations—Harris County, I guess it is—Council of Organizations was sophisticated enough, I should say, to ask for some assistance in that regard.

I came in with a second in command, an assistant from the Dayton Police Department, Col. Tyree Bloomfield, a black officer from that department, who is a consultant to CRS, and we met with that group, including the Black Lawyers Association and some other groups—ACLU and some others, and discussed that question.

It was—that was the first week in May. The Torres incident occurred on the 6th of May. That was the day that we were discussing—one of the days that we were discussing with Chief Bond the possibility of setting up some kind of a mechanism that would lead to hopefully fruitful exchanges of ideas and productive dialogue. So that's how we came into Houston. It was not in response to the coalition. Father Jack McGinnis, who is in the audience, was at that first meeting, and when the coalition got in gear, so to speak, it was he and some others—Hector Garcia sitting here—who decided to examine the possibilities of using the process of mediation to deal with some of the issues that had surfaced, not from the Torres incident, I say again, but from a series of other incidents which didn't necessarily involve any fatalities but were viewed by some people in the community as being problematic and being destructive to the relationship between the department and some public.

MS. GEREBENICS. Could you briefly and fairly generally tell us the types of issues that were addressed in those initial meetings and if they changed after the Torres incident?

MR. GREENWALD. Well, first you have to bear in mind, I think, that the incident—that the issues we were discussing and the agenda—the first issue on the agenda was firearms policy and the use of force. The second issue was police-community relations, which is kind of a catchall for a lot of other problems that most communities try to deal with in their relationships between law enforcement and the public.

That—the first issue on firearms was—had nothing whatever to do with the Torres incident or any other incidents in the fact that it was primarily the coalition—I think it is safe to say that it was primarily interested in—interested in dealing with preventive aspects. They were primarily dealing with those things that might provide a framework within which one could expect a lessening or a decrease in the frequency of police-citizen incidents.

The second issue, as I say, police-community relations is one that we did get into after the first one was completed.

MS. GEREBENICS. Leaving Houston for a moment, could you briefly explain how the symposium in San Antonio came about and if anything has come from that?

MR. GREENWALD. Yes. The symposium in San Antonio really came about outside the happenings in Houston. There was a series of incidents across the State, 18 of them, in which a citizen and a police officer or law enforcement officer was involved. There were demonstrations all across the State—in Plainview, in Lubbock, in Corpus Christi, in San Antonio, and elsewhere.

At one of those meetings we were approached—the people who were having a meeting in Dallas of all the Hispanic organizations—and said, “Is there some way we can deal with these problems other than out on the street and other than through the media?” After 3 months it was decided that we would call a meeting in our offices of six chiefs of police and six Hispanic organization leaders. They met, and after 2-1/2 hours of dialogue and finding out that neither one of them were—that they could talk to one another productively, they decided to expand that framework from 12 to 200 and that gave birth to the San Antonio conference. The results of that conference last week, the summary of that conference was—the final draft was completed. It will be used to distribute to local police departments and local community groups to see what parts of what was learned at San Antonio can be useful in developing constructive relationships at the local level.

MS. GEREBENICS. Thank you.

MR. Garcia, Mr. Greenwald has been referring to the Coalition for Law Enforcement in which you played a very large role. Would you tell us about some of—what you feel some of the coalition's accomplishments were?

MR. GARCIA. Well, first of all, the coalition, as has already been indicated, was formed prior to the Torres incident. The Torres incident certainly precipitated a much broader base of awareness, from which it is sprung forth, of doing its activity in terms of what kinds of accomplishments, as a result of the communications sessions that were set up via the Community Relations mediation service, I think were significant inasmuch as a result of this, of our actions and of the meetings that we had with the chief. I think it is safe to say that we assisted the chief in coming together in crystallizing what he instituted as a firearms policy. That, I think is safe to say, also was quite significant

in terms of its range and its impact in the whole law enforcement community across the country.

Other aspects that the coalition was responsible for, I think, accomplishing, and that is primarily that it was a focus, or it provided a focus, on what is generally rated a very important issue. It brought to bear public scrutiny upon the department to the extent that these changes were, in fact, expedited. Other activities that have been brought forth, I think, as a result of the coalition's involvement has been the institution of a nonprofit agency in this city that is involved in collecting information, complaints from citizens who for one reason or another fear or feel uncomfortable in reporting them to the traditional channels, and I'm talking primarily of the Public Interest Advocacy Center, also, the formation of an advisory committee that Mayor McConn and Chief Caldwell instituted not long ago for advising the department. So those are kind of the primary tangible results of the coalition's activities.

MS. GEREENICS. After these first apparent successes, why did the coalition terminate its work?

MR. GARCIA. Well, the nature of the coalition, first of all, in how it came to be, that is, because of a series of incidents that were related to questionable police practices, a small group got together to visit with Mayor Hofheinz and Chief Bond. The Torres incident, as I indicated, precipitated a much broader activity around a citizens group, or groups, and the coalition was made up of several organizations and because of the nature of the coalition, which is very issue oriented. As these other things started getting into place, and certainly time has detrimental effect on any kind of temporary organization or temporary movement, such as the coalition, I think that it was a natural process by which these other things were being put into place, that it dissipated.

MS. GEREENICS. Following this natural progression here, Mr. Spencer, could you tell us how and for what purpose the new police advisory committee started?

MR. SPENCER. The coalition formed an advisory group to see what could be done to make permanent and much more extensive the sort of negotiations and conversations that were held first with Chief Bond and Chief Caldwell, and over a period of about 9 months, that advisory group from the coalition went through a number of drafts of papers, had conversations with the Houston Council on Human Relations board of directors, who studied the issue by themselves, separate from the coalition, and along with the coalition. Ultimately, the council's board was asked to essentially be a negotiating team with the mayor and chief for the establishment of some sort of more formal structure to provide a two-way conversation format between citizens and the police department.

Over that period of time, it—as I indicated, we went through about five or six drafts. A year after the coalition formalized itself as a Coali-

tion for Responsible Law Enforcement, the first meeting was held with the mayor and was to have been with the chief, as well, but, as it happened, that meeting fell on the Sunday after the Moody Park incident, and the chief had been up to 4 in the morning, the previous morning, trying to maintain some order and deal with that incident, so he was not present in the room. He was later communicated with that day, as I understand it, by the mayor, but the committee from the council at that point began the formal negotiating process which a year later and several drafts later eventuated in the joint announcement by the mayor, the police chief, and the president of my board of directors, Howard Wolfe, that there would be formed what is now called the Police Advisory Committee for Continued Improvement, which is an advisory committee to the Chief of police.

MS. GEREBENICS. Could you briefly explain the selection process for that committee?

MR. SPENCER. How members were selected?

MS. GEREBENICS. Right.

MR. SPENCER. My staff had a predominant role in terms of suggesting people. We would—organizations, not individuals, organizations—and from the outset, the concept was to have established agencies in the community that had some concern over police-community relations matters or intergroup relations and other groups that would represent a fairly broad spectrum of the community, each to appoint a representative, and also, to have representatives appointed by the mayor, with the predominant number of those appointments being made by the community agencies selected.

In the drafting process of the coalition advisory committee, we went through elaborate and lengthy sessions to talk about who should or should not be represented. There were many lists and they changed over a number of times. Finally, a list was drawn up and, through the negotiating process, the 15 agencies that we have today were selected.

MS. GEREBENICS. What do you foresee for that organization in terms of what it could accomplish?

MR. SPENCER. I think the primary thing is a structured, long term relationship between community agencies and the top levels of administration within the Houston Police Department. It's been described as the first ongoing open-window—two-way window between the police and the community.

The chief, his people have made themselves available to community people as I see it. And the chief was very clear with us that this would not—the creation of this committee would not preclude his meeting with any group. On the other hand, he has certainly given a great deal of his time and effort and energy to meeting with the PACCI committee. I see that it certainly does not have any power of legislation or ordinance. It has a great deal of power of political influence, as I see it, in that the organizations represented run the gamut from the Houston Chamber of Commerce, Houston Bar Association, perhaps on

one end of the spectrum, to agencies like Chicano Training Center, the Urban League on the other, with a number of agencies in the middle.

Ms. GEREBENICS. Thank you.

Representative Washington, could you briefly tell us about some of the legislative efforts to bring about changes within police departments in general?

MR. WASHINGTON. Yes. Well—

Ms. GEREBENICS. I think you may need to move your microphone.

MR. WASHINGTON. Since I began my tenure in the house of representatives in 1963, I have attempted to go back and chronicle most of the attempts that were related to the kind of issues that this Commission has for study. There have been attempts in every session of the legislature that I served in since the 63rd, that would be beginning in 1973, and since we have our sessions biannually, we meet once every 2 years, it would have been four sessions through the session just completed on May 28 of this year.

In each of those sessions there has been legislation introduced, except this session, attempting to set up a police civilian review board. There have been attempts in every session to pass legislation, and one successful attempt, although in my judgment somewhat watered down, to effect a more stringent penal sanction for police misconduct when it results in violence being done to one of the citizens of our community, either resulting in death or bodily injuries to that individual.

I have attempted during the 63rd and 64th sessions to reform the grand jury system. We have a key man or key person system, what I consider blue ribbon system; that is, a commissioner. The criminal district judge appoints a commission of persons who then appoint a panel of persons, from which a grand jury is selected.

There have been—there is one Supreme Court case from the valley here in Texas, *Pardito v. Castanedo*, in which the Supreme Court decided that the system we presently use was not sufficient to meet consequent constitutional muster. They remanded the case, however, to give the Texas Legislature an attempt to solve its own problem. It has not done so. No attempt has been made since, to my most recent effort, to reform the grand jury system.

Ms. GEREBENICS. What sorts of reforms did you propose?

MR. WASHINGTON. I proposed a random selection of grand jurors similar to the system that's used in selecting petit jurors. I shortened the term and I increased the pay. The reason for shortening the term, so that the obvious objection that could be made that people who presently serve are able to do so because they are either the wives or relatives of wealthy people and they don't work for a living and they have the time to spend for 3-month term on the grand jury. I attempted to counter that argument by raising the pay to make it adequate for persons who work every day for a living. In my judgment, if they're good enough to serve on the petit jury to try the case, they ought to be good enough to serve on the grand jury to determine

whether the case is going to be tried in the first instance. I also say increase the pay and shorten the term and provide for a random selection of those individuals, a larger selection, providing the district attorney's office could come in and make any objections on the panel because of any statutory disqualifications that they may have, and I provided an appointee from the Criminal Defense Lawyers' Association could come and likewise express objections to any person to whom they had a statutory objection.

MS. GEREBENICS. I have one final question. How effective and what role do you think that a citizen review board could play?

MR. WASHINGTON. I think it could be very effective, and I think that there are several aspects that I think that would speak to the question of its role. First and foremost, I think it would give the citizens of this community some real assurance, and that obviously not to cast any aspersions on any existing organizations or any existing attempts, but it seems to me, and it has through the attempts of now Congressman Mickey Leland and State Representative Ben Reyes. Representative Reyes, then-Representative Leland, and myself determined we would make the attempt, because it was obvious that the forces that existed in this community were never going to get to the point of appointing or selecting or aligning for the election of a citizens review board. And I say that to say that we realized that it was "meddling in city business" for the State legislature to attempt to write a law setting up a citizens review board because that ought to have come from the city government itself, but we represent the constituency and our constituency suggested to us that they had no meaningful remedy on the local level and they brought their problem to us.

I think that the only meaningful citizens review board that can and will be established will be established on the State level or the Federal level that will have any meaningful role in determining how citizens feel about the police department. I think theirs can be a very formidable role, both for the police department and for the citizens, although they don't necessarily line up as adversaries with each other because it will give the people of this community a place to go. They have no place to go now. They can't go to the chief of police; they can't go to the mayor; they can't go to the council; they can't go to the State representatives or the Congressperson, because they're not involved in the process. They have no meaningful place in my judgment to which they may take a legitimate complaint concerning the way they are treated by the police department, and until—and so I think psychologically, if it didn't do anything, if it was set up on paper, and if it had a meaningful role and if it were not a paper tiger, then I think the people of this community would at least have a place where they could go and at least have chronicled the incidents of abuse and misconduct that are visited upon them daily.

MS. GEREBENICS. Would you envision this board as having investigative powers?

MR. WASHINGTON. Most certainly do. I think that's what I call a paper tiger. It must have the power to subpoena witnesses, to call officers, to call upper ranking officials in the police department in when they feel that it is necessary.

MS. GEREBENICS. Thank you.

Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, as I have listened today of the various problems in police-community relations, it occurs to me that maybe your panel might have some comments with respect to some of the questions that we raised. One of the questions that was raised—asked earlier was whether there were—whether the Houston Police Department had any leaflets, brochures, or any kind of distribution among the various communities telling them what they could do in the event of an allegation of abuse or misconduct.

Do you have—have you had any conversation with the chief of police or any of the members of the police department with respect to what they can do under the existing procedures? That would be to either of you. To improve community—yes, Mr. Garcia.

MR. GARCIA. Certainly, in a lot of the sessions that we had, it was repeated that relief through the normal processes, that is, if a person who felt like they had been abused was hesitant in going forward to the police department itself in making a complaint—and keep in mind that the internal affairs division wasn't really even formulated until the spring of '77—that they had the FBI and other jurisdictions, the district attorney's office to go to.

Now as far as them taking steps in disseminating that information, the one effort that I know that was instituted was the creation of neighborhood stations in which police officers manned and are manning—for instance, at Ripley House, which is in the East End, predominantly Mexican American community, there is an office there that the police department mans for the purpose of clearing this kind of information, that is, specifically for abuse cases; there was not any brochures or fliers or that type of marketing attempted by the police department, not that I know of, any.

COMMISSIONER FREEMAN. Mr. Spencer?

MR. SPENCER. The PACCI committee just had five meetings and been in existence, actually, as a committee since June 21. We have not got into all of the details about the ways in which the Houston Police Department formally and informally relate to the community; however, we are in the midst of a survey of our very diversified background and to find out what the key issues are. And one of the key issues that has been raised is the need for better structures for relating complaints, policies, and procedures to the citizenry, and the chief certainly has had an open ear to that. No action has been taken nor has the committee set this as one of its highest objectives, but it has been talked about a great deal. There's a need for the HPD to communicate

in ways that are not threatening to the general populace what those policies are.

COMMISSIONER FREEMAN. Has PACCI had any conversation or is the recruitment and equal employment opportunities on its agenda?

MR. SPENCER. Yes, ma'am. I might share with you a little bit—while the survey is not completed of our members, we have been through an elaborate process of trying to see what the committee's chief concerns are. And the number two concern at this point—out of 21 members I have surveys from—11 of those members—and by far the top two concerns are, one, establishing and maintaining communications with the—between the police officers in the many sectors of our city, and very closely behind that is a very prime concern for minority recruitment and ways to improve that.

These two fall within a cluster of issues which are very clear in the survey at this point. The first cluster of issues deal with all sorts of issues about better communications between the police officer and the citizen, and within that cluster there is some concern about the two-way street being established at the street level; there's some concern about improving attitudes within the rank and file of the officers; and there's some concern about having citizen input and getting citizens involved on behalf of the same side that the police are involved in, in terms of fighting crime.

Relative to the second cluster of issues in the survey that the committee is very vitally concerned about has to do with the size and composition of the force. At the top of those issues, the whole question of minority recruitment stands predominantly out. Beneath that are a series of issues that deal with, How do you increase the entire size of the force so that the force can have better response time to alleged crimes or to requests for help? And the feeling seems to be pervasive on the committee that we are very much undermanned.

Then there is a third cluster of issues that deals with getting at improving the structure of the police department. How do we help enforce and enhance the chief's authority so that he can deal with a quicker way of getting his policies and procedures implemented? And that raises questions about the current civil service laws, raises questions about how do you just go about the terribly difficult business of changing an institution, and whether it be a police force or educational institution or whatever, we all know that simply dictating policy does not change the nature of that structure.

The committee seems to be interested in finding ways of changing the whole nature of the structure so that the community attitude toward the chief, which tends to be very positive, can also be positive toward the officer on the street.

COMMISSIONER FREEMAN. Thank you. I have nothing further.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. It seems like the business community is concerned with the slippage of morale in a police membership department

which today is substantially the same as it was 5 years ago. The key issue is, How do you change the stripes of a tiger and can a chief of police change the attitudes which the police department has developed and persisted over so many years without help outside of the existing structure?

As I see the contributions that are being made by you gentlemen, it's like giving castor oil to a person that doesn't want it; it's good for him. There's so much that can be done by those that persist in the status quo. I see a coordinating council here of community people and who are the community people, they are the citizens of the community. You are reaching out for the Federal level for a place for people to go from the community to a statewide structure. This is in reality assistance that's being given. I don't see any real antagonism there in accepting that the chief of police has the same problem that you do. I think you're making a great contribution and the record is very good at this point with respect to the efforts for changes in the breeze, changes that have occurred. Changes are coming fast, and you people are part of that change.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Greenwald, I assume that the Community Relations Service is doing the kind of work that you described not alone in Houston but around the country in other cities. Can you tell us what seems to be successful in its experience in relieving the mutual sense of alienation or hostility shared between the police departments and minority communities?

MR. GREENWALD. I think it will come as no particular surprise to anyone that the problems of police-community relations are not unlike other kinds of alienation problems; namely, they are problems of perspective. And I think the thing that was glaringly evident in San Antonio and will be in our Fort Worth conference when we have it in November, which is an encore, is the fact that once people are able to deal with one another on something other than a superficial level, on really gizzard issues, gut issues, in an honest way, that they somehow begin to see that they were both wrong in their perceptions of one another.

I think if there's anything that was accomplished in San Antonio it was the opportunity for a mechanism that would provide—would enable that to happen. It was really from my perspective something to behold. Here were people who for 3 to 5 years, prior to that occasion, could barely stand to look at one another—some of them that barely envisioned a meaningful dialogue with one another, either side. There are a lot of exceptions to that, of course, but if you could generalize, I would say those perceptions were markedly changed after a day and a half of intensive exchange of ideas. Both groups began to see that they didn't really have a good understanding of what the problems were from the other perception, and if nothing else, I think that was well worth the effort. Of course, if we determine that we had a con-

ference in San Antonio and one in Fort Worth and then go back to business as usual, then we might as well not have had them.

That is what the original steering committee—Chief Caldwell serves now on the new steering committee for the Fort Worth conference, has been a major contributor to that, was on your program in San Antonio, presenting a police perspective on some issues. And we had people there who were very capable of presenting a community perspective, if there is such a thing, that is, civil rights attorneys, like Ruben Sandoval and others, who have been at the forefront of criticism through litigation of police practices in Texas. I think even Ruben Sandoval, after that conference was over, he said publicly that, indeed, this was an eye-opening affair for him, so I think that was a major result.

COMMISSIONER SALTZMAN. Would a recommendation from this Commission to the Justice Department to enlarge the efforts and scope of CRS toward this end be something that you think should come from our—

MR. GREENWALD. It will be glad to help to draft such a recommendation.

COMMISSIONER SALTZMAN. You think that kind of process—

MR. GREENWALD. Indeed. I—you know—in our society there are so many groups that think they cannot deal with one another. Labor and management always felt that until we began to have mediation in that field—I am not saying that is what is needed in police-community relations, but it is often helpful. But the attitudes—behavior is not going to change until attitudes begin—we make some impact on attitudes and that doesn't happen among strangers. Attitudes begin to change when you begin to know who your supposed adversary is, and that may sound like pie in the sky, but it really did happen in front of our eyes in San Antonio. And yes, the answer, of course, to your question is indeed that would be helpful.

We have very limited resources in our agency; we're 135 people nationwide. We have far more to do than we can possibly handle and this—our agency has recognized that this kind of an activity—that is, promoting the kind of dialogue that occurred in San Antonio—is bound to be productive, or at least the effort is worthwhile. And we are—as I understand it, there is an effort now underway to have a national conference somewhat patterned after these two that we're having in Texas.

But we do need far greater resources to do the kind of job that needs to be done because we've only scratched the surface. You'd be surprised at how many chiefs in Texas don't even know we had a conference in San Antonio, and there were 100 of them there, 100 chiefs and sheriffs, 200 people altogether. So the impact—to make an impact is a difficult thing, and the only way that impact, in my judgment, can be really enhanced is through a much wider effort in the same direction.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Along that same line, I'm certainly very much interested in what you did at San Antonio and you are planning to do this fall.

What views do you have as to how you can begin to institutionalize, at the community level, the process that you get underway or stimulate in conferences of this kind? Is what is happening here in Houston, with this new community organization, city and police department, council, a pattern or a model that you are helping on and that you would tend to promote in other cities?

MR. GREENWALD. Well, the story you heard about the creation of a new committee here, an advisory committee of the chief of police, is only one of several developments that are occurring here in Houston. One such development, aside from what you've heard about today, is a spinoff of the San Antonio conference. The 20-odd people who went to that conference, including Hector Garcia and some other people in this room, came back and, on their own initiative, decided to take a look at some of the things that happened in San Antonio, some of the things that were discussed there, to see how that experience could relate—could be developed at the local level, and so they have created—I don't know how successful it's been; I haven't been involved with it. One of our staff people here in Houston has been involved with it, and from the reports I hear, it is fruitful. But what I'm saying, I guess, and I think I indicated earlier that unless—you know, we've all gone to enough conferences and we've all held hands and we've all had catharsis, and I think most of us feel that can be marginally productive at best unless there really is a followup to that that is applied in some very practical way.

I'm simply saying that the process of dialogue with some careful planning can be implemented at every local level. The city of Lubbock right now—I visited out there after a police incident, talked to the people involved, and they are interested. The police officials are, the mayor is extremely interested in doing some things by way of communication that have never been done in that city before.

You know, most mayors say, "My door is open, people come in all the time, and I talk to them." Well, most mayors give 10 or 15 minutes to a subject that takes 10 or 15 hours really, deserves that much time to examine in depth. So we're simply saying there should be and can be and will be, we hope, some opportunities at many local levels, what we call metro conferences, is what we're striving for now, so that a group of police departments—that's what happened here, Chief Caldwell and the DPS commander, department of public safety commander, got together and invited, with a number of other people, invited all of the chiefs in this metropolitan area and organizations that have membership in the metropolitan area and the idea, of course, is to enhance communication.

It's got to be institutionalized. It doesn't happen by chance, and somebody has to be behind that kind of an effort.

CHAIRMAN FLEMMING. That leads me to the advisory committee that you have described. Do the activities of this advisory committee include working on the development of relationships or interrelationships with the district attorney's office? Is that in the picture at all at the present time, or is that being handled in some other way? As I've listened to the testimony here today I'm very much impressed with the fact that when you're talking about any of these incidents, that the district attorney's office immediately comes into the picture.

For example, the mayor, in testifying here this afternoon, said that if a citizen comes into the city council and complains, testifies under oath relative to an incident involving the police, that the city council will refer it, as he put it, to the grand jury, which in reality is referring it to the district attorney. Now, the district attorney and his assistant district attorneys, his staff, and so on, are they involved in this dialogue that is underway in connection with the work of the advisory council?

MR. SPENCER. Not at this point, per se. Nobody on the police advisory committee has brought up that issue at this point; however, it is certainly within the purview of the committee's work and spelled out in its constitution that it will advise the chief and sort of be a—try to find issues in the community and relate back to the community, those things that deal with policy, procedures, and practices that affect police-community relations. And I think that if the members of the committee are of a mind that that is a prime concern that affects police-community relations, the processes by which complaints get filed, they would certainly have the ability to deal with that, but that is not part of the survey that the committee generated.

CHAIRMAN FLEMMING. Mr. Garcia?

MR. GARCIA. Yes, as someone who personally served on the grand jury in Harris County, one of the experiences that we had in orientation day was that we got basically a prosecutor's orientation, which included a presentation by the chief of police and the sheriff's department. Consequently, and I feel it is a direct result of, I thought, a very skewed orientation, all of the cases that were brought before the grand jury that I served in which police practices or police abuse, or in one case even a murder or a killing in the county jail—all of them ended up in no bills, with a prevailing attitude among my fellow jurors that anything that, you know, that was done by the law enforcement agency must—for any reason was justified. And I feel like certainly, if another perspective could be presented to the grand jury, community perspective, somewhat to balance off what I considered a very imbalanced attitude among the other grand jurors that I served with in these cases, would be very, very favorable in trying to bring a little more equity into the grand jury system, but, you know, we're a long way from that.

CHAIRMAN FLEMMING. Representative Washington, you obviously spent a good deal of time thinking about the grand jury as an institution. Do you want to comment on the point?

MR. WASHINGTON. I think that—Mr. Chairman, I think the attempt at use of the present grand jury system is utterly meaningless. I served as a grand juror; I also served as a grand juror commissioner; and both of those experiences were part of the reason that precipitated my desire to change the present system. There's no way that we can look upon the grand jury, in my opinion, as it is presently constituted, as playing a meaningful role in screening and determining when there's been police misconduct.

It is either by design or merely because that's the way things happen. It's difficult to get people who serve on the grand jury to believe that any of the things that are said about our police department could ever be true. It's because they are insulated from what happens out on the street, but if it ever happened to one of them, if they ever realized that it could happen to one of them, then I think that would change the system.

I rather doubt, though, that will ever occur, and so I think that unless the system is changed, such that it represents a cross section of the people who live in this community, that it serves as nothing more than a buffer for the police department rather than an intelligent inquiry into some of their alleged practices.

CHAIRMAN FLEMMING. One thing, the district attorney was before us as a witness and the head of his civil rights division. I asked whether or not they had any plan for regularly, systematically conferring with, consulting with, the representatives, for example, of minority groups. I think I'm correct in saying that the testimony was that, no, there is not any plan for doing that on a regular systematic basis.

Recognizing the problem with the institution, and you have very clearly identified and others have identified that in testimony, do you feel that something could be gained by meaningful dialogue and meaningful relationships developing between, let's say, the representatives of minority groups and not just the district attorney and the head of the civil rights division, but as I understand it, there are 124 assistant district attorneys. I mean, if there's going to be a dialogue within the community, aren't they pretty important persons to try to get involved in that dialogue, even with the institution in its present shape?

MR. WASHINGTON. Yes, Mr. Chairman, I think that's a very interesting point. I think that they necessarily must not continue to be—I perceive them right now as being rather isolated from what happens. As you suggest, I think it would be very helpful if assistant district attorneys who prosecute cases on a regular basis could become somehow more actively involved, on a personal basis, with what happens in the community, both with the police department, the sheriff's department, and with the citizens and the community groups that are all interested in change, because as long as you have one individual or a small group of individuals who screen the information before it gets to them and makes the determinations about which cases go to the grand jury, then

I don't think it could ever be truly said that the district attorney's office, as an institution, was participating in the process.

CHAIRMAN FLEMMING. Mr. Spencer?

MR. SPENCER. Mr. Chairman, I might share with you that approximately 4-1/2 or 5 years ago when Judge Andrew Jefferson was the chairman of my board of directors, Houston Council on Human Relations, he prepared a proposal that I believe may have been presented to some committee of the State bar and talked about among some legislators for minor amendment to the current grand jury system for the setting up of a special grand jury that would—to which would be referred all matters where there was some sort of alleged conflagration between the police and the community. Under those special rules, defense attorneys would be allowed to be present, certainly with confidentiality required. There would be some sort of investigation at the level of captain within the force or above to be presented to the grand jury, and there would be special rules for the selection of the grand jurors.

Nothing has happened with that proposal, but it struck me as a very interesting proposal, to amend the system that's already there.

CHAIRMAN FLEMMING. Judge Jefferson was a witness today and he touched on that suggestion. He didn't elaborate on it, but he did touch on it. Mr. Greenwald?

MR. GREENWALD. Mr. Chairman, if I may make one additional observation, it seems to me that the complaint process and the way in which an incident is investigated is at the heart of most dissatisfaction in this area, and I get very frustrated because it seems, seldom indeed, when I hear this kind of conversation about investigation of police complaints where there's any distinction made as to the proper role of the internal investigation—internal affairs unit of a police department, which, as I understand it, at least I'll be glad to stand corrected, is essentially to determine whether or not a disciplinary action shall be taken against that police officer. It is not a criminal proceeding. It is not designed to determine criminal culpability, and it seems to me that must be borne in mind when we—you know, the grand jury reform and the civilian review board are two sides of the same coin in my judgment.

If we had a grand jury system that fostered confidence in most of the community, there would be no cause for a civilian review board because that's what a civilian review board would be, it would be another kind of grand jury.

So I simply say to any of us who are inclined to discuss this subject, to at least bear in mind that very important distinction, the criticism of police investigating themselves, as far as the IAD is concerned, has to be looked upon with that in mind, that it is not designed to do the same thing; it is not in a criminal context.

CHAIRMAN FLEMMING. The comments that have been made by members of the panel relative to the grand jury system as related to the

grand jury's panel under State law, do you want to make any observation at all on grand jury impaneled under Federal law? Do you see any difference? Do you see a distinction between the way in which the grand jury system operates under Federal law and under the Federal U.S. attorney?

MR. WASHINGTON. If I may, Mr. Chairman?

CHAIRMAN FLEMMING. Yes.

MR. WASHINGTON. I see a very clear distinction between the Federal grand jury system and the present Texas State grand jury system. As a matter of fact, the bill that I sponsored for two sessions was directly modeled after the Federal system. I think that that ought to be the model for—I would be comfortable with that, with 10 years' experience that I have in studying police misconduct. I would be comfortable with a system designed like the Federal system because I would know that there would be representatives from the community there who had the community's interest at heart, and I would be satisfied with their judgment about the several matters that are brought before them, but with a hand-picked system, it's inherently designed so as not to allow, in my judgment, for fair opportunity.

The district attorney is there alone with 12 people who are fine, good people from the community, but who have not the slightest perception of the kind of problems that happen out on Lyons Avenue here in Houston, Texas, and it would be unfair for them to attempt to force that upon them. But if there were a random selection of people from all walks of life, from every economic group in town, then I think that both sides, both the police department and the citizens, whomever the complainants are, would have a fair opportunity to be heard, and I think that all of us could better swallow the results of those investigations. That's really the heart of the problem.

We are not willing to let these matters come to rest. We're talking about cases that happened 10 years ago because we have an uneasy feeling about what has been done to them. But if we had—you know, there must be a final coming to rest of everything, Mr. Chairman and members, and the people in my community know that. But you have to get to at least an equitable forum first, and once we have an equitable forum and a fair opportunity to be heard and a decision is made, then the people in this community can live with it. They are strong people and they are good people, but to continue to have the allegation made, and with some fortification from what happens through the inept attempts to come up with some forum, to have the allegation continually made that these matters are swept under the rug, does this man no good and it does my community no good. And I don't think he's the culprit, if I may say, without being solicitous. He doesn't run the police department in this department. The police officers' association has run it for long time, and unless something is done about the civil service laws, which I may add we also attempted to amend the last session, so he can appoint all his high echelon officers, we're going

to hold them responsible for their conduct. He can't appoint anybody. The mayor appoints him. He doesn't have anything to do, because of the rigid civil service system that we have, with cleaning house so he can get people in there who will follow his directives. That's as much a part of the problem that I think—excuse me, sir.

CHAIRMAN FLEMMING. I'm just going to interrupt. I want to clarify the point—the legislation that you sponsored would have given the chief of police the authority to appoint his deputy and assistant superintendents?

MR. WASHINGTON. I've forgotten how far, down—

CHAIRMAN FLEMMING. Some testimony we received indicated that the legislation would have given that authority to the mayor rather than to the chief of police, and I'm a little confused on that.

MR. WASHINGTON. My recollection was there were several bills floating around. My recollection is from the proposal that the several of us in the Houston community were interested in, after conversations with people who suggested that that was the way to attempt to get some authority in the hands of people who have the apparent authority but perhaps in many instances don't have the real authority.

My recollection is that the proposal that we had was to allow, as in the case of the mayor, the mayor would appoint the chief, with advice and consent of the council, and the chief would appoint—I've forgotten how many deputy chiefs, but a fairly sizable number of people from deputy chief right below his position down to, I think, inspector ranks, with advice and consent of the mayor.

CHAIRMAN FLEMMING. Yes, sir, the mayor would have a veto, then.

MR. WASHINGTON. Yes, sir, the mayor could veto his selections, but it was an amendment to the present law which is, as I say, very rigid with respect to civil service up and down the line.

CHAIRMAN FLEMMING. Just one—I'll put this in the form of a question. I guess it is an obvious one in light of the other questions I've asked: in connection with these community dialogues—I'll refer to it in that way—I mean, going out of your advisory council and the other efforts that have been made along this line, has a conscious effort been made to involve the U.S. attorney and his assistants, who in turn have been dealing with civil rights problems affecting Houston and affecting the police department? Have they been involved in these dialogues, also?

MR. GREENWALD. If you're talking about the regional conferences, Mr. Canales was on our program—

CHAIRMAN FLEMMING. I was thinking at the moment, I was relating it to Houston and what kind of dialogue is going on in Houston.

MR. GARCIA. No, there was no attempt. In many cases there were probably would have been conflicts had they come in with any dialoguing of any specific cases, because—

CHAIRMAN FLEMMING. I recognize that on a specific case, but I was just thinking in terms of the some of the basic issues that are involved here.

MR. GARCIA. No. Generally, I've always felt that they seemed to be aloof to the community realities.

MR. SPENCER. The police advisory committee in one of the early drafts considered inclusion of that office on the committee and also inclusion of the Defense Lawyers' Association and the district attorney, and we decided very early not to involve them in it. What we were trying to set up was a committee that was answerable to the parent organizations and was truly a representative group of the community and not tied in with some governmental official and I think, certainly, the committee would be open to dealing with the U.S. attorney and DA and everybody else, but they are not a member of the structure.

CHAIRMAN FLEMMING. All right. Mr. Nunez, do you have any questions?

MR. GREENWALD. Just one quick addendum to Representative Washington's comments. It should be noted that not all cities are under 1269m which is the statute we are talking about that controls the civil service statute of the State. Many cities, I don't know how many, but I would say a significant number, are not affected by that. Houston happens to be, unfortunately or fortunately, one of them that is.

CHAIRMAN FLEMMING. Of those cities that are not under that statute in a position to set up their own civil service system?

MR. GREENWALD. Indeed, yes.

MR. NUNEZ. Representative Washington, I understand you introduced the bill for a citizen review board, but is your testimony tonight you also indicated you might find acceptable a revamped grand jury system to have a possibility of performing a function of an investigative body to deal with questions of police abuse?

There has been some testimony in this session—there is some controversy as to the effectiveness of police community boards around the country. Do you still feel that that would be the best vehicle for dealing with these kinds of problems or do—you indicated that you've been at this for the last 10 years. What are your current thoughts on this?

MR. WASHINGTON. I frankly think that, from all perspectives, a grand jury system that would ensure an adequate opportunity to be heard would be better than a police civilian review board for several reasons: one is because of the obvious politics in the police department, it takes on a bad connotation. There's been so much resistance on behalf of the city of Houston and its mayor and its chief of police for so long that it would be difficult to establish confidence on behalf of the officers and the department in a civilian review board for their own politics.

On the other hand, we don't like the present grand jury system, and by we, I think I speak for most of the people in this community. With respect to what it is designed to do in cases involving alleged police

misconduct, it doesn't have a good track record, suffice it to say. I think that there are several things that are possible in my mind. One is the recently passed official oppression statute that is now the law in this State, provides that the attorney general of the State may come in if a district attorney or county attorney who is otherwise empowered to prosecute under the act does not or will not do so. Then the attorney general of the State may come in and prosecute a violation of the statute.

I think something similar to what Judge Jefferson and I talked about at the time I introduced the grand jury reform bills before, which I'm sure he touched on in his testimony. I think a special grand jury, or in the alternative, a revision of the present grand jury system would meet both the confidence of the police department in that it is an on-going institution in which they have and should have a great deal of confidence and it would also meet the objections of the community at large with respect to the present method of selection, such that both the police officers and the citizens in a confrontation situation could feel that they had an adequate opportunity to have their cases heard before an impartial body.

I think that, and I'm not a mediator, I think that is somewhere in between what both sides want, and I think that is a goal that is attainable in the foreseeable future.

MR. NUNEZ. One last question. Again, as a student of this very unfortunate field of human endeavor, what do you see is the primary—what would you think is the issue or the method that could be—well, you talk in terms of what would restore community confidence in the police. What single mechanism or single action would you see would be the—maybe I'm being a little vague—recruitment? Is that the crucial issue? Is it a more effective police internal review process; is it a citizens—which one of these mechanisms do you feel would be the key one?

MR. WASHINGTON. If I had to isolate one?

MR. NUNEZ. Yes.

MR. WASHINGTON. I think the goal is that every citizen, if I may preface the answer to your question, I think the goal of every citizen in this town is to feel free to encounter the police without fear that because of who they are or which side of the bed the police person got up on that morning or the color of their skin or the color of their eyes or for any other reason, or their sexual persuasion, that they will have a bad experience with the police officer. That is a goal that every citizen in this community has a right to expect, that the law will be vigorously enforced, but nothing more. I think what it takes to restore that confidence in them, sir, is the sure knowledge that this gentleman, or whomever, that sits as chief of police in this town has not only the duty but the authority to tell his police officers that you will not harm or molest, intimidate, or otherwise impose upon the constitutionally guaranteed rights of the citizens of this community with impunity.

To accomplish that goal, I gave you the one answer to the one question. Sure, it's going to take everything you talked about and more. You have the reports at the league commission that meet out at Texas Southeastern University and the perceptions of the sociologist and the psychologist, if you look at that report; look at the perception of the police officers, how they measure themselves in terms of role model; look at the black community's perception of the police department in terms of role model. I'm not a psychologist or sociologist, but that tells me something, that as a private citizen they are missing each other a mile. Their perceptions of each other and of themselves are missing each other a mile.

In short, I think that the answer to the questions is all of the things that have been suggested, more recruitment, better police-community relations—but I think if we live in a situation where we know that the police chief of this city is committed—and I suggest that this man is—but not only his commitment, but he has the authority to do the job that he tells us he's committed to do—and I frankly suggest at the present time that he doesn't—then all of us can go to sleep at night and rest easy. Because I think that all of us—we don't need grand juries and we don't need any of those things; we don't need a police review board or any other community organizations to investigate them if we know that the police chief of this city has the authority and the ability to do his job.

CHAIRMAN FLEMMING. May we express to all of the members of the panel our deep appreciation. Time has gone very, very rapidly. Did you have one final comment?

MR. GARCIA. Well, as I was sitting here, a final one. It occurred to me, before we all go home, and think everything is well healed or healing. It occurs to me that your question about what is going to restore the confidence of the community to its police department, and I dare say that there is confidence in the police department, but I think that the confidence is ill founded, that there are factions or that the community is so factionalized there still is a prevailing attitude of the majority of Houstonians who justify the actions of police officers under any conditions, and as long as that justification prevails and as long as the community standard prevails that justifies whatever actions that an officer feels he wants to take in whatever situation, that we're going to have this problem.

I think the grand jury system certainly is another institution that must really be gotten to the bottom of. Certainly Representative Washington has touched on it very well, but we need to really get to it, and the problem is long, long from being solved. And so, anyway, I think there's a conflict of confidence in the department because the confidence is there, but it's ill founded.

I think that people feel that whatever happens, somehow those folks who get their heads beat in deserved to get beat in and the justification is there and we need to eradicate that mentality. And I dare say Torres

might have shifted it, but today I think it prevails back basically where we were prior to it. Thank you.

CHAIRMAN FLEMMING. Thank you all very, very much. Appreciate it. Counsel will call the next witnesses.

MS. STEIN. Captain Michna, Captain White, Lieutenant Nuchia, Lieutenant Stewart, please.

CHAIRMAN FLEMMING. Remain standing please and raise your right hand.

[Leroy Michna, Sam Nuchia, I.L. Stewart, and B.R. White were sworn.]

TESTIMONY OF LEROY MICHNA, CAPTAIN; SAM NUCHIA, LIEUTENANT; I. L. STEWART, LIEUTENANT; AND B. R. WHITE, CAPTAIN; ALL WITH THE HOUSTON POLICE DEPARTMENT

MS. STEIN. Could I ask each of you, beginning with Captain Michna, to state for the record your name, your rank, and the number of years in your present position?

MR. MICHNA. My name is Leroy Michna. I'm captain with the police department. I'm director of training and a captain for the last 20 months.

MR. WHITE. B.R. White, captain, Houston Police Department, been in the present assignment for a little over 2 years.

MR. STEWART. Lt. I.L. Stewart; I've been assigned to the training division, principally concerned with recruit training, for about 2-1/2 years.

MR. NUCHIA. Lt. Sam Nuchia; I've been with the recruit division for a year and a half.

MS. STEIN. Thank you. Captain White, we've heard a great deal of testimony today on all to the unanimous effect that the Houston Police Department appears to have a considerable problem of understaffing. Do you have an opinion as to what is the cause of this understaffing? Is it a problem in attracting recruits or a problem in finding qualified applicants?

MR. WHITE. I don't think there's a single answer to that. It's a multitude of things. Yes, we have trouble attracting enough qualified applicants.

MS. STEIN. My question was, is it a matter of not enough persons wanting to be police officers or not enough of those being qualified under the standards that the Houston Police Department uses?

MR. WHITE. I don't think I can really answer your question. I don't think I have the answer.

MS. STEIN. In what geographic areas does your division conduct its recruitment?

MR. WHITE. Throughout the State of Texas, Oklahoma, Louisiana, Arkansas, Georgia, Alabama, Mississippi, and Florida.

MS. STEIN. How is it determined what area you will use as your recruitment area?

MR. WHITE. The area that I have just given you as our recruiting area was submitted to the chief of police and I believe ultimately to the mayor and he approved it.

MS. STEIN. Is it then the chief of police who selected that area or was it that area recommended to him?

MR. WHITE. It was our recommendation.

MS. STEIN. Can you tell me why you chose those particular locations?

MR. WHITE. Yes, ma'am. We were faced with a problem of not having enough applicants in our area before that, which was basically a 500-mile radius. I—with the city of Houston—we looked in the directions to the north, east, and west of us. We found that by going east to Florida, in that direction, the whole total area was populated as opposed if we had went west, we had Arizona, New Mexico, and areas in there that was very thinly populated.

We also found a large concentration of blacks by going towards Florida, taking in Alabama, Mississippi, and Georgia. We also found that the State of Florida was one of the States having the highest—higher number of higher learning institutes which had a criminal justice program.

MS. STEIN. You mention that one of your reasons for focusing on the Southern States was the higher concentration of blacks there as potential applicants. Are there any other efforts that you have made at recruiting more minority applicants or more women applicants?

MR. WHITE. Numerous.

MS. STEIN. Can you describe what they are?

MR. WHITE. I couldn't sit here right now and list you a total efforts. I can give you a summary of the efforts. We involve ourselves with any community organization that we can in an effort to recruit these people; we make the public functions that they have where we are asked or were permitted to participate in. We go to the colleges and universities having a high concentration of minorities and offer our program to the students and to the staff of the universities. We advertise in the different minority publications, be it electronic media or printed media. We participate in employment seminars. We do numerous things. Right now I can't recall, but any practical method that we have the funds, manpower, and ability to participate in.

MS. STEIN. Lieutenant Nuchia, have you been able to determine what recruiting efforts of the ones that are made by your division are the most successful?

MR. NUCHIA. Yes, ma'am, advertising on television is the most successful.

MS. STEIN. And are there any others that are particularly successful?

MR. NUCHIA. None that come anywhere near that particular form. We found that we have to continuously bring it to people's attention that we are hiring police officers, so that people will think of us when they're thinking about a job.

Ms. STEIN. Could you give me an idea of what sort of person the Houston Police Department is looking for? What your idea is of a good police officer recruit?

MR. NUCHIA. Are you addressing me, ma'am?

Ms. STEIN. Yes, sir.

MR. NUCHIA. We are looking for some person that has a high school education, basically is honest, stable, and has common sense.

Ms. STEIN. I didn't hear the last?

MR. NUCHIA. Common sense.

Ms. STEIN. Are there any particular attitudes you're looking for?

MR. NUCHIA. Not—nothing that I can—I'm not sure what you mean by that—attitudes?

Ms. STEIN. In evaluating potential applicants, are there any attitudes of mind or mental assets that you think would make for a better police officer than others?

MR. NUCHIA. Only the things I mentioned before, honesty and good sense, stability, things like that. I won't call those attitudes, but, you know, attitudes vary with people. I don't believe we look for a specific attitude.

Ms. STEIN. A relatively high number of applicants for the position are not selected. Why do you think—what do you think is the reason for that?

MR. NUCHIA. They are not suitable to be police officers.

Ms. STEIN. Do you know what the most frequent causes for rejection are?

MR. NUCHIA. The most frequent cause for rejection is use of narcotics.

Ms. STEIN. What is the standard that you use, with respect to narcotics, to determine whether an applicant will be accepted or not?

MR. NUCHIA. Well, it is a rather involved standard. I don't know if I can quote to you from memory. Obviously, anyone that has used any of the felony narcotics—we could not use a person addicted to heroin or anything like that.

Ms. STEIN. Does previous usage of marijuana disqualify an applicant?

MR. NUCHIA. It would depend on the extent of the usage and how long it had been since they had used it.

Ms. STEIN. Are there particular specific guidelines for making that determination, or is it a subjective decision that's made from case to case?

MR. NUCHIA. No, ma'am, we have guidelines that the chief has instituted for us to follow.

Ms. STEIN. Can you recall what they specify about the length of time since the use of marijuana, or what other restrictions they provide for when marijuana can be disqualified and when it is not?

MR. NUCHIA. A person can't have used marijuana extensively within the last 12-month period prior to their application.

MS. STEIN. If I could return to you for a moment, Captain White, my understanding of the State minimum standards of employment for police officers is that they require the applicant be of good moral character, which I think is a direct quote, but they do not define what good moral character is.

We've just heard from Lieutenant Nuchia the standard that you use with respect to drugs in determining what would satisfy the character requirement. Do you agree with what he said?

MR. WHITE. As far as drugs, is what you're saying?

MS. STEIN. Yes, sir.

MR. WHITE. Basically, he's correct. There's exception.

MS. STEIN. Can you tell us what that is?

MR. WHITE. Yes, ma'am. We can accept an applicant who has a single isolated occurrence of marijuana usage within the past 12 months, if it is a single isolated incident and has been passed 90 days. That's an option that I can exercise.

MS. STEIN. So it would be within your discretion whether to exercise it, if those facts were present; is that right?

MR. WHITE. Yes, ma'am.

MS. STEIN. With respect to debts, or the credit record of the individual, what standards do you apply?

MR. WHITE. All just bills to be current.

MS. STEIN. What about with respect to sexual conduct?

MR. WHITE. That covers a broad area. Could you be more specific?

MS. STEIN. Well, is there any sexual conduct that is disqualifying to an applicant?

MR. WHITE. Yes, ma'am.

MS. STEIN. Could you tell us what that includes?

MR. WHITE. Deviate sexual behavior.

MS. STEIN. Anything else?

MR. WHITE. No.

MS. STEIN. By deviate sexual behavior, do you include homosexual relations?

MR. WHITE. Yes, ma'am.

MS. STEIN. Is there any other conduct that you include in that category?

MR. WHITE. Yes, ma'am.

MS. STEIN. Could you tell us what that is?

MR. WHITE. Sex with a child, habitual window peeping, isolated instances you have of sadistic behavior, or make it the opposite of a sadistic behavior, where injury is inflicted upon another individual.

MS. STEIN. It was suggested by a witness earlier in the day that minority applicants are more often disqualified because of marijuana smoking or the credit rating standard or sexual standards than white applicants, Anglo applicants. Do you have any impression whether this is accurate or not?

MR. WHITE. Whoever told you that didn't know what they were talking about.

Ms. STEIN. Do I take you to mean that you do not think there is a disproportionate adverse impact on minorities because of those standards?

MR. WHITE. No, ma'am.

Ms. STEIN. Are there any ways that you can suggest or that you would like to see that recruitment or selection process could be changed which would attract more qualified applicants?

MR. WHITE. You bet.

Ms. STEIN. Would you share those suggestions with us?

MR. WHITE. I'd like to see some of these communities leaders and political leaders of minority communities that have been throwing rocks at us help us instead of throwing rocks; instead of criticizing, do something constructive. Anyone can sit back and criticize. They criticize my division; they criticize Chief Caldwell; they criticize the department. Not one of these alleged community leaders, political leaders, has sat in my office and spoke with me about recruiting efforts, what he could do to help, not one. I'd like to see the community support, in other words.

Ms. STEIN. Are there any suggestions that you yourself have about changes in procedures that you think would be helpful?

MR. WHITE. You mean, recruiting procedures?

Ms. STEIN. Yes, sir, and selection procedures.

MR. WHITE. No, ma'am.

Ms. STEIN. Who selects the staff of the recruiting division?

MR. WHITE. I make recommendations to the deputy chief. Basically, I guess you could say I select them with his approval.

Ms. STEIN. How do you make your choices? What do you base your choices on?

MR. WHITE. Pardon?

Ms. STEIN. What criteria do you look for in choosing someone?

MR. WHITE. We look for the person who, by benefit of their character or what they are or their background or their prior field, would most likely fill the bill for the position that we're looking for.

Ms. STEIN. Do they receive any special training for work in recruitment?

MR. WHITE. We have a training procedure that I go through with them for the different job functions that they are there to perform, yes, ma'am; there are training procedures for them.

Ms. STEIN. Are those the training procedures the ones you've just described?

MR. WHITE. No, ma'am.

Ms. STEIN. Would you give us an indication of what training procedures are used?

MR. WHITE. We sit the new officer down and tell him what the standards that we use are, what is expected of him, how he is to conduct himself, and how he is to do his job. Now what specific job it is that we're telling about depends on his particular assignment.

MS. STEIN. I'm referring now to people who have the assignment to go out and make contacts within the community and try to encourage—and encourage persons to identify—to apply to the police department and identify people who would make good applicants.

MR. WHITE. Yes, ma'am, we sit down and we tell them what's expected of them. We assign them with a more experienced and highly qualified officer to provide them with the inservice training toward—we feel they are capable of handling themselves and representing our department on their own.

MS. STEIN. Thank you, Captain.

Captain Michna, may I ask if you have any suggestions on ways in which recruitment or selection might be changed in order to increase the number of qualified applicants?

MR. MICHNA. Well, I certainly agree with Captain White that involvement on the community leaders' part—with those people in the community that are the people we're looking for as police officers and who seem to come to us looking for a job, the younger people that seem to be seeking guidance at that stage in their life when they're looking for a career, immediately after college or high school, or looking for a career change, if they would seek, and they do seek this guidance, if they perhaps would give them a push towards us or recommendation to look at the police department, that would help a lot.

I think Lieutenant Nuchia referred to television advertising being so effective, and I think we are all aware how effective media advertising is—radio and television—on all of us for any product and I do know that, of course, money is a problem everywhere, and Captain White didn't refer to it, but he certainly works under monetary restraint of advertising. Some prime-time advertising in the middle of a football game on Sunday afternoon would help a lot. We're looking a lot of times for the people perhaps to be watching a football game and you don't see them, you know, ties them—during the order of the football game Sunday afternoon. It costs so much money. That—so I assume help from community leaders—directing people towards us that are looking for a career—and free-flowing money to buy all the advertising you want would help a lot.

MS. STEIN. Do you think recruitment from a wider area would be helpful?

MR. MICHNA. No, I believe right now that, based on the knowledge I have, we are recruiting where the density of population is. There's no point in going to New Mexico looking for people; they're not out there. One thing, when you travel away from here and go into the southeastern United States and start asking people to relocate from Mississippi and Georgia, college graduates to come to Houston and live here and pay the rent and the high cost of living, and you talk to them about salaries we're paying—I don't know why any of them do come, really. And some of them get here and they wonder why they came after they get here and don't have money to eat on.

Ms. STEIN. Turning to the subject of training, could you give us an idea of what types of training at the academy deal with the use of deadly force, the question of when to shoot or when not to shoot?

Mr. MICHNA. Okay. There are several subjects that are taught during the 18-week academy course that—while the title of the course may not imply—that deals with the use of deadly force. The course does—they begin the first day of police school when Police Chaplain L. L. Hanna talks to the officers about—cadets about moral responsibilities. It continues on such courses—study of the Houston Police Department rules manual, the study of the Texas Penal Code, the firearms training program where they receive classroom and actual firearms instruction on the range where they shoot with a gun in their hand, and discuss counseling sessions between the counselors assigned to the academy staff and the group of cadets that are assigned to them when they talk about incidents in the past. I heard one of the officers working in the academy that had the misfortune of taking the life of someone. When I hear him talking to his group of cadets about this, about how it played on his mind and how to be so careful, to be aware of what you're shooting at and when you're shooting, I consider that also training in the use of deadly force. As far as the number of hours they actually receive, it would be difficult for breakdown because so many subjects allude to the use of deadly force without receiving that title. I would think they receive many hours of instruction.

Ms. STEIN. How do you evaluate the understanding that the persons at the academy have of their lesson, how well they've understood it?

Mr. MICHNA. One thing, they are tested each Monday and they must, of course, pass these tests and they must pass a certain grade average to even graduate from the academy—over the penal code and the classroom instruction they receive, over the rules manual—and these questions are asked to determine how much they have been learning. So they are, they are the best guide.

Another good measure we have of determining how they learn the use of deadly weapon—we have simulated crime scenes, very extensive ones, very professional and very sophisticated crime scenes, two of them in particular of robbery with firearms in progress, where the cadets are dispatched, and this is after receiving classroom training where they must apply their knowledge of the use of deadly force and burglar-in-the-building call, and we can very readily see their understanding of the rules manual and the penal code teaching on that use of deadly force by the way they perform these crime scenes.

Ms. STEIN. How do you critique their performance in these crime scenes situations? What are you looking for as the trainer?

Mr. MICHNA. Okay. We have an evaluation sheet where they must perform certain things. First and foremost, the unauthorized illegal use of deadly force at the crime scene automatically fails them. During the last four cadet schools we have terminated, at Chief Caldwell's approval, four cadets for failing crime scenes. All four of those misused

their firearms at the crime scenes where they are using a gun that is loaded with blank ammunition and a plugged barrel. They, in our opinion, took the life wrongfully of an actor or even a complainant in one situation, even.

They are given two chances to pass their crime scenes. On their second failure we recommend termination, when that second failure is again for misuse of deadly force. The crime scenes—you ask about how they're graded.

We bring in the FTO, field training officers, from the patrol divisions to monitor the crime scenes. They are selected by the director of the field officer program in the field operations command and sent to us; in fact we are conducting those crime scenes tonight. There is a pair of field training officers at each crime scene. They are removed from the academy staff and may not even be acquainted with our academy staff. They are very objective observers and graders and these men are out every night. In fact, they come to us from the field, usually policing that very night; they come from their beats and observe the crime scenes and they grade the crime scenes in how the officer performed, and did he or did he not misuse deadly force, in particular.

MS. STEIN. What standards do you use in defining excessive force or unnecessary force? Is it an objective standard, or is it one that can only be individual?

MR. MICHNA. No, ma'am, I think it is very objective in that if a person is standing there with his hand trying to surrender and the cadet fires a blank pistol at him, we assume he has taken that person's life and has misused his weapon. We have had situations where one cadet was terminated where a police officer playing the part of a burglar that was hidden in the building jumped in front of the cadet in the dark warehouse and said, "I give up," and had nothing in his hand and the cadet fired his gun. We can't tell for sure, because it was a blank gun, what he would have hit. If it had been a real gun in a real situation—but he failed the crime scenes and was dismissed from the police academy for misuse of deadly force. We form the opinion that in shooting his gun he intended to shoot and kill the person.

MS. STEIN. There are probably, though, I'm sure the officer on the street encounters situations that are not as clear cut as somebody throwing up his hands and surrendering, that require much harder decisions. In a case like that, how do you use the excessive force standard?

MR. MICHNA. Well, certainly, ma'am, we don't grade people on the street that have actually have live ammunition and unplugged barrel in their gun. We can't grade them. I think they are graded by others. We make our crime scenes, again, as realistically and as close to real live situations as possible. The scenarios—the crime scenes the cadets are exposed to are scenarios drawn by the academy staff, based on some staff member studying an actual offense report obtained from the homicide division, of an actual burglary, where an actor was arrested

and perhaps where an officer had to use his gun or drew his gun during that arrest. And their scenarios are drawn up from actual robberies. The offense report is taken and we take that and use it as a basis for a script and we prepare these crime scenes from that. So we approximate real life situations as much as possible. We couldn't give them live ammunition, though, and ask somebody to volunteer be an actor in those crime scenes. I don't think we'd get much response.

MS. STEIN. But your attempt is to simulate as much as possible the stress that would occur in real life on the street?

MR. MICHNA. Yes, ma'am, and if you see some of those soaking wet uniforms with sweat from fear and notice perspiration, I think we come very close. It takes a few minutes to calm them down as if they have been in real life situations, but as close as possible we try to make them.

MS. STEIN. Do you have the responsibility for course selection and curriculum planning at the academy?

MR. MICHNA. Ma'am, I assume I have ultimate responsibility, in that I would authorize an approved course selection and trainers.

MS. STEIN. Do you conduct any evaluation to find out what courses are the most useful to officers, based on what their feelings are a couple of years after they're out on the street? Do you have any feedback of that type?

MR. MICHNA. Yes, ma'am, we had invited the commanders of each division within the Houston Police Department or their representative to come and monitor the class that pertains to their field. For instance, when a robbery detective, where someone is teaching robbery investigation, we have asked the commander of the robbery division periodically to come and monitor that class and see if what is being taught is what he, as commander of that division, thinks a new police officer needs to know about robbery investigation. Same thing for patrol investigation and all the other subjects that are taught inhouse, in regards to the actual police operations. These classes are monitored, of course, by the division commander, who has many years of experience. His representative has never been any less than a detective or sergeant with, again, at least 5 or 6 years' experience, that I've ever seen, monitoring those classes. Then we ask them to comment back in writing to us about the class they attended and monitored, the relevancy of that class and the quality of the instructor, and the importance of continuing that class along those lines.

MS. STEIN. Thank you.

Lieutenant Stewart, in your opinion what are the major reasons for attrition at the academy?

MR. STEWART. The major reasons for attrition?

MS. STEIN. Yes.

MR. STEWART. Number one, improper academic preparation—that's something that occurs prior to our recruiting efforts—family problems, financial problems. Many of these things could be lumped under family

problems. Occasionally, we have problems where misconduct might be a subject—dishonesty or something like that—but probably previous scholastic preparation is the principal reason for attrition in the academy.

MS. STEIN. The Houston Police Department's equal employment opportunity plan indicates that total attrition from the academy is 14 percent but that the attrition of Mexican American males is 29 percent, and the attrition of black males is 25 percent. Were you aware of those figures or that phenomenon?

MR. STEWART. Our figures roughly parallel those, I would say, give it a little bit one way or another, that the Anglos run about 80 to 85 percent; the Mexican Americans—that is the success rate—the Mexican Americans are running about 80 percent and the blacks, I believe, are running around 70 to 75 percent, depending on the time span you wish to choose.

MS. STEIN. Have you attempted any analysis to try and determine why the rates are different according to the different groups?

MR. STEWART. Have we made any efforts to determine why these things are occurring?

MS. STEIN. Yes, sir.

MR. STEWART. I believe I answered that with the first question. I believe that these people are ill prepared to be in this setting; that is, scholastically, they cannot perform.

MR. MICHNA. If I may, pardon me, everyone that leaves the academy for academic reasons is interviewed by Police Lieutenant Stewart and a patrolman assigned to the officer, myself, and Deputy Chief Bells. And of course, we're trying to determine why they're leaving, and one question we always ask, "Is there anything we could have done to see to it that you—that we didn't come to this situation where you are now flunking out and have to leave us?" And most of them, you know, say, "No, nothing else you could have done." We ask for any suggestions for improvement, anything we could do to help them if they come back again or anyone else maybe like them. And one black male, a man about 34 years old—third class that I was captain at the academy—summed up what we seemed to be finding the case in regards to the minority cadets that are terminated for academic reasons and which, of course, backs up what Lieutenant Stewart said about the main reason, poor academic performance. He said, "Captain, It is not your fault. You have standards. They're set down and explained the first day. I knew before I came here." By the way, this man was a former high school teacher, like for 6 years before coming to us. He said, "Who is prejudiced and who hurt me and who put me here? It started years ago when I was in high school. It was that black high school principal who let me have a high school diploma because I was black; it was a black college dean that let me graduate from college because I was black, and didn't require me to learn; it was the school system that tolerated me as a teacher because I was black and never

required me to meet a higher standard." He said, "You're not prejudiced. I look back and they were. They didn't force me to get an education, and you're trying to do that." And he said, "I thank you for it and I hope I can come back someday and meet your standards."

Right or wrong, I feel like that man summed up what we do see from interviewing applicants that are terminated for academic reasons from the police academy. Another young man that had to leave us was a 21-year-old black male, had lived at home with his mother and several children, I think, in a two-bedroom house, and his brother was recently discharged from the penitentiary prior to the young man coming to the police academy—a very fine young man. And his ex-convict brother could not tolerate the thought of having that brother for a police officer and he made life too miserable at home so that poor youngster could not study and flunked out. We talked to his mother and we talked to his brother to please try to help him through, please give him a chance, but they didn't want to and they didn't and he did flunk out for academic reasons. But again—we knew that; he told it to us, also. But again, that typifies the lack of support that a lot of minority cadets receive from their family and the community while they try to struggle through that academy and rigors of it.

MS. STEIN. And I gather that the thrust of your testimony is that those situations occur to a much greater extent in the minority community than among white persons at the academy?

MR. MICHNA. Certainly seems to be the situation that I've seen.

MS. STEIN. Lieutenant Stewart, do you ever become aware, during the course of—while a cadet is at the academy that he has tendencies towards the abuse of police authority to use physical force?

MR. STEWART. Yes, ma'am, in the cases—at least one case—a number that Captain Michna cited, I believe the figure is three, sir, is termination for the use of excessive force. We had an indication that a person had a tendency towards too much force.

MS. STEIN. And that was as a result of the crime scene simulated?

MR. STEWART. No, we had an indication prior to that; that behavior, coupled with the crime scenes and other observations, led to his ultimate termination.

MS. STEIN. Is there any other response that you make other than termination when you come across that situation?

MR. STEWART. The first time a behavior is observed, of course, we go to the person, talk with the person, counsel with the person, and try to alleviate the situation there.

An individual may be reacting to some indication they think they're getting from us, some action that we're going through that may lead them to believe this is the response that we want. When we observe such behavior, we assure them that is not what we want; we are not there to train them to do that.

MS. STEIN. Thank you very much. No further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Captain Michna, when you described the situation about the young man who got the high school diploma and couldn't read or whatever, were you describing the Houston school system?

MR. MICHNA. Ma'am, as I recall, yes, he was a product of the Houston school system, yes.

COMMISSIONER FREEMAN. Do you know if anybody in the police department has ever brought this problem to the attention of the board of education of the city of Houston?

MR. MICHNA. I have not.

MR. WHITE. That man right there has. Chief Caldwell has brought it to the school board's attention.

COMMISSIONER FREEMAN. Are you saying that the graduate of the high school of Houston was given a diploma and could not read and that person went on to college and received a college degree? Was that a college in the city of Houston?

MR. MICHNA. As I recall, the university that he had graduated from was not a university here in the city of Houston, and I don't believe I testified, ma'am, that he could not read and I was relating something he told me. I didn't verify the fact that he had even attended, myself personally, a Houston school. I was relating what he told me.

COMMISSIONER FREEMAN. But you were accepting it as it is, and your testimony was that this was to be something that the Commission should consider as a reason why this man did not make it, so therefore, you have accepted it and I imagine you've told this story other places?

MR. MICHNA. I'm sorry, I didn't understand that question, ma'am.

COMMISSIONER FREEMAN. Is this the first time you have repeated what you just told us?

MR. MICHNA. No, ma'am.

COMMISSIONER FREEMAN. So you've been telling it around?

MR. MICHNA. Yes, ma'am, I have.

COMMISSIONER FREEMAN. But now you say you don't know whether it is true or not?

MR. MICHNA. I say I know it is true that the man told me as his reasons for failing out of the academy.

COMMISSIONER FREEMAN. Captain White, you described your recruitment efforts. Does your recruitment team go in person to these various communities?

MR. WHITE. In some instances, yes. In many instances we do it with mass media communication. I must ask you to remember that my manpower resources, as well as my money and budget, is limited.

COMMISSIONER FREEMAN. You said manpower. Does that mean that it is all male?

MR. WHITE. No, ma'am. Personpower.

COMMISSIONER FREEMAN. You indicated a concern that the political civic leaders had not come, had not discussed any of the concerns with

you; does that mean that you have not tried to involve them in your recruitment efforts?

MR. WHITE. That certainly does not mean that.

COMMISSIONER FREEMAN. Well, will you describe for this Commission what efforts you have made to recruit, to use the various community groups that you referred to in your recruitment efforts?

MR. WHITE. Okay. In the Mexican American communities the organizations that we facilitate are quite numerous. LULAC is probably the outstanding and leader. They have a seminar that they hold quite frequently down in what's called the valley—Rio Grande Valley—McAllen, Brownsville, Arlington, Corpus Christi, Victoria. We participate in those. We participated in what is called GI Forum, which is predominantly a Mexican American organization that attempts to gain employment for the members of their community. We participate in the—I can't—IMAGE de Tejas, which I think is an annual employment seminar. Here again occurring in the valley, predominate where Mexican Americans are.

As far as the black communities—when I went to recruiting division, I tried to identify why the difference between the responses from the black communities as opposed to the Mexican American communities. I found that the black communities did not have the organization to facilitate employment or to offer employment other than the summer job program that the mayor offers, which is directed primarily at young teenage individuals. So we—after consulting with Ms. Barbara Jordan, she suggested that we approach the religious leaders.

We did so—we—through another lady who is very active in the church, she helped us identify some pastors within our black Baptist association. We had a meeting with these people; we identified their problem. They agreed that there was a problem and agreed they would like to do something about it. So we met over—off of, just off of Dowling Street, there in a facility that they had and we outlined the procedures, what they could do.

I explained to them how the Mexican American communities had done it, had employers, large organizations, companies—both private and public, either/or, or a combination of both—sponsor these employment seminars, usually in conjunction with an educational or higher learning institution.

They voiced some good words. When we reapproached them and asked them what steps, what organizational steps, they had made to start pursuing such as this, there was none.

I offered to use some of the expertise in my office to help them organize and help them get the program going, everything short of running it for them. I heard no response.

COMMISSIONER FREEMAN. So therefore, you have had no meetings with any black organizations?

MR. WHITE. Yes, ma'am, I sure have: Houston Black Baptist Ministers' Association.

COMMISSIONER FREEMAN. How many meetings?

MR. WHITE. Two.

COMMISSIONER FREEMAN. Two. You stated that you advertised?

MR. WHITE. Yes, ma'am.

COMMISSIONER FREEMAN. Have you advertised in any of the—I believe there are two black newspapers in the city?

MR. WHITE. Yes, ma'am.

COMMISSIONER FREEMAN. Do you have a continuing ad that goes into those papers?

MR. WHITE. I advertise in the black media and I advertise in the Mexican American media.

COMMISSIONER FREEMAN. How often? When was the last time the ads were in those papers?

MR. WHITE. Every issue in the advertising community.

COMMISSIONER FREEMAN. There is an ad in the current issue of those papers?

MR. WHITE. My lieutenant says there is, so I'll have to say there is.

MR. NUCHIA. There should be with the exception of 2 months where our advertising money was out—2 months during the summer. We advertised in the *Forward Times*, virtually every issue. We advertise on the black radio stations as often as we have the money available.

COMMISSIONER FREEMAN. Is that different from the number of times you advertise in the white radio stations?

MR. NUCHIA. Yes, ma'am, it is.

MR. WHITE. Can I interrupt you just a minute, ma'am? In our own—with what facilities that we have and what expertise we have, in our own way we try to do a little market research. And the results of this research that we have done, we have found that the general communication media, be it newspaper or be it television, that most of the minorities will identify that segment of media as to how they became aware of us. The ones they identify with, say particularly a black newspaper or black radio station or a Mexican American radio station or Mexican American publication, are not identified as frequently as the *Houston Post* or channel 13 or channel 11. The general mass media, from our crude methods of market research, appears to be the most productive. However, we do use the other media. I think you'll find our advertisement in the Texas Southern publication for this upcoming game.

COMMISSIONER FREEMAN. Coming up now?

MR. WHITE. Yes. We do our best to stay on top of it, but you have to give—here again, the monies that we spend is limited, and we owe it to the city of Houston and to the people of the city of Houston to spend our money as wisely as we can, which will do us the most good, ultimately the communities.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Captain White, do you feel the police department has been under unwarranted attack by the minority community?

MR. WHITE. I don't see a monster attack; I see a lot of irresponsible remarks being made.

COMMISSIONER SALTZMAN. By members of the minority community?

MR. WHITE. Yes, sir.

COMMISSIONER SALTZMAN. Do you feel that this has caused a sense of disappointment and frustration in you?

MR. WHITE. Pardon?

COMMISSIONER SALTZMAN. Are you disappointed and frustrated?

MR. WHITE. I'm disappointed for the community itself to verbally voice so much opinion and so much concern to the media, but when it comes down to actually doing something, no, there's no—like I say, they can criticize, but no one has come up with a suggestion and said, "Captain White, have you tried this?"

It is amazing, isn't it? Everyone can criticize.

COMMISSIONER SALTZMAN. And there have been no efforts on their part or on your part to bring yourselves into some kind of mutual conversations, dialogue, as was described earlier by the Community Relations Service?

MR. WHITE. Yes, sir, I think I just alluded to you some of the efforts—where you make all kinds of efforts with the leaders of the minority communities. I think you can see from the general conversation that we have just had and the efforts that I've gone to that we have, but you can't hold me, Chief Caldwell, or the department for irresponsible remarks made by these individuals and picked up and publicized by the mass media because it is the in thing, if you please, to do.

COMMISSIONER SALTZMAN. Generally, you could characterize the criticisms that have come from the minority community as irresponsible?

MR. WHITE. No, sir, I'm not generally characterizing that. I'm saying that a few individuals have done this who have the ability to draw the press attention. I'm not characterizing the entire minority community as that, no, sir. We have a very fine minority community, but they need to be informed correctly and properly and just so. And any leader that tells them that I'm not really trying to recruit Mexican Americans, or I'm not really trying to recruit black individuals—whoever tells you that doesn't know what he's talking about, and I consider his remark irresponsible.

CHAIRMAN FLEMMING. Mr. Ruiz?

COMMISSIONER RUIZ. Lieutenant Nuchia stated that in considering the qualifications of the prospective recruit, certain elements were considered, including common sense, intelligence, honesty, stability, but that attitude is not considered. Captain White, would you concur with the statement insofar as your experience is concerned?

MR. WHITE. No, sir. I think you—for me to answer that I think you'd have to be a little more specific on attitude. We all have attitudes. Attitude can be expressed in various ways. You have to be more specific

with me before I could really answer it. I'm trying not to be elusive and trying to answer your questions, but here again, a lot of times we do not have the facilities to judge attitude.

COMMISSIONER RUIZ. Your particular conclusion is not in accord with what he said; is that correct?

MR. WHITE. I think we're saying the same thing. I'm just trying to get you to be more specific. In some instances, we can judge attitudes about something.

COMMISSIONER RUIZ. Well, Lieutenant Nuchia said that attitude was not considered. Now, do you consider attitude?

MR. WHITE. What aspect of attitude?

COMMISSIONER RUIZ. Pardon, sir?

MR. WHITE. What aspects of attitude?

COMMISSIONER RUIZ. Any aspect of attitude. Do you consider the attitude of the human being before you with respect to his outlook, philosophy, life, and so on.

MR. WHITE. Yes, sir, I do.

COMMISSIONER RUIZ. Now Lieutenant Stewart, insofar as your experience is concerned, would you concur with the statement made by Lieutenant Nuchia, or do you have a different impression?

MR. STEWART. I believe I heard what Lieutenant Nuchia didn't say and I heard what Captain White did say. Attitude is considered, and knowing Sam Nuchia, he was trying to answer the question. It is obvious he faltered.

Attitude, I believe, is important and has to be considered in the selection of an individual. A person may profess an attitude, but then that attitude often—or it has to be, finally, to be judged—manifested in behavior and then the behavior is the outward sign of an inward attitude and then that, in itself, can be judged.

COMMISSIONER RUIZ. You think it is an element to be considered?

MR. STEWART. I think it is an element to be considered, and at what point and how much or how deeply you can consider it—it has to be considered. It has to be related to the point that you are at in the process.

MR. WHITE. Mr. Ruiz, may I address that a minute?

COMMISSIONER RUIZ. Surely, I want to get this cleared up here.

MR. WHITE. I'll do my best. I can assess, in some instances, an individual's attitude toward accepting supervision. I can assess, perhaps, his attitude towards being responsible, as to whether he is timely—he will show up to work on time. But it is very difficult for me to assess attitudes that are not tangible and reflected in a behavior. If it is reflected in his behavior, in some instances we can assess it and some we can't. Certainly, we can assess his attitude towards following instructions, but his own personal attitudes that are not reflected in his behavior, I submit to you, sir, that none of us sitting here could assess that attitude.

COMMISSIONER RUIZ. Lieutenant Michna, would you change what Lieutenant Nuchia's consideration was, with respect to the qualifications, and take into consideration the element of the attitude of the recruit?

MR. WHITE. I would not throw attitude out there as you have. Attitude covers broad things, as I've tried to assess—

COMMISSIONER RUIZ. I directed the question to Captain Michna.

MR. MICHNA. Mr. Ruiz, I feel like I am trying to repeat a story—I have four times here. Nuchia said a while ago, it's perhaps distorted and played upon, but as far as—as best I can answer what you're asking me and recall in regard to measuring attitude, attitude is, you know, very important, but hopefully we in the police academy—that's all I can deal with, not recruiting, we just see them after they're hired—plays a factor in whether he continues in that police academy or not or whether he graduates or not. Attitude only plays a factor in that it is a measurable demonstrated attitude.

For instance, I talked about a man a while ago that we terminated for misuse of deadly force in a crime scene. He earlier had passed a test indicating he understood what the rules manual and the penal code taught about the use of his firearms, but he demonstrated on the crime scene an attitude completely different than what this department can tolerate. So based on his demonstrated attitude, he was terminated. He professed an attitude of believing it and said he understood it and could go along with it on a test.

COMMISSIONER RUIZ. I was hoping that someone of you would mention attitude toward a minority, attitude toward a Mexican or a black, a racial attitude, and none—neither of you have mentioned that yet.

MR. WHITE. Can I answer that for you?

COMMISSIONER RUIZ. Yes, you may now answer it.

MR. WHITE. We assess attitude that is demonstrated or verbalized by the applicant, but if it is not demonstrated or it is not verbalized, we have no way of knowing.

COMMISSIONER RUIZ. When you recruit a person, do you speak to him?

MR. WHITE. Yes, sir.

COMMISSIONER RUIZ. Isn't that verbalizing?

MR. WHITE. It would be verbalizing about getting a cup of coffee.

COMMISSIONER RUIZ. When you verbalize, do you not seek attitudes?

MR. WHITE. True.

COMMISSIONER RUIZ. And is not one of those attitudes with respect to race an element to be considered, the attitude toward—

MR. WHITE. That is a very directed and pointed question asked of each applicant.

COMMISSIONER RUIZ. It is a directed and pointed question asked how?

MR. WHITE. After a general inquiry to assess what answers—if there would be any conflict of his attitude—it is a very pointed question put to him.

CHAIRMAN FLEMMING. I have, I guess, a problem to Captain White. In connection with your recruiting program, before you make a selection, do you ask the applicants to take one or more standardized written tests?

MR. WHITE. Yes, sir.

CHAIRMAN FLEMMING. How many are they asked to take and just briefly what's the nature of those tests?

MR. WHITE. A reading comprehension test and a psychological evaluation test. Each phase consists of two separate—each part has two separate parts. There's two parts to the reading and two parts to the psychological evaluation.

CHAIRMAN FLEMMING. I assume that they are geared to the high school graduation level; am I correct there or—

MR. WHITE. That, sir, is being given. You ask me if it is being given? It is being given and it is not being used at this time.

CHAIRMAN FLEMMING. That's another one.

MR. WHITE. Sir?

CHAIRMAN FLEMMING. Which one is not being used?

MR. WHITE. The reading comprehension test.

CHAIRMAN FLEMMING. That isn't being used.

MR. WHITE. Not at this time, no.

CHAIRMAN FLEMMING. But you are giving—

MR. WHITE. Yes, sir.

CHAIRMAN FLEMMING. But you don't use it as a selection device?

MR. WHITE. Correct, at this time.

CHAIRMAN FLEMMING. Do you use it—are the results turned over to the academy? For example, is it used for purposes of counseling and advising the recruit if the person is selected?

MR. WHITE. Not at this time.

CHAIRMAN FLEMMING. Not at this time.

What is your feeling relative to the tests that you are giving? Are you satisfied, reasonably satisfied, and how do you tend to evaluate them?

MR. WHITE. This evaluation period is—right now, what we're using and what we're experiencing— I would have a psychological consulting firm who is working with this in establishing some level—a valid test as to what it would take to finish the academy. We did not select a test and say, "You've got to come up to this level."

In other words, we're attempting to validate—this is the process we're going through now; we are not using results. If and when it should become validated, subject to the chief's approval, we will probably use it.

CHAIRMAN FLEMMING. One other question: in connection with the courses that are taught at the academy, captain, do you offer any work in the area of race relations?

MR. MICHNA. You're addressing me, sir?

CHAIRMAN FLEMMING. Yes, please.

MR. MICHNA. Yes, sir, again, some of the courses don't have a title that would apply that deal with race relations. We have such things as—recently, we brought in a lady from the community who was given a 2-hour block of time to talk to cadets. I don't recall her name. She is a retired HISD [Houston Independent School District] school administrator, principal, came through the ranks as a teacher, who also happens to be black, and retired from HISD and comes into talk to them what it is like to be black. She still lives in the third ward area of Houston. Very much involved in the community.

We have a Dr. Barum from Sam Houston State, a sociology professor with a Ph.D., talk about race relations and human relations with the cadets.

The—it is part of the selection process and, of course, I see the police academy as part of the selection process. Also, the probationary period served by the officers during most—particularly, the FTO program which goes on for the 14 weeks—

CHAIRMAN FLEMMING. What program?

MR. MICHNA. FTO, field training officer program, each person upon graduation enters that for 14 weeks; that's part of the selection process also. The third phase and selection phase of the selection process, they have an opportunity there to demonstrate—again, I guess it is perhaps made in response to Mr. Ruiz's question—their attitudes toward minorities. At the end of each day they are graded in certain categories, 34 specific subjects, on how they handle themselves by the senior officer and then they are shown their grades at the end of the day. And the grade on a scale of one to seven, seven being the best, one being the worst, and they're told, you know, how they did in each subject and what mistakes they made.

Again to—part of the power firearms training program, also—it is included in that. Again, they are graded by their senior field officer, how they used their firearms.

So in response to general counsel's question about firearms training, that is part of it, the FTO program, and the attitudes and race relations and their attitude is certainly demonstrated there and graded by an FTO, hopefully. I don't know and I don't have any control, but, you know, a person that would demonstrate prejudices towards anything or anybody would not be tolerated by that FTO.

CHAIRMAN FLEMMING. But have you given consideration to the possibility of putting into the curriculum an intensive course in race relations that might extend over a period—I don't know whether you are semester, quarter, or whatever your system is, term, whatever it is. Have you given consideration to that possibility?

MR. MICHNA. Yes, the two that I referred to. The lady talks about what it's like to be black in Houston today and how she sees police. Dr. Barum is a sociologist, Ph.D, talks about that, and—Lieutenant Stewart, there are others that escape me right now, that have to do with race relations. If you can help me out, Lieutenant Stewart.

MR. STEWART. Human relations is the one that he's referring to about Dr. Barum, Ph.D., Sam Houston State. Then there is a course taught by Dr. Jones, a professor at Texas Southern University, cultural awareness, what it is to be black. Then there is the course essentially what it is to be brown, the Mexican American perspective, Dr. Lupe Cantonia. Of course, we have Lauri Lanzalone, who is a retired HISD administrator, who, as the captain says, still lives in the community and on their own time come down to us.

Of course, we have the standard sociology, which would deal with this but not so direct as this, and that's taught by a Ph.D. in sociology, and we finally have a course that is self-taught by two experienced police officers, police-citizen interaction.

CHAIRMAN FLEMMING. I would appreciate it if you could just prepare for us a memorandum listing the courses that you've identified in response to my question and also indicating what you do in connection with the field training program, also, in this particular area. I would like to see that a part of the record and without objection we'll enter it in the record at this particular point. Is that feasible?

MR. MICHNA. Would I submit this to Mr. Gardner or—

MS. STEIN. Mr. Chairman, I might just mention there will be another panel tomorrow speaking to the field training officer portion of the training.

CHAIRMAN FLEMMING. All I'm interested in is just getting in the record in the form of a memorandum what you are doing at the academy in the area of race relations and human relations.

MR. MICHNA. Title of courses, course content—

CHAIRMAN FLEMMING. So it is here in organized form in the record. Mr. Nunez, do you have a question?

MR. NUNEZ. Just one factual question.

Captain White, you are the director of recruitment of the department?

MR. WHITE. Yes, sir.

MR. NUNEZ. And Captain Michna, you're the director of the training academy?

MR. MICHNA. Yes, sir.

MR. NUNEZ. Fine.

CHAIRMAN FLEMMING. We appreciate very much your coming here this evening.

We apologize for running an evening session, but it was necessary to do so if we were going to hear everyone that we felt we should hear in connection with our getting the overall picture. We're very grateful to you for coming this evening and giving us this testimony. Thank you very much.

The hearing is in recess until 9:00 o'clock tomorrow morning.

[Whereupon, the hearing was recessed until 9 a.m., Wednesday, September 12, 1979.]

Wednesday, September 12, 1979

CHAIRMAN FLEMMING. The hearing will come to order. Counsel will call the next the witness.

Ms. STEIN. Dr. Riede, Lieutenant Wilson, Officer Sessums, please.

CHAIRMAN FLEMMING. Remain standing and raise your right hands.

[Gregory Riede, J.L. Sessums, and John Wilson were sworn.]

**TESTIMONY OF GREGORY RIEDE, DIRECTOR, PSYCHOLOGICAL SERVICES;
J.L. SESSUMS, OFFICER, PATROL BUREAU; AND JOHN WILSON,
COORDINATOR, FIELD OFFICER TRAINING PROGRAM, HOUSTON POLICE
DEPARTMENT**

Ms. STEIN. Could I ask each of you to state your name, your position, and the years that you have spent in your current position, beginning please, with Lieutenant Wilson.

MR. WILSON. John Wilson. I'm the department field training program coordinator for the department, and I've been in this position for 1 year.

Ms. STEIN. Dr. Riede?

DR. RIEDE. I'm Dr. Riede. I'm the director of the psychological services for the Houston Police Department. I've been there just under a year, since last January.

Ms. STEIN. Mr. Sessums?

MR. SESSUMS. Officer J. L. Sessums, Patrol Bureau, Northwest, 7 years.

Ms. STEIN. Lieutenant Wilson, could you explain to us briefly what the field training officer program is?

MR. WILSON. Field training officer program is the on-the-job, postacademy program, which is what we do, we give on-the-job training to recruits when they get out of the police academy. It is an extension training program.

Ms. STEIN. How long does it last?

MR. WILSON. It's now 14 weeks.

Ms. STEIN. Could you tell us what the role of the field training officer is in this program?

MR. WILSON. Training and evaluation.

MS. STEIN. So to begin with, who is a field training officer?

MR. WILSON. Okay. An officer has to have—he's a police officer, of course, with the department. He has to have 2 years with the department. He is selected by the division commander, which is a captain, in cooperation, of course, with a shift lieutenant and with a sergeant at the station.

MS. STEIN. What does he do as his role in the program?

MR. WILSON. He is a training officer.

MS. STEIN. How do you select an officer to be a field training officer?

MR. WILSON. Okay. The captain takes, along with the lieutenant and sergeant, takes several things into consideration. The main thing is his interest in the program. They look at his background, his police experience, and general attitude, his ability to communicate with people, his interaction, of course, with officers and citizens.

MS. STEIN. Are there any particular factors that would disqualify someone from being a field training officer?

MR. WILSON. Yes, there are many.

MS. STEIN. What sort of thing would disqualify?

MR. WILSON. A background investigation where, if the officer had several complaints that were sustained against him, or maybe even one complaint that was sustained against him, that would disqualify him.

MS. STEIN. And by complaints, do you mean citizen complaints or any type of complaints?

MR. WILSON. Any brutality complaints, I would say, that was sustained against him would definitely disqualify him.

MS. STEIN. Would you look at a number of complaints that had not been sustained? Would that play any part?

MR. WILSON. Yes, that would be taken into consideration.

MS. STEIN. Do you have enough participants in the program who wish to be field training officers?

MR. WILSON. At this time, with our six stations, we have approximately 210 field training officers.

MS. STEIN. Is that the amount that you feel is necessary? Or do you feel there should be more?

MR. WILSON. Let me clarify that a little bit. We've tried to condense the program down to three stations so we can better coordinate it and control it. In the program right now, the total six stations, we have 210. Out of those we're using—to the latest academy graduates—we have approximately 133 FTOs who are active in the program at this time.

MS. STEIN. Is that your goal? Or would you like to have more than that?

MR. WILSON. We like to have 168 active participants.

MS. STEIN. Why are you unable to reach that number?

MR. WILSON. Well, we're actively recruiting FTO participants. It takes time, especially with—we have to send these people through a 40-hour field training officer's school, and we've just recently condensed it down to three stations and we are in the process of increasing our strength to that number; however, we have to schedule these schools and conduct those FTO schools before we could reach that number. Approximately, it might take us 1 year before we can build that back up to the strength of three stations.

MS. STEIN. Do you have a problem finding officers who are interested in the program? Or is that not difficult?

MR. WILSON. No, that doesn't seem to be a real difficult problem at this point.

MS. STEIN. Could you give us any idea how many of the field training officers are blacks or Chicanos or women?

MR. WILSON. Yes, I know the exact number of women. There's two. I don't know the exact number of black officers; I would say between maybe 10 or 15.

MS. STEIN. And—

MR. WILSON. Mexican Americans, I would say between 15 and 20.

MS. STEIN. What kind of supervision do field training officers receive?

MR. WILSON. Okay, they are supervised by a field training sergeant in conjunction with a district sergeant. The field training sergeant is responsible for the supervision within the field training program itself. He meets with the field training officer, once a week with the probationary officer.

He also—when he finds time, he supervises in conjunction with the district sergeant on the street, also, and observes the probation officer in action on the street.

MS. STEIN. Now am I correct that a probationary officer, during the course of this 14-week period, will be assigned to three different field training officers?

MR. WILSON. A minimum of three.

MS. STEIN. And those officers will demonstrate the correct performance of a number of duties of the police officer and then evaluate the probationary officer in his performance?

MR. WILSON. Yes, ma'am, that is correct.

MS. STEIN. Officer Sessums, you are a field training officer; is that correct?

MR. SESSUMS. Yes, ma'am.

MS. STEIN. Do you feel the new probationary officers are adequately prepared for the type of stress that they will encounter when they first go on the street?

MR. SESSUMS. Once they clear the FTO training program, I feel sure that if they complete it successfully they would be able to handle the situation on the street.

MS. STEIN. I'm thinking more about when they come to you from the academy. What do you think is their level of preparation?

MR. SESSUMS. Compared to years past, it's excellent; it really is.

MS. STEIN. Do they have any misconceptions about police work, in your opinion, when they're just starting out as field training officers?

MR. SESSUMS. Several cadets, when they come out, feel that they can eliminate crime completely and, of course, in about 2 days on the street that goes out of their head, because they know they can't once they see it on the street.

MS. STEIN. Any other types of misconceptions of what it's going to be like to be an officer?

MR. SESSUMS. Not noticeably, not that couldn't be stopped. I don't feel that any of them come out, say, badge happy or gun-slinging crazy out of the academy. The training has improved greatly and their attitudes come out—they're ready to work and they're ready to learn.

MS. STEIN. Lieutenant Wilson, is there any mechanism for feedback from the field training officers to the academy to let them know what the probationary officers appear to need by way of training?

MR. WILSON. Yes, this is actually, of course, through the supervisor and the field training sergeant, who communicate this more or less through his division coordinator, through me; and of course, that's one of my duties, also, is liaison with the police academy.

MS. STEIN. Do you, in turn, get any feedback from probationary officers after they have finished the field training program and been out on the street, or after they've ceased to be probationary officers and became full, sworn officers?

MR. WILSON. Yes, ma'am, we do. They're required to write a letter to the chief of police, through the chain of command, of their evaluation of the field training program.

MS. STEIN. Do you see these letters?

MR. WILSON. Yes, I do.

MS. STEIN. Can you give us an idea of what problems, if any, or what positive strengths the officers feel resulted from the field training program?

MR. WILSON. Yes, I—just about all the letters are positive toward the field training program. The officers feel that the training is excellent, especially, you know, compared to years past, because this is a structured program where the officers are, from day to day, confronted with, not only different situations, but they are taught in sequence by several topics. Policing of duties is covered, extra jobs, things such as this.

MS. STEIN. Would you know what I meant by "recycling through the field training program?"

MR. WILSON. Yes, ma'am, I would.

MS. STEIN. Could you explain to us what that means?

MR. WILSON. We kind of used in the recycling process—we did, of course—now with this recent class, we did away with recycling and just used an extended period.

Recycling—when used, what we call pairing—if a probation officer is on the street, let's say for 8 weeks, and the field training officer feels that he is functioning at maybe a fifth-week level, then the probationary officer could be sent back to the beginning of that phase. He might be sent back to the start of the second phase, which, with the last class, was the start of week five, and required to take this phase over; and then at the end of the second phase, which would be the ninth week, if his performance, in the opinion of the field training officer, was up to a 9-week probationary officer, then he would be allowed to continue into the last phase of the program.

MS. STEIN. Could you tell us, generally, what percentage of probationary officers go through recycling? I know you probably couldn't exactly, but approximately.

MR. WILSON. I would say approximately 5 percent.

MS. STEIN. And how many probationary officers are terminated during this period?

MR. WILSON. Maybe 1 or 2 percent.

MS. STEIN. What are the most common reasons for termination during the field training stage?

MR. WILSON. There's two actually: attitude and the ability to—I think their writing ability, ability to read and write and also attitude.

MS. STEIN. Now I think we said that part of the field training officer's job is to evaluate the performance of the probationary officer?

MR. WILSON. That is correct.

MS. STEIN. How does the officer evaluate knowledge of—knowledge and judgment about when to use deadly force, or does he make an evaluation about that?

MR. WILSON. Yes, he definitely makes an evaluation there. Of course, our policy is that we use that force necessary to effect an arrest, and it's as simple as that.

MS. STEIN. Well, does the probationary officer use—just use his own judgment about what force would have been excessive and what force wouldn't be excessive?

MR. WILSON. Under strict supervision, he does.

MS. STEIN. Officer Sessums, you must have been presented with this situation of having to make a judgment like that. How do you—what do you rely on in making the judgment?

MR. SESSUMS. To take someone's life or use deadly force on my personal experience, or with probationary—

MS. STEIN. With a probationary officer, the use of deadly force, or what constitutes excessive use of force?

MR. SESSUMS. Once you start riding with a probationary, of course, occasions that you're going to use deadly force are very slim. For probably every thousand contacts that you make with the public, you may have one occasion to pull your weapon, even though it may not be in a deadly manner.

You talk to the probationary; you ask him questions; you see if they're knowledgeable, according to the policy, according to the State law, according to the liabilities of civil action, and see if his knowledge is adequate toward use of deadly force.

I personally then take the probationary to the pistol range, let them fire their weapon to see if they know how to use it, to see if the training through the academy was effective on them.

Once they show me mentally that they know the knowledge of it, then physically, that they know how to use their weapon when the situation does arise, I feel confident that they would handle it in the proper manner, and they are drilled on the fact that if they are fired upon, you know, to return fire. If not, be cautious when you do use it.

MS. STEIN. In your experience as a police officer, as well as a field training officer, are the guidelines that you're given about what degree of force is excessive, are they adequate for you to make that determination in an instantaneous situation?

MR. SESSUMS. There again, a lot depends on the circumstances that arise. Of course, every situation is completely different.

In the event that, you know, you're faced with a situation where you're going to have to use deadly force, you do think about the policy; you do think about the law. Even though it does take an instant of a second, it does go through your mind. I've been in a situation—it has went through my mind, and you do think about the policy. Of course, it may be the one second too much before you get shot, but however, you do have to think about it. And the policies that are laid out now are more restrictive than the past, as far as when you can use it, where you can use it, and how you can use it. With this policy now, it is to the point where, unless you are definitely in fear of your life, or definitely in fear of the life of someone else, you do not use your firearm, but if you can justifiably say, "Yes, I was scared of being killed," then you use your firearm.

MS. STEIN. This is a stricter policy than you used to guide your actions earlier during—I think you said you had been 7 years on the force?

MR. SESSUMS. Yes, ma'am. The policy has tightened. There's been less officer shootings—officer-involved shootings where officers have been shot or citizens have been shot or suspects have been shot, due to the policy.

Then, again, in a situation—in each situation, if there is a threatening move, you know, there you're going to have to make a decision: "Well, is he going to fire on me, or does he have a weapon?"

At 12 o'clock at night in a warehouse where there's no lighting and a suspect jumps out on you, it's hard to determine whether he has a weapon or not, due to the fact that it is dark, it is midnight, and you're scared to death.

Ms. STEIN. It is your impression, then, that the tightening of this policy has not only resulted in fewer shootings by police officers, but also fewer shootings of police officers; is that right?

Mr. SESSUMS. Yes, I feel that officers realize the situation and you're less likely to put yourself in a position to be shot because if you are shot at and then you return fire and strike the suspect that you're shooting at and he does survive then, you know, the civil litigations are heavy on you, and you make a decision then whether to fall back, call your reinforcement, and hope the hell you can get him out without having to shoot him.

There's many situations here lately that have come up with that fact where 15 years ago he would probably be shot on sight. But times have changed to the point where these officers are using better judgment, the training has improved, the firearms training has improved, the knowledge of the firearms improved—from the day that I went through—is improved.

They went from a target bull's-eye shooting to a combat situation shooting under different circumstances, and this has helped officers become more familiar with their firearm and know how to use it and when to use it.

Ms. STEIN. As a field training officer, are you called upon to evaluate the probationary officer by the use of a standardized guideline that covers different topics, such as attitude, knowledge, use of firearms, and so forth?

Mr. SESSUMS. Yes, ma'am.

Ms. STEIN. One of those is—one of those topics is control of conflict, and as I understand it, there's a continuum between number one, which would be the poorest rating, and number seven, which would be the highest rating; is that right?

Mr. SESSUMS. Right.

Ms. STEIN. According to the guidelines, number one would be given to an officer who was cowardly, physically weak, or uses too little or too much force for given situations, unable to use proper restraints. Could you give us examples, perhaps, of what type of situation would cause you to give an officer that rating?

Mr. SESSUMS. There is, of course—there's thousands of them, you know, hypothetical situations that you could throw up. But in the event of—well, our most common causes are family disturbances, husband beating the hell out of the wife. You arrive at the scene, and you are—you have to intervene. You have to be the buffer zone between two people and, if you're not willing to step in there and try to settle their problem, be withdrawn, not say anything, you know, that's not being a good officer.

You need to be over there and try to help the people solve their problem. Advise them—go to the lawyer, get a divorce, you know, try to settle your problems without killing each other. Then in the event—lots of times it happens where an officer will just not go into a situation like that.

The report was there's firearms involved in a disturbance, you know, family type disturbance. If an officer just sits in the car and waits for another unit to get there, you know, because he's scared to go up there and handle the situation—I would hate to be in a serious situation where there's an exchange of gunfire and have to depend on him for help because, if you're shot and you're bleeding to death and this guy's got you pinned down, you want him to be able to take care of the situation and get you to a hospital. If he turns and runs, he's not going to be any help to you.

MS. STEIN. The number seven rating, the best rating in that category, would be given to someone who has excellent knowledge and ability to use restraining holds, always prepared to use necessary force, above-average physical conditioning. What type—can you explain what type of situation and what type of response, maybe by one or two examples, would cause you to conclude that the officer was always prepared to use necessary force?

MR. SESSUMS. If an officer is—keeps in good physical condition, of course, his mental condition stays sharper. If you're out physically, out of shape, you're mental—you're relaxed mentally. If he's in good physical shape and good mental condition, in the event of your chasing somebody—that somebody just killed somebody—you know you're chasing a murderer and say he's armed and you are approaching with—of course, if you're going to go with your weapon drawn—there's no doubt that you got a man that is armed—you're going to go with your pistol drawn; if you're not, you're crazy.

If he's got the ability to physically disarm the man or if he's got the ability to mentally disarm him by talking him out of his gun—which I've done in situations, other officers have done in situations, to save someone from getting shot or being shot—if you can talk a man out of shooting somebody, you're a hell of a lot better off. You have less paperwork.

You discharge your firearm on the police department, you've got at least 8 hours of paperwork, an explanation to do it; so an officer today is lax about firing his weapon, period. If the man is sharp enough and has the ability physically and mentally to talk someone out of a weapon or talk him out of a situation or talk him out of jumping out of 1 Shell Plaza, he's a hell of a lot better off.

Physical appearance and physical conditioning has a lot to do with it. There's a respect line of—if you have an officer out there and he's 5-foot tall and weighs 400 pounds, you know, and the respect is less than if an officer goes out there and shows, you know, just his physical nature that he's in good physical shape and has the ability to talk to the people, and you can talk almost anybody out of anything.

MS. STEIN. Could I ask you, Officer Sessums, if you, in your own experience, have had occasion to use force, and to explain what the situation was that made you feel that it was justified to use the force or appropriate to use it?

MR. SESSUMS. To use like deadly force?

MS. STEIN. Either deadly force or physical force, significant physical force?

MR. SESSUMS. Well, there're occasions that you've had to use physical force in restraining somebody. It happened, you know, years ago that a suspect run us off the road and he had run on the bar ditch. We finally got turned around and pulled around on him.

After we stopped him—of course, you know, got him out of the car— obviously, he was intoxicated, highly intoxicated. In the front seat there was quite a bit of, you know, narcotics, and if you know anything about narcotics—Robitussin is a codeine and it is a numbing type, it is a downer—and he also drank two bottles of wine. And the guy was 6 foot 4 and weighed 235 and he was a longshoreman and his arms was as big as my thighs and, of course, then you advise him—of course, you—you saw the narcotics; you had a legal arrest on him. You said, “Look, you're going to jail for this; you're under arrest.”

Of course, I'm not going to try to use the language he used, but he told me, “You're not putting me in the car.” Well, you know, “Get in the car.” Well, he knocked my partner out—that's when I had a partner—knocked him over into a culvert. He got a brain concussion, laid up in the hospital for a couple of weeks. As a result of that, he quit the force because he got out and couldn't face the public again because he knew he had gotten beaten on the street.

I fought the man and fought him and it was a losing battle and, finally, I was able to restrain him enough and hold him until other officers got there and we made the arrest.

He didn't know what happened. After the suspect really sobered up and realized what he had done, he said, “Oh, hell, look what I've got myself into. You know, I got bruised-up ribs, I got my face kicked in, and all this.” But you know, that's the physical restraint that you have to use. And this guy—when I grabbed him around the arm, you know, it felt like I had him around the waist.

MS. STEIN. Thank you very much.

DR. RIEDE, could you tell us what the job is that you're called upon to do for the police department?

DR. RIEDE. Yes, I can. Really a number of different things. It may be good for me to back up to, I guess, my very first day with the police department where I met with the chief and we were talking about what kind of things I could do for the department.

I think that he provided me with some brief information. It was very valuable to me because what he suggested was that he knew his business, which was policing, and he hoped that I knew my business, which was psychology, and he would try to not to interfere with me if I could do things that could help the department. He'd be very pleased with that.

He suggested one area called “police stress” that he would like me to take and give special attention to. I tried to do that, but I've been

given a very free hand in doing whatever I could to help the department.

In the past year most the kinds of things that I have done I guess could be divided into three main areas in the police department. One is sort of a—well, the major one is offering counseling services to the officers and the members of their immediate families to deal with any particular problems that they may have.

A second one is involvement in both preservice or cadet training and inservice training where I might be able to provide psychological aid for officers in their work.

And then the third area is really sort of a research assistant to any parts of the department that are conducting some kind of study that I may be able to offer technical assistance in. That really probably covers over 90 percent of my workday.

MS. STEIN. What methods are used by the department either to assist officers in relieving stress or to teach officers to deal with stress?

DR. RIEDE. I think that the whole issue of stress is kind of on a continuum. There are routine stresses in every police officer's life and then there are more acute stresses, so we have different programs for different types of problems.

If we get down to the issues that are very acute stress where the person is having serious problems, having physical symptoms, having severe family conflicts, then generally the service we offer them is direct psychological counseling, trying to help them resolve the issues in both their emotional and physical life and in their thought processes.

The programs that seem to meet more the other end of the dimension, the routine stresses of the work, are those that are more the inservice type or the preservice type training programs.

Recently we conducted a school for all the sergeants in the police department. I was responsible for one session of that school where I tried to teach the sergeants how to help the officers deal with the problems in their work and how to communicate more effectively with them to help them reduce difficulties in their work.

MS. STEIN. Under State law, what is your role in the screening and selection of candidates for the police department?

DR. RIEDE. Okay. I was involved somewhat in the development of that State law, incidentally, and I'd like to say I'm in support of it. My role is that after the officers have gone through—after the applicants have gone through the basic screening procedure of the police department, they're referred to psychological services where I examine them and decide if, in my judgment, they are suitable for police work.

So in terms of what we actually do, is the applicants are administered a couple of examinations. I review those examinations, and I interview the applicants and make a decision about whether I think that they would be a satisfactory officer or not.

MS. STEIN. At this time, Mr. Chairman, I have no further questions. Thank you.

CHAIRMAN FLEMMING. Lieutenant Wilson, as I understood your earlier testimony, your program consists of a number of—you referred to them as phases; is that correct?

MR. WILSON. Yes, sir, that's correct.

CHAIRMAN FLEMMING. Could you just indicate to me again the number of phases and the content of each phase—I mean the objective of each phase?

MR. WILSON. Okay. Of course, what we try to do is get the best picture possible of a probationary officer. It's broken down into right now four phases.

The first phase is 4 weeks in duration in which the probationary officer rides with an FTO, either on the day shift, evening, or night shift. If he starts out on the day shift, he rides with the officer 4 weeks. He's evaluated by his FTO daily, the supervisor weekly.

After the first phase, he moves onto the second phase in which he is either transferred to evening or night shift. He is evaluated at this time by a different field training officer and also weekly by a different field training sergeant.

After he completes the second phase, he moves into the third phase in which he works the shift that he has not worked, and again he changes FTOs, field training officers, evaluated daily and, of course, weekly by a different field training sergeant.

If he makes it through the 12-week, three phases, which are 4 weeks long, of course, then he moves into what we call an "evaluation only phase," which is 2 weeks long. We try to send him back and let him ride with the first field training officer, who looks at him again, and if he completes the evaluation only phase, which at this time during these 2 weeks he will function as much as possible on his own, and the field training officer will observe him as much as possible and let him participate in handling the situations by himself as much as possible.

When he completes the evaluation only phase, then he completes the field training program.

CHAIRMAN FLEMMING. How many officers are participating in this program at any one time?

MR. WILSON. Probationary officers?

CHAIRMAN FLEMMING. Yes, approximately.

MR. WILSON. It depends. Right now we have approximately 80 probationary officers. We have two schools. We had one school with approximately 50—50 graduates—and another one that graduated a week or so ago with 31, so we had approximately 80 going through the program at this time.

CHAIRMAN FLEMMING. How many field training officers are assigned to you?

MR. WILSON. In the total program with the six stations, approximately 210. Right now with the training stations that we're using for the 31 recent graduates, we have approximately 133 field training officers.

CHAIRMAN FLEMMING. 133?

MR. WILSON. Yes, sir.

CHAIRMAN FLEMMING. It was that total of 133 that you had in mind when you said that, as I recall it, 2 of them were women and 15 to 20 were Spanish heritage, and 10 to 15 were black; is that correct?

MR. WILSON. Yes, sir.

CHAIRMAN FLEMMING. Last night we took testimony relative to the program at the academy, and as I got the picture, through formal course work and in other ways, a considerable amount of emphasis is placed in the academy on the whole area of interracial relations. I think I'm correct in recalling that some reference was made to the fact that there was a followup on this in connection with the field training program. Is my recollection correct and, if so, what is the nature of the followup?

MR. WILSON. Yes, sir, that is correct. We use in our evaluations what we call relationships. Here we cover relationships with citizens in general, with minorities, with officers, and with supervisors. What we actually get at here, we want these people to treat everyone the same. It's as simple as that, regardless of race.

CHAIRMAN FLEMMING. Do you have any—do you or the field training officers have any assistance in connection with that phase of your field training program? Do you get any assistance from any of the faculty that are attached to the academy or any other outside persons, or do you get any assistance from Dr. Riede?

MR. WILSON. Yes, sir, of course, assistance is always available to us, of course, upon our request. Say, maybe a person is having—of course, this is off the subject a little bit—a person is having problems with driving. We might send him back through the driving school and have him retested. If, of course, he's having maybe problems in dealing with stress, we might go ahead and request that he see Dr. Riede.

CHAIRMAN FLEMMING. Dr. Riede, in connection with the testing of the applicants, do you use some standard tests on that—

DR. RIEDE. Standard tests?

CHAIRMAN FLEMMING. Yes.

DR. RIEDE. Yes, I guess I ought to help put the testing procedure in perspective, tell you what they're like. The tests that the applicants take at this time are two standardized objective tests. One is a true-false test; one is a multiple choice test. The information we are gathering from the multiple choice test is entirely for research purposes and is not used at this time in decisionmaking.

The true-false test is a standard test that's been used for 20 to 30 years for identifying mentally disordered people. My interview is what I primarily make the decision on. I use that test as a guide to—if I see any indication of significant pathology, I would interview the person about that to see if it is a problem or not, or see if it may be some really mistake in the testing procedure. That's what the primary—

CHAIRMAN FLEMMING. What is your own feeling relative to the validity of that particular test.

DR. RIEDE. That test is highly valid for identifying people who are mentally disordered. It is a method of development of what is called empirical criteria in keying, which means that we have sought out people that are mentally disordered, tested people in mental hospitals for the criterion group, and if the test profile comes up like a person in a mental hospital, then we say, "Okay, that person has a high probability of being mentally disordered," and I examine them for that.

With respect to the issue of quality across races, the test is not as good as I'd like it to be, and I recognize that and, therefore, place very little value in certain areas of minority groups. I just don't use it much in those areas, and I can speak to you about those particular areas if you like.

CHAIRMAN FLEMMING. Yes, just briefly.

DR. RIEDE. Okay. There are two primary scales on the instrument that are really—I guess you'd say unfair to minorities, primarily blacks. One is scale four; one is scale nine; the instrument is the MMPI [Minnesota Multiphasic Personality Inventory]. The scale of four, of all things, happens to be a scale relating to crime, really to behavior. It was originally developed to identify people who were criminal types. The criterion group were people in prisons, and if you answered a test and got high scores on that scale you were a criminal type person was the rationale behind it. Unfortunately that scale tends to be elevated for all police personnel, whether they're white or black, because most folks in police work are interested in crime, as you might well expect.

In addition to that, it is additionally unfair to minorities because of cultural background. Influenced minorities tend to get additional elevation on that particular scale, so it is not of great value with minority groups.

Scale nine is similar to that. Scale nine is not related specifically to crime as much as energy level or impulse behavior, and we find that minority groups tend to get almost twice the raw score on that scale as nonminority groups and, therefore, you have to not rely very much on raw scores on those two areas in making decisions about people from minority groups. It would be unfair.

CHAIRMAN FLEMMING. As I understand it then, in your current testing program, or in any recommendations that you might make relative to testing programs, you endeavored to keep in mind the fact that standardized tests can be biased in relation to minorities?

DR. RIEDE. Certainly.

CHAIRMAN FLEMMING. Then, as I understand it further, for that and undoubtedly other reasons, you do not automatically accept or reject applicants on the basis of test scores?

DR. RIEDE. Oh, no.

CHAIRMAN FLEMMING. You use it as evidence, which you weigh along with other evidence, including a personal interview.

DR. RIEDE. Yes, every applicant gets a personal interview. That would be a little like a physician diagnosing somebody on elevated

temperature alone. That would be a mistake. It is a sign that may be an area to look at, but certainly you need an expert judgment in that area to make a decision about it. And if you were able to review psychological testing that I've done, you'd find out that to some degree I've been inconsistent on the profiles. Sometimes the profiles are not indicative of the person's performance.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Dr. Riede, do you have copies of the tests to which you have just been referring?

DR. RIEDE. With me at this moment? I don't, but I can answer most questions about the test.

COMMISSIONER FREEMAN. Actually, what I would like to request is that you submit for the record a copy of the two standardized objective tests that you described, the scale four—is that included in that?

DR. RIEDE. That's one of the tests I mentioned, is called the MMPI, Minnesota Multiphasic Personality Inventory, one of the scale—it is scale four and scale nine, another scale on it, are two problems areas in that instrument.

COMMISSIONER FREEMAN. All of that is what I am requesting you submit to the Commission for inclusion into the record at this time, and if you will submit—you don't have to submit it today, unless you have it today.

DR. RIEDE. Well, I have them in my office. The only hesitation I have in that is I bought those tests from the psychological testing corporation that manufactures them, that require I only give them to qualified personnel which would be psychiatrist, psychologist, physicians, and I can lose my ability to purchase such tests by making them a public record.

COMMISSIONER FREEMAN. If you find a problem, will you at least inform this Commission of what that problem is and we will at least pursue it from the organization from which you purchased it.

DR. RIEDE. Okay, in other words, you mean the problem in getting you the tests?

CHAIRMAN FLEMMING. Yes. Just to make that clear, I mean, if you check with them and you find there is a problem in supplying it for the record, you notify the Commission and—

COMMISSIONER FREEMAN. We will take appropriate steps to obtain it, but we are requesting that you have it and, Mr. Chairman, I would request it be submitted to the record at this time.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER FREEMAN. Now, my next question is, do you have—you administer the tests, and I would like to know, do you have a compilation of your evaluation when you determine—the ratings? Do you have a compilation of the ratings? Could you provide for this Commission the results of the tests, the number of white applicants, the number of minorities, including blacks and Spanish, how they rate on these tests that you have administered?

DR. RIEDE. You'd like to know the profiles of the various ethnic groups?

COMMISSIONER FREEMAN. Without the identifying the name, but at least the number of—yes, white, Anglo, or whatever.

DR. RIEDE. I can do that.

COMMISSIONER FREEMAN. If you will submit that to us for inclusion in the record at this time.

CHAIRMAN FLEMMING. So ordered.

DR. RIEDE. I'd make a comment about that if I could. The procedure is a fairly new one, and because of that we don't have large numbers of applicants in each area. So, for statistical purposes, I might give you that now and give it to you again in a few months when we have more people involved in it.

COMMISSIONER FREEMAN. That could be very helpful.

CHAIRMAN FLEMMING. Could I interrupt you because that reminds me, this particular testing program that you've described, you've had responsibilities for less than a year, as I—

DR. RIEDE. Yes, the State law required we define the screening test this year, which is why I say it is a small number of applicants.

COMMISSIONER FREEMAN. This is part of a national project and probably a few more months before we complete our studies anyway.

DR. RIEDE. That's fine. I'll supply you with the results, what we've done so far, plus in a couple of months I'll update it.

CHAIRMAN FLEMMING. That's good. Thank you.

COMMISSIONER FREEMAN. That will be fine. Lieutenant Sessums, I believe you were referring to the field training. Officer—I was promoting you.

MS. STEIN. He likes it better the other way.

COMMISSIONER FREEMAN. Maybe it's Lieutenant Wilson that I need address, but either of you. As you know, many of the problems of the allegations against the police relate to the conflict situation and the allegations of the conduct and the relationship of the police officer to either the black community or the Spanish-surnamed community.

What I'd like to know is do you have a program that includes a returning or reviewing with the police officer in another return to field training after there has been an incident? You see, mostly, as I understood it, this relates to the probationary officer who has just been there maybe 6 months. What about the officer who has been on board 10 years who comes in with an attitude that is hostile and then, as a result of his attitude, it is promulgated into something that is very bad. Is it your program that would handle this?

MR. SESSUMS. No, ma'am, we do not deal with officers that have, you know, 10 years seniority on the force, as a field training officer. Probably the only way we would have contact with them would be working with them, you know, run and talk with them, making disturbance scenes, and what have you. And a lot of officers that had say—what you would call the old style of policing, I guess—see that

when you're explaining and handling a situation, what you're doing you're teaching this rookie, a probationary officer, the proper methods in handling a family disturbance between blacks or a family disturbance between a Latin American.

This other officer, who also runs the call with you, and you step in, you take charge of the scene and you handle the situation in a proper police manner that's taught today—he may realize that the problem was solved a lot easier than the old, "Hey, if you don't quit fighting, I'm going to put you in jail." But if you sit down and counsel with the people a little bit, spend 5 minutes with them, refer them to specific agencies, the older officer will see that. He's not necessarily going through a training program, but, yet, he can pick it up from officers that have been through the field training officers program.

This does rub off. It does rub off on officers that's been there 15 or 20 years. They can see that the new style will work. Maybe it's not as swift as the older style of policing, but it is functional and it will work.

COMMISSIONER FREEMAN. Do you know—and maybe if Lieutenant Wilson will answer this—if there is any program within the Houston Police Department that deals with hostile racial attitudes? I ask that question because in the recruitment panel last night, the officers stated that they go into Mississippi, they go into Louisiana, they go into a lot of places—for instance, let's give an example, maybe they may go and recruit from the Klan, assuming—is there any way that you would know whether that was the pattern or not?

MR. SESSUMS. Not being involved with recruiting, I would not know.

COMMISSIONER FREEMAN. You don't know?

MR. SESSUMS. No, ma'am.

COMMISSIONER FREEMAN. Okay, we'll get it later. Thank you. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Officer Sessums, just for the clarity of the record, I think you indicated that the new regulations and perhaps the new training caused an officer today to be lax in the use of his weapon, or do you mean something other than lax—guarded, careful, hesitant?

MR. SESSUMS. I didn't understand the question completely.

COMMISSIONER SALTZMAN. You said, as a result of the training today, which you stated as more effective, the use of a weapon by an officer—these new regulations and training have caused him to be more lax in the use of his weapon. Is that the word you meant?

MR. SESSUMS. No, sir, it doesn't make you more lax, and you don't keep your guard down at any time on the street because you will get your, you know, stuff blowed away out there. The program in the orders and the training that has gone down now, that is being trained now, lets the officer become more cautious when he does use his firearm. He doesn't shoot at a fleeing car and hit somebody watching TV four blocks away.

COMMISSIONER SALTZMAN. I thought that was probably what you meant and I wanted to question the word—the use of the word “lax.”

Dr. Riede, is it possible in the course of your work to identify with the testing the bully personalities, so to speak, that was referred to yesterday?

DR. RIEDE. I think that probably there are a few levels of identifying problem people for police work, and maybe I can answer your question through that kind of approach. Certainly, if we have someone who is extremely mentally disordered, he may be a bully type person; he may also be another kind of problem person. In the extreme cases of people like that, they are quite easily identified.

COMMISSIONER SALTZMAN. They are.

DR. RIEDE. It wouldn't take a professional person to do it. However, it's not a yes or no kind of situation. It seems to be on a continuous dimension. I guess we are all somewhat bullies. It depends to what degree we are bullies, and the problem in making a decision becomes more severe when you have someone that is on the line and you're saying to what degree is this person a bully.

What we try to do, or what I try to do, is identify those people that I think have a high probability of having a danger to themselves or the community from entering into this kind of work. I make that decision based on similarity or dissimilarity of their responses to me compared to other officers I've worked with.

COMMISSIONER SALTZMAN. Have you, in the course of this past year of your work, had the occasion to identify such personalities?

DR. RIEDE. Certainly. Again, saying you know this exists in all of us, I identified it to different degrees. I'm certain that I've seen some people who are more bully oriented than others. If that's a strong characteristic in a person, I'd be very hesitant to pursue him as a police officer.

There seems to be—to go along with the dimension thing, there is the problem of identifying people who are high probability problems for the department, and then we move into more gray areas where we get down to saying, “Is a person really suitable or not,” and I think at this point in time that seems to be the area where we have the most difficulty.

I don't think we've got a lot of problems saying this person is really dangerous, he's psychotic or a super problem. The background investigation recruiting finds many of those folks. The neighbors say, “My god, don't make him a police officer.” So I think that kind of a person is identifiable quite easily.

The more suitable person is the one who gets harder to identify when we're talking about, “Is this a too high level?”

COMMISSIONER SALTZMAN. When you make a recommendation to the department relative to a person whom you think is unfit, what happens?

DR. RIEDE. Okay. Let me try to explain my role in the department. The department has more than one psychologist available to them in terms of identifying mental difficulty.

The service I provide for the department is a voluntary one from the point of the officers and their families, and I don't—and the department doesn't require any officer under any circumstance to see me.

I wanted this procedure to be arranged this way because I believe that if psychological services are perceived as a friendly source of help, people will be inclined to go in and work. People do work in voluntarily.

There is an alternative source in the department. Though if an officer is seen as a problem person with mental health difficulty or being someone who might not conduct his duties in a proper fashion, his supervisor can request that he get a psychological evaluation. That goes through a chain of command procedure in the department, and that committee ultimately is who is in charge of the decision. If they believe it is appropriate in that person's case, will refer him to Baylor School of Psychiatry, where some of the staff evaluates that person and makes a recommendation to that police department committee as to whether they believe that person is safe at this time for him to conduct his duties.

From those kinds of meetings there have been officers who have been found they've been having mental problems at that time. Those officers can seek mental help wherever they like, as long as the department knows they're getting it, and I have had some of those officers come to me voluntarily saying, "I could go to anybody in Houston, but you're the only police psychologist I know of and you seem to be all right. Can I come to you?" So I've seen people under that circumstance.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Officer Sessums, you've articulated your thoughts very well. How tall are you?

MR. SESSUMS. Five foot 10.

COMMISSIONER RUIZ. Now, the potential use of firearms or knives in domestic relations quarrels and interfamily disputes can be explosive and fatal?

MR. SESSUMS. Yes, sir, very.

COMMISSIONER RUIZ. What is the recommended posture for an officer who arrives and interjects his authority in a domestic relations quarrel or interfamily fight which may continue immediately after the officer leaves?

MR. SESSUMS. Yes, sir. Criminally, which that's what we're mainly involved in, criminal matters. We have no criminal reason for being there while there's a family disturbance because it is a civil problem, you know, a marital problem, common law mess, or whatever. We actually wouldn't have any business there except to prevent a possible, you know, homicide prior to us not being there.

You enter a house, you know, upon somebody saying, "Yes, I called the police, would you please come in." You don't kick the door in and say, you know, "What the hell is going on?" You're invited in because one of the parties or the neighbors have called to complain about it. They've heard discharge of firearms, or "Henry, put the knife down."

You go into the situation; first off, you find who all is in the house. There may be, you know, a lover's triangle and the third man is in the bathroom hiding with the gun because he's afraid the other man is going to kill him. Then you step in; he thinks you're the other man; you get shot.

So you try to round up everyone that is involved in the disturbance. Then you sit down and try to get the people sit—to sit down, relax. If they are armed, either talk them out of the weapons, disarm them. Most of the time they will disarm themselves.

COMMISSIONER RUIZ. Is it best to have two officers or one officer?

MR. SESSUMS. Well, it is always better to have four eyes than two because another officer can see. He may see something that you do not. He may see a hidden pistol in a pocket. He may see a knife stuck between the cushions of a seat where you may miss it. There is always better to have two or three officers at the scene where it is an explosive situation.

I ride by myself when I'm riding with the probationary. I make disturbance calls daily by myself. In Sudland, many times I don't have to go back because you refer them to some United Way agency, get them to get a divorce, talk one of them into going over to his relatives or something, separate them to try to keep them from killing each other. We've got a homicide rate that's unreal and many of them are family related.

COMMISSIONER RUIZ. Dr. Riede, do you screen out gross pathological cases?

DR. RIEDE. Yes.

COMMISSIONER RUIZ. What is a gross pathological case?

DR. RIEDE. The kind of standard I use for that is—if I think the person's thought processes are not sufficient to organize—that I can make good decisions on his emotional state that he would be a highly impulsive person, explosive type person, or someone who shows physical symptoms of mental disorder.

COMMISSIONER RUIZ. Oftentime that can be ascertained initially at the threshold, can't it.

DR. RIEDE. By myself, you mean?

COMMISSIONER RUIZ. Yes.

DR. RIEDE. Yes.

COMMISSIONER RUIZ. And then it is not necessary to go through a probationary period or academy, etc., when those people are identified, or do you get into the picture after they've gone through the academy and after they've gone through the probationary period? I'm trying to—

DR. RIEDE. I get into the picture at any time in the officer's career if he comes to me having some kind of problem, or sometimes the officer himself would not come to me. His supervisor would say, "I've had somebody who is having difficulties; this is a serious issue. What can I do to help him out? Should I refer him to somebody else; what should I do about this person?"

COMMISSIONER RUIZ. You don't have to wait for any particular time capsule. You can always go in at any time, even during the training period, for purposes of making some sort of an observation?

DR. RIEDE. Oh, yes.

COMMISSIONER RUIZ. Are your services always available?

DR. RIEDE. My services are available on request. It is not as though every day I walk in the academy and look for a mental disorder. It doesn't work that way. So it's available on request. It is a requirement in the application procedure, but not like I go back and screen everybody again at the academy or something. That's not done.

COMMISSIONER RUIZ. I see. Thank you.

CHAIRMAN FLEMMING. I appreciate very much the testimony that you've given, the information that you've given us relative to the field training program and also the role of the psychologist and the life and the work of the department. Thank you very much.

Counsel will call the next witnesses.

MS. STEIN. Mr. Chairman, before I call the next witnesses, may I ask that the standardized evaluation guidelines for field training officers, which were referred to in the testimony, be admitted as Exhibit 5 in the record?

CHAIRMAN FLEMMING. Without objection, that will be done.

Counsel will call the next witnesses.

MS. STEIN. Would David Beck and Dennis Gardner please come forward.

CHAIRMAN FLEMMING. Stand please and raise your right hands.

[David Beck and Dennis Gardner were sworn.]

TESTIMONY OF DAVID BECK, CHAIRMAN, HOUSTON CIVIL SERVICE COMMISSION; AND DENNIS GARDNER, ASSISTANT CITY ATTORNEY

MS. STEIN. Would you please state your names, for the record, and your position with respect to the city and how long you've held that position?

MR. BECK. David Beck, chairman, civil service commission.

MS. STEIN. How long have you been chairman?

MR. BECK. Approximately 2-1/2 years.

MS. STEIN. Thank you.

MR. GARDNER. I am Dennis Gardner. I'm an assistant city attorney. I'm head of the administrative law section in the city legal department, and I've been with the city legal department for 5 years.

MS. STEIN. Thank you.

Mr. Beck, would you briefly explain for us the role of the civil service commission in the disciplinary process of the Houston Police Department?

MR. BECK. All right. The civil service commission, as you know, is a creature of the State statute. The statute basically sets out two areas in which the civil service commission should act. One is that the civil service commission should administer the civil service laws, that is, whatever rules and regulations the commission itself has promulgated or any other rules which are promulgated by the various department heads, in this case, the chief of police.

The second area is more in terms of appellate review, that is, any disciplinary action which is taken by the chief of police, which is then appealed to the civil service commission. So in that context, it would be for an appellate judiciary type function.

MS. STEIN. Could you tell us a little bit about the appellate function, how it is conducted? What type of hearing occurs? What due process guarantees are afforded the officer?

MR. BECK. All right. The type of hearing accorded would necessarily depend upon the type of disciplinary action which is taken. If, for example, the chief of police indefinitely suspends a police officer, which is a euphemism for firing the police officer, then the police officer has a right to appeal to the commission.

The police officer must give a notice of appeal within 10 days, and then the commission must have a full hearing within 30 days thereafter, or the police officer is automatically reinstated.

Now if the nature of the disciplinary action taken by the chief is less than that, say 7 days' suspension, in my judgment there is no right to a full commission hearing; nevertheless, since I've been chairman of the commission, we have, for all practical purposes, afforded those officers full hearings. By that, I mean they have the right to counsel; they have the right to be present.

Any witnesses who are called as a basis for the disciplinary action taken are brought to the hearing; the police officers have a right to confront that testimony, and they have the right to call any other witnesses, and we will subpoena any witnesses that they wish to have subpoenaed.

MS. STEIN. Can you give us an idea of approximately how many appeals of adverse disciplinary decisions the commission handles annually?

MR. BECK. Confined to the police department?

MS. STEIN. Yes, sir.

MR. BECK. Would this be in terms of solely indefinite suspensions?

MS. STEIN. No, indefinite or 15 days or less.

MR. BECK. I'm not sure I have that statistic readily available. I would say, and this is my best estimate, that we're probably talking—well, let me just look here. I think we're probably talking about 25, 30, somewhere in there approximately.

MS. STEIN. Could you give us an idea of what percentage of that would involve cases of the misuse or excessive use of force?

MR. BECK. I would say that of those that are brought before us, I would say that a very small percentage of those would involve the excessive use of force. We have had some in the last—well, since I've been on the commission, but they clearly have been a minority percentage of those matters which have been brought before us.

MS. STEIN. A very small percentage?

MR. BECK. Yes.

MS. STEIN. I know it's not easy to come up with figures like this on the spot, but do you have any idea of what percentage of suspensions are sustained by the commission, as opposed to those that are altered?

MR. BECK. I would estimate that—and again this is a rough estimate, because I don't have these figures readily available—I would say approximately 80 to 85 percent are sustained without any modification at all. I would say roughly 10 to 15 percent, that would either be a reversal or there would be some modification. By modification, I mean that the police chief may have indefinitely suspended someone. We may affirm but modify making it a 60- or 90-day suspension.

MS. STEIN. Is there any difference in this regard between the police department and other departments of the city government?

MR. BECK. I'm not sure I understand your question.

MS. STEIN. Do you think that rate would hold true generally for appeals?

MR. BECK. I'm not sure I know the answer to that question. I would say that since I've been on the commission that I think we may have had a little higher rate of reversal and modification than perhaps they've had in the past with the Houston Civil Service Commission. But, again, I want to emphasize that we hear not just police matters. We hear matters involving the fire department plus matters involving municipal employees.

MS. STEIN. That's really the heart of my question: is the reversal/modification versus affirmance rate pretty much the same for all departments, or is there a difference between the police department on the one hand—

MR. BECK. No, no, I understand your question now. I think we're pretty consistent across the board. I think if you analyzed the decision we reach in cases, I would say that the statistics I mentioned earlier, my estimate of statistics, pretty much hold true across the board.

MS. STEIN. Could you explain briefly for us the so-called 6-month rule?

MR. BECK. Yes. Under the statute which governs us, it provides that no police officer may have disciplinary action taken against him for any action which goes back beyond a 6-month period. The problem this has presented in terms of discipline is that, if there has been any improper police conduct, or any conduct which is in violation of the rules of the department or the civil service commission which is

beyond 6 months, and somehow that information has never come to the attention of the chief of police, then at least arguably, under the State statute, the chief of police and then the civil service commission is powerless to do anything by way of discipline.

MS. STEIN. What is the civil service commission's position about whether that 6-month period begins to run at the time of the misconduct or at the time it's discovered?

MR. BECK. All right, the civil service commission had two or three cases this past year in which that precise issue arose, and we heard arguments and received briefs by counsel on both sides, and the civil service commission, after considerable deliberation, took the position that the so-called discovery rule applies.

For those of you who are not lawyers on the Commission, the discovery rule is a rule which basically says that any limitation period does not begin to run until such time as a party knows, or should have known, that there's been some type of a violation. So the commission has gone on record in several cases as adopting that rule. So that with regard to those cases that are before us, we took the position that even though the alleged misconduct went beyond the 6-month period, since there was no evidence that the—either the chief of police or anyone in a supervisory position with the police department knew it, or should have known it, then we could go back beyond 6 months and, of course, that's now being litigated in the courts.

MS. STEIN. Could you just briefly tell us what the status of that interpretation is?

MR. BECK. Well, it is my understanding that one of the cases was appealed, which they have a statutory right to do, into the courts—the civil district court of Harris County. It is my further understanding that the trial judge sustained the police officer's motion for summary judgment on that precise ground, saying they could not go—and the commission could not go beyond 6 months, and that is now being appealed by the city attorney's office in the next intermediate appellate court.

MS. STEIN. A witness yesterday mentioned that there are some cities in Texas that do not use the police and firemen's civil service law that have opted out of that or have refused to opt in. Of course, if Houston were to do that, that would give the city council the flexibility to set their own standards and change things such as the 6-month rule. Could you give us an idea of what the countervailing considerations would be, what the advantages are to the city and to the officers in staying with the statewide rule, and I don't know, you might prefer that Mr. Gardner handle that. I'll leave that to you.

MR. BECK. I think I'd prefer Mr. Gardner to answer that.

MR. GARDNER. That would be the wildest speculation. I might say that Dallas does not participate in 1269m, but I think, if you examine Dallas' local system, you would find that many of the features that are in 1269m are incorporated in their civil service.

There's a fundamental thread, I think, that has to run through all civil service law. The idea is that it is to provide an efficient and effective force of employees, be they policemen, firemen, or other municipal servants.

I'm not sure the fact that the State controls on the police and firemen is at all that disadvantageous. There are certain elements that those of us that deal with it day in and day out might like to change, but overall, it is not a bad law, and I'm not sure that there would be any great advantage to providing local option is really what you're saying. There may be even an advantage to keep it from becoming politicized at the local level.

MR. BECK. I might add, if I may, if a concern is opting out of the law are such things as the 6-month rule, I think the answer is simple, you simply change the law.

MS. STEIN. Would the city administration favor a change in the 6-month rule?

MR. GARDNER. Yes. At this last session of the legislature, I personally worked with a statewide group that was looking into 1269m reform. That was one element that was considered. At the time the bill reached the house floor, that particular amendment was deleted. For what reason, I don't know. I—that would be the wildest speculation again to say that, but we are very active every session in finetuning the law, if you will, as we encounter difficulties with it. But all in all, it is not a particularly bad law, I don't believe. It serves its purpose.

MS. STEIN. Mr. Gardner, would you describe for us, briefly, the legal department's relationship to the police department?

MR. GARDNER. All right, sir, in more particularly the role of the administrative section, I think—the legal department represents all city departments in all facets of their business. One would be, we do their contracts and their business type matters. The area that I deal most closely with the department in—and those people that are associated with me—is in the area of their personnel operations. A major portion of that, of course, is the administration of the disciplinary process. The process is rather formalized. The requisites are rather clearly set out in the statute. It requires, I think, the participation of an attorney at virtually every step of the process.

We work very closely with the internal affairs division, in both their—the conduct of their investigations and in reporting those to the chief; advising him as to the course of action available to him; and then when he decides, we advocate that position before the civil service commission and ultimately before the courts, if it reaches that stage.

MS. STEIN. Do you advise the police department with respect to the legality or the—of its internal policies and procedures?

MR. GARDNER. On occasion, most of those, I believe, are operational in nature, or administrative in nature, that do not have what we consider significant legal problems. If, for instance, there is a problem, the

firearms policy might be an example of that. We have, on occasion, advised the police department of that. Frequently, I might add, we advise them of the operations of the statutes as they apply to the department.

MS. STEIN. What would be your participation with, if any, with respect to investigations within the department of police misconduct that might amount either to a criminal offense or to a civil—to misconduct that would give rise to a civil suit?

MR. GARDNER. Well, the role that the city attorney's office has is civil in nature, personnel in nature. The participation that I have and those people that are associated with me with internal affairs, for instance, is in an internal departmental personnel investigation. Now we do cooperate with both the State and Federal authorities who are charged with the criminal aspects of perhaps the conduct that's involved.

I believe yesterday both Mr. Holmes and Mr. Canales mentioned any number of instances where we have dealt with their agencies, but our primary interest—and that's because this is the responsibility that we're charged with—is in internal disciplinary matters, which is not a criminal matter, per se. It can have criminal overtones, in which case, of course, we rely on those people who are in that business, the law enforcement people.

When a matter is presented to the civil service commission, it may have criminal overtones to it. It may have involved a theft; it may have involved bribery or some sort of other criminal misconduct, but the proceeding there is civil, and it has some significance in the rules of evidence and the way you can conduct an investigation.

MS. STEIN. In carrying out your responsibilities with regard to discipline, would you ever, or have you ever, for example, requested that an investigation be conducted in any other manner than the normal manner, or that the matter be reinvestigated if new evidence is discovered or civil or criminal action has been taken?

MR. GARDNER. Yes, I'm certain that we have down through the years. I think our role in conjunction with the internal investigation is one of a very close and parallel type of activity, so that by the time it reaches a conclusion, we have participated to the point that those of us in the legal department who are working on it are satisfied with the product.

If the inference is, does it come to me, I say, no, go back and do more. That may have happened, but it's more common that we will work right along with it, and much as Miss Sinderson described yesterday, I believe, the role of the U.S. attorney with the FBI, perhaps not a dissimilar analogy.

MS. STEIN. Have you ever requested that the department reinvestigate an incident when new evidence has come to light, such as a throw-down gun, or such as evidence tending to show that an officer perjured himself on his statement about the incident?

MR. GARDNER. The incident you're referring to—I think the initiative did not come from the legal department. I don't recall an instance like that right off the bat, but I would have no hesitancy to do that should the occasion arise.

MS. STEIN. Is it part of your responsibility to represent the city in tort suits or civil suits that might be filed alleging police misconduct?

MR. GARDNER. It is the responsibility of the legal department. It is not the responsibility of my section. There's another section that does represent the city in tort actions.

MS. STEIN. Does the legal department—what is the legal department's responsibility with respect to representing individual police officers who may be charged with such an incident?

MR. GARDNER. The legal department will represent individual officers if they were acting within the course and scope of their employment. An officer, or any employee, when sued individually, of course, is entitled to obtain his own representation.

More often than not, and particularly now in light of the *Monnel* decision, the city is a party to the lawsuit in addition to the individual officers. My—I don't have personal experience with this, but of my own knowledge, I am aware that most of the time when individual officers are sued, I think the—they obtain their own counsel who works very closely with the city attorney's office in those matters.

I would like to emphasize in that there is an implication in your question, I think, of perhaps I am—I work for the legal department. We're going to defend the city against some tort action. How can we objectively evaluate the officer misconduct that may ultimately be found to be negligent in some fashion and impose liability on the city?

That's why I would emphasize that we are doing an internal personnel investigation that's completely independent of any other type of activity, and as a consequence of that, the discovery rules will protect that to a certain extent. As a defense lawyer, I'm concerned with that, but by the nature of the internal personnel investigation, I think it can be thorough and the disciplinary action effected without considering potential tort liability or without compromising the individual's fifth amendment prerogatives or privileges. So I don't believe that would pose a problem.

MS. STEIN. But isn't there a potential conflict situation for you in this role? Wouldn't it be better for your clients, the city and the police officers, if they were found to have been blameless in the internal personnel investigation, the IAD investigation that you said you worked along with? Do you understand the thrust of my question?

MR. GARDNER. Yes, I do. I think the only answer I can give to that is I believe that there's a high level of integrity in the police department, I believe there's a high level of integrity in my office, and I don't believe that that interferes. I have never been instructed by the city attorney or anyone else in authority to modify or to lay off an investigation. To the best of my knowledge, I've never let that interfere in my own pursuit of these. I don't believe it happens.

MS. STEIN. Does your office notify the police department when a civil judgment or a criminal conviction is obtained against an officer?

MR. GARDNER. Yes, I presume that we do. There's only been one civil judgment down through the years, and that's been very recently. Criminal convictions, I usually find out from them, as a matter of fact, because they will quite often be witnesses in the criminal trial.

What I am interested solely in—the pursuit of the personnel aspect. Once the officer—the action is taken, once we have represented the department's position before the civil service commission, once we have represented what becomes then the city's position and the commission's position before the district courts, that's my concern with it. I'm not saying that I don't care what happens in the other, but I have no role; I have no involvement in the other.

MS. STEIN. Right. The reason for my question was, I was wondering if you would advise or recommend or discuss reopening the personnel aspect on the basis of what had occurred in court?

MR. GARDNER. Oh, I've had a number of occasions where the defendant in a criminal action who had been fired from the police department has been exonerated in the Federal courts or the State courts, and they certainly would like to reopen it. I might add that's never happened because there's two different matters: one is a criminal matter; one is a personnel matter. There are different standards of proof; there are different levels of conduct that are expected.

MS. STEIN. I have no further questions.

CHAIRMAN FLEMMING. Thank you.

Mr. Beck, how many members on the civil service commission?

MR. BECK. Three members, Mr. Chairman.

CHAIRMAN FLEMMING. Appointed by whom?

MR. BECK. Appointed by the mayor with the approval of the city council.

CHAIRMAN FLEMMING. For a term—

MR. BECK. Three years.

CHAIRMAN FLEMMING. Three years. Any provision as to the party membership on the commission? Is there a provision such as no more than two can be members of the same political party?

MR. BECK. There's nothing in the statute along that line, Mr. Chairman.

CHAIRMAN FLEMMING. Right. The—what role does the commission play in relation to the police department, particularly, as far as promotions are concerned?

MR. BECK. Well, I think as a practical matter—although we approve the promotions—I think as a practical matter, the promotions are made by the police chief under the procedures set forth, and the information is sent to us absent any objection that ordinarily be approved.

So I guess in response to your question, I'd have to say unless there is some controversy or some problem which has arisen of which we are aware, then whatever promotions are made by the chief are approved.

CHAIRMAN FLEMMING. Do you prescribe the procedures to be followed?

MR. BECK. We, for example, have to oversee the examinations. We don't personally do this. This is an administrative matter which the civil service staff administers, but if any problem arises, for example, with regard to grading of an examination, that matter will be reviewed by the civil service commission and—

CHAIRMAN FLEMMING. What role do you play in the development of the examination?

MR. BECK. As a commission, we do not personally, for example, select the textbooks and so on and so forth. We rely pretty heavily on the civil service staff to develop the text, the nature of the examination, and the questions; however, as I said, if any problems arise, we'll review it and we have, for example, discarded texts, because we thought they were not good texts and so on. But we, the three members of the commission, do not personally draft each and every question on an examination.

CHAIRMAN FLEMMING. I appreciate that. I'm thinking really of the commission as an institution and the role that the commission as an institution plays in connection with this particular function. Under the law, must the commission, staff of the commission, develop the written examinations?

MR. BECK. Yes.

CHAIRMAN FLEMMING. What kind of consultation do they have with the police department in the development of the written examination?

MR. BECK. To the best of my knowledge, Mr. Chairman, that is independently done. They develop it independently. The examination is administered independently. The grading is done totally independently.

CHAIRMAN FLEMMING. Has the police chief or any other supervisory official in the police department ever appeared before the commission and, in effect, objected to the nature of the examination?

MR. BECK. Not during the time I've been on the commission, Mr. Chairman.

CHAIRMAN FLEMMING. All right, now, the examination is held; it is graded then by the staff of the commission.

MR. BECK. That is correct.

CHAIRMAN FLEMMING. Do they develop an eligible list for a particular position?

MR. BECK. That is correct.

CHAIRMAN FLEMMING. Is it a list of three?

MR. BECK. Well, the list is actually longer than three in many instances.

CHAIRMAN FLEMMING. What is the requirement? Must the chief and his people—is it a rule of one or a rule of three? I mean—by that, I mean is this; must he start at the top and pick the person at the top, or does he have any opportunity to select from among the top three, for example?

MR. BECK. This involves some interpretation of the statute. To the best of my judgment, he has to start at the top. If for some reason he does not select the person on the top, I believe the statute provides that he has to have just cause or good cause and that must be explained to the person at the top of the list as to why he did not get that promotion.

CHAIRMAN FLEMMING. If the person who is passed over objects, does that person have an appeal to your commission?

MR. BECK. That is correct.

CHAIRMAN FLEMMING. Has that happened at any time, during any time?

MR. BECK. Yes, it has happened; in fact, very recently it has happened where we had some problems with regard to certain questions on the examination and whether the answers given were correct. We had a full hearing on it.

The people who were going to be affected by our decision, that is, not only the person on the top of the list but the person below him, were called in. They both had counsel. Arguments were made; briefs were submitted; we reviewed the texts; we reviewed the examinations and reviewed the answers; and then we made the decision that was appropriate under the circumstances.

CHAIRMAN FLEMMING. Have you ever had a situation where the examination was not in question and the rating of the exam was not in question, but the police chief just simply said, "In my judgment the number two man is the best man for the vacancy that I've got, and I'm going to pass over number one and appoint number two," and none of you had number one appeal to you; and, if so, what disposition has been made of that kind of case? Maybe you haven't had that kind of case; I don't know.

MR. BECK. The reason I'm hesitating in answering your question is we sit not only for the police department, but for the fire department and municipal department.

During my term on the commission, Mr. Chairman, we've never had that, to my knowledge, with the police department. We have had it, however, with the fire department, but not with the police department.

CHAIRMAN FLEMMING. Right. What is the general standard that the commission follows in a matter of this kind? Do you, in effect, feel that you are under legal obligation to consider whether or not you should substitute your judgment for the judgment of the administrative head of the department in question?

MR. BECK. Yes, and we have no hesitancy in doing so.

CHAIRMAN FLEMMING. In other words, you feel that is your role?

MR. BECK. Yes, sir.

CHAIRMAN FLEMMING. You have gotten an appeal of that kind before you, if necessary to substitute your judgment for the administrative—

MR. BECK. Based upon the evidence we have before us.

CHAIRMAN FLEMMING. Okay. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Beck, has the written examination which the civil service commission administers—has it ever been questioned as to its validity, as to job relatedness?

MR. BECK. Not during my term on the commission.

COMMISSIONER FREEMAN. You—

CHAIRMAN FLEMMING. Just a moment. This is the promotion exam you're asking?

COMMISSIONER FREEMAN. I'm talking about the written examination that was developed.

MR. BECK. That's the promotional exam.

CHAIRMAN FLEMMING. That is right.

COMMISSIONER FREEMAN. That has never—the question of validation has never come up?

MR. BECK. The question of validating—the validity or invalidity of the examination has never arisen during my term on the commission, but as I mentioned to the Chairman, there have been questions about the validity of certain specific questions on the examination.

COMMISSIONER FREEMAN. Has a copy of this examination been requested by this Commission?

MR. GARDNER. If I might explain that, it's a different examination each time. The same examination is not ever given again, and those examinations are very carefully controlled. They are kept in a vault. No, copies of the examinations have not been given to the Commission, nor will they be given under the discovery agreements.

COMMISSIONER FREEMAN. For the promotional exam—we're still with that—I understand that the examination for a promotion from patrolman to sergeant might be different from the examination—

MR. GARDNER. It's going to be different each time.

COMMISSIONER FREEMAN. It will be different each time, so when I talk about the examination, I am still recognizing that it will be a different examination. But the question is, with respect to those individuals who have taken the examination for sergeant, who are patrolmen, you said that that has not been questioned—that has not been challenged?

MR. BECK. That is—

MR. GARDNER. It has not been challenged before the commission. There is a lawsuit pending challenging the entire promotional scheme on the basis of race that has not been resolved.

COMMISSIONER FREEMAN. And the—

MR. GARDNER. That's the lawsuit described yesterday.

COMMISSIONER FREEMAN. The lawsuit that was referred to. But this lawsuit has challenged the promotion scheme, which will then, of course—I will assume, that the pleadings have challenged each one of the examinations—each one is different and—

MR. GARDNER. Right. Each one indirectly challenges the examination because it challenges the entire scheme that's utilized, but I don't believe that it's specifically challenged the examination for lack of

valid content. I think it is more against the statutory scheme of promotion.

COMMISSIONER FREEMAN. However, it is your testimony, Mr. Beck, that the promotions are based upon passing the written examination, and those written examinations have had the effect—have not been challenged?

MR. BECK. Not before the commission.

COMMISSIONER FREEMAN. Mr. Gardner, you indicated that your work is mostly related to personnel. Does that include any issues relating to equal opportunity or allegations of discrimination on the basis of race and sex?

MR. GARDNER. Yes, ma'am, it certainly does.

COMMISSIONER FREEMAN. Will you state how many such cases have you—how many have you handled?

MR. GARDNER. Involving the police department?

COMMISSIONER FREEMAN. Yes.

MR. GARDNER. There are two lawsuits currently pending involving the police department hiring and promotional practices.

COMMISSIONER FREEMAN. Will you give us the style of those cases and where they're pending?

MR. GARDNER. The style of the one challenging the hiring practices is *Tarver, et al. vs. the City*. That case is probably within a week of having an order entered.

The other case, the one that Officer Young described yesterday, there were two cases that were merged, they were Kelley and Comoiux [phonetic], whatever—it is a Louisiana name—that had been consolidated. They initially challenged the hiring and the promotional practices. The promotional—the hiring practices have been resolved in the *Tarver* litigation, so that just leaves the promotional practices to be litigated and that—

COMMISSIONER FREEMAN. Are they pending in Federal or State court?

MR. GARDNER. They're both Title VII actions. They are in Federal court.

COMMISSIONER FREEMAN. Title VII.

CHAIRMAN FLEMMING. U.S. district court?

MR. GARDNER. Yes.

COMMISSIONER FREEMAN. Are you representing the department in those cases?

MR. GARDNER. Members of my staff are, yes.

COMMISSIONER FREEMAN. You say that one has been resolved?

MR. GARDNER. Yes.

COMMISSIONER FREEMAN. Do you have the copies of the pleadings in those cases?

MR. GARDNER. Yes, I think about six boxes full, as a matter of fact.

COMMISSIONER RUIZ. She said pleadings.

MR. GARDNER. If you want the entire case file, there are 20 cases.

COMMISSIONER FREEMAN. The pleadings. The petition, answer, and you said there has been a preliminary order with respect to certain issues in the case?

MR. GARDNER. No, there will be, probably within a week, a final order entered in that case; I'm presuming the judge that is hearing it agrees with what the parties have worked out.

COMMISSIONER FREEMAN. Those are the pleadings that I would like to request that, if they can be, because Mr. Young had some problem as to whether the attorney—but since you are representing the Houston Police Department and you would have them, would you make available—

MR. GARDNER. I have no problem with furnishing those to the Commission. I would like to wait until that order is entered. I think at this stage it would be presumptive of us to interfere in what the Federal judge has done.

COMMISSIONER FREEMAN. We're just asking—the petition has been filed; that's a matter of record. Your answer has been filed; that's a matter of record. The only thing that is not a matter of record is an order which you are now—the attorneys have now worked out. We're not requesting that at this time.

MR. GARDNER. That would be the important thing for you.

COMMISSIONER FREEMAN. Within the next few weeks you would resolve the whole thing?

MR. GARDNER. I would hope so.

COMMISSIONER FREEMAN. And that will be received—

MR. GARDNER. We will provide that.

CHAIRMAN FLEMMING. I just want to pursue one out of curiosity, really, the question of the promotion tests, the fact that there are different tests every time a test is given, and the fact that the commission keeps those tests, so to speak, under lock and key.

Has that ever been tested in the courts? Has a plaintiff at any time subpoenaed those tests as a part of a lawsuit questioning the validity of the test?

MR. GARDNER. Under the statute—yes, they have tried, unsuccessfully. Under the statute there is not a right to appeal that particular decision to the district court. Only certain things may be appealed to the district court, primarily involving serious disciplinary action. To bypass is appealable, the promotional bypass. A demotion would be appealable, also, beyond the civil service commission, but virtually every other item—the commission is the ultimate authority and their decision is final.

CHAIRMAN FLEMMING. Okay. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. Beck, in looking at this relationship between the civil service commission and the police department—and certainly this occurs in other cities—where we are interested in the interrelationship, yesterday here in Houston in particular, the mayor, I think, if I'm correct, implied that the chief of police is rather severely

limited in his ability to evaluate an officer and, on the basis of the poor evaluation, to remove him from his position.

Others allege that this is a problem in relationship to the present structure, which does inhibit the ability of the police chief to implement his responsibility and to achieve accountability. Is that the case as you evaluate it?

MR. BECK. Well, I think that Chief Caldwell and I might differ somewhat on that, but I think we agree basically on the fact that the standard of accountability has to be set by the police chief, and I think that Chief Caldwell has clearly done that. Once the standard or the level has been set, and the word goes forth throughout the police department that this is the standard and anybody transgressing that standard is going to be disciplined, either severely or within the degree required, and is going to be held accountable, then I don't see where the police chief is in any way inhibited.

I think that where Chief Caldwell and I may differ somewhat is that once he makes a decision, which he believes to be right and fair and based upon what has been represented to him, then he has to go through an entirely new system before the civil service commission in which the same police officers that he's heard from internally have to then appear before the civil service commission; and we, in effect, go through the same system again.

Now I think that that is a good system. It's one required by statute, so I guess it really doesn't matter what I think. But I agree with Chief Caldwell when he says that the accountability must begin at the top. Now obviously, if Chief Caldwell gets inaccurate information, that's going to affect his decision, but I think once he sets the standard and the level, I think that anybody who sends him inaccurate information internally is doing so at their own risk because I think he's pretty well on record as saying that he is going to discipline people who transgress the rules and regulations of the police department, and he has done so.

COMMISSIONER SALTZMAN. Wrongly or rightly, I received the impression from the mayor that it is almost impossible for the police chief to remove someone whom he has evaluated as an incompetent, for whatever reason. Has it ever occurred where, let's say, someone from the rank of sergeant or above, the police chief has disciplined and has found it impossible to maintain that action in the face of the opposition of the civil service commission, or has the commission gone forward? Has there been, first of all, such an instance?

MR. BECK. I think in all fairness, it is difficult within the police department to take disciplinary action and—well, I guess I shouldn't say "take the action"—to get the information necessary to make the decision to take the action.

It is difficult, though, only in the sense that you have to go through the system which has been set up and the internal affairs division's investigation and so on. So it does take time, but once this information

is accumulated, then the chief makes the decision that he thinks is appropriate under the circumstances, and then it comes before the civil service commission. You know, I think that the results of those matters which have been brought before us show that at least during the time Chief Caldwell has been chief, that the overwhelming number of disciplinary matters brought before us have been sustained.

CHAIRMAN FLEMMING. Do you have anything?

COMMISSIONER RUIZ. I have one question.

Mr. Gardner, you mentioned serious disciplinary action, and it was just stated that this has to go through the system. When is the last time that a Houston police officer has been indefinitely suspended or dismissed from the department on account of any infraction, civil or criminal?

MR. GARDNER. Last Friday. Wasn't it last Friday?

COMMISSIONER RUIZ. What was the accusation or charge?

MR. GARDNER. The charge, at this point—let me say that until—well, that's been appealed. We'll go on to that. Let me finish the sentence, so you know where I'm coming from: until the action is appealed, we consider that a private personnel matter, but that matter has been appealed, so I might say that this involved what we consider to be a serious infraction of the firearms policy while the officer was off duty.

COMMISSIONER RUIZ. It involved a firearm?

MR. GARDNER. It involved the firearms policy.

CHAIRMAN FLEMMING. Mr. Nunez?

MR. NUNEZ. One question, Mr. Beck. You construct your own promotional examinations for the police department?

MR. BECK. The staff does.

MR. NUNEZ. I understand that. Does the staff consult with other major police departments as to policies in this area, as to construction of these examinations, or do they do it all on their own?

MR. BECK. I'm sure that they do because the texts they use, for example, are pretty standard texts which are used in police departments throughout the country, and, you know, they have various organizations in which they're members of, so there is this constant communication back and forth.

MR. NUNEZ. What I'm getting at, there would appear there are several cities around the country who had a relative amount of success in increasing the number of minorities in supervisory positions in police departments, and they do seem to have the same problem that they have to go through these promotional examinations, but they've managed to deal with it somewhat successfully, and I'm just wondering if that knowledge, that background is—your staff is privy to that, so that you could deal with this problem.

MR. BECK. I can check on that, Mr. Nunez. I feel certain that they have access to it and have such information, but if they don't, I'll make certain that they do have access to it.

MR. NUNEZ. Fine.

CHAIRMAN FLEMMING. Thank you very much. I want to thank both of you very much for your testimony.

Counsel will call the next witnesses.

MS. GERE BENICS. Captain Thaler, Captain Adams, Lieutenant Gamino, Lieutenant McWilliams.

CHAIRMAN FLEMMING. Would you please stand and raise your right hands?

[B.F. Adams, J.A. Gamino, D.J. McWilliams, and E.R. Thaler were sworn.]

TESTIMONY OF B.F. ADAMS, CAPTAIN; J.A. GAMINO, LIEUTENANT; D.J. McWILLIAMS, LIEUTENANT; AND E.R. THALER, CAPTAIN; ALL MEMBERS OF THE HOUSTON POLICE DEPARTMENT

CHAIRMAN FLEMMING. Counsel may proceed.

MS. GERE BENICS. Beginning with you, Lieutenant Gamino, would each of you please state your name, rank, and years on the force for the record, please?

MR. GAMINO. I am Lt. J.A. Gamino. I've been with the Houston Police Department 20-1/2, almost 21 years.

MR. ADAMS. Capt. B. F. Adams, 21 years.

MR. THALER. Capt. E.R. Thaler, 20-1/2 years.

MR. McWILLIAMS. Lt. D.J. McWilliams, 21-1/2 years.

MS. GERE BENICS. Thank you.

Captain Adams, beginning with you, could you tell us basically your responsibilities for investigations of officer shootings?

MR. ADAMS. Well, basically—

MS. GERE BENICS. Yes, just generally, what the investigation entails?

MR. ADAMS. Well, it would entail, like any homicide investigation, detectives would be assigned to go to the scene, collect all evidence, gather all facts, locate all witnesses, take statements.

MS. GERE BENICS. In the instance of an officer shooting, or let me make it more general, in the instance of a shooting, approximately how many investigators are assigned to investigate?

MR. ADAMS. Well, that would depend on how involved the investigation was, the availability of the manpower at the time. If more is needed, more would be called in off duty.

MS. GERE BENICS. Could you elaborate just a little on the extent of the investigation, the statements you take and from whom, and your onscene investigations that you make?

MR. ADAMS. Well, I'm not sure I understand how you want me to explain that. Basically, handled like any investigation should be handled. No stone, basically, should be left unturned. Anybody that has knowledge or might have seen or heard of the offense or passed through it, if they can be located, a statement will be taken from them. Any physical object, such as evidence that can be connected to the scene, will be tagged, analyzed by our laboratory, presented to the courts, and so forth.

MS. GERE BENICS. Under what circumstances would your division report the results of its investigation to the district attorney's office?

MR. ADAMS. Would you repeat that?

MS. GERE BENICS. Under what circumstances would you report the results of your investigation to the district attorney's office? Do you do that immediately in all—

MR. ADAMS. That is routine in any investigation.

MS. GERE BENICS. To the district attorney?

MR. ADAMS. That you take it to the district attorney. He makes a ruling in all criminal homicide cases.

MS. GERE BENICS. Is there any circumstance under which you would report it to the U.S. attorney, also, or the FBI?

MR. ADAMS. It's none that I recall, but we have—if it involved Federal laws, of course it would be.

MS. GERE BENICS. Could you briefly explain for me—and I will also be asking this of Captain Thaler, later—delineate the responsibilities in a shooting, in an officer shooting between your division, the homicide division, and the internal affairs division? Do you have joint responsibility, or do you investigate separately, and then—how does that work?

MR. ADAMS. I wouldn't want to answer Captain Thaler's question. Our responsibility is investigate it, gather all facts, and gather all evidence as completely as possible and as thorough as possible.

MS. GERE BENICS. Is that report then sent to Captain Thaler?

MR. ADAMS. They do get a copy of our report.

MS. GERE BENICS. I see. At what point in an investigation—first, let me ask you, is it your division that makes the determination of whether it was a self-defense or an accident?

MR. ADAMS. No.

MS. GERE BENICS. Where is that decision made?

MR. ADAMS. It is normally made—the district attorney takes it before the grand jury.

MS. GERE BENICS. And that would be at the close—that would be following your investigation?

MR. ADAMS. It is a court system that basically makes that decision, not the individual officer. The officer is obligated to gather all evidence and all facts that he can possibly obtain. Then that is taken to the district attorney, whose routine procedure would be to take it before the grand jury.

MS. GERE BENICS. Thank you.

Captain Thaler, could you briefly explain the joint responsibilities of your division and the homicide division? Do you start with your investigation prior to receiving their final report, or how does that work?

MR. THALER. Yes, ma'am. Anytime—we're speaking of now when an officer is involved in a shooting.

MS. GERE BENICS. Right.

MR. THALER. An injury occurs?

MS. GERE BENICS. Right.

MR. THALER. One of the internal affairs division investigators will respond to the scene, and they will monitor the scene along with the homicide detectives. They will, of course, make an independent report of their findings. They do not make an offense report. Theirs is all—the investigators' report is handled administratively and through our office.

Now we perhaps, in many cases, reenact the scene, things as such, done in conjunction with the homicide. This is at a later date, but it is taken from the time an incident occurs until the investigation is completed.

Again, all scientific physical evidence which may be obtained is examined. I say examined, reports are given to us by homicide. And reenactment photos are kept also by us.

MS. GEREENICIS. Thank you. Could you also briefly explain the complaint process, how a citizen who has a complaint goes about filing that?

MR. THALER. Okay. There are several ways that a citizen can make a complaint. One, the citizen can go to a precinct station or any division within a department. We have a standard complaint form that the citizen would use, stating briefly the circumstances and what the nature of the complaint is.

Secondly, a citizen could send a letter to the department, to internal affairs division, or perhaps to city council. When we receive this letter in writing, then we will conduct an investigation.

A citizen can appear before city council. If we receive the notification from city council, an investigation is conducted, or a citizen can come directly to the internal affairs division and make a complaint directed to us, give us a statement, and we will initiate an investigation.

MS. GEREENICIS. All of these complaints—is it necessary that all of these complaints be in writing in order to be investigated?

MR. THALER. Basically. Now, if there is serious allegation as far as misconduct on the part of an officer, they do not necessarily have to be in writing. Now, if it is a minor offense or a minor misconduct, we ask the citizen to put it in writing.

MS. GEREENICIS. When you say in writing, does that also—are we talking about a notarized statement?

MR. THALER. No, ma'am.

MS. GEREENICIS. Not necessarily?

MR. THALER. No, ma'am, not necessarily.

MS. GEREENICIS. In what instance would you require that it be notarized?

MR. THALER. If a citizen would object to notarizing a statement, I don't know of any particular case that we would refuse to take a complaint from a citizen if they did not want to notarize a statement. I know of no such case.

MS. GEREENICIS. Do you have any idea how often you do investigate complaints that have not actually been formalized?

MR. THALER. That have not actually been formalized, probably—this includes criminal activity?

MS. GERE BENICS. Yes.

MR. THALER. Many cases which will perhaps go unfounded or inconclusive and serious allegations would average, I would say, one and a half per month, perhaps.

MS. GERE BENICS. And these follow a normal investigative procedure?

MR. THALER. Would follow the normal investigative procedure until its final conclusion.

MS. GERE BENICS. Does the Houston Police Department ever accept anonymous complaints?

MR. THALER. We do, depending again on the allegation. If it is—

MS. GERE BENICS. And investigate it if it is serious?

MR. THALER. And would investigate it if it is serious, right.

MS. GERE BENICS. I see.

Lieutenant Gamino, could you track for us the process beginning when the complaint arrives at IAD and is assigned a control number and then what procedures follow?

MR. GAMINO. Yes, ma'am, be glad to. When a complaint is received in IAD, whether it be a letter from a complainant or whether it is an incident report form from out from one of the substations, or whatever form it takes, or whether it is a citizen coming in and making a statement in the office, an incident report form is completed in every instance.

That incident report form goes to the administrative lieutenant, who reviews it. He determines whether it is a class one or class two, and at that point he determines whether it will be investigated by the IAD or whether it will be investigated by the command staff.

He then gives it to the clerk who then logs into a control book, types up the index cards. It is cross indexed by employee and by complainant, and then we have to send out a letter of notification to the complainant, a letter of notification to the officer, and if the command is going to do the investigation, we have to send a letter to the command requesting they conduct an investigation.

When all of these items are completed, the form is returned back to the administrative lieutenant, who reviews it, gives it to the captain for his signature.

If it is to be conducted by the command or by the individual divisions, then we retain the original of the incident report form and forward the originals of the letters out and any copy of the complaint to the division for investigation.

The division conducts their investigation, and they submit their findings to chief—to the chief of police. When the chief of police has reviewed that particular complaint, the complaint itself, after it has been signed by him, it comes back to the internal affairs division, and we have to prepare letters of notification again to the complainant and to the officer. Then it is handed to the clerk typing all the letters. She

has to note the final decision on the controlling log and final decision on the index cards. At that point, that particular case is said to be completed.

If it is to be conducted by the internal affairs division, basically the same process, log in, index cards, letters of notification, and then it is handled by the division, and then the investigative lieutenant puts a cover letter on it; the captain puts a cover letter on it; and then it goes up to the chief for his review. When the chief signs, it comes back to us and we send out the final notifications. At that point, the other procedures take effect.

MS. GERE BENICS. Now, let me just see if I got all this straight. I did have one question somewhere in the middle. The administrative lieutenant has the responsibility for classifying the complaints to one and two?

MR. GAMINO. Yes, ma'am.

MS. GERE BENICS. Are there any standards of procedures that would help you in an instance where it could be a class one or class two complaint? Are there standardized procedures—for making that procedure?

MR. GAMINO. It is spelled out in the rules manual. It is spelled out in the bulletin that came out in regards to internal affairs procedures and spelled out in our procedural guidelines, and it is also incorporated into the general orders which are now in effect.

MS. GERE BENICS. Internal affairs assumes responsibility for investigating all class one complaints; is that true?

MR. GAMINO. The majority of class one complaints. The workload became so heavy that there were some complaints that were actually class one complaints, but were what you might term "minor." For example, the procedural guidelines say any excessive or unnecessary force is a class one complaint. All right?

You could define "unnecessary force" as simply the fact an officer unnecessarily pushed someone, had no reason to, he pushed someone. There were no injuries sustained as a result, but still is an unnecessary force.

In this type of case, we were investigating all these cases. Then a decision was made perhaps some of these cases might just as well—could very well be investigated by the divisions. So I say that the majority of class one complaints are investigated by internal affairs division with a few of them being sent to the commands.

Conversely, the commands are supposed to investigate all class twos; there are some class two complaints that the internal affairs division investigates.

MS. GERE BENICS. What would be an example of some of those?

MR. GAMINO. The class two complaints?

MS. GERE BENICS. Right.

MR. GAMINO. It could simply—of course, it is a violation of departmental rules and regulations or procedures. It could be one in which

there is a time limit. we have a time limitation. The chief might want a report, say within 2 weeks, and it would take quite a long time for it to go through the normal procedure, going through the command and up to his office, so he might request that we conduct an investigation immediately, which we would do so even though it might be a class two complaint.

MS. GEREENICS. Once a division investigating—do you monitor that investigation at any stage in it, or do you wait until the final report from the division?

MR. GAMINO. At the very beginning, of course, you know, when we started back in 1977, we were brand new, and we were—we had a lot of procedures and we tended to modify those procedures based on experience and as we went along. In the very beginning, say, for the first year or a little over, we monitored the investigation in that all division investigations came back to internal affairs division. We monitored the investigation itself—when I say monitor, we reviewed the investigation. If we felt there was something lacking, we would simply send it back to the division asking for a clarification. If not, then we would put a cover letter on it, which was a summary of the investigation with our recommendation on it, and that would go to the chief.

Again, because of the increased heavy workload, it was modified to the point that where the assistant chief of the command would, in effect, take over that particular review. He would review the investigation and then would put his cover letter on it and then go to the chief of police.

Now the only monitoring we might do, we maintain a suspense file and we make sure that—or try to make sure time schedules are met.

MS. GEREENICS. I'm sorry, the suspense file; would you—

MR. GAMINO. Yes, ma'am, a suspense file—remember I said at the very beginning if it went to the division, we would maintain the original of the complaint. We maintain this in a file cabinet in a sink we call a suspense file, because that report is going to come back. When we come back, we remove from the suspense file, attach to the complaint, and then we go to the completed file. That's it; it's over with; it is completed.

MS. GEREENICS. Has there ever been an instance of where the internal affairs division would assume responsibility for an investigation that was ongoing, say, either in a division or in homicide, for instance?

MR. GAMINO. According to—we have, according to our guidelines and our procedure, when a division, say, for example, a burglary and theft division—to give you an example—a burglary and theft division is conducting a criminal investigation. We come upon some information, perhaps, that a police officer might be involved. We can do several things. Since they have already conducted the bulk of the investigation, we can ask them to continue the investigation, providing us with periodic reports. We can have those personnel transferred to the internal affairs division temporarily until that investigation is

completed, or we can simply assume the entire investigation, just have them turn over whatever they have and we can conduct the entire investigation. It would depend on the circumstances.

MS. GEREBENICS. And internal affairs would make that decision?

MR. GAMINO. The commander of the internal affairs division would make that, yes, ma'am.

MS. GEREBENICS. Going back one more time to the procedure, you outlined what appeared to be a similar lengthy procedure. Is there in fact a schedule or a timetable in which those very steps are completed?

MR. GAMINO. On class two complaints, once the division gets the complaint, they have 30 days in which to submit their final written report to the chief of police.

MS. GEREBENICS. Thank you.

MR. GAMINO. Yes, ma'am.

MS. GEREBENICS. Lieutenant McWilliams, how is it determined within internal affairs division which detectives are assigned to any given case?

MR. MCWILLIAMS. There is no basis there for who gets what. We simply try to equalize the workload. Of course, being around as long as I have and being as familiar with the people that were assigned to internal affairs, I can recognize certain talents and utilize those talents.

MS. GEREBENICS. Certain types of cases are assigned to certain people on a regular basis, or—

MR. MCWILLIAMS. Well, the fact of the matter is, your internal affairs personnel pretty well represents a cross section of the expertise in the investigative field of the Houston Police Department, and we try to have someone in the internal affairs division with expertise, for example, in homicide or burglary and theft or auto theft or whatever. We like to have all those talents represented.

MS. GEREBENICS. In what instances do you assign more than one detective?

MR. MCWILLIAMS. It would depend upon what kind of investigation it was. For example, in a shooting, you might have a lot of witnesses, a lot of followup work to do, and, of course, in that situation, certainly, more than one person would do the investigation.

MS. GEREBENICS. What is the role of the investigative lieutenant in monitoring the various steps of the investigation? Do you review periodically or wait until the final report?

MR. MCWILLIAMS. Well, not necessarily periodically. The investigative lieutenant simply stays in contact daily with those people doing those investigations and ensures that the investigation is done properly and completely.

MS. GEREBENICS. Are there specific investigative procedures that are required to be followed in the various investigations?

MR. MCWILLIAMS. Well, I think there are specific procedures required in any investigation and that simply is to determine what the facts are.

MS. GERE BENICS. Do you interview the complainants and witnesses in every case? Is the statement sufficient or do you reinterview the complainant, and is a statement sufficient for the officer or do you interview the officers?

MR. MCWILLIAMS. In many instances, persons are reinterviewed, simply because something might not be clear, and that's one of—

MS. GERE BENICS. That goes to officers and citizens?

MR. MCWILLIAMS. Yes.

MS. GERE BENICS. And sometimes you just rely on the statement; is that—

MR. MCWILLIAMS. If there are no questions arising from that statement, that could be true.

MS. GERE BENICS. Where two or more officers are implicated in an allegation, are they interviewed separately or—

MR. MCWILLIAMS. We would follow normal investigative procedure there, and it's not a good idea to interview any two people involved in the same offense together. So yes, they are separated, to answer your question.

MS. GERE BENICS. Are all firearm discharge reports sent to the internal affairs division?

MR. MCWILLIAMS. All discharge of firearms reports come through the internal affairs division.

MS. GERE BENICS. How soon after that report does that occur?

MR. MCWILLIAMS. Within 24 hours we require that a discharge of firearms report be submitted to us. We require the completed investigation within 5 days. Now understand we're talking about those instances where a firearm is discharged and no one is injured.

MS. GERE BENICS. I'm sorry, you also investigate those, or you don't? You investigate where there is injury?

MR. MCWILLIAMS. We investigate all those instances where there is injury to a citizen.

MS. GERE BENICS. I see. If there's no injury to a citizen, but say, extensive property damage or something like that, is that in your division or does that come from the investigative—

MR. MCWILLIAMS. It could be within our division, depending on the circumstances.

MS. GERE BENICS. That would be a decision that you would make?

MR. MCWILLIAMS. That would be a decision for the commander of the internal affairs division.

MS. GERE BENICS. Right. All weapons are required to be registered with the department; is that true?

MR. MCWILLIAMS. That's correct.

MS. GERE BENICS. Now how does that work on the firearms discharge? Obviously, the weapon used in the incident was—is listed. Is that checked against another registration card? You have some sort of internal procedure?

MR. MCWILLIAMS. That is a normal procedure to—anytime a firearm is discharged, whether there's injury or not, one of the prescribed facts required from that investigation is the registration of that firearm.

MS. GEREENICS. And that would be internal affairs' requirement?

MR. MCWILLIAMS. If internal affairs conducted the investigation. If it were a division investigation, they would have to cover that point in their investigation, submit it to the internal affairs division.

MS. GEREENICS. Could you tell us, roughly, what percent of complaints investigated involving citizen injury are sustained?

MR. MCWILLIAMS. I couldn't tell you off the record. I would have to say that probably a little less than 10 percent of all complaints are sustained.

MS. GEREENICS. When your investigation is completed then, that is sent directly to the chief, or does it go through—how many steps is it between your report and the chief?

MR. MCWILLIAMS. Okay. The investigators, of course, would submit their investigation to me. I, in turn, would review that report in its entirety, put a cover letter on it, and submit it to Captain Thaler. He, in turn, goes through the review process, puts a cover letter on it, and submits it to the chief of police.

MS. GEREENICS. In that process, is there ever an occasion when one of those gentlemen would send back one of the reports and ask for more information or further investigation? Does that occur?

MR. MCWILLIAMS. It would be rare.

MS. GEREENICS. Who makes the determination of the disposition that's to be recommended, at which level?

MR. MCWILLIAMS. That lies with the chief of police.

MS. GEREENICS. A recommended disposition?

MR. MCWILLIAMS. No, I would, in my cover letter, make a recommendation as to the classification: founded, unfounded, sustained, or whatever. I would submit that to Captain Thaler and he, in turn, would review that. Of course, he would make his recommendation and send it to the chief. The final disposition would lie with the chief himself.

MS. GEREENICS. And on what criteria do you base your recommended disposition?

MR. MCWILLIAMS. From the facts of the investigation. If the allegations that had been alleged have been proved by our investigation, certainly, I recommend that that complaint be sustained.

MS. GEREENICS. Does the officer against whom the complaint has been made ever have an opportunity to review any portion of the investigative file?

MR. MCWILLIAMS. Yes, he can.

MS. GEREENICS. Under what circumstances?

MR. MCWILLIAMS. If he has a question as to what the facts of our investigation might be.

MS. GEREENICS. And that would be a request to you or to Captain Thaler?

MR. MCWILLIAMS. To some supervisor in the internal affairs division.

MS. GEREENICS. Would that be limited to portions of the file or would he have access to—

MR. MCWILLIAMS. That would depend on the type of investigation it was. Certainly, if we had conducted a criminal investigation and we had subjected some police officer to the criminal process, certainly we would not let him review any portion of our file.

MS. GEREENICS. Thank you.

Captain Thaler, could you explain how you select your personnel in internal affairs, how the detectives are selected?

MR. THALER. Okay, basically, along the same lines what Lieutenant McWilliams just said, a cross section from the various divisions—robbery, homicide, etc.—on their demonstrated ability, investigative experience, recommendations from superior officers, and we look for the very best and most objective detectives in the department who have been professionals since they joined the department.

MS. GEREENICS. Do detectives assigned to the internal affairs division receive any special training?

MR. THALER. When you speak of special training, they are assigned to work cases with a detective who has been in the division for a period of time, but no outline or special training other than that is given.

MS. GEREENICS. How about the supervisors? Do they receive any special training?

MR. THALER. Along the same lines, the supervisor will work with the supervisor transferring out of the division for a period of time.

MS. GEREENICS. This is something I would like your opinion on. We've been studying police practices around the country for about 18 months, and there's very divided opinion on personnel assignments to internal affairs. There are some chiefs and people in departments who believe that the assignments should be permanent, so as not—not to present any conflict to the officer when he gets reassigned to another division, and there are some who believe it is such a stressful situation, it should be rotated on a fairly regular basis. What is your feeling on that?

MR. THALER. I would hope that I'm out of internal affairs before we go permanent.

MS. GEREENICS. Permanent?

MR. THALER. My opinion is that the permanent assignment to internal affairs with the stress and the pressure that the investigators and supervisors are under constantly from both sides, citizens and other officers, that permanent assignment is not in the best interest of the individual or the department itself.

MS. GEREENICS. What's the average length of assignment? I realize your internal affairs division is fairly new, but what do you anticipate the average length of assignment to internal affairs?

MR. THALER. It has been between approximately 15 and 18 months, and for supervisors it has been 2 years.

MS. GEREENICS. Thank you.

Lieutenant Gamino, could you briefly explain for us what the history file is?

MR. THALER. Excuse me, a history file?

MS. GEREENICS. History file.

MR. THALER. Would you explain that a little bit?

MS. GEREENICS. Perhaps the index card file system is—in your written procedures?

MR. THALER. I see; you want to know how do we keep up with multiple complaints against single officers.

MS. GEREENICS. That's it?

MR. THALER. The only procedure that we have at this particular time, as I said earlier, we cross index; so we maintain index files on complainants; we maintain index files on the officers. They are maintained alphabetically, so it is a very simple procedure just simply to thumb through the cards and obtain the names of any officers, three or more, four or more, or whoever's category of complaint it is, whether, you know, whether you're looking for three discharges of firearms, two unnecessary force, or excessive force.

We had one study conducted at the request of one of the assistant chiefs, wanted to know how many officers had had three or more complaints, and so we just simply went through the index card file system and we were able to draw those names of those particular officers.

As far as the history file, that's the only one that we have at the present time.

MS. GEREENICS. You mention that study; would you use that file for any other purpose? Do you ever conduct a periodic review to monitor various officers, or do you, on the receipt of an individual complaint, check the files to see if you can ascertain any kind of pattern regarding that officer?

MR. THALER. The only time that we would go through the files and obtain multiple complaints against any officer would be more than likely, it has been done at the request of chief's office, request of the assistant chiefs or the command staff, and I'm sure their purposes are for seeing if there is a need for training in any one particular area and they use it.

We may go through the file when we get a complaint and see whether or not an officer has received, you know, X number of complaints, and what were the findings in those complaints and were there any common denominators.

MS. GEREENICS. What would trigger that review on your part?

MR. THALER. On the administrative lieutenant part? It would not—on the administrative lieutenant, what part the administrative lieutenant might take, I don't know. You'd have to—

MS. GEREENICS. Lieutenant McWilliams, would you like to respond to that?

MR. MCWILLIAMS. Well, certainly, if a name becomes familiar, you're curious to know what the problem might be, and we would use the file simply as a reference in that point; and if we felt there was a problem there, we would bring it to the attention of the chief's office.

MS. GEREENICS. Thank you. Do you do that—have you ever done that or is it fairly rare?

MR. MCWILLIAMS. Yes, on a couple of occasions we have.

MS. GEREENICS. Thank you.

MR. CHAIRMAN. I have no further questions at this time.

CHAIRMAN FLEMMING. Captain Thaler, when was the division brought into existence?

MR. THALER. In June of 1977.

CHAIRMAN FLEMMING. Prior to that, had there been any unit within the department comparable to an internal affairs division?

MR. THALER. A specific unit, no, sir, to answer your question directly. The complaints were investigated by the divisions to which the officer was assigned. I may correct, when I said June of 1977, I think this was officially; it operated on an ad hoc basis prior to that, but June of '77 it was officially established.

CHAIRMAN FLEMMING. You, in response to an earlier question, indicated some of the qualifications that you kept in mind in terms of persons being assigned to the unit. How many persons are assigned to the unit right now, roughly?

MR. THALER. At the present time, I have 11 investigators, 1 police officer, 2 lieutenants, and 4 clerical personnel.

CHAIRMAN FLEMMING. Are there any women in that group at the present time?

MR. THALER. In the investigative area, there's one female investigator. All the clerical personnel are females.

CHAIRMAN FLEMMING. Are there any minorities in the group?

MR. THALER. Yes, sir. We have one black and two Mexican Americans.

CHAIRMAN FLEMMING. Is this an assignment that is coveted by people within the department, as you sense it, up to the present time? I appreciate you haven't had too much experience.

MR. THALER. Would you ask that question one more time to make sure I understand what you're asking?

CHAIRMAN FLEMMING. Is this an assignment that officers would like to receive, an assignment to the internal affairs unit? Is it something that they feel is an important part of their career in the department and that it's a type of recognition and may even contribute to their advancement within the department?

MR. THALER. No, sir, there are no volunteers and no one particularly likes working that division.

CHAIRMAN FLEMMING. I see. In the light of—of course, we've received testimony this morning relative to the civil service require-

ments as far as promotion is concerned, but within that frame of reference could an assignment to the internal affairs division help an officer as far as his or her advancement in the department is concerned?

MR. THALER. Not on the present system, no, sir.

CHAIRMAN FLEMMING. It wouldn't become a factor at all under the present system?

MR. THALER. No, sir. I would like to add, sir, as I said earlier, even though no one is a volunteer, once they are assigned to the division, they diligently work in that division as they have in any division in the past. I have also mentioned the fact they're professional police officers and professional investigators, and they accept the assignment and their tour of duty without any problems.

CHAIRMAN FLEMMING. Well, I recognize that your earlier answer presents you, as a supervisor, with a real problem in terms of developing morale within the unit, but I assume that your last comments indicate that you are able to deal with that and to develop real morale within the unit.

MR. THALER. I'll answer that by saying, sir, regardless of where my assignment may be, I'll do the best job that I can regardless of where the chief assigns me.

CHAIRMAN FLEMMING. I would like to ask Captain Adams this question going back to your earlier testimony. In response to counsel, you indicated that the district attorney's office was notified, as I understood you, immediately relative to an investigation dealing with—

MR. ADAMS. Did you use the word "immediately," sir?

CHAIRMAN FLEMMING. Well, maybe I didn't hear that and—

MR. ADAMS. Basically, I'll be glad to reexplain that.

CHAIRMAN FLEMMING. Just indicate to me how it happens, that's all.

MR. ADAMS. The way I was answering her question—that this case is reviewed—it is taken to an assistant DA, and the case is reviewed with him about any charges and whether charges will be filed or whether it will be taken directly to the grand jury. The officer cannot make this decision. He can recommend and present all his facts and the truth as he has been able to determine it.

Just recently the district attorney's office has organized a civil rights group who is notified immediately that a shooting has occurred involving a police officer. The dispatcher's office notifies them. We also in turn—homicide, as a doublecheck, call the intake section, which is open 24 hours, and notify them. They, in turn, are obligated to call Mr. Terry Wilson, who heads up that section, and they normally also go to the scene, either him or one of his investigators. So basically, using the word "immediately"—as soon as possible—definitely before an investigation is completed and as soon as possible someone can get them notified. That is the procedure that has been used at this time.

CHAIRMAN FLEMMING. So in other words, they, I think, in connection with internal affairs—the term was used that someone immediately

goes out from internal affairs to monitor, I think that word was used, and in effect that's what happens now.

MR. ADAMS. That is basically also what the district attorney's office is doing, also, now.

CHAIRMAN FLEMMING. Right. At about what point in the investigation would there be a discussion with the district attorney or assistant district attorney relative to what has been developed?

MR. ADAMS. That would be almost continuously. We're assuming, of course, this investigation is very seldom completed in a matter of hours. It sometimes takes days to complete it or weeks, perhaps, but using a scene—for instance, Mr. Wilson or his investigator would go to the scene. He would immediately talk to the homicide detectives and find out what they have learned. He is also—at his own discretion, would talk to any witnesses or anyone else at the scene, just like they have done, so it would be basically discussed as the investigation is in the ongoing phase.

CHAIRMAN FLEMMING. So the district attorney and his associates play a very important role in the total process here that we are taking a look at?

MR. ADAMS. Yes, sir.

CHAIRMAN FLEMMING. I was interested, Captain Thaler, also, in this. I think I've got the procedure in mind here. There are certain circumstances under which a complaint that may come to internal affairs is referred to one of the other divisions, assign, such as maybe the homicide division or some other division; is that correct? Did I get that?

MR. THALER. That would be—

MR. GAMINO. If a complaint was against one of their members, for example, a complaint of rudeness on the part of a homicide detective, then that complaint would be sent to the homicide division for investigation. The supervisors of the homicide division would conduct that investigation. Those are mostly class two complaints. That's what we had reference to.

CHAIRMAN FLEMMING. All right. Now, once it is referred to, let's say, the homicide division, then, as I understand it, the internal affairs division really doesn't have anything further to do with that particular case.

MR. GAMINO. Other than making sure—

CHAIRMAN FLEMMING. To keep in touch with it.

MR. GAMINO. Right.

CHAIRMAN FLEMMING. To keep in touch with its progress, but from a substantive point of view, you don't have anything to do with it.

MR. GAMINO. That is correct.

CHAIRMAN FLEMMING. So that the recommendations as to the findings and the disposition of the case would then come from the head of the homicide division to the chief?

MR. GAMINO. It would be through his chain of command. It would be through his deputy chief and assistant chief which is reviewed along

those steps. They are in effect doing the review process we would normally do, but they are doing it on a higher level.

CHAIRMAN FLEMMING. But the internal affairs division would not be involved in that review process in any way?

MR. GAMINO. Not on those class two complaints on investigations conducted by the division, no, sir.

CHAIRMAN FLEMMING. But now on all other cases, the class one case, as I understand it then, the captain in charge of the internal affairs division evaluates the evidence, arrives at a conclusion, makes a recommendation. Does that recommendation include penalty, possible penalty?

MR. THALER. No, sir, it does not.

CHAIRMAN FLEMMING. It does not, but it simply is a recommendation as the conclusion that should be reached on the basis of the facts that have been developed in the investigation?

MR. THALER. That is correct, sir.

CHAIRMAN FLEMMING. All right, and that goes to the chief?

MR. THALER. That is right, sir.

CHAIRMAN FLEMMING. And then it's the chief alone who would make the decision—assuming he agreed with the conclusion, then he would make the decision as to the penalty to be imposed?

MR. THALER. Yes, sir.

CHAIRMAN FLEMMING. Okay.
Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Gamino, yesterday we received some testimony that in some cases, following a complaint, that the individual who made the complaint is subject to harassment. What would—
is your division the division that would receive a complaint of harassment following a complaint of a greater degree?

MR. GAMINO. I don't personally have knowledge of any of other complainants who have filed a complaint being victims of harassment following the investigation.

COMMISSIONER FREEMAN. The testimony which we received yesterday concerning the incidents of harassment—your division has never been informed of any harassment cases?

MR. GAMINO. I have no personal knowledge. If you review our status, and I'm sure you have, you might find some allegations of harassment, but these allegations of harassments that are indicated on those particular statistics was when the initial complaint was harassment and that was because we asked the complainant, you know, "What is your complaint?" and they say, "I'm being harassed."

Some citizens feel if they have been stopped on the street once that constitutes harassment. Now, some lounge operators feel that if an officer goes into their place four times within 6 months they are being harassed. They make those sort of complaints to us. We list complaints as harassment, but to answer your earlier question, I personally have no knowledge of where an individual came in and made a complaint

against an officer and then was harassed by any individual officers after the investigation was completed.

COMMISSIONER FREEMAN. So that the internal affairs division does not have any—has not ever had any such complaints in the 2 years?

MR. GAMINO. I have no knowledge of one.

COMMISSIONER FREEMAN. The other testimony that was given was that there is—coupled with the harassment, was there is a fear in the community, the minority community, because of the attitude of the police officer.

Now, you indicated rudeness as a class two complaint.

MR. GAMINO. Yes, ma'am.

COMMISSIONER FREEMAN. Now—do you have any examples of how many such complaints have been sustained?

MR. GAMINO. I don't have the breakdown on the sustained complaints on each individual category. Again, the only thing we can tell you is probably 10 percent of all complaints are sustained.

COMMISSIONER FREEMAN. Ten percent of all complaints are sustained?

MR. GAMINO. Right. Of course, we add to that 10 years, there's classifications called misconduct not alleged in the complaint which simply means the original complaint was not sustained but that there was something that the investigation uncovered in which the officer was at fault and, therefore, we administered discipline. So if you're talking about citizen complaints in which disciplinary action was administered, we're probably talking closer to 12 percent, or 12.5 or 12.9 percent.

MR. THALER. May I clarify a point, please?

COMMISSIONER FREEMAN. Yes.

MR. THALER. We referred to this less than 10 percent and we're talking basically of our class one investigations and some of the more serious violations. Now overall, this includes overall departmental policy violations, class twos, class ones, automobile accidents; everything as such, it's around 43 to 45 percent, sustained percent; that's overall sustained complaints.

Now the more serious allegations, what the lieutenants are referring to, are the class ones, is probably less or is less than 10 percent, no doubt.

COMMISSIONER FREEMAN. You indicated that the tenure in the IAD is about 6 months. That means that perhaps you were not there 1 year ago.

MR. GAMINO. I'm sorry. I didn't quite understand who said the tenure was 6 months.

COMMISSIONER FREEMAN. Eighteen months. So the same team now is the team that has been investigating all over the complaints during the past 18 months?

MR. GAMINO. Okay. Now, the tenure for the lieutenants was 2 years; the tenure for detectives is actually a year, but it is actually working out to about 18 months by the time that they rotate. I was in internal

affairs for 26 months, which means I was in internal affairs June 27, '77 until August 3 of 1979, and Lieutenant McWilliams was in there from first of June until June 3, I believe, June 4.

COMMISSIONER FREEMAN. I just have one final question. Do you have an administrative procedure that permits you to analyze complaints that have been filed and to determine whether there have been three—or two or three of the same complaints against an officer whereby when you make this analysis you forward it to the chief for any appropriate action?

MR. GAMINO. On the class one complaints, Lieutenant McWilliams, I think, has answered that, and on the class two complaints, occasionally, we will receive requests from the command staff, the deputy chiefs or assistant chief, to give him a listing of the officers under his command who may have multiple complaints.

COMMISSIONER FREEMAN. But your procedures do not provide for your initiating such analysis?

MR. GAMINO. I would imagine that we can, if the circumstances called for it. Being the administrative lieutenant, I would only do it when I would be given a request from someone. Lieutenant McWilliams would do it because he has to put in the cover letters on the class one complaints or the investigations being conducted by IAD. I also would do it at the request of some sort of supervisor who was also conducting the investigation. The procedure is there; we can do it.

CHAIRMAN FLEMMING. Do you want to comment on that, Lieutenant McWilliams?

MR. McWILLIAMS. Yes, sir, I will. I think the fact of the matter is, in a division as small as the internal affairs division, it is a close knit group and certainly you're living with this thing day in and day out, and I think any supervisor in there would be remiss if they did not pick up on a name that had come to their attention several times.

Under those circumstances, certainly the internal affairs division intends to bring it to the attention of the chief's office. Understand that one of the primary factors in establishing that card file was to make that information available to the chief of police and, as I say, certainly, we would be remiss if we did not bring those things to his attention.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Lieutenant McWilliams, am I correct in saying that you supervised the investigation of alleged firearms violations which resulted in death or serious injury?

MR. McWILLIAMS. That is correct, sir.

COMMISSIONER RUIZ. On the initial steps which require the preservation of evidence, does the homicide division enter into the picture first or does the internal affairs division enter into the picture first?

MR. McWILLIAMS. Let me explain it to you this way. The purpose of the internal affairs division making the scene on each shooting where someone is injured—our role is not to circumvent the responsi-

bility of the homicide division who is charged with that investigation. The philosophy here is that being on the outside looking in we feel that we can be more objective and ensure that the investigation is done properly and completely.

COMMISSIONER RUIZ. Is this an oversight responsibility that you have—

MR. MCWILLAIMS. Primarily so, I would say, sir.

COMMISSIONER RUIZ. —who preserves the evidence homicide first accumulates?

MR. MCWILLAIMS. Yes, sir.

CHAIRMAN FLEMMING. What's then?

MR. MCWILLAIMS. Normal procedure followed just as in any other homicide investigation. Homicide division is charged with collecting and preserving any evidence for whatever the test, and our role is simply to make our own observations and to ensure that the investigation is complete.

COMMISSIONER RUIZ. Homicide is the custodian of the evidence?

MR. MCWILLAIMS. Yes, sir.

COMMISSIONER RUIZ. At what point does the civil rights division of the office of the district attorney assign personnel to preserve and identify evidence, if at all?

MR. MCWILLAIMS. I think probably Captain Adams, if he hasn't already answered that question, could best answer that.

MR. ADAMS. Normally, the evidence is collected, either by a homicide detective or crime scene investigator or someone from our lab, and the routine procedure—whatever test has to be conducted and then it is tagged.

The district attorney's office may request that piece of evidence whenever they wish, but normally our lab or ballistics people, whatever type of evidence it is, will do the test on the evidence.

The district attorney can request that evidence anytime but, if you're going to have that many people, sir, at a scene, somebody has to be designated to do certain steps. Everyone cannot do the same step.

COMMISSIONER RUIZ. Homicide then continues to preserve the evidence; is that correct?

MR. ADAMS. Basically, I think that would be yes to your question.

COMMISSIONER RUIZ. Now, at any time, is there an independent contemporaneous investigation made by the civil rights division of the office of district attorney, separate from the investigation which is made by homicide?

MR. ADAMS. I don't think it would be right for me to answer the question. I think they should, but I will give you my opinion.

COMMISSIONER RUIZ. Give me your observations.

MR. ADAMS. That's an objective, to make an independent investigation. They, of course, take our report also, but it is my understanding that was one reason they—they are there to make sure that they look at it in all respects. They can make an independent investigation.

Whether they do on each one, I think Mr. Wilson of the DA's office should be the one to answer that question.

COMMISSIONER RUIZ. From your observations, do they usually make an independent investigation?

MR. ADAMS. From my observation, they are looking at it independently. I could not tell you how they type the reports or what they do with the reports. I don't know that, sir.

COMMISSIONER RUIZ. What I'm looking for is whether the office of the civil rights division of the district attorney constitutes a check to police out investigation in the preservation of the original evidence. From what I am gathering here, it's a bystander's observation, somebody on the side, that is coming in with some sort of an oversight responsibility; would you identify it as such?

MR. ADAMS. I would say it was an oversight responsibility that they are trying to conduct, but I'd look at it basically like this: anyone involved is after all the facts and after all the evidence and the truth. Everyone is trying to reach the same objective, learn the complete truth and present it to the court. That is the sole objective as I understand it, the complete truth, as best can be determined, so—

COMMISSIONER RUIZ. Have you been involved in this type of investigation since you've been in your office, relating to an alleged violation of firearms? Have you as a police officer been involved? You are not with the homicide division, are you?

MR. ADAMS. Yes, sir. I'm captain of homicide.

COMMISSIONER RUIZ. Then you have been involved in a firearms violation relating to an investigation?

MR. ADAMS. Are you asking me have I been involved personally in a firearms?

COMMISSIONER RUIZ. Personally, yes.

MR. ADAMS. I have never fired my weapon at anyone; is that what you're trying to—

COMMISSIONER RUIZ. The investigation.

MR. ADAMS. Well, I'm captain of the division. I also worked as a detective in the division for 9 years, so if you're asking me have I conducted these investigations, yes, during my career at different times, during the 9 years as a detective. Basically, as captain, it is basically administrative supervisor function.

COMMISSIONER RUIZ. In the last 2 years, have you personally been investigating, not simply as a supervisor, have you gone to a scene of an alleged crime and done the investigating phase of it?

MR. ADAMS. No, sir, that is not my responsibility to do the investigation. My responsibility is to see and have it done correctly.

COMMISSIONER RUIZ. When is the last time you were involved in that fashion as a supervisor?

MR. ADAMS. The last time I went to the police station, I did not go to the scene, was when a city marshal was killed here several weeks ago. Is that what you basic—

COMMISSIONER RUIZ. Did it involve firearms discharge by a policeman?

MR. ADAMS. The law enforcement officer got killed and his partner did discharge his firearm, yes.

COMMISSIONER RUIZ. In that particular case, did the district attorney's civil rights division send any representative to that investigation?

MR. ADAMS. Yes, sir, Mr. Terry Wilson made the scene himself.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. I would like to pursue for a moment the line of questioning that Commissioner Freeman initiated about the problem of, or the possibility of, harassment when someone has made a complaint. Is there—do you feel, Captain Thaler, that that is a condition that might be or create an atmosphere—the possibility or the fear of harassment by those who make complaints, an inhibiting or chilling influence on their bringing complaints to your department?

MR. THALER. It may be a fear, but as Lieutenant Gamino stated, I personally do not know of any situation. I had not had a citizen come to me and say, "I don't want to make a complaint because I'm afraid I'm going to be harassed," so I have no personal knowledge of this being in the citizen's mind or this possibly occurring.

COMMISSIONER SALTZMAN. Is there a legal formal protection extended to a person who makes a complaint? For example, the Commission is sensitive to the possibility of someone coming before us and offering us testimony who might be in conflict with some organization or whatever. There is a law under the United States Code that protects witnesses and we make at every hearing—we we make it very clear, and at the beginning of this hearing Commissioner Freeman stated witnesses at Commission hearings are protected by the provisions, etc., "which make it a crime to threaten, intimidate, or injure witnesses on account of their attendance at government proceedings" and she stated, "Let me emphasize that we consider this a very serious matter and we will do all in our power to protect witnesses." Now, is that an atmosphere in which the witness or the complainant coming to the IAD feels that that is also the situation?

MR. THALER. That is also the situation, yes, sir.

COMMISSIONER SALTZMAN. Is there a law protecting that person?

MR. THALER. I can't quote the specific law. However, when you're speaking of as far as protecting the citizen, I'm speaking of any officer found to be in violation, found to be harassing a citizen as a result of making a complaint; I can assure you and speak on my behalf as far as bringing it to the attention of the chief and knowing the chief of police would not tolerate any such conduct.

COMMISSIONER SALTZMAN. Captain Thaler, I believe we had testimony that there was a decline in the number of shooting incidents recently of policemen or by policemen. Is that an accurate—did I understand that? Is that correct?

MR. THALER. Yes, sir, but if you ask me for the specific statistics, I do not have them with me. There has been a trend, a decline, in the number of shootings and officers involved in shootings.

COMMISSIONER SALTZMAN. Can you account for that in any way?

MR. THALER. You're speaking of as far as statistics are concerned?

COMMISSIONER SALTZMAN. Yes, sir.

MR. THALER. In our office, yes, sir, we have statistics. As a result—

COMMISSIONER SALTZMAN. No, I mean can you account for it?

MR. THALER. Oh, why is it? Probably because of the fact that the officers are realizing that Chief Caldwell, his policy, the accountability that he's holding the officers to, have no doubt thought twice before discharging their firearms, especially—in one area, especially, warning shots, which at one time perhaps was a problem. We have very few warning shots ever fired anymore because of the fact that the officer knows when he is in violation of departmental policy by firing a warning shot, discharging his firearm as a warning, that action will be taken.

COMMISSIONER SALTZMAN. So it is, in your opinion, it is clear that if the chief of a police department does transmit to the officers his attitude in a strong manner that he can produce a change in the accountability for the positive as has happened here in Houston?

MR. THALER. Yes, sir, in my opinion, he can.

COMMISSIONER SALTZMAN. Has the work of the IAD, do you think, contributed and, if so, how?

MR. THALER. I can speak perhaps from personal knowledge as far as investigations are concerned. I answered a question earlier regarding the form in which investigations were conducted prior to IAD being formed and that is that each division investigated the complaints, the discharging of firearms, things as such. In addition, of course, if someone was injured, homicide would made the investigation.

However, the number of supervisors—and supervisors did the investigating—that we had on the street, in addition to the other duties, were not able to expend ample time to fully cover the investigations. Whereas now the internal affairs division—I'll use this term—leaves no stone unturned, even though in cases it takes an investigation a considerable period of time to conclude, but if there is a witness who we may be able to contact or any evidence which may be brought forward, all of this is included in this report.

So I'm speaking from both sides of an investigation, I've made investigations when I was in the uniform division as a supervisor and now being in internal affairs division and can see the difference in the quality of the investigations.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. I would like to just ask one question. We focused a good deal on the relations between the district attorney's office and the police department, but we've used for illustrative purposes a homicide case. If you're not dealing with a homicide case, what kind

of a relationship exists between the district attorney's office and internal affairs in connection with investigations that you may be making in cases that do not involve a homicide but still involve possible violation of law on the part of a police officer?

MR. THALER. Okay, we deal specifically with the special crimes section of the district attorney's office and in connection with criminal activity. That's been most of our involvement and that is basically the individuals of assistant district attorneys that we have dealt with.

CHAIRMAN FLEMMING. Thank you.

Mr. Nunez?

MR. NUNEZ. The internal affairs unit is, or division, has been established for approximately several years, and you do have a relationship with the newly constituted civil rights unit at the district attorney's office, if I understand your testimony this morning. Captain Thaler, you as a director of this division, are you professionally satisfied that the relationship between the police department and district attorney is all it should be and that the organizational pattern that you've developed is adequate to meet all the needs?

MR. THALER. You're speaking of the new division in the district attorney's, the civil rights?

MR. NUNEZ. The organizational framework.

MR. THALER. The organizational framework, yes, sir, and a meeting will be held with Mr. Terry Wilson this Friday in order to formalize policy as to how we are going to operate and proceed.

MR. NUNEZ. The divisional responsibility I'm getting, because there are obviously some joint enterprises you might be embarked up on.

MR. THALER. Exactly, sir.

MR. NUNEZ. One last question in this regard: as a director of that unit, do you have any thoughts about making it, improving on the present system, or do you feel that it is totally adequate at the moment?

MR. THALER. Improving on the internal affairs?

MR. NUNEZ. Yes, in its relationship to the district attorney's office and in the handling of serious police complaints by citizens.

MR. THALER. Well, of course, being just a fairly new unit at the present time and just venturing into it, certainly, just like the internal affairs division itself, we're making improvements every day and I'm sure we'll find some improvements to be made; however, until we determine what the problems are, if there are any problems, or what the best course of action is, we will improve on that course of action.

MR. NUNEZ. You're sure you're on the right track?

MR. THALER. We're on the right track, yes, sir.

CHAIRMAN FLEMMING. We appreciate very much your testimony. Thank you for being here. We are in recess until 1:15.

Afternoon Session, September 12, 1979

CHAIRMAN FLEMMING. I ask the hearing to come to order, please. Counsel will call the next witness.

Ms. STEIN. Chief Caldwell.

[Harry Caldwell was sworn.]

TESTIMONY OF HARRY CALDWELL, CHIEF, HOUSTON POLICE DEPARTMENT

Ms. STEIN. For the record, chief, would you state your name and your position and the length of time you served in that position?

MR. CALDWELL. Yes, my name is Harry Caldwell, and I'm chief of police of the Houston Police Department at this time and have held that position since June of 1977.

Ms. STEIN. And could you briefly tell us, chief, what positions you have held and what responsibilities you had in the police department before becoming chief?

MR. CALDWELL. Yes. I was an assistant chief, a deputy chief, an inspector, a captain, lieutenant, a detective, and a patrolman prior to that time.

Ms. STEIN. What responsibilities—in other words, I understand you had responsibility for the sections that dealt with recruitment and training during the time before you became chief?

MR. CALDWELL. Yes, at one time. As patrolman I was a field officer, and as a detective I worked in training and personnel and as a homicide investigator, and as lieutenant I worked as the assistant director of training and personnel as a field commander. As a jail lieutenant—as a captain I headed the community relations division, the police academy, for a short period of time the jail division; as an inspector I headed the entire staff services bureau training personnel. Those sorts of functions.

Then as a deputy chief for a period of time I had the support services, which included all the support services with the department; as an assistant chief, I headed what was known at that time as the inspec-

tions command which included the police academy, training, selection, personnel, and the ancillary functions attached to those sorts of things.

MS. STEIN. How much input did you have into departmental policymaking prior to becoming chief?

MR. CALDWELL. Significant.

MS. STEIN. Could you tell us for the period of time when you were deputy chief, an assistant chief, what form that input took?

MR. CALDWELL. Well, it depended to a large extent on who the chief was at that time, the degree of input that the assistant chief or deputy chief had.

Under Chief Bond we worked very closely in the implementation of policy. It was my job when the chief of police identified a problem to try to promulgate policy to deal with the concerns of the chief of police, and depending, again, on who the chief of police was, the degree and extent to which he opted or felt comfortable with input.

MS. STEIN. Since becoming chief, you have instituted a number of policies that are of interest to the Commission in its study. I'd like to ask you about some of these policies and ask you particularly how and why the policies came into being. In other words, what was the reason you felt they were necessary and how did you go about deciding what the policy should be, beginning, please, with the deadly force policy?

MR. CALDWELL. Yes. I thought that the State law was overbroad in terms of the definition of the use of deadly force. At that time there existed some professional differences of opinion as to whether a chief of police had the prerogative of establishing firearms policies that were more restrictive than the State penal code or code of criminal procedure.

I opted to test that theory, to determine whether or not in fact the chief of police could make it more restrictive. The reason was pretty simple; I felt we needed to place a higher priority on human life, that unless the police placed a high priority on human life, we could hardly anticipate that anyone else would do so.

Therefore, shortly after I became chief of police, I instituted a policy that restricted the use of deadly force in the Houston Police Department to those circumstances where an officer felt his life was in danger, those circumstances where he felt someone—he or she felt that someone else's life was in danger, or under circumstances where a person had used deadly force in the commission of a crime and the officer reasonably believed that the escape of that person might endanger the lives of other persons that he or she could use deadly force.

This was only part of a package of policy changes that I made shortly after becoming chief of police in June of 1977.

MS. STEIN. Who did you consult with in making these decisions?

MR. CALDWELL. I prayed a lot and consulted with the staff, the command staff of the Houston Police Department, and the general staff of the police department shared with me the great concerns that I inherited when I became chief of police.

We were of a consensus, although I assumed full responsibility for these policies; insofar as they are in error, the errors are mine; insofar as that department is in error, the responsibility is mine, solely and exclusively.

So far, this as the Commission has heard testimony that we are all criminals cut from the same mold as the pimps, whores, and thieves that we deal with on the street; then I want to be counted with my officers in that regard, not to be separated from them in any way, shape, form, or fashion. All of the policies of that department are ultimately exclusively my responsibility as is the firearms policy. No policy, however, is established without consultation with my staff.

I then must make a decision. I did so in the case of the firearms policy. This is a policy that will remain in effect as long as I am chief of police or for whatever period of time that might be.

Ms. STEIN. Could I ask you about the burglar in the building policy?

Mr. CALDWELL. Yes. Yes, it was my feeling that there were few offenses involving burglary that carried a death sentence. I did not feel that the life of a single officer in the Houston Police Department was worth the capture of a single burglar in the city of Houston. I felt that particularly given the problems that we had experienced prior to my becoming chief of police, that it was necessary for us to reinstitute some very basic police policy that existed in the department 25 years ago and somehow we had sort of drifted away from; that was requiring a backup unit to be present before an officer entered the scene.

In addition to that, it was my opinion that a great incentive for supervisors to remain on the street with the troops whom they were responsible for supervising was a requirement that he—by answering this call with the officers and direct multiple police officers and in a multiple police unit operation—therefore, I instituted a policy that required that we would, in essence, wait until hell freezes over before we would enter a building and have to shoot a burglar or be shot. I'll point out to you, essentially it's worked exactly that way. There are officers, certainly, who do not appreciate this policy as I'm sure there are members of this staff who do not appreciate all its policies. To their credit, they have followed it to the letter.

My feeling is it is a very efficacious policy; it is a very humane policy; and it is a sound policy; and I'll point out there's not been a single police widow on the payroll as a result of a police officer having being shot by a burglar since that policy went into effect. I've been asked, "Don't you lose some burglars?" The answer is, I could care less how many burglars I loose as long as we place a high priority on human life. Again, I think the facts will have to speak to themselves; it doesn't make any difference what I say. I think the facts are pretty obvious as to the results of that policy.

Ms. STEIN. Finally, the chase or the fresh pursuit policy?

Mr. CALDWELL. Yes. The fresh pursuit policy was first initiated under the administration of former Police Chief B.G. Bond. This was

a policy that I was privileged to assist in preparing. This is a policy that provides for a limited number of police officers to be involved in very closely controlled circumstances, as close as may be in the very confused atmosphere that sometimes exists on the streets.

You must keep in mind that police chases do not occur in a sterile atmosphere of a conference room; they occur out on the streets under very trying and hazardous and dangerous circumstances to their officers, but insofar as we could possibly control tactical procedures, it was felt that the chase policy should be instituted.

To their credit again, the officers have followed this policy consistently. There have been violations of this policy. That doesn't disturb me. As I recall, Moses walked off of Mount Sinai with 10 Commandments and people have been violating them ever since then.

I think the important thing is that they constitute a set of regulations that govern conduct. The fact that individuals may not follow it is simply a phenomenon of human behavior. The important thing is whether or not this behavior is institutionalized and is there a policy that covers it and there is a policy that covers chase. I suspect in the year 2000 that police officers will still be violating policies because we'll still be using human beings.

MS. STEIN. Well, the extent or number of persons who do violate these policies or the number of occasions on which they're violated would probably be important in assessing how effective they are. Do you have an impression of how?

MR. CALDWELL. I think that is a simplistic approach to a very complicated tactical situation in the field. It would occur to me that when one would start worrying is when someone—if there was a need for a chase and nobody came to the party, now I would begin to worry. The fact that our officers have never exhibited any reservations in trying to do their job under all the guidelines that I've imposed on them, which have been significant, and still have maintained their dedication to this job is a matter of encouragement to me.

The fact that occasionally they violate a policy is something that has to be looked at in terms of whether this was wanton and malicious in nature or whether it was as a result of confusion on the streets. And again, I must emphasize to you that unlike the television carefully scripted scenarios that we see marching across the screen, real life is extremely more complicated and seldom such clear-cut issues present themselves.

It does concern me when officers violate the policies, and we take action if it appears to be wanton or malicious in nature. Again, policies are guidelines that govern the conduct of human beings. As long as I send them out to make judgment decisions, I anticipate that they will err, occasionally, in their judgment. I anticipate that the policies—some of the policies of that department will be violated tonight. The question to be resolved is whether these violations are wanton and malicious, rather than caused by either a misunderstanding or a confu-

sion over a tactical situation. It could well occur that this policy will be violated, but again it will always stand as a guideline, a hallmark against which we measure the professional conduct of the officer.

MS. STEIN. My question, chief, was do you have an impression of how frequently violations occur?

MR. CALDWELL. No, I don't think I could form a hard impression in that regard. I would say that I would not suffer a cardiac arrest were someone to advise me that a policy had been violated. The important thing is, What do you do about it when it is violated? I can't give you any numbers. I can't tell you whether it was violated 37 times this week. I don't know. I only know about those that came to our attention.

MS. STEIN. Well, chief, we've received over the past 2 days a certain amount of testimony that your intentions are good and your policies are good, but that they are not being carried out and that is not being reflected on the street, that there are still very frequent incidents of abusive conduct and excessive use of force. My question to you is do you feel that you know what goes on in the streets, and, if so, how do you know?

MR. CALDWELL. Well, the thing that amazes me, counsel—and please, I want to point out I answer this in all sincerity. Sometimes it is difficult to emotionally detach oneself professionally from your life's work, but I'll do the best that I can. The thing that amazes me is that you are amazed. You must recall that what I am asking a young man to do, or a young woman, is to go out into the world and make judgment decisions 24 hours a day, 365 days a year.

Now, the fact that it amazes you that some of these young people exercising human discretion in making judgment decisions err—yes, the officers sometime violate the policies. Again, I don't understand why, instead of receiving the approbations of an observer for having established the policy, that we should be condemned because there are those who do not obey it.

I'll point out to you, again, that the State legislature passes laws and people disobey them. I suspect, although I have no hard evidence, that perhaps even a Federal agency might have a rule that is not obeyed by their employees; nevertheless, I think they realize that they established conduct standards and that's important.

In fact, again, I'm—I understand that my officers will violate the rules and regulations of that department. They do so because they're human beings, not because they're evil persons, because they're human beings trying to make judgment decisions under very difficult circumstances.

Now, I refuse to be separated from my officers. If there exists fault with that department, the fault is mine, the fault is exclusively mine, and if there are weaknesses in the operation of that department, the faults are mine and exclusively mine.

Now, the testimony, the naivete of any individual that would expect that any employer could issue a regulation to 3,000 individuals and then anticipate that every one of those individuals would accept it in the spirit and intent with which they were given and then to obey them explicitly has to be very naive.

It was my good fortune to serve this country in the United States Marine Corps for 4 years. I don't know of any stronger discipline that exists in any organization, and I can assure you that the rules and regulations of the United States Marine Corps were violated quite regularly, so I don't think anybody held the Marine Corps and held the Commandant was an incompetent because we, down in the ranks, had violated his rules. I think instead they said, "He has recognized the need for these rules and has established them." And I anticipate there will always be officers who do not either agree with the rule or obey the rule. The thing they do, however, is violate it at their peril.

MS. STEIN. I think you misunderstood the thrust of my question, chief. I wasn't suggesting that it was unusual that the rules would ever be violated. I was asking if you are in a position to know how frequently such violations occur, how common they are, and, if so, how you acquire that kind of knowledge?

MR. CALDWELL. Well, generally, the violations are called to my attention either by a supervisor or by a citizen, and either internally or externally, unless we know—sometime I read about it in the papers because there are some who feel that the best avenue for exploring this situation is through the media, and I have no objection to this. But when I find out about violations of the rules, it is generally—it is because it is initiated through the supervisory ranks of the police department or because some citizen has made a complaint either to the internal affairs division or through any of the other processes available to them. Did I answer your question? I thought we had answered it twice.

MS. STEIN. Well, let me ask this: are all the complaints that are made to the internal affairs division brought to your attention?

MR. CALDWELL. I think we have explored the concept of internal affairs very carefully. I think you have heard my subordinates whom you chose to have testify here, as you did all witnesses, testify as to the processes in internal affairs. Complaints, as they are adjudicated, are investigated or brought to my attention, and I make the decision regarding disciplinary action, if in fact disciplinary action is called for, retraining, reinvestigation, referral to a psychological evaluation, or whatever, but I think we've pretty well covered what the processes are. Yes, I'd say that those complaints are investigated by our department, come across my desk with regularity.

Now, if your question is, is it possible that one couldn't get—you wouldn't know about it, yes, that's possible.

MS. STEIN. Chief, could we turn for a moment to the question of understaffing. We've heard a lot about understaffing in the Houston

Police Department, and I wonder if you have an opinion as to why the understaffing problem exists?

MR. CALDWELL. I think I could point to several reasons: one of them is that we are involved in an intensely competitive labor market. The deteriorating northern and eastern parts of the country that are suffering from unemployment is not reflected here, where we find ourselves in a boon economy with unemployment rate probably lower than any major city in the United States.

It is necessary then for me to compete with private industry, with the trade labor unions, and with all other employers for the same caliber of young men and women. Sometimes I am not competitive for these young people. The fact of the matter is that our labor market will not provide us with sufficient numbers of men and women to fill an insatiable appetite. Again, there is no other police agency in the United States that's trying to hire 2,000 men and women. We are. So we cannot be satiated in terms of the employees.

If most of the police departments in the United States had the number of people we hire every year, they would be delighted. We're so far behind because of our rapid growth that we cannot stop hiring for the next 10 years and doing so at a very high rate of speed.

MS. STEIN. Do you believe that the fact that you are understaffed tends to contribute to the excessive use of force?

MR. CALDWELL. That's about the strangest cause and effect relationship that has ever been my misfortune to hear. If you establish the principle by which you arrive at cause and effect relationship, maybe we can explore it. I think you found me guilty and then tried me and asked me if I quit whipping my wife. I don't see how short-handedness applies to the violation of the criminal statute by police officers, but if you'll show me your relationship, I'll work on it.

MS. STEIN. Chief, my question was a question—and I think you're wrong to conclude that because I asked it I have an opinion of the answer, but let me suggest several reasons why that might be true. One might be that supervision would spread thinner and officers would not be as closely supervised. A second might be that officers feel they cannot be so easily dispensed with because there are so few people on the force and feel that they don't need to modify their conduct as much as they otherwise might. A third reason is that it requires more force to effect an arrest if fewer people than—fewer officers than necessary are present to effect the arrest—

MR. CALDWELL. Okay.

MS. STEIN. —and if you fear lack of backup support; those are the reasons underlying my question.

MR. CALDWELL. Well, those are some interesting conclusions. No, I think our supervisor ratio is probably comparable to that found in most major police departments. We have 10 to 11 officers per sergeant ratio which is a pretty decent ratio of field supervision.

I believe that, again, our backup resources are adequate for our officers. There are times, of course, when the Fifth Regimental Combat Team would not be sufficient, but then we try to plan for those normal contingencies and I think that normally speaking we are able to provide backup capabilities.

Now, I would say that the use of excessive force, wanton and malicious use of excessive force, is an individual wrongdoing by an individual person. I realize it's a lot easier for us to think in stereotype; if it's blue, we'll just talk about all of it, but I don't think you'll be able to afford that luxury. Individuals commit misdeeds and individuals are called to account for them. I don't think there's any precedent at all for the indictment of a group of blue people. Our people act individually and are held accountable individually for the conduct.

MS. STEIN. Am I correct, chief, that the Houston Police Department is unusual by virtue of having the policy that police officers supply their own firearms? There is not a standard firearm that's prescribed or supplied to officers?

MR. CALDWELL. That's the way it is. I don't know how unusual it is, and frankly I'm concerned but not very much about that. The important thing is not what an officer carries, it's when he uses it. This is his life insurance. I feel quite comfortable with him carrying whatever he feels comfortable with. My concern is when he shoots, not what he shoots.

MS. STEIN. Is there a reason for the policy?

MR. CALDWELL. Well, I might try to think of one right quick. It is his life insurance. He may carry whatever he's comfortable with. I'm not concerned with what he carries. I'm more concerned with when he uses it.

MS. STEIN. There are two thoughts that occur to me why such a policy might present problems: one is that use of nonstandardized weapons makes it easier to supply a throw-down gun in a throw-down gun situation, and the second is that it avoids any possibility of determining what type of ammunition is the best to be used in terms of dealing with situations that may arise with the smallest risk of excessive harm. Do you have a reaction to either of those as to whether they would be good reasons for standardizing the firearm?

MR. CALDWELL. Well, I am not impressed with them being good reasons, but they are opinions held by some persons. First, let me suggest to you that if a police officer was going to carry a throw-down gun, that if you specified as chief of police, counsel, a dayglow shotgun to be worn around the neck, that wouldn't preclude him from carrying a throw-down gun if he was determined to do so.

I further suggest to you that there doesn't seem to be a significant consensus regarding ammunition type. There are some who say you should fire ammunition that punches small holes, and others who say that if you shoot someone you should shoot them with sufficient impact to knock them down or stop them, that you shouldn't be shooting

at anyone unless it is under a circumstance that would justify the taking of a human life. I realize that there are schools of thought that say police officers should carry .22s and others who think .357 magnums are not large enough.

My only feeling is that you establish specific from the top, specific policy regarding this situation, and then the officer has something against which to judge his conduct. Shortly after I became chief of police, I required the registration of every firearm that a police officer carries. Oh, you might ask, "Does that keep them from carrying a throw-down gun, chief?"

There's no way that any regulation passed by the chief of police or anyone else on this earth can keep anyone from doing anything. I submit to you that adultery is against the law in many States and still occurs. The passing of a policy does not—and again this point must be made very clear—it does not ensure that individual conduct will not run contrary to the policy, but it does say that it will not be institutionally condoned and the policy requiring the registration of all firearms by a police officer says to him, in effect, that you may not carry officially any weapon not known to your division. What happens then when you find one? Do you do anything about it? You bet'cha.

On a regular basis, anytime that it occurs—and I'll say it is occurring with less and less frequency—that an officer will even forget to register his firearm, and the ammo type again is subject to a great deal of discussion, not only in police circles but among others.

MS. STEIN. In connection with the firearms registration policy, could you tell us what the responsibilities of first-line supervisors are in enforcing that, in making sure the officer doesn't forget?

MR. CALDWELL. Now, again I tried to explain to you, but I'm going to walk through it again, that we established a policy that precludes a certain type of institutional behavior, that the mere passing of a policy does not ensure that an individual officer could not violate that policy.

I do not propose to hold shakedowns of police officers' private ditty bags to see if they're violating the policy any more than I intend to violate the rights of anybody else in this community, knowingly and intentionally; but he knows that it is a violation of the rules and that if he errs from that rule he does so at his peril, and it is only internally that a person's individual conduct can be regulated, not externally. The only external regulation of human conduct occurs on shotgun row in the penitentiary when you have 10 convicts lined up and somebody sitting at the end of the road with a shotgun making them hoe State's cotton.

There you can control individual conduct. Otherwise, it occurs inside a human's head when he knows it is against the law—policies of that department; the implication is that if he disobeys that policy that he does so at his peril, and if he has and he does, we've taken action. I think it is fully understood.

MS. STEIN. Are you saying, chief, that you feel there are no policies that you can take that minimizes the amount of deviation from rules—

MR. CALDWELL. Oh, I'd say.

MS. STEIN. —being out of control?

MR. CALDWELL. Every policy we have passed is designed explicitly to minimize human conduct. What you're addressing yourself to is, Can you then be assured that no one will violate that rule? I submit to you the Carpenter of Nazareth did not assure us that violations of the beatitudes will not occur, and I can't do it as police chief; I can pass the rules.

MS. STEIN. No, sir, I'm not—I'm asking you what policies have you taken to minimize violation of the firearms registration rule.

MR. CALDWELL. Well, let's talk about some more of them. One of them is that anytime a police officer is found using any firearm that is not registered, immediate disciplinary action is taken, and as you know, I have turned over to the staff copies of data reflecting exactly this; that's available to this Commission, so it is not important what I say. You have the facts in front of you. You can see what we've done, and we have acted on numerous occasions where anytime that we have found that a police officer has utilized a weapon that is not registered, then this disciplinary action has been taken.

But if you are asking me does the sergeant shake them down, the answer is no.

MS. STEIN. My question is, Is any action taken in advance of the discovery of a violation? For example, are the weapons actually checked against the registration cards by anyone other than the officer who in question?

MR. CALDWELL. Again, ma'am, I'll have to defer one of—that question to one of your subordinates to determine whether or not in their periodic inspections, whether or not the weapons are checked against one. I would submit it would take an utter fool to show up at roll call with an unregistered weapon knowing there is going to be an inspection. Again, that is a policy that governs conduct. I can't take any reasonable step beyond setting the institutional policy that prohibits that behavior.

MS. STEIN. You said that an officer is disciplined if he is found to have an unregistered weapon?

MR. CALDWELL. I say the records reflect that that is so.

MS. STEIN. Can I ask what type of disciplinary action is taken for that?

MR. CALDWELL. Yes, you can. It generally reflects a number of days without pay, generally a fine of something in the vicinity of anywhere from \$120 to the equivalent of \$1,000, depending on how many days' suspension without pay is recommended by the chief of police. Sometimes there are mitigating circumstances. The kid bought the weapon that week. He filled out the card; he had it in his ditty bag. He didn't turn in the registration card or it was misplaced or what have you.

Sometimes there are mitigations, but if we—in the routine, first thing internal affairs does in discharge-of-firearms investigations on the scene is determine if the weapon is registered with the division. This is an essential part of every investigation.

MS. STEIN. Since your tenure as chief, a number of, two at least, well-publicized cases of throw-down guns have come to light.

MR. CALDWELL. Yes.

MS. STEIN. It is my impression that the internal affairs division investigation that followed that concentrated on the coverup aspect rather than on the justification or not of the homicide in question. Can I ask you if that's an accurate impression, and, if so, why?

MR. CALDWELL. Counsel, I don't even understand your question. What are you asking me? Would you try to simplify for me, please, ma'am?

MS. STEIN. I'll try. The investigation of the internal affairs division concentrated on the wrongdoing that was involved in covering up the—making it appear that a gun was present—

MR. CALDWELL. That's correct.

MS. STEIN. —when apparently a gun was not. I'm asking, did the investigation go into whether in light of the fact that the citizen apparently had not been armed, whether the shooting itself was an excessive use of force or a misuse use of force?

MR. CALDWELL. Again I'll answer that question, but it doesn't matter what I say. I suggest again that you look at the facts that are on record.

You heard testimony from the U.S. attorney, Tony Canales, who went to great extent to assure you he was no friend of mine and these sorts of things. Not our most ardent critic has suggested once that the integrity of the internal affairs investigation could be questioned. Nobody has yet questioned the integrity; nobody involved with the U.S. attorney's office has yet questioned the integrity of the internal affairs division's investigation.

I think you even heard testimony to the fact that investigations were very thorough. Now, while we're talking along those lines, please allow me—permit me to suggest to you that the Torres case was not discovered by anybody other than the Houston Police Department who investigated it, notified the U.S. attorney, found out about it, fired the officers involved, testified against them at every trial that occurred, and took disciplinary action.

The Webster case—when the Webster case first came to my attention, after it had occurred—again, all of these are prior to 1976. I know there's been a question: well, did it occur in 1978? Did it occur since you've been chief of police? The answer is no. This occurred about 1976 and the minute that case was brought to our attention, we participated with and did a significant amount of the investigation.

The Joyvies case was discovered by the Houston Police Department, came to our attention, thoroughly investigated the case, and followed exactly the same procedure.

For some reason, I don't think that our department—I've heard testimony, there's been a lot of publicity. That publicity is because of a decision that we made to deal with our problems right on top of the table where everybody could see them and to try to resolve every question about our credibility. That includes the Webster case and the Joyvies case and the Torres case, and in every one of those cases nobody has questioned the thoroughness of the investigation or questioned the integrity of the internal affairs division.

Now your question whether or not they reinvestigated the homicide phase of it. This was an integral part of the investigation, and again, I refer you to the investigation insofar as you have access to it.

MS. STEIN. So, you're saying that the reinvestigation was directed as whether—

MR. CALDWELL. At the totality of the circumstances involved and no one has questioned the integrity of those investigations.

MS. STEIN. I am not questioning integrity; I'm questioning extent at this point. Did it involve the justification—justifiability of the shooting?

MR. CALDWELL. Again, I can only tell you, ma'am, that it covered every facet, every phase of the case, including the weather report at the time.

MS. STEIN. Did it cover the question of possible perjury on the part of officers in their statements?

MR. CALDWELL. Every question was covered. Every question, every question was submitted to the U.S. attorney; the officers offered testimony and evidence in every way that was asked of them, I think cooperated fully in terms of the investigation. It included every facet of the case.

MS. STEIN. Chief, is it your practice to speak out publicly in defense of an officer's actions after a shooting has occurred, before there has been a full investigation by the internal affairs division?

MR. CALDWELL. It is my policy to share the preliminary reports of the internal affairs division. We do not operate in a vacuum in a metropolitan police department. We occupy a position of great interest to the public. We have the press living with us in our building, set at the very juncture of the crossroads of the third floor of the police station, and when an incident occurs, I have no media capability; therefore, when I am asked about an incident, I respond according to the information that I have.

I generally get a preliminary report. I then advise the press regarding the results of the preliminary investigation and then explain to them that a full and complete investigation will be completed in a period of time, but I generally share with them the results of the preliminary investigation, if that answers your question.

MS. STEIN. Do you think by stating your tentative conclusion that the officer acted properly, rather than saying the matter is under investigation and that you will reveal the results of the investigation, that this tends to prejudice the conduct of the investigation?

MR. CALDWELL. Do you think you could restate that question in some semblance of objectivity?

MS. STEIN. Did you understand the question?

MR. CALDWELL. Oh, I understood it. Let me say that I don't always say the officer was guilty, and again, it doesn't matter what I say. I think it is important that you look at the media clippings again that I've made available to you, or will at your convenience, and it only states whatever the preliminary investigation states.

Sometimes it states that it appears the officer is in error. And other times it would appear that the officer has acted within the law, but again, it all depends on the final investigation, but there is no conclusive conclusion that every time an officer is involved that I stated that he acted properly.

I state whatever the preliminary report tends to indicate, so that was the reason for my objection to the question, ma'am.

MS. STEIN. Do you think that the public perception might be that by your stating that your preliminary—to preliminary appearances that the officer acted properly, do you think that might create a perception in the public mind that the investigation would be inclined to go along with what your preliminary conclusions were?

MR. CALDWELL. I'm sure in some areas of the public that the perception is so deeply ingrained that the police are automatically either right or wrong, that there is little that I could say or do would change this myopic stereotype thinking. I can only tell you that when an incident occurs, it is not my intention now or in the future to cast a huge blackout or an iron curtain around the police department. We work for the people of this community and will continue to answer to them through the media of this community for conducts and actions.

I have no intention of going into a closed shop operation. We'll operate on top of the table and that includes making statements to the press about preliminary investigation.

MS. STEIN. If information were brought to your attention that an investigation of a police shooting had not uncovered all the facts, what would you do about that, if the investigation at that point were already complete and the officer had been exonerated?

MR. CALDWELL. Well, then we go back and open the investigation as we did in the Webster case, ma'am.

MS. STEIN. If you did that, would it be assigned to the same investigative unit?

MR. CALDWELL. Well now, in that it hasn't happened to me as best I can recall—so I don't know whether it would be assigned to the internal affairs division—if the internal affairs division did not discover all the facts in the case, it is not uncommon at all for the internal affairs captain to say, "Hey, chief, I need another 30 days on this case. I want to look at something else. We don't have the all the gaps filled in." Or I might send it back to him, "Hey, have you thought about this? Have you looked at their capability?" So what we're doing is

human work by human beings. You must not be amazed if we occasionally err and make a mistake. I anticipate we will. We're not going to get all the facts. The Supreme Court of the United States generally votes on a 5 to 4 decision and they have everything in front of them. Generally, all we have is an accusation, a denial; sometimes it is difficult to get all the facts, but we do the best we can.

MS. STEIN. Are you saying this has never happened, that you have never sent one back?

MR. CALDWELL. No, ma'am, I spent about 3-1/2 minutes explaining that it happens quite often, that we send information back and forth. If you have a specific case in mind, we could probably talk about that, but if your question is, if an investigation were made by homicide and you later found out that it wasn't true, would you send it back, and the answer is no, I probably won't send it to homicide; send it to internal affairs.

MS. STEIN. I have no further questions, Mr. Chairman. Thank you.

CHAIRMAN FLEMMING. Chief Caldwell, as you know, and as counsel has brought out, there has been a considerable amount of testimony to the effect that, in the opinion of some persons within the community, policies that you have instituted are sound, but there has been some difficulty in terms of the implementation of those policies in such a manner for them to become truly operative at the street level. You, in response to questions from counsel, have said that you recognize, as all administrators do, that this is always a problem, and we can make policy decisions, but it is another thing to get them fully implemented down to the lowest level.

MR. CALDWELL. Yes, sir.

CHAIRMAN FLEMMING. But you also said that it is clear to your people that if they deviate from those policies they do so at their peril.

MR. CALDWELL. That's correct, Commissioner.

CHAIRMAN FLEMMING. Do you have full authority to determine the nature of that peril?

MR. CALDWELL. No, sir, I don't have full authority. I have a range of options available to me. I can recommend indefinite suspension, and from that end of the spectrum, I can award a written reprimand. So between those two options, I have other capabilities.

Sometimes the problem relates to retraining, reassignment. Sometimes it involves an appearance from the administrative personnel committee for complete psychological and physical evaluation.

I have quite a few options available to me, but I'll say this. Under the civil service law, it is not always easy for a chief of police to exercise the type of discipline that he would prefer. Now, I'm not sure that's all bad because it perhaps guards against an impetuous chief of police.

On the other hand, chiefs of police, I think, would lack the authority perhaps to exercise more options as most administrators would, I think. Again, the points I would make with this Commission is simply

this, Mr. Chairman: that in those cases where we have seen a need for the establishment of policy, we have tried to do so. Insofar as assuring that this policy will dictate individual behavior, I can't do that. I can only say that everybody knows the rules. I established, shortly after I became chief, a field training officer program which I was concerned primarily with not how to do the job but the spirit and intent behind the rules and regulations, and I think you heard from my young people about how it works. It is not perfect, but it is something, and we think it is better than what went before it, where you simply put a man or woman out in the street. I think we are putting the best young men and women in the FTO program. We think they understand the rules.

The unrealistic expectation that I can ensure individuals will not contravene my orders is something I simply cannot say. I would like to say that I need only issue a rule and be assured that it will be carried out, but this is not the case.

CHAIRMAN FLEMMING. We understand that is the case. The thing I'm interested in, however, is the system that you've instituted and the extent to which you controlled that system for dealing with situations when there is deviation.

MR. CALDWELL. I think again that the record submitted freely by me to the staff of this Commission will reflect exactly what's happened as a result, Mr. Chairman. Again, I don't think it is important what I say. I think it is important what the facts show, and I think, again, the information that I provided your staff will reflect, in no uncertain terms, that the impact is there, and that action is being taken and that we are returning to a posture of accountability of which any police department can be proud.

I want to take advantage of this opportunity, Mr. Chairman, to say this: that it has been my mixed pleasure to sit during the entire Commission's hearing, and you've heard those persons that the staff has brought before you for to hear.

There are many other voices in this community that perhaps time would not allow you to hear. There are many other persons who, perhaps, but for the press of time or for what they had to say, would have been here.

But I want to tell you that our department is returning, I think, firmly convinced, to a position of accountability, not that we'll ever satisfy all those voices in the community, because we won't, and I know that, but we'll continue to try.

Now I've heard reference to the minority community distrust of police. We haven't heard the minority community; you've heard from certain spokesmen and it may well be true, but if there's one left out there, just one member of the black community that has faith in that department and our administration, I intend to build on that one person as best I can to establish the credibility of this department.

Now, we're going to continue to make mistakes because I'm using human beings, not super ones. But we are going to continue to

try—when this Commission goes back to Washington, I'm going to continue to try and do whatever we can here.

CHAIRMAN FLEMMING. Right along that line, I did want to have another line of questioning here, but right along that particular line, do you have a plan—do you follow a plan of meeting regularly and systematically with the representatives of various minority groups within the life of the community?

MR. CALDWELL. Mr. Chairman, I'm not only meeting with the grass roots people; I'm meeting with the taproots people. I don't know of another chief of police in a major city in the United States that goes out and spends 3 hours with eight black citizens that wanted to talk to them, but I tell you I hope they do, because it is very encouraging and very rewarding. I have in the 2-1/2 years or whatever years I've been chief of police met with over 140 separate occasions with members of my minority community.

Now, I'm going to ask you at this time for permission to—because the Commission won't have a chance to hear this testimony, because apparently the list got filled up before any of the folks that would have testified knew it was there, so I'd like to give you this booklet that shows just our efforts in the Spanish-speaking community.

It is unfortunate you didn't have a chance to hear a little of what we've been saying: institution of the Hispanic culture classes, the assignment of my officers out in the field into the community where the people live so they can be of service to them, and these other things, but I understand that press of time does not allow it. But I would to submit these booklets, if I might, and ask you to look at them because—

CHAIRMAN FLEMMING. We'll be very happy to make it a part of the record of the hearing and appreciate your presenting it to us.

Going back where we started, as I understand it then, you recognize that, as you put it, the civil service system limits your ability to, in effect, define the peril to some degree.

MR. CALDWELL. Yes, sir, I think that would be less than—

CHAIRMAN FLEMMING. Am I correct in concluding that you feel that you can still operate effectively within those limitations and that you don't feel any necessity for pressing for a change in the basic civil service laws so as to give you more maneuverability in the discipline area?

MR. CALDWELL. I'm not that happy with it; there are aspects. The civil service law was a law created in 1948 designed to be the greatest piece of equal employment ever devised by man because without reference to race, to creed, to color, or national origin provided everybody an opportunity to be promoted through the ranks to get a job as a police officer, and in theory it was great. The only problem was it involved people, and people weren't great.

The law is 30 years old. I don't think there's any question that it needs some revision, Mr. Chairman, and some of the areas—again, I'm

the only major city chief in the United States who does not have the options of appointing his own staff. I'm not saying again that's good or bad, but it is a fact. The fact of the matter is I have a staff that I would appoint categorically in the morning if I were given that authority because they are men of great professional stature and whom I hold in great regard. They don't always agree with me; it is not their job to always agree with me; it is their job to get the job done. But there are some revisions that need to be made in the law. I will be addressing myself to those at the next legislature.

One of them I don't like is that 6 months' provision. I think it's ridiculous. The presumption that if anybody could hide something so deep that it wouldn't surface for 6 months that they ought to march on free—that is patently ridiculous and it ought to be changed.

CHAIRMAN FLEMMING. Another one that I would like you to comment on briefly is the limitation that is placed upon you as far as promotions are concerned.

MR. CALDWELL. Sure, fine, let's talk about it.

CHAIRMAN FLEMMING. If I understood the testimony from the civil service commission this morning correctly, you, in effect, are given an eligible list and you really have no option other than to go down that list.

MR. CALDWELL. That's the way it works pretty much, Mr. Chairman. I don't design the test. I don't design the system for promotions. I don't grade the test. What I do is they present a list of eligibles and I promote off that list unless there exists good and sufficient reason that can be upheld before the commission for passing somebody on the list.

CHAIRMAN FLEMMING. You not only promote off that list, but you have to start at the top of the list; is that right?

MR. CALDWELL. Yes, the rule of three is available theoretically, but the fact of the matter is that if you exercise the rule of three, then you must have almost the same reasons for passing a person as you would for demoting them or disciplinary action, so it is not as if the chief said "Hey you know, one, two, three are nice guys; I'll take number two." It is not that way at all.

In life you have good and sufficient reason to pass one; then he has a right to appeal to the commission, trial de novo in the district court; then you better have your facts together. Oftentime you don't know how a person is going to perform as a sergeant and have no way of knowing until he gets on the job. It is—it does present some problems, sure.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Chief Caldwell, in your response to one of counsel's questions, I believe you said that the police officer has a right to carry any kind of gun that he's comfortable with.

MR. CALDWELL. Yes, ma'am. Well, I wasn't quite right on that, Ms. Freeman.

COMMISSIONER FREEMAN. A .22 caliber or a .357 magnum. Do you have a record of how many police officers are carrying around .357 magnums?

MR. CALDWELL. Just a bunch, those that couldn't get .44s.

COMMISSIONER FREEMAN. How many?

MR. CALDWELL. I don't count them, Ms. Freeman.

COMMISSIONER FREEMAN. Half the police force?

MR. CALDWELL. I don't know, ma'am. I haven't directed myself to that question. Let me say that, I wasn't quite clear on that, but I'd like to get clear on it.

There are certain types of weapons that officers cannot carry and that is automatic weapons, rifles; they cannot carry those because if a rifle or automatic weapon fire will be delivered it will be delivered by the SWAT team under different fire circumstances, but they may carry a sidearm as long as it is .38 caliber.

Now there's another restriction you ought to be aware of, that your staff has all the regulations on that I gave them. It says that during the first tenure, first year in office, that he must carry a revolver; after that he may opt for that weapon with which he feels most comfortable, or she, as the case may be.

COMMISSIONER FREEMAN. Would your office have any information or have you ever done an analysis of the complaints of excessive force to determine the extent to which those officers who are charged with abuse of their weapons had been using the .357 magnums or whatever?

MR. CALDWELL. No, ma'am, we have not been able either professionally, within the profession or to find any psychological basis for relationship between the caliber weapon that an officer carries and his conduct. There are those who ascribe to a phallic relationship and other types of psychological implications, but we haven't been able to establish this either professionally or within the department, ma'am, and I have no information along those lines. There is a school of thought that—

COMMISSIONER FREEMAN. One of the reasons for this, there was testimony yesterday, and you heard it—

MR. CALDWELL. Yes, ma'am.

COMMISSIONER FREEMAN. About the fact that in certain, especially in the minority communities, there are two situations that have been at least reported rather often and that is the the situation of harassment by the police following the report of a complaint and then the fear in the community against the police officer because, I suppose—all I know about a magnum is what I see on television. If a police officer is walking around with that, you would ordinarily not think he is there to protect you. So I would want to know if you have made any analysis to the extent to which these incidents whether, one, there are more or less, depending on the weapon that is being carried.

MR. CALDWELL. Well, if there's a relationship between the caliber weapon being carried and the complaints of harassments, ma'am, was that the question now?

COMMISSIONER FREEMAN. And fear that the presence of the police officer imposes in the community.

MR. CALDWELL. By virtue of people seeing him with a large weapon? Let me see if I have a uniformed officer in the audience. Do we have a uniformed police officer?

COMMISSIONER FREEMAN. With a .357 magnum.

MR. CALDWELL. With anything. Would you stand up, brother, and show the Commission your holster, please, just turn sideways.

As you can see, Commissioner, all holsters in the Houston Police Department carry flaps and the only way a person would know what that officer is carrying is going up there and opening his flap, which would not be recommended, or to go around in back of him and try to peer at it, but as you can see, nobody would even know what was he carrying unless he told them.

COMMISSIONER FREEMAN. You can explain to me, is that—what is the difference between that particular weapon and a .357 magnum?

MR. CALDWELL. The one he's carrying?

COMMISSIONER FREEMAN. Yes.

MR. CALDWELL. I don't know what one he's carrying unless there is somebody on the Commission can. Stand up again, police officer, and see if we can discern the caliber of your weapon. Can anyone on the Commission tell me what he's carrying?

COMMISSIONER FREEMAN. I said I don't know the weapons. I just wanted to know.

MR. CALDWELL. What are you carrying?

THE OFFICER. .45 automatic.

MR. CALDWELL. A .45 automatic. He is carrying a .45 automatic. I could not tell from here, ma'am.

COMMISSIONER FREEMAN. Now, what does a .357 magnum look like? Is it one of those automatic rifles that you would—long—

MR. CALDWELL. No, ma'am, it is a pistol like this that would punch a hole through 4 inches of concrete.

COMMISSIONER FREEMAN. That's what I thought. The community knows that.

MR. CALDWELL. I suspect they do; ma'am' most of them are carrying them. I didn't mean to be facetious, ma'am; but I'm sure they know what a .357 magnum is.

COMMISSIONER FREEMAN. And you said about half your police force carries them.

MR. CALDWELL. I said I didn't know, ma'am; but I wouldn't be surprised if there were that many. As a matter of fact, I think we issue .357s out of the academy. It is a very servicable weapon and has a lot of flexibility in terms of ammunition load.

COMMISSIONER FREEMAN. I would like to go back to the profile of your police force. You have 3,000 officers, 185 black. Now in this community, which is 25 percent black population and 13.8 percent Spanish population, one of the concerns in the community is when the

force, such as a police department, does not reflect in any respect, because in this instance it is only 6 percent black, none at the top level. Has this—has your office ever made any determination that you needed to participate in affirmative action programs to improve the profile and the recruitment?

MR. CALDWELL. Mrs. Freeman, we have had affirmative action since affirmative action was applicable and even before that. We have had an affirmative action plan. The reason, sure, the community knows that. One of the reasons they know it because I tell them every time I get a chance.

COMMISSIONER FREEMAN. I'm talking about the result. We're not talking about affirmative action plan that you talked about. We want the results. We saw the recruitment team last night.

MR. CALDWELL. Yes, ma'am.

COMMISSIONER FREEMAN. They were talking about having gone into Mississippi, Louisiana, etc. What I want to know, what have you done in terms of recruitment within the Houston district population, geographic boundaries?

MR. CALDWELL. We've recruited very hard in the Houston population. The fact of the matter is we have an insatiable appetite that can't be satisfied. One of the tragedies of this city is the fact that it has only 7 percent of its officers black. It is very little comfort to me that Burtell Jefferson, Washington, D.C., can't achieve his population representation either or Detroit can't or Chicago or Los Angeles. It is a problem we all have and not one I take any comfort in. Your staff has information provided to them by me that shows better than a 30 percent increase in minorities' representation in the last 2 years. Now, the only thing to which I could contribute that is the fact we work very hard to try to get more black and Hispanic youngsters in this department.

The fact of the matter is we are not succeeding. I have taken it upon myself to do personal recruiting in this area. I met as recently as 2 weeks ago with a large convocation of prominent black citizens in this community and I asked them not to recommend anybody out of their community to join the police department, not to recommend anybody until they had come to the police department themselves, sat down with me, satisfied every question they had, and then go back and make up their mind. But the fact of the matter is that we hear things like, "If your image improved you wouldn't have any trouble recruiting." I submit to you, Ms. Freeman, if I didn't have any problems, I wouldn't need help recruiting. We need help; we have sought this help; we will continue to do so; and I'm not altogether pessimistic.

We've shown some improvement and your staff have the figures, and I'm sure they shared them or will share them with you. Until we represent 26 percent of the population of this city, and I won't set that as a minimum because there is a disproportionate amount of victimization in the black community. Maybe it should be higher than that, but

it ought to be a goal that we will seek and we will continue to do so. We aren't succeeding as rapidly as I would like to see us to do.

COMMISSIONER FREEMAN. But you're going to keep trying?

MR. CALDWELL. You bet. You may recall Mr. Larry Spencer testifying to you about the PACCI committee, P-A-C-C-I, police advisory committee. The top priority submitted—the chief of police was given the prerogative of submitting three goals. His top goal was police recruitment of black and Hispanic youngsters.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Saltzman?

MR. CALDWELL. Ms. Freeman, may I point out something before you get away. You heard some testimony last night and unless I do it I may never have a chance to do, because I don't know whether you're going to invite me to Washington, but we heard testimony from one of our officers who had been a patrolman for 30 years. Would it surprise you to know that I have 18 other patrolmen who have been patrolmen for 30 years and 56 patrolmen who have been patrolmen for 25 years? It is an unfortunate fact, but I was curious about that when I heard that testimony and checked it this morning. Thank you.

COMMISSIONER SALTZMAN. Chief Caldwell, I am impressed by the vigor and the clarity of your defense of your department. I should expect that and feel that it is altogether appropriate for you to make such a fine presentation on behalf of your department. I should also like to precede my question by saying, I am sure you understand, at least from my point of view, what the Commission is doing here.

We are concerned not alone with Houston but with events around the country. This is part of a national study that we are undertaking that has been the results of complaints and instances of increasing alienation and hostility between police departments, and minority communities, the increasing incidents around the country, seemingly by statistical evidence, of harassments, brutality, police misconduct—to ensure the constitutional guarantees to all citizens. We're not attempting to embarrass or to inflict any damage on the police department here in Houston, but we are seeking your help in coming to some conclusions that we might recommend for improvement of a situation to the President and the Congress.

Now with respect to the question I'm going to ask, I would appreciate it—you need not, unless you feel you want to proceed immediately, answer it right now, but perhaps some written statement toward the end of helping us might be presented for the record. I wonder whether you could respond to the concern that I have. What are the key improvements and policies and regulations in the program that you have already instituted or hope to institute, one, to enhance the effectiveness of the police department's ability to minimize acts of harassment, brutality, and abuse; two, to improve minority police relations; and three, to create an image on behalf of the police department that projects the department's concern for that which you so well articulated, its concern for human life?

MR. CALDWELL. Well, sir, let me say this, that I did not need the Civil Rights Commission to come to Houston to remind me of my duties as a human being or as a police officer for protection of human dignity and human rights. I've spent 26 years of my life laboring in this vineyard. Not always—

COMMISSIONER SALTZMAN. That's not the tenor of my question.

MR. CALDWELL. I'm sorry, sir.

COMMISSIONER SALTZMAN. I did not mean to convey that I'm asking you to defend it. We're looking for help to make recommendations how these accomplishments might be implemented through recommendations to the Congress and the President, how they might be achieved in the policies and in the regulations of the police department, not to suggest that you haven't done that, but you articulated that you are doing it. What I am asking is how is that accomplished so that we might convey this in a national report?

CHAIRMAN FLEMMING. If the Chair might intervene. I think, chief, you should consider the question in the spirit in which it is addressed to you. We are engaged in a nationwide study. We are dealing, we know, with a very serious problem as far as this nation is concerned. We appreciate the fact that there have been various stages as far as the evolution of this problem is concerned here in the city of Houston.

Commissioner Saltzman indicated that in all probability you would not want to respond to sweeping a question that he has addressed to you orally, but that we would be very appreciative if you could dictate a response to that particular question which we could consider as a Commission, as we take a look at this national problem, and as we try to determine the kind of recommendation that we're going to make to the President and the Congress and I would urge you to consider very seriously following Commissioner Saltzman's suggestion.

MR. CALDWELL. Sure, I'll consider Commissioner Saltzman's suggestion to be the highest priority that I have and be delighted to do so, but if I might be permitted just very briefly to respond, I think it is pretty obvious what the biggest problem we face as police and administrators is and that's the concept of accountability. You don't like the internal affairs division approach; we don't like the grand jury approach; we don't like the firing squad; maybe some do—but the question of how does one hold human beings accountable when you send them out into the world to make judgment decisions. I think it is the biggest question that has to be faced, has been and still is faced by police administration. It is an equitable meaningful way to hold people accountable for their conduct.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. A gun is a specialized tool for destruction. I was interested in the use of the word and I would like you to explain it a little bit further; what is your definition of using a gun that you are more comfortable with?

MR. CALDWELL. Commissioner, I don't know, again, how much experience you've had—

COMMISSIONER RUIZ. I have had very little experience, that's why I'm asking that question. What is your definition of a gun that you're most comfortable with?

MR. CALDWELL. Please allow me, I've had a lot. A gun that is comfortable is one you feel you can operate with the greatest degree of confidence, that you feel you can use most effectively, that you feel is the safest, that you feel has the capability of doing what it's designed to do; and this differs with individuals.

COMMISSIONER RUIZ. Well then, I'll ask you another question that comes to mind. Why would an officer be more comfortable with a weapon that will pierce 4 inches of concrete, if that officer is patrolling a civilian district?

MR. CALDWELL. The purpose of the gun is to protect his life—to protect his life if he's being fired upon—and again, we have to assume that he's using it within the mandates of the law and the policies—he's being fired upon, he would need a gun that had adequate penetration to deal with the tactical situation he was dealing with, and I think, again, he would feel most comfortable knowing that the gun would not hit the screen door and splatter off.

COMMISSIONER RUIZ. A prior witness testified that there was an attempt to legislate a sales tax, if my memory serves me correct, for funding for the department to be placed in a more competitive basis in the labor market. Do you intend to renew your efforts for other funding sources, to lick the department's competitive problem and position in the labor market?

MR. CALDWELL. I intend to make a crusade out of it.

COMMISSIONER RUIZ. You are crusading on it. Can you be more specific?

MR. CALDWELL. I don't think there's enough money in the city treasury to pay these young men and women for what they do every night of their lives. I think a minimum starting salary of \$24,000 would be the biggest bargain the citizens of this city or any other community ever got.

COMMISSIONER RUIZ. I agree with you. What are the funding sources you have in mind?

MR. CALDWELL. Well, the taxpayers around here pay the bills. What's left after they send it to Washington, sometimes we get some of that back, but not very much of it. If we could just get them to leave it here instead of taking it up there and then sending it back in a leaky bucket, it will help a little bit. This is where we get it from, our taxpayers. We don't have any independent stores of money.

COMMISSIONER RUIZ. Do you intend to renew the sales tax?

MR. CALDWELL. We're getting into high finance now, Commissioner. I think I'll go and ask the mayor what my opinion is on that. I'm not sure. We may be looking at a proposition 13 sort of reaction in this community, too; and I think people are tired of seeing money squandered off and—I think, however, that they would be receptive to sup-

porting higher police salaries. I'd sure like to see it get a test at the polls.

COMMISSIONER RUIZ. Very well.

CHAIRMAN FLEMMING. Chief Caldwell, thank you very much for your testimony and we will look forward to receiving your statement.

MR. CALDWELL. I thank you, sir.

CHAIRMAN FLEMMING. We have made one or two statements relative to part of our hearing that will take place now, but let me repeat so that everybody does understand. When we opened the hearing yesterday morning, Commissioner Freeman, in setting forth the rules and the regulations governing the hearing, said that beginning at 2:30 and running until 4 o'clock we would be glad to listen to persons who had not been subpoenaed but who desired to present their views to the Commission. She indicated that she would listen to them under a strict 5-minute rule. She indicated that we would listen to them in the order in which they signed up with members of our staff.

Yesterday, at noon, I announced that 17 had already signed up with the staff. We obviously cannot listen to more than 17 between now and 4 o'clock.

I will ask counsel to call these witnesses in groups of five so they can come to the witness table, and I can swear them in five at a time.

Counsel will keep time. She will indicate when they have used 3 minutes, and then at 5 minutes the person will have to stop. However, if the witness has a statement, the entire statement will be included in the record of the hearing.

In addition to that, if there are other persons who desire to participate under this 5-minute rule and who did not have the opportunity because they indicated their desire after the 17 had signed up, we would be very happy to receive a statement from them in written form and that also will be made a part of the record of the hearing.

We do have to remind everyone that we cannot, under our law, take in open hearing any testimony which would tend to defame, degrade, or incriminate an individual. I think that covers the rules that we follow in connection with this part of all public hearings that we hold. With those opening comments I'll ask counsel to call the first five witnesses.

MS. GERE BENICS. Dimas Benoit, Lazelle Stewart, Walter Ballard, Mrs. Santos Rodriguez, Harold Eugene Dewalt.

Mr. Chairman, while they are coming forward, I've already been given three statements. I would like these statements of Neil Izben, Phyllis Frye and Jordan Spouse to be entered into the record at this time.

CHAIRMAN FLEMMING. Without objection, they will be entered into the record as a part of this portion of our hearing.

CHAIRMAN FLEMMING. May I ask five of you to stand, please, and raise your right hands.

[Walter Ballard, Dimas Benoit, Howard Eugene Dewalt, Mrs. Santos Rodriguez, and Lazelle Stewart were sworn.]

STATEMENT OF DIMAS BENOIT, SR.

MS. GERE BENICS. Beginning with Mr. Dimas Benoit, state your full name for the record?

MR. BENOIT. My name is Dimas Benoit, Sr.

MS. GERE BENICS. You may proceed with your statement, Mr. Benoit.

CHAIRMAN FLEMMING. You understand the 5 minute rule?

MR. BENOIT. On March the 11th, 1977, Houston police officers arrested my son in the front yard, right by my step, and took him to jail. At that time they terrorized my whole family and continually they've been harassing the family up until now. They've been driving in front of my house in paddy wagons, slowing down right at my house, showing me the peace sign in this manner [indicating] whenever I happen to be on the outside, and also in police cars.

Now, sometime when I be driving maybe at night or something, I have noticed police officers would put their red light on behind my car and then they'll—when I proceed to pull over to stop, they'll bypass me and cut right in front of me and I have to hit my brakes to keep from maybe jamming into their car.

Since that time, they arrested my son on numerous occasions, Dimas Benoit, Jr. He is now in mental hospital in Rusk, Texas; he was also in a mental hospital in Austin, Texas, last year. Dimas Junior is ill from the service. He come home. He catch a seizure; he has a mental blockage. He has been seen by doctors.

On the 28th of June of this year, Dimas Benoit, Jr., was beaten in the Harris County jailhouse the day before they sent him to Rusk. Now, the arrest was made in March of this year, March the 8th. They accused him of something that happened on the 12th of February. I'm sure that the Houston Police Department are very aware—well aware of the car that Dimas Benoit, Jr., has been driving all along because they are so familiar with my car; they are so very familiar with me.

They are continually harassing my whole family. I am asking you, ladies and gentlemen, if there is any way that you all can help us to let us live a peaceful life here in the United States. I am a 100 percent service-connected disabled veteran. I lost my health in the war in Korea. I am very comfortable in United States of America because I'm a native-born American and I love this country so dearly.

If you all listen to me, ladies and gentlemen, I'm asking in the name of the Lord, Jesus Christ, please help me and help my family that we can live here on this earth in peace in the city of Houston, and if we can't, I would appreciate it if someone could help me to move somewhere else where I may live in peace, me and my family.

I would ask you if there is any way that you can help my son to come home to me. Certainly he is a good child, but he has this condition and he is under medication now.

MS. GERE BENICS. Thank you Mr. Benoit.

MR. BENOIT. I thank you all. May God bless all of you.

STATEMENT OF LAZELLE STEWART

MS. GEREENICS. Lazelle Stewart, would you state your full name?

MS. STEWART. Lazelle Getry Stewart.

MS. GEREENICS. Thank you, you may proceed, Mrs. Stewart.

MS. STEWART. My name is Mrs. Lazelle Getry Stewart. I live 3228 Melbourne, Houston, Harris County, Texas. I have been employed as a history and civics teacher with the Houston Independent School District at Thomas Edison Junior High for 18 years. I am also on the Honor Society at this school. My son, Charles William Stewart, Jr., was shot and killed by an off-duty Houston police officer on Saturday, June 30, 1979, at 2 a.m. at Madrid East Apartments, 6113 Gulf Freeway.

Prior to this incident, my son had never had any relationship whatsoever with the Houston Police Department. Charles was a fine son who was well loved and respected by not only his immediate family but also many friends. He was a graduating senior at Southern University where he had been on a 4-year football scholarship. While at Southern University, Charles received the following outstanding honors: voted the most valuable player at the Southern University vs. Grambling game in 1977, All Southwestern Athletic Conference in 1976 and '78, and All American 1977.

My son was a very kind, sweet, obedient, an only child. I cannot believe and I shall not believe that Charles would commit the crime of rape that he was accused of.

I filed a statement with the internal affairs division on July 20, 1979, asking for a complete investigation of my son's death. The internal affairs division has not even the common courtesy to contact me or any member of my family. There was no reason for my son to have been shot five times. I feel that the conduct of this Houston police officer was unjustified and irrational toward my son.

Some recourse should be taken and efforts made to rectify this horrible situation. I want to be assured that this does not happen again to someone else's son.

I thank you for giving me this opportunity to express my feelings. I hope that there may be some positive action taken which will relieve the numerous tensions that exist between the black community and the Houston Police Department. Thank you again.

MS. GEREENICS. Thank you.

Mr. Ballard?

STATEMENT OF WALTER HARVEY BALLARD, JR.

MR. BALLARD. Yes. My name is Walter Harvey Ballard, Jr. I live here in Houston; I've been here now about approximately 11 months. Initially came to Houston to testify in the Ruiz case. I'm an ex-convict, been in the penitentiary; I have been out now, served my time—I have been out now about 2-1/2 years.

Since I've been back in Houston, I've had many confrontations with the city of Houston Police Department, and on April 10, after they came into my home, invaded my home and rampaged through it and tore everything up and had what apparently was—they were having a little bit of fun—I wound up in jail. Had five cases filed against me; subsequently went to court; did not have an attorney; would not appoint me one; could not afford one. I was subsequently convicted of all five of those cases. They now stand on the appeal. I'm carrying the entire case all by myself; I can't afford an attorney.

Prior to the trial of these cases, I filed a lawsuit in Federal court pro se, and that lawsuit still continues to be pending. Thereafter, on August 18 of last month, two officers pulled me over. I was doing nothing wrong. They claimed that my car was smoking too much and pulled me over. I tried to explain to them it wasn't. They continued to hassle me about it, but during the process of drawing up tickets and threatening to arrest me and put me back in jail, they told me they were going to make it super hard for me while I was here in Houston, as soon as I got out of Houston the better, and as long as that lawsuit was pending against their friend, they were going to continue to harass me. They were officers with the Park Place substation. I live in that same vicinity.

Nine days later, after the threat was imposed, a man got shot by a city of Houston police officer, and then I became extremely afraid. I didn't know what to do. I don't want to go back to the penitentiary. I've done too much time there. I've spent half my life locked up in Texas. I just want to stay on the streets. I just want them to leave me alone; let me do it out here.

I'm getting out of the city as soon as I possibly can because those people have gotten me so scared. I sought assistance. I knew of nowhere to go, no one, you know, who I could call. I called the *Houston Chronicle*, and the *Houston Chronicle* then referred me to the organization that is assisting me with my second complaint.

I don't know what to do; I don't know what recourse to take. I'm not a rich man. I can't afford the things that are necessary to bring these causes before the courts like they should be. I think that's probably everybody's problem in those respects.

I have to face trial. The officers don't spend the money; the courts don't spend the money. It is the individual who wants to contest it; they are the ones spending the money, and it is extremely hard to do. It is extremely hard to just live out here now. The police department—I've been in force with them for many, many years; they haven't changed. The only thing that has changed are the words and books, words on paper and people saying, "We're going to write this law and write that law."

It hasn't changed. There has been nothing changed. I know it from the inside and I know it from the outside. I've seen it both ways. There's been no change whatsoever. I just hope that possibly the

government can take over, can review, see what's happened. When they see it, they're going to find a lot of things that have happened in the past, that is becoming barbaric. I just don't understand it. I thank you for giving me this opportunity. I'm honored to speak before this committee. Thank you very much.

Ms. GERE BENICS. Thank you.

Mrs. Rodriguez, state your full name for the record?

STATEMENT OF MRS. SANTOS RODRIQUEZ

Ms. RODRIQUEZ. Mrs. Santos Rodriguez.

Ms. GERE BENICS. Excuse me. Could you adjust the microphone to the right in front of you. You need to speak directly into it.

Ms. RODRIQUEZ. To the United States Civil Rights Commission from Santos Rodriguez, misconduct by Officers of the Houston Police Department; date, September 12, 1979.

My name is Mrs. Santos Rodriguez. I'm a citizen of Houston. I live at 1613 Maury Street. I am employed by the Allied Maintenance Corporation as a member of the office cleaning crew.

I am here to report about the mistreatment of me and my family by police officers of the Houston Police Department. On May 30, 1979, at approximately about 2 a.m. I was awakened by a loud noise that I soon recognized to be an helicopter. I went outside to see what was going on. I realized that my son Peter Rodriguez was approaching our driveway on his motorcycle. I went to open the gate and he passed through. The next thing I recall is being struck in the area of my right eye. I lost consciousness. I then remember trying to get up off the ground. There was blood running down my face. The next thing I saw was police officers knocking Peter off the motorcycle. They then handcuffed him as they screamed and cursed at him. One officer held his boot on Peter's neck. My son's friend, Walter Castillo, who was with Peter on the bike, was treated in the same manner. By this time the rest of my family went outside. My son, Juan, who was asleep, came rushing outside with his shotgun. He thought someone tried to break into our home; there have been many attempted burglaries recently. The officers immediately jumped him and knocked him to the ground. He was also handcuffed. I approached one officer and said, "Look what you have done to me."

He said, "Get out of here, lady, you deserve it."

I begged them to let Juan go; he didn't even know what was happening at that time.

The next thing I noticed was my daughter-in-law, Petrita, who told the officers that my son, Joe, was coming. Joe is a Harris County deputy sheriff. When she told the officer this, he replied, "I don't give a damn who your husband is."

At one point a black officer said, "Call an ambulance."

A white officer said, "She doesn't need it."

Others members of my family reported that the officer said that if an ambulance was called, the news media would also be there.

When Joe arrived, members of my family saw some of the officers take off their name tags. Some also removed their badges.

Then I was arrested by one officer who informed me when I objected that his sergeant told him to take me in. My son, Joe, also objected but was told he would find himself behind "city jail bars."

My sons, Peter and Juan, and our friend, Walter, and myself were taken downtown and jailed. I was not released until 3 o'clock that afternoon. My family was subjected to constant verbal abuse and mistreatment. I was arrested without cause, and my sons were beaten at various times by various officers. I was injured in this incident but was refused immediate medical attention in order to cover up this incident.

I was eventually treated by the jail doctor several hours later. A helicopter and approximately 15 to 20 patrol cars answered this disturbance. My son, Peter, could have been apprehended without unnecessary force. Peter has been harassed by city police in the past. He actually feared for his life and, therefore, refused to stop when asked to do so. He wanted to reach the safety of his home and family.

On June 8, 1979, my family filed complaints with the internal affairs division of Houston Police Department. On June 19, 1979, after learning about the Public Interest Advocacy Center on television, we requested their assistance. PIAC filed a—

Ms. GEREHENICS. Mrs. Rodriguez, your time is up. If you leave the statement with us, we'll see that all gets in the record.

Ms. RODRIGUEZ. Thank you.

STATEMENT OF HAROLD EUGENE DEWALT

Ms. GEREHENICS. Mr. Dewalt, state your full name for the record, please?

MR. DEWALT. Harold Eugene Dewalt.

First of all, I want to state I would like for my name to be kind of held, not for word about defame or anything; I actually fear for my life. I've actually been threatened that it was easier to kill me than to suffer the persecution I might bring on the Houston Police Department if the words of what actually happened to me got out, and for this reason, for 2 years I haven't sought any assistance from anyone.

On January 25 I was trying to return some equipment to a local distributor in the city of Houston. I had—I was arrested by the Houston Police Department at that time, and the police said that I looked like someone else even though I was telling my name and I was arrested, handcuffed. My hands were handcuffed, feet cuffs were placed on me, and my hands were handcuffed to my feet. I was hit across the head with a flashlight in the beginning, and I was bleeding from the head and I was drug into and out of the police car and an unidentified plainclothes officer, who I later found out to be a lieutenant in the Harris

County Sheriff Department, stuck me twice with syringes. I don't know the contents of the syringes. I don't know whether the syringes—whether it was two syringes or he missed once and tried to stick me again. When the officers had me in the back seat of the car, I heard—by this time there was five or six officers present—I heard one of the officers ask the other officer whether I was out yet. When the officers asked, you know, I began to feel what he meant by out. I assumed that the tranquilizer—whatever was in the syringes was supposed to render me unconscious. I was driven from the scene of that local department store.

Incidentally, the officers asked me to flatten myself on the car and I wouldn't lay down. I was also dressed inappropriate, black hat and, you know, basically I wore the same thing I have now, no hat, and I do believe this had something to do—my appearance had something to do with the officers' opinion of me.

I was taken from the scene, and when I was taken from the scene, the officer first—they were bumping me around in the back of the car, speeding and stopping, and because I was handcuffed with three cuffs I couldn't protect myself. I bounced around quite a bit. They took me to the regional station, pulled me out of the car.

At the time they hit me. I had a bad gash on my head, but at the time they hit me with the flashlight, it wasn't, I guess they considered it not bad enough. When they took me to the regional station they pulled me out of the car; another officer hit me over the head with a piston; they took me to police—I mean Harris—to Ben Taub Hospital. Ben Taub checked for a broken elbow and they thought I had a skull fracture. They had X-rays and everything to prove this.

At that time I was charged with aggravated assault on a police officer. I was placed under \$40,000 bond and this—but they still—and they took me into the station. They took all my identification and everything and put it in the envelope and registered it under a different name, an alias name. They called me Charles Rogers Stancil. They put me in the county jail; my parents and everybody who tried to get in touch with me couldn't. They told them they didn't have a Harold Eugene Dewalt. They had me under the name of a Charles Rogers Stancil. This is an official document; this will show that. The only way I can get this document is from them. This is to say they did have me as Charles Rogers Stancil. When they did find out they made a mistake because they had—it would be easier for them to kill me than it would be for me, you know, they told—anyway, to make a long story short, I spent 20 days in the Harris County jail before I was taken before a judge. When I went before the judge, it was a reputable judge this time—when I went before the judge, the judge asked me was I Charles Rogers Stancil. I said, “No, sir. I am Harold E. Dewalt.” He said, “We will clear this up.”

They brought the probationary officer and everything and found that I was who I said I was. At that time I was employed by the Houston

Chronicle. When I did receive a phone call, they told me I could make one telephone call—I called the *Houston Chronicle* as I thought that they would send a reporter or something out, because I was employed by them; they would release me. I went to court several times.

MS. GEREENICS. Excuse me, Mr. Dewalt, your time is up.

CHAIRMAN FLEMMING. Time is up, sorry. If you want to add to that, we'll be glad to include it in the record. Thank you very much.

Counsel will call the next five witnesses.

MS. GEREENICS. Eugene Mendoza, Antonio Guajardo, Robert Lee Young, Lucille Miller, Robert Dooley.

[Robert Dolley, Antonio Guajardo, Eugene Mendoza, Lucille Miller, and Robert Lee Young were sworn.]

STATEMENT OF EUGENE MENDOZA, JR.

MS. GEREENICS. Mr. Mendoza, state your name for the record.

MR. MENDOZA. Eugene Mendoza, Jr.

MS. GEREENICS. You may proceed.

MR. MENDOZA. Thank you.

I appreciate the opportunity to come before this Commission. I wanted to bring a case that occurred in the community in which I was working at the time. I am a Houstonian. I've been working in the Mexican American community as long as I've been living in it.

I'm a graduate of the University of Houston. I've been past administrative assistant to the mayor of the city of Houston. At the time of the incident I was administrative assistant to State Representative Ben Reyes.

At 9 o'clock that morning, August 17, 1976, the car that I was in was routinely stopped by the police officers for a violation of invalid inspection sticker. As the officers routinely signed the ticket for the driver of the car in which I was a passenger, the other officer came to the driver side of the car that I was sitting in and asked me in a very demanding way for my driver's license. I responded—and this is testimony in Federal court because it's been adjudicated in Federal court this past September 4 and 5 that the officer—I responded to him that "Officer what have I done? Why do you want my driver's license?"

Immediately he proceeded to go to the side I was on, dragged me out of the car, beat me. He didn't have me under arrest at the time. He was verbally abusing me. He used the word Mexican American, Mexican in a derogatory manner.

This was 9 o'clock in the morning on my way to work. I immediately was fearful for my life. The officer unsnapped his gun. After he had dragged me out and had me and searched me and took my ID, after that we immediately went to the office, which was a block and a half downstreet, Representative Reyes' office and proceeded to try to get some medical attention, and also, because of my efforts in the commu-

nity and my wanting to try to better the community relation of the police department, I immediately tried to get ahold of the police chief at the time which was Pappy Bond.

I also tried to get ahold of the mayor's office. The incident, in my opinion, was something of commonality in reference to some unofficial policy by the police department to try to identify citizens in that particular area as being illegal aliens. I had asked previously when I was at the mayor's office, of the police chief then at that time, police chief—of the policy of asking citizens to prove their citizenship in this city. I did not get any response. I took my case before the city council. I took my case to the district attorney's office. I took my case to the police chief. At that time there was no internal affairs committee or investigative unit.

I had no recourse but to file a lawsuit in Federal court. The officer was found guilty of a charge of misuse of conduct and excessive force on my person. He was exonerated in reference to the willful intent and malicious intent. That officer works out in our community on a daily basis. There are some complaints against the officer. It is unfortunate that the civil service law protects them. He cannot be reprimanded for his actions of August 17, 1976, but I come before you to testify that it is common in our community that officers misuse their force in dealing with citizens.

I was subjected as a criminal, a common criminal. I object to that. I've been working with the police chief at the present. Unfortunately, he is a political appointee. I would hope that the next mayor, if elected, would possibly keep this police chief because he has brought the police department into the 20th century in my opinion, but until he is able to change the institution of which he is the head, and possibly because he is a political appointee, we are still subjected in our community to some harassments and some unfamiliar type of situations in which our community is not accustomed to. Many people of our community are working with the police department at this time to try and better the relationships, but time and time again there are citizens that are not coming forward with complaints.

Ms. GEREENIS. Excuse me, your time is up. Thank you.

Mr. Guajardo?

STATEMENT OF ANTONIO GUAJARDO

MR. GUAJARDO. My name is Antonio Guajardo. I am a citizen of Houston. I live and work in the Latino community. I'm an attorney, and I would like to make some very brief points. I know you all have listened to a lot of repetitious testimony, and I'll try to lead into some recommendations at the end.

Mr. Mendoza, the person that just testified, alluded to harassment in the Spanish-speaking community. I would like to follow up on that by pointing to the policies of the police department. The chief of po-

lice very adequately testified earlier that the policy is one thing, but the practice of the police department is another. I would like to have the police department enforce their policies.

More specifically, I would like for the police department to enforce the policy or so they supposedly have a policy of not stopping people and asking for immigration documents, or stopping suspected aliens, "illegal aliens," and asking them for immigration documents and the policy has been espoused by the Attorney General of the United States, that the Attorney General's office does not condone local police departments enforcing the immigration laws.

The immigration law is highly complicated, highly complex, and is reserved solely to the Immigration and Naturalization Service which is a Federal agency, which is exclusively given that authorization to investigate and inquire into the persons' immigration status.

There is a practice, and I quote "practice" in this community, in the Houston Police Department of holding aliens and strictly holding them on immigration hold and there is no crime that they've been charged with, but they are simply held because they are suspected of being illegal aliens, and they are held there beyond and without any authority to do so.

This has undermined the credibility of the police department in the Spanish-speaking community. I point to you a *Houston Post* article dated July 9, 1979. It says "Rapist Preying on Aliens," and it points to prevalent attacks on female aliens who were raped by this man in the community. The police department's harassment in the Spanish-speaking community has made the people in the community hesitant to approach the police department for aid or assistance when the police department has continually harassed them about their immigration status and when they are victimized, literally victimized and literally victimized and preyed upon by someone criminal, they are hesitant to go to the police department for help because they fear, instead of getting any assistance, they will be arrested and charged or deported.

I would like to make this article part of the record, if I may.

CHAIRMAN FLEMMING. It will be made part of your statement.

MR. GUAJARDO. My last recommendation is that the police department hire more Spanish-speaking officers, and they enforce their own policies which they claim that they have.

Another problem has been the problem of judges denying bail and probation to persons simply because the judge suspects the person as being an illegal alien. The judge goes too far to ask them, "Are you an illegal alien?" It is an improper question and not the proper forum for the judge to reach the question of whether the alien's immigration status is illegal or not. As a recommendation, I would like to make this practice of judges cease and that bail and probation not be denied to persons simply because of their immigration status. Thank you.

MR. INNIS. Mr. Robert Lee Young.

STATEMENT OF ROBERT LEE YOUNG

MR. YOUNG. My name is Robert Lee Young. I live at 7961 Barnard Street. Are you allowed to mention names that did you harm or you don't mention no names?

MR. INNISS. No, don't mention any names.

MR. YOUNG. I was arrested at my home on March 21 about 8:30 p.m., you know, for aggravated robbery. When the police came to my house I said, "Robbery!" I said, "I haven't robbed anyone," you know, so the people that lied on me, they framed me out of my house in order to rob me, but I'm going to read the statement if I have time to tell the rest of it.

The two police officers came to my house to arrest me for aggravated robbery, something I did not do; the two police officers struck and kicked me all over my body, except my face, before taking me to the police station. The two police officers called me various names and acted rude toward me.

I was charged with aggravated robbery. I have—the case was dismissed at 174 district court. I cannot believe that the Houston police would allegedly beat me for no reason at all. I did not do anything to cause such reaction toward me. I filed a statement with the internal affairs which they ain't going to do nothing for me or nobody else. I filed a statement because they going to just tell you that they investigated and that investigation ain't never going to come to a head.

On November 17, that's when I filed it with them, I asked what they were going to do. They told me—the lieutenant down there told me, "We are not going to do nothing for you or nobody else." Them were his words; they're not mine; I'm just repeating what he said. "Do you think we were going to do something against a police officer for you?"

And I asked for a copy of the statement—first statement I gave. They told me it is police paper and they were not going to give me nothing. It was on police report and police material and they weren't lying. So PIAC—they gave another statement to them and they sent me a control number next day and I did not know whether or not they were investigating, which I know they wasn't.

In this confused statement I sought the help of the Public Interest Advocacy Center on August 7, 1979. I filed an amended complaint with internal affairs on March 1, 1979 with Ms. Jennifer Schaye, legal counsel for public advocacy center.

I met with lieutenant of the internal affairs division. He would not let us see the statement made in November and said it had been determined at the time not to investigate my complaint. I was informed to go to do this decision. I received a letter from internal affairs on August 3 and the statement that I filed with the center here, 1979, telling me that they had—

MR. INNISS. Mr. Young, you have 2 minutes left. You may submit that for the record.

MR. YOUNG. Anyway, they took me to court. I went to court seven times and they never—came me to as fast as they never took me in front of arraignment. The judge never told me what I did, and the people that had me thrown in jail, they lied, policeman filled them with my stuff, and at first they told me why I was indicted.

I couldn't file any paper when I was indicted, but when I got in front of indictment, I could. So I got from indictment I went, told me two wrongs don't make a right, and I ask them, What they mean—two wrongs don't make a right? "We did you wrong; why do them wrong." I wonder if they had took their stuff, would have I felt the same way I feel?

Plus when they broke into my house they took \$8,000 I had saved to get me a business place. I had to pay lawyer \$1,000. I had to pay a bondman \$1,000. The same people who took my stuff out of my house, police and detectives and burglar and thief filled them with my stuff. And she told them she was my common-law wife and they let her go.

I never received my stuff or nothing. So they just been giving me the runaround, runaround, and none of the people would help me try to get my stuff there or the center people here and I am scared to trust another lawyer because he trick me around too. He told me—said it caused too much mess in this town he wrote as I got freedom, intending on getting marriage, just be happy. So he says too many people involved, he didn't want to get involved in it, and he just dropped the case. I wish I had known he didn't want to get involved, before he had gotten my \$1,000, I wouldn't have given him a dime; I would have gotten another lawyer. So that's about all I have to say.

MR. INNISS. You may submit that statement for the record, sir.

MR. YOUNG. I'm supposed to hear some stuff where they took my stuff, you know, the number, police report, I thought.

MR. INNISS. That's okay. Thank you very much.

STATEMENT OF LUCILLE MILLER

MR. INNISS. Mrs. Miller, would you please state your name for the record, please?

MS. MILLER. My name is Mrs. Lucille Miller. I reside at 4226 Cavanaugh. I am a devoted wife, mother, and teacher. I work for HISD. On the night of November 4, 1977, at approximately 11 p.m. there was a disturbance in my neighborhood. Two police officers came out to answer the disturbance, but they came next door to my house.

The disturbance was over on another street which was a block from my house, and my son was in the front yard. I had told him not to leave the yard. The police officers questioned my son, asking where the disturbance was. So my son told them where the disturbance was. They went around where the disturbance was. Prior to that time they had told him not to be in the yard when they got back. They went to where the disturbance was.

They went to where the disturbance was and they told my son—when they came back, they came back on the side of the house where the—with the lights out, and they asked my son for ID and they told him, “We told you not to be in the yard when we got back”—in his own yard.

Someone came into the house and told me that two police officers had him down on the ground beating him. I went out into the yard and I asked, “Well, what are you beating him for?” And one police officer had his knee on his neck, and the other one had—was beating him with the flashlight and blackjacks.

One of the officers told me that he didn’t have ID. I tried to cooperate with the police officer. I got the ID and gave it to the police officer. They proceeded to beat him and told me he was going to jail.

I was screaming and crying and asking them to stop beating him. My neighbors were complaining. One police officer ran to his patrol car and in a matter of seconds there were 14 police cars on my street and I don’t know how many on the other street. One carload came up with 10 or more policemen.

They kicked my son, beat him with flashlights and blackjacks, and took him to jail. They filed aggravated assault on a police officer and failure of ID when they were the ones who really aggravated assaulted my son. Police brutality was inflicted on my son in the front yard because he did not have ID. Since that time—well, they called out I don’t know how many police officers, TV news cameras came out. The sergeant came out and I asked the sergeant to help me. He ignored me. There were two helicopters, 14 police cars on my street; I don’t know how many on the other street.

When I went down to the jail to get my son out, I asked some police officer down there where was my son. He said, “Well I don’t know. He might be in the bayou.”

Well, the main thing is that he was beaten in the yard because he didn’t have ID. Since then we have been aggravated by police officers. On Easter Sunday morning police officer came out and asked me if I had called the policeman and told me I didn’t have any business being in the yard if I hadn’t called the policeman.

Then on Thanksgiving Day in 1978 my son was taken to jail and, when I went down to get him out of jail, they told me they had a warrant for his arrest because he did not have ID. I told him this was an illegal arrest because this had happened over a year ago. On Thanksgiving Day on 1978 my son did have ID. I had to pay \$53.50 all over again to get him out of jail. This year of 1979, I went to court and I was refunded the \$53.50.

And in March of 1979 my youngest son was taken to jail. They landed a helicopter down in the middle of the street and took my youngest son to jail, who was only 17 years old, for a crime that he did not commit—now, the thing of it is I am really out of money paying lawyers for something like this—and that night when they had all

these police officers in my yard—I don't know how many, I couldn't even count. I would like to say that I have been supporting the Houston police officers every year with \$10 and this is what they did to me.

MR. INNIS. Thank you very much, Mrs. Miller.

Mr. Dooley, would you please state your name for the record, please?

STATEMENT OF ROBERT DOOLEY

MR. DOOLEY. Robert Dooley, I live at 8800 Broadway. I'm a chemist for SGS Control Services. On March 18—February 18 of this year, I was in a club on the far side of town. I was only there about 10 minutes speaking to a friend who was a cocktail waitress. They called "last call" and she went to attend to her tables.

An officer approached me, tapped me on the shoulder, asked me to follow him. I followed him into the back of the club. We entered a dark room lit only by two candles with a desk and several chairs. As soon as we had entered, they ask me where I was from. I told them I was from New York. I was immediately hit in the face and called a "damn Yankee." They asked me several more questions like where I lived, where I work, which I answered as courteously as possible given the conditions. They began to beat me again. I immediately covered my head and bent over to protect myself.

After a few more blows, I began to fear for my life and began to scream for help. After a few more blows they stopped, told me to straighten up and give them my license, which I did. At this time one of the officers left; the other officer sat down, told me to sit down, and copied information off of my license onto some form. The officer returned—the other officer returned with a wet rag, informed me, told me to wipe the blood off of my face, which I did, and then they took me out to a waiting police car. I was never told I was under arrest. I was never read my rights. When I was released from jail the next morning, I immediately looked for someone to file a complaint with which I finally did find the duty sergeant and complained. He informed me that the people from the internal affairs would contact me as soon as they got time.

The next day, after going to the hospital and finding out I was going to require surgery to fix my nose, I went to the public interest center and they gave me advice on what to do. Finally in March I went to trial and was found not guilty. At the trial both officers claimed it was the other officer who arrested me. Since then I was finally contacted by the internal affairs division on June 26. I went down; I signed some medical release forms, answered a few questions, and then left.

About 3 days later he called me up again at work. He stated that he wanted to discuss what happened at the trial. I went back down again. He asked me one question: was I found guilty or not guilty? The

remainder of over an hour of time was concerned completely with my relationship with my lawyer and the public interest center. He asked unbelievable questions which had no bearing on the case whatsoever.

Since then I have heard absolutely nothing from them. I don't see the reason for taking so long in their investigation, especially since it is a matter of my word against their word. I would much rather be called a liar and know where they stand than to be continually put off like this. The idea of that internal affairs investigator being more concerned with my relationship with the public interest center and my lawyer is totally ridiculous and indicated to me that he had no real desire to find out what happened and was just trying to make somebody else look bad.

I have still not heard anything about the disposition of my case with internal affairs and, frankly, I don't think anything is going to happen. I thank you for this opportunity.

MR. INNISS. Thank you very much, ladies and gentlemen.

CHAIRMAN FLEMMING. Counsel will call the next five witnesses.

MR. INNISS. Mr. and Mrs. Loyal Florence, Mrs. Arlene Davis, Mr. Concepcion Escobedo, Mr. Pedro Ortiz,

CHAIRMAN FLEMMING. If you'll just stand, please, and raise your right hands.

[Arlene Davis, Concepcion Escobedo, Cora Florence, Loyal Florence, and Pedro Ortiz were sworn.]

STATEMENT OF LOYAL AND CORA FLORENCE

MR. INNISS. Mr. and Mrs. Loyal Florence, would you please state your names for the record. You're both testifying as one.

MR. FLORENCE. Cora Florence and I'm Loyal Florence.

MR. INNISS. Would you please proceed with your testimony?

MR. FLORENCE. First of all I'd like to express my gratitude and appreciation to the Chairman and ladies and gentlemen of the United States Commission for being here in Houston, and I hope from these proceedings it can be the beginning of a very, very needed change, I feel.

But my story—our story is that on June 20 our son Douglas, aged 14, was needlessly killed by the actions of the Houston Police Department. I say needlessly because, first of all, he was involved in no crime. He was a passenger in a car. The autopsy reports indicate no barbiturates, no narcotics, no alcohol. It was a hot summer evening. He was out for a walk with a 12-year-old friend, when a couple boys came by in a car—15 and 16—asked if he would like a ride—joy ride, I guess.

So 20 minutes later he's involved in a fatal, needless automobile accident after a high speed pursuit. Now, it is my understanding that Chief Caldwell has something on the record to the fact that he doesn't exactly agree with the necessity of high speed police chase of youth in the first place. In a congested area I don't think it is necessary.

I think legislation is needed that would apply to such chases in congested areas, only in the most extreme cases of major bank robberies or something like that, but not, not for suspicion of youth driving a car. My wife is very, very upset about the fact that the police officers had first approached the car at a convenience store where the children were buying some munchies, I guess you'd call it, and knew that they were youth. The children were frightened, took off because it was later found out that the one boy had stolen the car a few minutes before.

The police, at excessive speeds, causing this accident, and that we feel is a very severe crime in itself. After the accident the police officers had to make a judgment call. And rather than stop and render aid to this boy who was trapped helplessly, they decided to chase the fleeing boys, let him lay there and die of suffocation.

I was told by the sergeant of the northwest police station that very night that he was an expert at telling when a person was dead. Now, I didn't know he had a doctor's degree, was a pathologist. I was also told he died instantly of a broken neck. He did not. He suffered for over 20 minutes.

We have witnesses, tons of them. I'm ready to go to any court in the land. Like the chief, I'm also a veteran. I'm a combat veteran of World War II. I've always admired—because I've worked very closely with the Marines—but I've earned the right to have this investigated to the highest. My son Douglas was named after Douglas, of the Army, MacArthur and for my good college buddy, Alexander. Anyway, I don't want to get emotional about this, but the thing is something must be done.

Now I think, like so many people I've talked to, that something may be started to be done. I want to go on record that this is not a problem for the minorities alone. True, they have been the most severely punished, but it is a problem for all people. You'd be surprised the number of people who have come to me when hearing of this, that talked to me.

MR. INNISS. Mr. Florence, your time is up. You may submit your documents for the record.

MR. FLORENCE. Thank you very much.

CHAIRMAN FLEMMING. Thank you, sir.

MRS. FLORENCE. The whole world doesn't, as I see it, does not owe Douglas because anything that moved was his friend. That affects his schoolmates.

MR. INNISS. Mrs. Florence, that was 5 minutes for the both of you.

MRS. FLORENCE. Oh, all right. Let me say one thing, all of these people that I know cannot have any respect for the Houston Police Department at all, and those same juveniles will be the adults in 3 or 4 years and will be facing them on the street.

STATEMENT OF ARLENE DAVIS

MR. INNISS. Mrs. Davis, would you please state your name for the record, please?

MS. DAVIS. My name is Arlene Davis. I'm employed by the Veterans Hospital. On June 29, 1978, SWAT team came to my house approximately about 8:20 a.m. in the morning. My family was asleep. My baby daughter heard the helicopter at which she got me up, she said, "Mommy, come here, something is—what are all these cars doing here?" I immediately was aroused out of my bed—which I was still in my gown—went to the door and was met by a detective asking me for a suspect's name say—this particular person, and she doesn't wish to name names, I will not call them.

"No, sir, he is not here. I do not allow this person in my house." The particular man lived in the next block from me, so I invited two detectives—two blue clothes policemen into my home and went to each room and named my kids by name. My 19-year-old boy who was to finish high school was asleep in the second bedroom. So the officers looked in each room, saw the children, my two grandkids, and they went out of the door.

This one particular detective turned around and he came back and said, "I want to talk to your son Harvey."

And I say, "Okay, sir." He was in short pants because it was hot in the summertime. He had on shorts with no shirt—and asked him to put on long pants to be presentable.

"Oh, yes, we're going to keep him for a couple hours, and you can come and pick him up." I waited and waited and he never was returned.

I called the Houston Police Department. They said, "We are marking him hold," and me not knowing what they were holding him for. This suspect that they were looking for—his mother came around and said, "Did any officers come here? The neighbors told me the officers was here with the SWAT team."

I said, "Yes, ma'am, they were here looking for your son," and I said they took my son.

So I couldn't think of anything. He kept him the whole weekend, and he wasn't there and I called him back. They put him in the lineup and said that some young man say he had robbed him of \$5 at 7 o'clock in the morning, a Latin American woman which was about 30 years old. She said she was raped by some young man in Bel Air. "Well, ma'am, in Bel Air black folks can't go there no way." That's an aristocratic neighborhood. If any blacks are there they are going to really see what they're doing there—there's no raping a woman that gonna be hollering. I'm not saying this does not happen to the lady.

But then when I go to see about my son and went to court with him, the district judge and prosecuting attorney had appointed a lawyer, so the lawyer—everytime he would try to say something in my son's behalf, he was cut short. He was tried with a suspect that was gotten out

of a stolen car and supposedly had pulled a gun on officers, I don't know. They had this on exhibition for the people to see, the jurors and whoever was there. And they tried two kids together. My son got 50 years for rape, and I know he was home sleeping. I got him up at 11 at night and made him go to bed.

This is a hurting thing for us because I don't have \$5,000 to give a lawyer. I went to the internal officers. They said to me, "You are in the wrong place; go to the district attorney's office." I went to see Mr. Caldwell, he said, "Go to internal affairs." I went to Mayor McConn's office and I talked to a Mr. Hurd there; well, he said "I'm going to look into it." That's been 5 months ago; he hasn't returned my call. I went to Representative Leland's office; I told them this. So I need some help with my son, because if crime is permitted here in Harris County, I think the people should be punished, but unjust punishment for some one who hasn't done anything is wrong. Thank you ma'am, thank you all.

MR. INNIS. Thank you very much.

Mr. Escobedo, would you please state your name for the record.

STATEMENT OF CONCEPCION ESCOBEDO

MR. ESCOBEDO. My name is Concepcion Sanchez Escobedo. I am a citizen of the city of Houston. I reside at 747 Route Street. I am employed by Merchants Fast Motor Line as a long distance truck driver for the last 20 years. In the early morning hours, approximately 2:45 a.m. of September 9, 1978, I was charged with assault on a police officer and disorderly conduct. My arrest was preceded by police activities in my front yard. I had just arrived home from work and had showered; I was dressed in Bermuda shorts, T-shirt, and shower shoes.

My wife Ramona and I were preparing for bed when we heard a noise outside.

I went outside to see what was happening, and I noticed a police car on the sidewalk in my yard. Then a second car arrived, and it was then that I noticed that my stepson's wife was in their custody. This immediately concerned me as I approached the officer to ask what was happening. Ramon and Susan—that's my stepson and his wife—lived in my garage apartment at that time. The officer refused to give me any information even after I described my relationship to the woman in their custody.

I also identified myself and informed them that they were on my property in the front yard. The officer immediately became verbally abusive and he cursed me in the presence of my wife. I tried to explain to the officer that my only concern was my daughter-in-law. At no time did I curse the officer or become disrespectful. At no time did I physically interfere with the arrest of my daughter-in-law because she was already in custody.

I pleaded with the officer to tell me what was happening. The officer continued to curse me, eventually demanded my identification. I told him my identification was in my house and asked him to try it. I was then handcuffed behind my back and pulled to the police car by the handcuffs and physically thrown into the patrol car face first. The officer told me that he was going to lock me up but gave no reason why.

He threatened my wife if she didn't go in the house. I was transported to the downtown jail where I was detained a total of 8 hours before being released. The jail officer explained my papers had been misplaced because that was the reason for the delay.

On November 1, 1978, I was acquitted of the charges against me by a jury in justice of the peace court, precinct six, division two. I feel I was arrested and detained unjustly. Throughout the episode I was continually the victim of verbal abuse; in addition, I consider this incident to be a violation of my civil rights. It is difficult for me to explain the harassment and fear me and my family experienced. At the time of this incident I was not informed of the existence of the internal affairs division of the Houston Police Department. I was also unaware also of the community organizations that could assist me in filing a complaint against the police officers.

Finally, I appreciate that this Commission has given me this opportunity to present my story. I hope that my testimony helps the Commission to recognize that police misconduct does exist in the city. I have come before you today to say that it has happened to me.

Thank you.

MR. INNISS. Thank you very much.

MR. ESCOBEDO. Excuse me, I would like to submit a statement of this in more detail.

MR. INNISS. You may, sir.

Mr. Ortiz, would you just move the microphone in front of you, sir. Would you please state your name for the record, please?

STATEMENT OF PEDRO ORTIZ

MR. ORTIZ. My name is Pedro Ortiz. I reside at 7112 Farnsworth in Houston, Texas. I am 49 years old and have for the past 22 years been employed as a driver by Western Union. I have been married for 32 years, and I am the father of six children.

On March 7, 1979, about 10:30 p.m., I was shot in both legs by officers of the Houston Police Department. The incident took place in the front yard of my daughter's home, Hermalinda Gutierrez, who lives at 328 Basewood, Houston, Texas. I had been asleep when my daughter Linda called and said that there was a strange carload of men outside of her house and asked if I would come over and try to get the license plate number.

My daughter was afraid because 2 days before her house had been broken into. I put on my clothes, picked up three shells and my shot-

gun, and walked the half block to her house. I intended to leave this gun with my daughter's family. There have been numerous break-ins in our neighborhood. My intent was not to shoot anyone. Once there, I saw the car my daughter had described. I approached the car and asked, "Who are you and what do you want?" Immediately I was shot at by the men in the suspicious car.

I took cover behind the nearest tree. I was shot in my right leg. I thought that if I shot the windshield of the parked car the robbers would get scared and leave. So I tried to load my shotgun. The first two shells did not fit. Finally, the third one did fit and I shot at the windshield and it shattered. At this time someone to my left shot me in the left leg. After I had been wounded a second time, I drop my gun and lay on the ground. The men came over to me and began beating me with their hands and feet.

I was dragged across the street, bleeding from both legs and placed on the ground near the exhaust pipe of the car; the car was still idling, so the fumes came directly into my face.

At this time this man—I was handcuffed with my hands in the back, when I was dragged across the street, and then this certain man put his feet on my head and at the same time pulled my arms back and he done this two times. Then from there I was dragged back to the car in the exhaust pipe. The car was running. This man told me not to move or he would kill me.

As I lay on the ground in fear of my life I was relieved to find out the men standing over me were Houston policemen. They were treating me in an abusive manner. I did not think they would kill me. Approximately 1 hour passed before I was put in an ambulance and given any medical attention. I was finally taken to Ben Taub Hospital in the custody of the Houston Police Department.

My family contacted the Public Interest Advocacy Center to see if they could help me. They assisted me in preparing my complaint against the shooting officers. I filed this complaint on March 13, 1979, with the internal affairs division.

No internal affairs division detective spoke with me personally or with eyewitnesses until April 11, 1979. They only spoke with me once, though spent many days in the area of my home. They even videotaped a reenactment of the incident—the policemen's version of what occurred.

The district attorney did not meet with me until April 30, 1979. Before we even spoke with Mr. Wilson, the district attorney said he had made up his mind to recommend that the police officers and me be no billed by the grand jury.

The grand jury listened to approximately 5-1/2 hours of State testimony, but would not listen to my eyewitnesses. They did listen to me and honored the request of Jennifer Schaye of the Public Interest Advocacy Center to present my case to them. I was no billed on June 12, 1979, as Mr. Wilson had suggested on April 30, 1979. I am grate-

ful for this, but the officers who shot me were also no billed and completely exonerated. The internal affairs investigation— This did not surprise me since from the first time the chief was questioned on TV he said he believed the officers had acted properly and had been justified in shooting me. It seems to me his mind was made up on March 8, 1979, though I was not told of his decision formally until May 24, 1979.

I think I was wronged. If there had been better trained and more experienced men on duty, I feel the unfortunate incident would never have occurred.

I hope with the help of the hearings such as these relations between the community and the Houston Police Department will improve. Maybe the actions of the Houston Police Department would become something that we can all be proud of and feel safe with.

MR. INNISS. Thank you very much, Mr. Ortiz. Thank you very much, ladies and gentlemen.

CHAIRMAN FLEMMING. Counsel will call the last three witnesses.

MR. INNISS. Joan Glantz, J. Don Bonney, Jr., and Floyd Taylor.

CHAIRMAN FLEMMING. Please stand and raise your right hand.

[J. Don Bonney, Joan Glantz, and Floyd Taylor were sworn.]

**STATEMENT OF JOAN GLANTZ, VOLUNTEER EXECUTIVE DIRECTOR,
AMERICAN CIVIL LIBERTIES UNION**

MR. INNISS. Ms. Glantz, would you state your name and organization affiliation for the record, please?

MS. GLANTZ. Yes, my name is Joan Glantz. I am the volunteer executive director for the Houston chapter of the American Civil Liberties Union.

The ACLU has been actively involved in police-community relations in Texas for the last 15 years through contacts with officials in city government and through litigating civil rights cases and by processing grievances from citizens. From this perspective, I address these questions.

The first thing is that a question was raised yesterday regarding why the ACLU, which had been a prime mover in the Citizens Coalition for Responsive Police, was left off the PACCI board. And that question was raised and not answered. The answer to that question is because the police chief did not want us on the board, saying that we were an advocacy organization engaged in lawsuits against the police department. And that as far as I know is the answer to that. We do, however, engage in lawsuits for the police department.

But to square the record on it, we wish to direct this Commission's attention to the following issues:

Misuse of Force: Houston has and is continuing to experience an ongoing problem of misuse of force by police officers. Traditionally, this problem was exacerbated by police administrations that either tacitly

or explicitly encouraged abusive conduct despite some testimony that I know you have heard.

The current police administration should be commended for taking the initial steps necessary to begin to reverse the impact of many years of neglect. One of the primary tools for initiating this process has and will continue to be the HPD's internal affairs division, known as IAD. However, the internal review process has not approached its full potential, in part because the portions of the community most subject to police abuse are understandably reluctant to cooperate with the very organization which has been the source of the problem. In order to mold IAD into an effective vehicle for meaningful reform, ACLU advocates the following:

One, due to understaffing, IAD takes an inordinate amount of time, sometimes 7 or 8 months, to complete its investigation of a complaint. This delay discourages the complainant and casts doubt on HPD's commitment to the internal review process. To address this problem, HPD should either hire more officers or transfer officers from other duties. Certainly, IAD should be a higher priority than arresting persons for victimless crimes such as pornography or gambling, which goes on a lot in this city.

Two, it is understandably difficult for persons who have recently been abused by police officers to return to the police station and file a complaint with another uniformed officer. This reluctance is exacerbated on occasions when the duty officers at IAD demonstrate hostility toward complainants. HPD could significantly encourage access to IAD and the community's confidence in the process by moving the IAD office to a location separate from the police headquarters and by hiring nonuniformed lay persons to help interview complainants and witnesses. It would also be helpful for the government to develop a training program for lay investigators so that they are not the novices that were pointed out yesterday.

Three, IAD will never fully enjoy the community's confidence unless HPD is more forthcoming in opening its performance to public scrutiny. We recognize that there may be a need for a certain degree of confidentiality in conducting investigations of particular complaints. Nonetheless, there is no legitimate reason why the public should be denied access to more general information such as the procedures used in conducting investigations, the number of complaints received each month and the nature of the grievances, the amount of time required to investigate complaints, the percentage of complaints found meritorious and the types of conduct that have resulted in discipline, the types of discipline imposed for particular kinds of conduct, etc.

HPD is at a difficult stage of development. It has taken the first steps toward reform, but the impact of these actions has been dissipated by ambivalence in the community fostered by years of neglect. This resentment is also one causal factor of police misconduct, since officers are more likely to respond harshly to citizens who demonstrate

hostility. To break this cycle, it is important for HPD to mold IAD into an effective investigatory agency that merits the community's confidence. A necessary prerequisite to achieving this goal is more public participation and scrutiny of the internal affairs process.

Free Speech: HPD's tolerance for political activists is abysmal. Officers of the central intelligence division attend most rallies and demonstrations and often snap photographs of persons engaging in lawful political activity. Radical political groups are kept under close surveillance. Blatantly unconstitutional city ordinances are enforced selectively; i.e., mainstream political candidates are not arrested for violating a city ordinance requiring a permit to distribute handbills while members of radical groups are arrested for the identical conduct. To put it bluntly, political activists are denied their most basic free speech rights.

Illegal Detention: To protect persons from arbitrary imprisonment the Constitution requires that the police may not arrest in the absence of probable cause to suspect criminal conduct and that an arrested person must be promptly taken before a magistrate to determine if probable cause in fact exists.

HPD has a longstanding policy of arresting and detaining persons in the absence of probable cause. Moreover, it is not unusual for arrested persons to be held at the city jail for up to 3 days without being charged with a crime or admitted to bond or brought before a magistrate while officers conduct investigations. It is difficult to imagine a greater threat to a person's civil liberties than arbitrary and unreviewable incarceration.

Employment Discrimination: Though HPD has publicly committed itself to minority recruitment, the record reflects otherwise. HPD still maintains hiring standards and tests that arbitrarily exclude minority applicants. A disproportionate number of minority recruits do not remain with the department due to inhouse pressure. Virtually no minority officers are accorded promotions. HPD will never become truly responsive to the needs of the community until it meaningfully commits itself to diversity within its ranks.

MR. INNISS. Your time is up. You may submit that for the record. Thank you very much.

Mr. Bonney, you state your name and organization affiliation for the record, sir.

**STATEMENT OF J. DON BONNEY, JR., CO-CHAIRMAN, HARRIS COUNTY
MINORITY LAW ENFORCEMENT COALITION**

MR. BONNEY. I'm J. Don Boney Jr., I'm cochairman of the Harris County Minority Law Enforcement Coalition and also director for the Houston Area Urban League.

I first of all would like to thank the Commission for allowing me the privilege to speak before them, and any remarks that I may make, I

would like to now get the understanding there is no personal attack on Mr. Caldwell, who I consider a very good man, or the Houston Police Department, which I consider on the whole a fairly good department.

The present relationship between the police department and the Houston community can only be described as one of mistrust, discontent, and alienation. The prime reason for this is fear, intimidation, and frustration, primarily on the part of the minority community, resulting from consistent and increasing and constant acts of harassment, brutality, and misconduct; the use of unnecessary and excessive force, gross police misconduct, and repeated complaints of police brutality.

One of the major problems in trying to come to grips with any of these issues is that although policies had been made, some of them which are wholly satisfactory toward the total community, there's a political infrastructure within the department, a political police bureaucracy, if you will, which is primarily centered around the police officers association, and it is very difficult for any police chief or any of the political leadership to have any impact whatsoever on the real nexus of the police department until that political infrastructure is addressed.

In the course of the several years I've been employed at the Urban League and involved in a number of community activities and social activity, we have gotten repeated complaints, such as you've heard today, of police brutality and police misconduct. Last year in August when we held our agenda for our black Houston conference, Mr. Benoit gave us that same statement about what had happened to his son. It is now a year later and nothing else has happened. The incident with Mr. Charles Stewart, the gentleman who was shot five times in the apartment complex—the same officer who shot Mr. Stewart is the same officer who was involved in another questionable shooting less than a year earlier and is still on the force. He's been exonerated; there's been no change there, either.

The real reasons are that there is no legitimate relief or redress for legitimate complaints; there's no way that the citizens of Houston can actually get these complaints resolved. We have a political problem with the city council that we're into now with the Justice Department about political and minority representation; that same situation exists within the police department. There are no blacks at any of the higher levels: the police chief is white; the two or three deputy chief, the assistant chiefs, and lieutenants and captains are all white.

Let me briefly make you aware of some of the things we were involved in this year which counter some of the misrepresentation of facts that have been given to the Commission by some of the city officials. A minority recruitment proposal was given to the Houston Police Department last year which would, we believe, if enacted properly, would have brought up to strength 500 new black police officers on the force over a period of 2 years. Nothing was ever done with that

proposal—nothing whatsoever, either comments that it would not work, revisions, or some modification of same.

Earlier this year, during the session of the State legislature, myself and the Rev. C. Anderson Davis and other people went to Austin and tried to get senate bill 1075 passed through the legislature which would have allowed the mayor, with the concurrence of the city council, to appoint assistant chiefs and deputy chiefs to the police department.

Although there were commitments by the mayor prior to us going—campaign commitments—the city legal department fought against that bill. We found assistant chiefs and deputy chiefs in Austin in city cars lobbying against that bill for a period of over a week.

So we found the very police department itself working against our efforts to get minorities into those upper levels. It has been suggested by some members of the administration, “We want to do something, but this isn’t what should be done.” But no alternatives have been forthcoming which would provide some relief.

There’s a gag rule strictly enforced upon officers of the police department which they cannot speak out publicly on issues which concern them. This is completely restricted with regard to black officers. The officer who spoke before you the other evening on the hearing could not go on television and talk about specific incidents of misconduct or unjust practices before TV, although the head of the police officers association, who is white, could go on TV and speak against that bill which would have resulted in minorities being employed at the upper levels.

With regard to recruitment, when we have gotten qualified blacks to attempt to join the force and go through the academy process, they had been harassed or molested right out of the police department, so it is necessary not only to recruit blacks but see them through their training process and probationary process until they finally become officers. There was one black female recruit who was sexually molested by white officers, who could not complain because she would have been booted off the force. There was the incident when a black recruit with a master’s degree who was forced to scrub floors with a toothbrush. Consequently he quit the academy, did not complete his training there. Those are the kinds of people who could have made it on the force and probably would have been able to make it to the upper ranks.

Finally, some recommendations: The only way that there’s ever going to be a legitimate process for citizens to get their grievances addressed is the establishment of a civilian review board. It simply will not happen any other way. The grand jury process has not worked for us primarily because of the cooperation between the—

MR. INNISS. Mr. Boney, your time is up. You may submit all of that.

MR. BONNEY. I only have three points and I don’t have them written where I could submit them—

CHAIRMAN FLEMMING. I would appreciate it; we haven't made any exception to our rules. If you would submit those points for the record, we're very anxious to have them for our consideration. If you would work with the staff to make sure of the fact that we get them, we'd appreciate it.

This brings the hearing to an end, and this hearing is now adjourned.

Exhibit No. 1

GAY POLITICAL CAUCUS • P. O. Box 3887 • Houston, Texas 77001

September 11, 1979

TESTIMONY

Ia. THE PROBLEM: Houston Police Department continues to pursue policies, practices and procedures of widespread arbitrary and unreasonable physical abuse, verbal abuse, selective enforcement of the law, use of arbitrary deadly force, and conspiracy to libel lesbian/gay citizens.

Testimony provided to this Commission in the June 1979 hearing support these statements to the best of our ability. At this time I would like to submit to you additional documentation that also support these statements.

Ib. Houston Police Department (HPD) policy is not to discriminate or enforce the law differently to homosexuals or heterosexuals according to Chief Caldwell at a February 1979 membership meeting of the American Civil Liberties Union (ACLU) that I attended. However, the patterns and practices of HPD as evidenced by our documentation clearly point toward officers on the streets and in the jails defining policies and the law on the scene in a manner that results in physical abuse.

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and selective enforcement of the law. We submit that this is symptomatic of deeper problems:

- 1) deficiencies in field command and
- 2) condoning of acquiescence in and approval of such patterns and practices at many levels of the HPD.

Ic. Therefore we claim that these patterns and practices deny gay persons in Houston

- a) The right to be free from the denial of life and liberty without due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States;
- b) The freedom of speech, the right peaceably to assemble, and the right to petition their government for a redress of grievances as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States;
- c) The right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States;
- d) The right to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments to the Constitution of the United States.

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II. We submit that the nature of the problems of harrassment and physical abuse occur in the jail and in the streets in the Montrose area where gay men and women live in high concentration. Such abuse has been unwarranted and beyond the level of force reasonably necessary to serve legitimate ends, in my opinion, and has amounted to arbitrary and unreasonable force which shocks the conscience. Such practices, policies and procedures manifest themselves in the following manners:

PUBLIC INTOXICATION: There are warranted and wholesale arrests without probable cause when a gay person leaves a gay establishment where, in the past, HPD routinely stakes out. We call this "birddogging" our establishments. Subsequent to the arrest our protestations are responded to with physical abuse. One must be "endangering themselves or others" to be considered publicly intoxicated. This is never required to be proven in court. Consequently, harrassment arrests continue under HPD's own interpretation of the law.

INDECENT EXPOSURE & PUBLIC LEWDNESS: I preface my remarks to say that I am not making judgement on these types of cases, but selective enforcement of these ordinances continue to "chip away" at the people's

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right to privacy. HPD apparently condones such practices by their continuing to implement these laws selectively in areas that are not popular. Consequently, the entire community can be affected in more reputable areas where privacy is the issue, i.e. homes and private clubs.

On "routine vice patrol" officers kneel to look through air conditioning vents, climb to look over booths in Adult Bookstores, peer through racks in curtained booths that they believe renders the booth public rather than private thus giving them alleged probable cause to investigate suspected vice activity. HPD is infringing on civil liberties in areas that are not popular when they could be concentrating on real as well as high priority crimes. Deputy Chief Bankston, in a rare example of candor, told leaders of the gay community he had never heard of a public lewdness arrest in a gay establishment which resulted from a civilian complaint.

DWI: Gays are followed from known gay establishments. The police look for single drivers. In the Montrose we are pulled over for improper changing of lanes, not in safety, or failure to give proper turn signals. The officer invariably "suspects intoxication" and

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the suspect is taken in. If gays refuse the Breathalyzer, we are filed on for DWI and coerced into taking the test with the threat of taking away the drivers license. For some reasons gays rarely pass the Breathalyzer. The due process requirements are clearly denied gay citizens in this instance.

SOLICITATION OF PROSTITUTION: Plain clothed vice officers approach gays in the Montrose and solicit a discussion about sexual activity with the offer of payment. Our documentation indicates that we are not the perpetrators; under the law it does not matter however because as long as we agree to discuss the matter an arrest occurs. Officers arrest gays for crimes which would not exist if the officer did not deceive those arrested with their disguises, i.e. plain clothes costumes.

ASSAULT: This is frequently used as an "add on" charge resulting in multiple charges against persons who have not committed any violation to justify the charge or it is used to give color to the HPD's explanation for physical abuse of gays in their custody. The "cover charges" or "trumped up" multiple charges associated with physical abuse have the effect of intimidating potential complaints about such abuse and have the

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effect of punishing non-criminal conduct. In the courts, dropping the assault charge is a bargaining lever to get gay victims to agree not to press their complaints any further.

HOMOSEXUAL CONDUCT 21:06: (see attached law.) The mere presence of this law provokes the attitude in law enforcement people that it is legal to discriminate against homosexuals, in my opinion. This law is wrongfully used to arrest gays for nonsexual physical contact in public when in fact the law states that "a person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex." The wrongful use of 21:06 has no application to circumstances resulting in the arrest, i.e. kissing in public.

CITY ORDINANCE 79-3: Arbitrary selective enforcement of the after hours dancing ordinance was used on August 31, 1979 at gay discos, an ordinance that has not been enforced since February of this year because Chief Caldwell said he did not have enough staff. Involved parties are seeking injunction relief this week in State District Court.

Other manifestations of arbitrary and unreasonable use of force documented through our Operation Documenta-

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tion program include the following:

- * Physically abusing arrestees and prisoners who are accused of assaulting or resisting HPD officers.

- * Physically abusing prisoners who are handcuffed or otherwise under police control.

- * Physically abusing arrestees and prisoners to intimidate them, to provoke protestations by the arrestees in order to justify HPD's ensuing physical abuse.

- * Conducting illegal search and seizures.

- * Detaining persons with proper cause or for excessive periods, denying access to counsel or medical services.

- * Arbitrary and capricious use of deadly force beyond which is reasonably necessary to serve legitimate ends, specifically shooting non-dangerous, non-violent fleeing criminal suspects in a circumstance where apprehension reasonably could be affected without the use of deadly force and without any threat to the safety of the officers.

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III. A summary of attempts to alleviate the problems as provided you in the last hearing begin with the Gay Political Caucus (GPC) and Mayor Hofheinz in 1976. He facilitated the first meetings between HPD and GPC during his administration had Field Operations Commander, Assistant Chief McKeehan assigned as HPD's liaison to the gay community. Since that time many meetings with him have taken place and he has assisted our community in temporary administrative relief on certain situations. The meetings with Assistant Chief McKeehan have made us learn that the problems we define and the alternatives we suggest cannot be accomplished by McKeehan. Policy changes and new policy must come from the Chief of Police. Our attempts to work with Chief Bond resulted in the rubber stamping and filing away a request for human sexuality training implementation. Our attempts to meet with Chief Caldwell in the past have been in vain until last week. On the more positive side, Asst. Chief McKeehan, in a request to establish more rapport with street level officers, assigned Lt. Joe Kunkel as liaison to the gay community. He has helped us successfully arrest anti-gay assailants. Moreover, in response to growing tensions between HPD and the gay community *McKeehan* ~~he~~ attended a GPC meeting this April only to say that hiring gays on HPD force would have a disruptive effect and felt that it was asking a lot of a police force to

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hire gays when it had only been hiring blacks for twelve years and women for three. Since then our community challenged HPD to a softball game which was accepted and to a degree lessened some anxieties. Before City Council we have appeared only to hear that they claim no jurisdiction in this area. We have met with Mayor McConn twice in the last 17 months and our documentation will show no evidence of action on his part to assist us until August 9, 1979. I testified before Congressman John Conyers Legislative Subcommittee on Crime and Civil Rights in May in hopes of educating Congress about Houston's problems.

Recent involvements to continue to seek administrative relief and to seek other avenues of remedy include the following:

- * Held a July 23 meeting with Mayor McConn (see evidence of agenda).
- * Coalescing with other Montrose groups to enhance our efforts on like issues.
- * Presented our dilemma to our City Councilman, PACCI representative and Lt. Joe Kunkel at a Violence in the Community Seminar, August 28, 1979.

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- * Extended an invitation to Mayor McConn to meet on our turf at a general membership meeting of GPC.
- * Requested another meeting with Chief Caldwell that was finally granted on Sept. 7.
- * Hosted a meeting with Detective John Donovan, Homicide Division, newly appointed liaison due to the 9 unsolved gay murders this year. (Summarize his comments about problems he has getting cooperation due to lack of trust in HPD and fears of reprisal).
- * Met with Assistant Attorney General Drew S. Days on September 7 to discuss their involvement in monitoring HPD's patterns and practices and to determine how GPC could also work within the Dept. of Justice.
- * Initiated Phase II of Operation Documentation to deal with discrimination toward women, blacks and Hispanics within our own community. *of improved form for data gathering.*

VI. RECOMMENDATIONS

1. Injunctive or declaratory relief from some statutes for victimless crimes in the spirit of the Wolfenden Report, specifically Texas penal code 21:06, Homosexual Conduct.

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2. First amendment protection of speech which includes freedom of expression should be further construed by agency determination of rules, regulations, federal legislation and court decision to include the following:
 - * Freedom to express intimate love, care and concern between consenting adults without regard to their sex.
3. Request that EEOC list sexual orientation as a classification under which discrimination would be prohibited.
4. Recommend that Congress pass the Weiss-Waxman bill to amend Title ~~VII~~^{VI} of the 1964 Civil Rights Act.
5. Recommend that qualified openly gay citizens be hired onto the HPD.
6. Recommend that the Justice Department do a trend analysis of their files of complaints of police abuse since the Joe Torres drowning.
7. Recommend training on human behavior, human sexuality and alternate lifestyles be required, especially if Federal funding is involved.

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Steve Shiflett
Gay Political Caucus
page 12

8. Install cameras in the infamous elevator of HPD's jail.

9. Recommend City of Houston Charter change that would offer some jurisdiction and administrative powers to the City Council.

10. Recommend that exclusionary rule be supplemented by judicially required police policy making, tort liability of governmental agencies for police abuses, provisions for minimum liquidated damages, and restrictions to the "clean hands" defenses. We submit this recommendation based on Mapp V Ohio (1961) that states exclusionary rules does not allow evidence to be entered into Court if secured in violation of the Fourth Amendment. Therefore, in harrassment only cases, it is not a deterrent force. (Foote, Tort Remedies for Police Violations of Individual Rights, 1955.)

11. Recommend that police policy making be subject to judicial review and should be "generally known" to eliminate various interpretations with policy at the beat level where it is now involved against us.

12. Recommend street level officer-citizen interface seminars to become on-going in the gay community for educational purposes.

TESTIMONY
Sept. 11, 1979
Steve Shiflett
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13. Recommend to the President that an executive order is needed to ban discrimination in all Federal government employment ~~bodies~~ and Federally contracted employment based on sexual orientation.

14. Recommend that this Commission study all the testimony and make a determination whether or not there is enough permissable evidence of violations of the following laws and regulation:
 - * 13th amendment

 - * Equal Protection Clause of 14th Amendment

 - * Title VI of the Civil Rights Act, 1964.

 - * Regulations of the Justice Department

 - * Omnibus Crime Control & Safe Streets Act of 1968 (Section 518)

 - * Regulations of the Law Enforcement Assistance Administration

 - * State and Local Fiscal Assistance Act 1972 (Section 122)

 - * Public Works Employment Act 1976 (Section 207)

TESTIMONY
 Sept. 11, 1979
 Steve Shiflett
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- * Regulations of the U.S. Department of Treasury
 I.R.S.

That would warrant your recommendation to the Justice Department that a full investigation be held and/or a Justice Department suit be filed seeking declaratory and injunctive relief from widespread and severe interference with Federal Mandates, statutory requirements and established national policies.

15. Recommend that a fully staffed and funded, city-wide Operation Documentation program be implemented to monitor and document allegations of police misconduct. In my meeting with Drew Days, Asst. Atty. General, he invited documentation of this nature as the people need a vehicle like Operation Documentation to assist them in gathering such data to intice /justify the Dept. of Justice's involvement.

16. *Commission on Human Relations
 for City of Houston*
17. *Harassment Critics under
 HPD must accord to a
 media connection: more of this
 week - ask Caldwell if true*

Exhibit No. 2

6944 Navigation • Houston, Texas 77011 • (713) 924-6020

June 21, 1979

Police Chief Harry Caldwell
Houston Police Department
61 Riesner Street
Houston, Texas 77002

Dear Chief Caldwell:

On Tuesday, June 12, 1979, in your testimony before the United States Civil Rights Commission, you stated your office would submit a cost breakdown of the one and a half million dollar figure quoted in the attached letter. Under the Texas Open Records Act, article 6252-17a, U.T.C.S., I formally request a copy of this aforementioned cost breakdown.

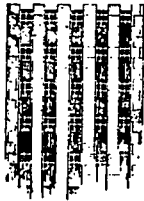
Sincerely,

Marc A. Campos
Executive Director
Public Interest Advocacy Center

MAC/sl

CERTIFIED MAIL RETURN RECEIPT REQUESTED

ROBERT M. COLLIE, JR.
CITY ATTORNEY



LEGAL DEPARTMENT

P. O. BOX 1562
HOUSTON, TEXAS 77001
TELEPHONE 713 222 5151

March 14, 1979

Ms. Jenifer Schaye
Legal Counsel
Public Interest Advocacy Center
6944 Navigation
Houston, Texas 77011

Dear Ms. Schaye:

This letter is to confirm our telephone conversation of Tuesday, March 13, 1979 wherein I advised you of the estimated costs associated with the collection and preparation of the information requested by Mr. Campos of your organization under the provisions of the Texas Open Records Act.

The only data base which exists within the Police Department from which an accurate compilation of the requested statistics can be obtained is represented by the offense reports kept in the Records Division. For the time period covered by your request (the years 1970-1978) there are approximately one million five hundred thousand such reports. It is estimated that approximately thirty-six man years of effort will be required to review the reports and extract the information which is subject to open records disclosure. In addition, the portion of your request dealing with disciplinary actions will entail examination of the individual personnel files of the officers concerned which could involve searching several thousand more files. It is our opinion that much of this review will entail the use of supervisory level officers since your request will require making interpretations and judgmental decisions in a number of instances. Our current estimate of the minimum direct labor costs associated with your request is \$972,000. Overhead costs directly attributable to the research effort will raise this estimate to between one and a quarter and one and a half million dollars.

Since you indicated to me on the telephone that you will be satisfied with no less than all of the information requested, I have made no effort to estimate potential costs associated with a

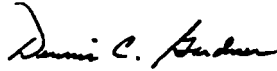
Ms. Jenifer Schaze
March 14, 1979

Page 2

records search narrowed either as to time period covered or information requested; however, I would reiterate to you my opinion that a less inclusive request would result in lower data retrieval costs.

I will await your response before undertaking any further action in this matter.

Very truly yours,

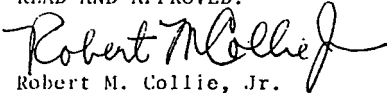


Dennis C. Gardner
Senior Assistant City Attorney

DCG/dp

cc: H. D. Caldwell

READ AND APPROVED:



Robert M. Collie, Jr.
City Attorney



6944 Navigation • Houston, Texas 77011 • (713) 924 6020

July 19, 1979

Chief Harry Caldwell
Houston Police Department
61 Riesner Street
Houston, Texas 77002

Dear Chief:

I have been instructed by the Board of Directors of the Public Interest Advocacy Center to extend an invitation to you to attend the next Board Meeting scheduled for Friday, July 27, 1979, at the HMM Conference Room, 3217 Montrose at 10:30 a.m.

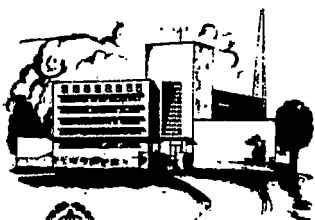
The purpose of the invitation is to have an open discussion geared to better the relationship between the Center and the Houston Police Department. Chief, I hope you will attend. If you need any other information on the meeting please call.

Thank you.

Cordially Yours,


Marc A. Campos
Director

MAC/sl



HARRY CALDWELL
CHIEF OF POLICE

CITY of HOUSTON
JIM McCONN, MAYOR
POLICE DEPARTMENT

61 RIESNER STREET
HOUSTON, TEXAS 77002

HOUSTON POLICE DEPARTMENT TELEPHONE 413-1111

July 23, 1979

Mr. Marc A. Campos
Director
Public Interest Advocacy Center
6944 Navigation
Houston, Texas 77011

Dear Mr. Campos:

I appreciate your invitation for me to attend the Board Meeting Friday, July 27, 1979, at the Houston Metropolitan Ministries Conference Room. Unfortunately I will be in Michigan for a two day meeting with other Police Chiefs regarding mutual problems. I will not return until Saturday evening.

I think it most appropriate that we meet as soon as possible relative to the continuing and escalating problems relative to relations between the Public Interest Advocacy Center and the Houston Police Department. I would hope that such a meeting could be arranged in the near future.

Your correspondence dated July 19, 1979 did not reach my office until this date. It is too late for me to reschedule my out of town commitment. I will be looking forward to hearing from you.

Sincerely,

H. D. Caldwell
Chief of Police

HDC/pl



6944 Navigation, • Houston, Texas 77011 • (713) 924 6020

July 24, 1979

Chief Harry Caldwell
Houston Police Department
61 Riesner Street
Houston, Texas 77002

Dear Chief Caldwell:

The purpose of this letter is to formally request your assistance in a citizen's awareness project.

The Public Interest Advocacy Center is in the process of developing a "Citizen's Awareness Guide Of The Harris County Criminal Justice System." Our mission is to educate the citizenry of Houston, especially those in the minority communities, about the criminal justice system.

On May 31, 1979, PIAC held a meeting of invited community leaders, agencies and private citizens to discuss this project. In addition, we invited the Houston Police Department Community Relations Office at Ripley House to send a representative. Officer Wilfredo Navarro was in attendance.

In order that the guide be complete, Officer Navarro was asked if he could provide a description of the arrest and booking procedures that are adhered to by the Houston Police Department. He stated he would do so.

On July 18, Officer Navarro referred PIAC staff to assistant Chief Tom Mitchell. From that office my staff was referred to your office. We noted at that time that you were out of town.

It is our understanding that Officer Navarro has graciously complied with our request but needs your approval to release the material.

We would be very grateful for your assistance in this matter Chief Caldwell. Please advise me of your decision.

Sincerely,

A handwritten signature in cursive script that reads "Marc A. Campos". The signature is written in dark ink and is positioned above the printed name and title.

Marc A. Campos
Director

MAC/sl

TO: Chief Harry Caldwell's file
FROM: Jenifer Schaye
DATE: August 15, 1979
RE: Conversation with Chief Caldwell

My name is Jenifer Schaye - Legal Counsel for the Public Interest Advocacy Center. Today on August 15, 1979, I received a call from Police Chief Harry Caldwell. The Chief's initial statement to me was that he assume that our conversation was being recorded and he was going to record from his end. I assured him that the conversation was not being recorded from my end but he could go ahead and record if he chose to do so. He said in that case he wouldn't record it, however, it was sometimes hard to remember when he began to testify in court. He proceeded to ask me, he said, "I am conducting a meeting to inform my community of whats going on and I am informed that there are people from the Public Interest Advocacy Center handing out literature and being disruptive at the meeting. (I don't know if he said being disruptive or if it was his strong implication. Later on in the conversation he said, "Do you intend to disrupt the meeting"). I assured him that we did not intend to disrupt the meeting and that we had been given the brochures about the meeting by Ms. Mamie Garcia of his office, the because it was a community meeting and we are a part of the community we wanted to

be present at that meeting and that we chose one of our staff to go to that meeting. I stated that staff person was Mr. Juan Perales and to my personal knowledge the only thing he brought to that meeting were copies of the traditional Public Interest Advocacy Center brochures that have been handed out since January of this year.

I assured him that neither I nor Mr. Perales had any intention to be disruptive at the meeting. Disruption was not our intention when the brochures were being given out. I said we felt he would want us to be present at a community meeting since we are a community group. He said, "I accept your explanation". I assured him I would answer any other questions he might have at any future time. He said thank you and the conversation was concluded.

This conversation lasted approximately seven minutes and was from about 10:50 a.m. to shortly before 11:00 a.m.



6944 Navigation • Houston, Texas 77011 • (713) 924-6020

August 20, 1979

Mr. Harry Caldwell
Chief of Police
Houston Police Department
61 Riesner Street
Houston, Texas 77002

Dear Chief Caldwell:

I thought our meeting Friday was fruitful and positive. I hope this will lead to a better understanding between the Houston Police Department and the Center.

If there is anything I can do to assist, please do not hesitate to call.

Cordially Yours,

Marc A. Campos
Director

MAC/sl



6944 Navigation • Houston, Texas 77011 • (713) 924-6020

September 5, 1979

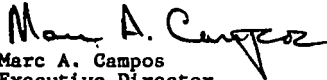
Mr. Harry Caldwell
Chief of Police
Houston Police Department
61 Riesner Street
Houston, Texas 77002

Dear Chief Caldwell:

On June 21, 1979, I wrote you formally requesting the cost breakdown figure quoted in the attached letter. I have since then received no such cost breakdown from you nor have I been notified that you consider the aforementioned cost breakdown exempt under the Texas Open Records Act, article 6252-17a, V T.C.S. Therefore pursuant to section 7 of the Open Records Act, I presume the information requested to be public.

At your earliest convenience please advise me of the date and time when I may receive the requested information.

Sincerely,


Marc A. Campos
Executive Director
Public Interest Advocacy Center

MAC/sl

CERTIFIED MAIL RETURN RECEIPT REQUESTED



6844 Navigation • Houston, Texas 77011 • (713) 924-6020

March 15, 1979

Mr. Dennis C. Gardner
 Senior Assistant City Attorney
 Legal Department
 P.O. Box 1562
 Houston, Texas 77001

Dear Mr. Gardner:

In our conversation on Tuesday, March 13, 1979, you informed me of the cost of copies of the public information which Mr. Marc Campos requested under the Texas Open Records (Vernon's Ann. Civ. St. article 6252-17a) I believe you told me the cost would be approximately 1½ million dollars and that it would require thirty-six man years to compile the information which you agreed was not exempt under the statute.

It is understandable that in a brief phone conversation we would only discuss bottom line cost figures. I do request, however, a written cost analysis explaining the 1½ million dollar figure, as well as the thirty-six man years of preparation. I make this request, Mr. Gardner, under section 9 of the previously cited Open Records Act.

I appreciate your effort in forwarding this information to me.

Sincerely,

A handwritten signature in cursive script that reads 'Jenifer Schays'. The signature is written in black ink and is positioned above the typed name.

Jenifer Schays
 Legal Counsel
 Public Interest Advocacy Center

JG/sl

Certified Mail
Return Receipt Requested



6944 Navigation • Houston, Texas 77011 • (713) 924-6020

September 4, 1979

Mr. Harry Caldwell
Chief of Police
Houston Police Department
61 Riesner Street
Houston, Texas 77002

Dear Chief Caldwell:

As has been stated many times, this agency wishes to have a strong working relationship with you and your department. It does, therefore, seem appropriate to advise you personally of what appears to be a serious violation of the attorney-client privilege. On two separate occasions, June 29, 1979 and August 28, 1979, clients of this center and who have a written attorney-client relationship with me were questioned by Internal Affairs investigators specifically about their attorney-client relationship with me.

The client can certainly waive this important privilege, I'm sure you will agree, however that such a waiver would not be valid were the client not fully advised of his rights by the examining officer. In neither mentioned case, Chief, was the client so advised by Internal Affairs. We ask that this situation be remedied.

I attempted to discuss this matter with Captain Thaler, but he referred my call to your Counsel Mr. Dennis Gardner. Mr. Gardner and I did have an opportunity to discuss the matter, but I would be willing to have a personal discussion with you on the subject, at your convenience.

Sincerely,

Jennifer Schaye
Jennifer Schaye
Attorney at Law
Legal Counsel
Public Interest Advocacy Center

CERTIFIED MAIL RETURN RECEIPT REQUESTED

cc Captain E R. Thaler Internal Affairs
Dennis Gardner City Legal Department

No. 243713

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED —
NOT FOR INTERNATIONAL MAIL

(See Reverse)

SENT TO		<i>Mr. Harry Caldwell</i>		
STREET AND NO.		<i>61 Resner St</i>		
P.O., STATE AND ZIP CODE		<i>97002</i>		
POSTAGE		\$ <i>15</i>		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	<i>80¢</i>		
	SPECIAL DELIVERY	¢		
	RESTRICTED DELIVERY	¢		
	OPTIONAL SERVICES	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	<i>45¢</i>
			SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
			SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
			SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$ <i>40</i>		
POSTMARK OR DATE				

PS Form 3800, Apr. 1976



6944 Navigation • Houston, Texas 77011 • (713) 924-6020

September 4, 1979

Mr. Harry Caldwell
 Chief of Police
 Houston Police Department
 61 Riesner Street
 Houston, Texas 77002

Dear Chief Caldwell:

As has been stated many times, this agency wishes to have a strong working relationship with you and your department. It does, therefore, seem appropriate to advise you personally of what appears to be a serious violation of the attorney-client privilege. On two separate occasions, June 29, 1979 and August 28, 1979, clients of this center and who have a written attorney-client relationship with me were questioned by Internal Affairs investigators specifically about their attorney-client relationship with me.

The client can certainly waive this important privilege, I'm sure you will agree, however that such a waiver would not be valid were the client not fully advised of his rights by the examining officer. In neither mentioned case, Chief, was the client so advised by Internal Affairs. We ask that this situation be remedied.

I attempted to discuss this matter with Captain Thaler, but he referred my call to your Counsel Mr. Dennis Gardner. Mr. Gardner and I did have an opportunity to discuss the matter, but I would be willing to have a personal discussion with you on the subject, at your convenience.

Sincerely,

Jenifer Schaye
 Jenifer Schaye
 Attorney at Law
 Legal Counsel
 Public Interest Advocacy Center

CERTIFIED MAIL RETURN RECEIPT REQUESTED

cc Captain E R. Thaler Internal Affairs
 Dennis Gardner City Legal Department



NEWSGRAM 88

El Franco Lee

STATE REPRESENTATIVE
DISTRICT 88

9 JULY 1979

FOR ADDITIONAL INFORMATION
PLEASE CONTACT:

BRUCE A. AUSTIN=713/675-0004
675-3608

FOR IMMEDIATE RELEASE:

REPRESENTATIVE EL FRANCO LEE (D-HOUSTON) HAS CALLED A SPECIAL HEARING TO INVESTIGATE THE DEADLY FORCE STUDY ISSUED BY THE PUBLIC INTEREST ADVOCACY CENTER AND OBTAIN INFORMATION CONCERNING INCIDENTS OF POLICE BRUTALITY AND/OR ABUSES IN THE BLACK COMMUNITY. THE HEARING WILL BE HELD JULY 21ST ON THE CAMPUS OF TEXAS SOUTHERN UNIVERSITY (EDUCATION BUILDING). TESTIMONY WILL BE HEARD STARTING AT 9:00 A.M. AND THE PUBLIC IS INVITED.

ON JUNE 12TH AND 13TH THE PUBLIC INTEREST ADVOCACY CENTER TESTIFIED BEFORE A HEARING OF THE CIVIL RIGHTS COMMISSION INVESTIGATING POLICE PRACTICES IN THE CITY OF HOUSTON. THE CENTER SUBMITTED A REPORT ON DEADLY FORCE USED BY THE HOUSTON POLICE DEPARTMENT. THE STUDY CONTENDED THAT OF THE 267 CASES STUDIED A SIGNIFICANT NUMBER INVOLVED BLACK HOUSTONIANS.

THERE WAS RELATIVELY NO DATA PRESENTED BY ANY BLACK ORGANIZATION OR INDIVIDUALS AT THE HEARING. THE COMMISSION WILL RETURN IN SEPTEMBER AND THEN OUR COMMUNITY SHOULD HAVE SOME CONCRETE DATA TO PRESENT AT THAT TIME. SPECIFICALLY, WE SHOULD HAVE DATA REFLECTING THE DIRECT EFFECT OF DEADLY FORCE ON BLACK HOUSTONIANS WITH SPECIAL ATTENTION GIVEN TO COMMUNITY REPORTS OF ALLEGED POLICE ABUSES.



NEWSGRAM 88

El Franco Lee

STATE REPRESENTATIVE
DISTRICT 88

FOR IMMEDIATE RELEASE

17 JULY 1979

FOR ADDITIONAL INFO
PLEASE CONTACT:
BRUCE AUSTIN-675-0004
675-5608

REPRESENTATIVE EL FRANCO LEE WILL HOLD A PRESS CONFERENCE 10:00 A.M., THURSDAY MORNING, JULY 19, 1979 WITH OTHER MEMBERS OF AN INVESTIGATORY PANEL THAT WILL LOOK INTO OCCURANCES OF POLICE BRUTALITY IN THE BLACK COMMUNITY OF HOUSTON. THE PRESS CONFERENCE WILL BE HELD IN THE DISTRICT OFFICE OF REP LEE AT 3701 CALVACADE, HOUSTON, TX 77026.

"THE HEARING WILL BE HELD SATURDAY, JULY 21st IN THE EDUCATION BUILDING OF TEXAS SOUTHERN UNIVERSITY. THE PURPOSE FOR THE PRESS CONFERENCE IS TO INFORM THE CITIZENS OF HOUSTON AND ESPECIALLY IT'S BLACK CITIZENS THAT I HAVE CALLED A SPECIAL HEARING TO INVESTIGATE THE DEADLY FORCE STUDY ISSUED BY THE PUBLIC INTEREST ADVOCACY CENTER AND OBTAIN INFORMATION CONCERNING INCIDENTS OF POLICE BRUTALITY AND/OR ABUSES IN THE BLACK COMMUNITY.

IF THE BLACK COMMUNITY RESPONDS THEN WE WILL KNOW FACTUALLY WHETHER OR NOT THE PEOPLE FEEL WE HAVE A PROBLEM WITH POLICE ABUSE. LIKEWISE, IF THERE ARE NO RESPONSES, THEN THE BLACK CITIZENS OF HOUSTON WILL HAVE SPOKEN, AND THIS WOULD CERTAINLY INDICATE THAT THERE HAS NOT BEEN A DEGREE OF POLICE ABUSE THAT WAS DEEMED SIGNIFICANT BY THE MAJORITY OF BLACK HOUSTONIANS. WE ARE HOPING THAT THE COMMUNITY WILL COME FORWARD AND OFFER THEIR OPINIONS ON THIS ISSUE."

RULES FOR RESPONDENT TESTIMONY
 HEARING ON POLICE BRUTALITY
 AND THE DEADLY FORCE STUDY
 AS IT APPLIES TO THE BLACK
 COMMUNITY

- A. Respondents will be duly sworn before rendering testimony.
- B. Questions may be posed to respondents at any point within the respondents testimony.
- C. **DEFAMATORY STATEMENTS:** Respondents are requested to refrain from publicly presenting any material or information that may tend to be defamatory in nature. If testimony is thought to be defamatory, the witness may request for the Hearing Panel to hear evidence in Executive Session.
- D. **EXECUTIVE SESSION:** The Hearing Panel may meet in Executive Session before or during the Hearing. Executive Session is held with only Panel Members present and any or all other persons the Hearing Panel may deem necessary.
- E. Respondents will be asked by Hearing Counsel to present the following information for verification. (name, affiliation, nature of incident, location) After the preceding information has been given, respondent will then proceed with his testimony in the following order:
1. Give clear detail of incident or problem.
 2. Stipulate facts that gave rise to your offering testimony of police abuse or comments on the Public Interest Advocacy Center's Deadly Force Study.
 3. Testimony Ended.

NOTE: TIME SCHEDULE

9:00	-	12:00...PART I
		12:00 - 1:00.....RECESS
1:15		5:00...PART II



Texas
House of Representatives

Committees:
Intergovernmental
Affairs
Business & Industry

El Franco Lee
District 88

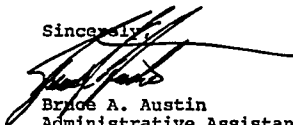
Dear

You are invited to offer verbal testimony and/or information concerning incidents of police brutality or where deadly force was used in excess within the Black community.

Representative El Franco Lee and four other notable community leaders will investigate the Deadly Force Study submitted by the Public Interest Advocacy Center and hear testimony concerning reports of Police Brutality. These reports will be submitted to the Civil Rights Commission when they convene here in September. The Hearing will be held at 9:00 a.m., July 21st in the Education Building of Texas Southern University.

Enclosed are rules for presentation of testimony. You are encouraged to participate and I hope you will find the time to do so.

Sincerely,

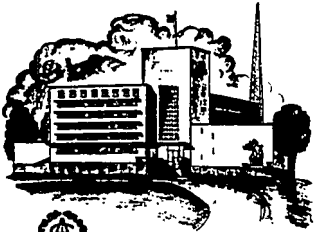


Bruce A. Austin
Administrative Assistant

BAA:ab

P.O. Box 2910
Austin, Texas 78769
512/475-3267

3701 Cavalcade St.
Houston, Texas 77028
713/675-0004



HARRY CALDWELL
CHIEF OF POLICE

CITY of HOUSTON
JIM MCCONN, MAYOR
POLICE DEPARTMENT

61 RIESNER STREET
HOUSTON, TEXAS 77002

TELEPHONE 771-1111 • 771-7011 • RADIO KKK 490 • TELETYPE 1 713 571 1012

July 17, 1979

Mr. Bruce A. Austin
Administrative Assistant
3701 Cavalcade Street
Houston, Texas 77026

Dear Mr. Austin:

I appreciate your invitation for me to offer verbal testimony concerning instances of police brutality in the Black Community. Unfortunately you did not allow me sufficient time to allow me to change my travel plans to allow my attendance. I am scheduled to be in Washington on Wednesday, July 18 and to return to Houston on Sunday, July 22, 1979.

Your correspondence was received in my office only yesterday. This obviously is not sufficient time for me to arrange for a member of my staff to attend. I have asked one of the officers from the Internal Affairs Division to attend this meeting since our great concern is to very carefully investigate any and every allegation of police misconduct. The Internal Affairs Division officer will not be able to offer testimony but will be in a position to record any instance of alleged wrongdoing so that we might do a follow-up investigation regarding these allegations.

I appreciate your having notified us of this meeting. It would have been extremely helpful if you had let us know in sufficient time to allow us to participate.

Very truly yours,

H. D. Caldwell
Chief of Police

HDC/pl

HOUSTON POLICE DEPARTMENT
INTERNAL AFFAIRS DIVISION

Det. H. A. Galano

PHONE: 222-5871
115 POLICE ADMINISTRATION BLDG.
61 RIESNER STREET - HOUSTON, TEXAS 77002

DATE OF TESTIMONY	NATURE OF TESTIMONY	AGENCY MATTER REFERRED	STATUS
21 July 1979	, 29 June 1978 taken into custody by Houston Police officers and beaten	Internal Affairs/Houston Police Department	Pending Disposition
21 July 1979	Provided an overview of the use of Deadly Force by Houston Police Officers; the study points to the actual use of firearms and includes only incidents were wounded or killed by police	Justice Department, Houston Police Department, U.S. Civil Rights Commission	
21 July 1979	Research that tested the con- gruences between police and inner- city residents' perception of police roles	Houston Police Department	Appointed to Committee of Experts to advise Police Chief Caldwell
21 July 1979	Police officers entered home, identified themselves as Houston Police officers and handcuffed. - age 61.	Reported to PIAC and Internal Affairs Div., HPD	Pending Disposition
21 July 1979	Son killed in Ramsey Unit One, Texas Department of Corrections. Read letter from son that told of abuses and expected death. Soon after letter arrived she was sent a letter notifying her of her son's death.	Reported to TDC officials	No response.
21 July 1979	Houston Black owned newspaper had documented newspaper accounts and other information concerning Police Brutality and other associ- ated incidents for the last ten years.	Hearing Committee	Subpoena needed to obtain data

DATE OF TESTIMONY	NATURE OF TESTIMONY	AGENCY MATTER REFERRED	STATUS
21 July 1979	Son died in auto accident resulting from auto chase with police officers. Son allegedly did not die from crash, but rather direct cause of death was asphyxiation. Officers would not allow son to be rescued from wreckage. Family experiencing harassment from police officers subsequent to their giving testimony before the Hearing of July 1979.	Internal Affairs, HPD Hearing Committee	
21 July 1979	Eyewitnessed to Police beating of Third Ward resident (Black male) in 1975. The incident occurred on Live Oak and Southmore St. and Police officers are said to have beaten the unidentified man for an extended period of time while community residents looked on.	No Report	
21 July 1979	Police came into respondent's yard on March 11, 1977, in pursuit of their son who was assured of having run a red light. Police beat 21 age man and approximately 9 or more police arrived. A Catholic priest arrived and he was an eyewitness to Police Officers beating head, face down on the concrete located on the ground, under mental treatment.	Internal Affairs	
21 July 1979	Beat by Police Officers in county jail, tripped her down, then started fighting her. Reports of medical problems have been caused.		

DATE OF TESTIMONY	NATURE OF TESTIMONY	AGENCY MATTER REFERRED	STATUS
21 July 1979	<p>One blue patrol car and about six plain cars pulled in front of my house. When I answered the door the officers asked for [redacted] and I told them no one by that name stayed here. Then he asked me my name and I told him [redacted]. He told me, thats close enough, you under arrest" and quickly handcuffed me and placed me in the car. I was never read my rights the entire time I was in their custody. I was immediately taken to the robbery division where my name was placed on a Statutory Warning that was already prepared when I arrived. He was confined and humiliated by officers and told his attorneys were going to be killed. He was told that his family would become to poor to buy coffee because they were going to put something on everyone of them.</p>		
21 July 1979	Harassed by Houston Police Department	Internal Affairs	
21 July 1979	Harassed by Houston Police Department	Internal Affairs	
21 July 1979	<p>Taken to secluded area and dipped in water by Houston police, tied and threatened by officers. Reported That he was fearful of his life.</p>	Hearing Committee	

DATE OF TESTIMONY	NATURE OF TESTIMONY	AGENCY MATTER REFERRED	STATUS
21 July 1979	Eyewitness to Police Firing on victim of kidnapping. She contends officer could have ascertained the identity of victim prior to his use of deadly force.	Hearing Committee	Pending Disposition
21 July 1979	Threatened by a Policeman on March 10, 1979 after attempt to gain custody of a drunk friend (who was asleep in car). After second attempt, police attempted to arrest him. then after tussling, shot him.	Internal Affairs	
21 July 1979	Son beaten by Police in yard. Son 17 and at time was on his parents property and was asked for I.D. Mother agreed to assist by obtaining I.D., but officers were beating her son on her return.	Internal Affairs	Letter of appology from the Houston Police Department

THE HARRIS COUNTY GRAND JURY— A CASE STUDY

Robert A. Carp*

I. INTRODUCTION

For several decades students of the judicial process have had measured success in parting the veil of secrecy that surrounds the deliberations and internal dynamics of American trial juries. The classic study by Kalven and Zeisel of jury behavior in Chicago¹ and other related projects² have provided keen insights into the types of psychological, institutional, and sociological variables that influence the "output" of trial jury deliberations. In addition, psychologists and sociologists have generated numerous theories about the behavior patterns of small groups,³ and many of these theories have served as the basis of highly sophisticated studies of the interpersonal relations and voting behavior of small groups of judicial decision makers.⁴

While the literature on petit jury behavior has increased both in quantity and in theoretical and methodological sophistication, such research has not been extended to the subject of grand juries. Although the grand jury is a vital aspect of the federal judicial process and is part of the due process guarantee in half of the state constitutions,⁵ it has received scant and generally unsophisticated treatment by judicial scholars. Grand jury literature tends to fall into three general categories: studies of the history and evolution of the grand jury;⁶ analyses of the legal powers and prerogatives of grand juries in relation to the rights and immunities

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1. H. KALVEN, JR., & H. ZEISEL, *THE AMERICAN JURY* (1966).

2. *See id.* at 541-45 (bibliographic references).

3. R. BALES, *INTERACTION PROCESS ANALYSIS: A METHOD FOR THE STUDY OF SMALL GROUPS* (1950); E. MACCOBY, T. NEWCOMB, & E. HARLEY, *READINGS IN SOCIAL PSYCHOLOGY* 437-47 (1958); *THE STATE OF THE SOCIAL SCIENCES* 148-61 (L. White ed. 1956); *WORKING PAPERS IN THE THEORY OF ACTION* ch. 4 (T. Parsons, R. Bales, & E. Shils eds. 1953); L. Berkowitz, *Some Effects of Leadership Sharing in Small Decision-Making Conference Groups*, 1951 (unpublished thesis in University of Michigan Department of Psychology); Berkowitz, *Sharing Leadership in Small, Decision-Making Groups*, 48 *J. ABNORMAL & SOCIAL PSYCHOLOGY* 231 (1953); Slater, *Role Differentiation in Small Groups*, 20 *AM. SOCIOLOGICAL REV.* 300 (1955).

4. *E.g.*, *THE FEDERAL JUDICIAL SYSTEM* pt. III, § C (T. Jahnige & S. Goldman eds. 1968); *JUDICIAL BEHAVIOR: A READER IN THEORY AND RESEARCH* chs. III-V (G. Schubert ed. 1964).

5. H. ABRAHAM, *THE JUDICIAL PROCESS* 108 (2d ed. 1968).

6. *E.g.*, G. EDWARDS, JR., *THE GRAND JURY* (1906); R. YOUNGER, *THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES, 1634-941* (1963); Van Voorhis, *Note on the History in New York State of the Powers of Grand Juries*, 26 *ALBANY L. REV.* 1 (1962).

of the accused;⁷ and critiques of the grand jury system and proposals for reform.⁸ Although a few studies analyze the selection process for grand juries and speculate on the possible effects on grand jury "output" of various forms of selection, these studies are not based on quantitative data nor are they performed with much methodological rigor.⁹

This article is intended to help remedy the paucity of empirical data on the selection and internal dynamics of grand juries by reporting the results of a case study of grand jury operations in Harris County, Texas. The study differs from the existing grand jury literature because the author had access to data not previously available to judicial scholars, and the data permitted the researcher to respond concretely to questions that until this time have been only subjects of speculation among students of the judicial process. The article is divided into three veins of inquiry. Section II outlines the selection process for the Harris County grand jury by providing answers to questions such as these: From which social and economic strata of society are grand jury members drawn? What is the nature and effect of the grand juror's initial training and socialization process? How much time is required for the average grand juror to fully understand the various functions and prerogatives of the grand jury? Section III explores the nature of grand jury deliberations by suggesting answers to these queries: How much time does the grand jury spend deliberating on each case? What is the rate of internal dissension on the grand jury, and in which types of cases is there likely to be the largest number of divided votes? Which cases are considered "routine" by the grand jury, and which cases do the grand jury choose to discuss and to deliberate on at length? Section IV examines the relationship between the grand jury and the assistant district attorneys who present cases to the jury and who direct and participate in grand jury investigations. Questions such as these will be explored: When and on which types of cases does the grand jury decide in accordance with or in opposition to the district attorney's recommendations? To what extent does the grand jury trust the competence and suggestions of the district attorneys? How much evidence does the grand jury require of the district attorneys before it is convinced that a "true bill" is mandatory? Finally, the article will offer some general conclusions about grand juries, will attempt to evaluate their overall effectiveness, and will present several suggestions for future research on grand juries.

7. E.g., S. MACCORKLE, *THE TEXAS GRAND JURY* (1966); Note, 30 *FORDHAM L. REV.* 365 (1961); Note, 23 *U. PITT. L. REV.* 1024 (1962); Note, 1963 *WASH. U.L.Q.* 102.

8. E.g., Contes, *Grand Jury, the Prosecutor's Puppet: Wasteful Nonsense of Criminal Jurisprudence*, 33 *PA. B. ASS'N Q.* 311 (1962); Russell, *Cook County Grand Jury: Some Problems and Proposals*, 43 *CHI. B. RECORD* 9 (1961); Sherry, *Grand Jury Minutes: The Unreasonable Rule of Secrecy*, 48 *VA. L. REV.* 668 (1962); Note, 52 *CALIF. L. REV.* 116 (1964).

9. E.g., Note, 21 *Sw. L.J.* 545 (1967).

Data for this study derives from three principal sources: First, as a participant-observer on the 177th District Court Grand Jury, which met in Houston, Texas between November, 1971, and February, 1972, the author had the opportunity to perform a case-by-case content analysis of the 918 cases considered by that grand jury. This analysis includes a complete record of all votes taken, the amount of time spent deliberating on the various cases, and extensive notes on the discussions among the grand jurors and between members of the grand jury and the district attorneys. Because of the oath of grand jury secrecy to which the author is bound, the information provided must deal with the cases in the aggregate, not individually, and great care has been taken not to divulge specific information about sensitive or confidential subject matter.

Second, in-depth interviews were conducted with former members of Harris County grand juries. The interviewees were not selected at random but were selected from a group of *recent* grand jury members and jury foremen. Twenty-three such persons in all were contacted (including six jury foremen), and all of them agreed to be interviewed. The primary purpose of these interviews was to compare the grand jury experiences of this author with those of others to determine if the performance of the 177th Grand Jury, from which the hard data was drawn, was typical. No attempt was made to quantify the results of the in-depth interviews; thus the information they provide is anecdotal although frequently interesting and insightful.

Third, the study contains data from a questionnaire mailed to all persons who served on Harris County grand juries between 1969 and 1972. Of the 271 questionnaires mailed to the grand jurors, 156 (58 percent) were returned and included in the analysis. The questionnaire solicited information about the socioeconomic characteristics of the grand jurors and about the nature of their grand jury deliberations and experiences. The results are used throughout the article to supplement the other sources of research data and to provide a comparison and contrast between the data of the 177th Grand Jury and the other grand juries that immediately preceded and followed it.

Finally, a word should be said about Harris County itself and about the degree to which one may generalize the conclusions of this case study for application to grand juries in general. Harris County, with its population of approximately 1.9 million, is one of the largest, most cosmopolitan urban centers in the United States. Because it is located in a state that is both "southern" and "western" and has a sizable minority-group population with a large influx of citizens from the east and the midwest, it seems reasonable to suggest that Harris County is fairly representative of modern American society. In addition, the Texas laws that outline the functions, duties, and powers of the grand jury, while unique in some ways, are

not too dissimilar from those that govern grand juries in other states.¹⁰ For these reasons the author believes that the conclusions of this study may well apply to grand juries in general throughout the United States.

II. THE SELECTION AND SOCIALIZATION OF THE GRAND JURY

A. Selection and Composition of the Grand Jury

The process of selecting grand jurors in Texas is as intricate as it is arbitrary. Unlike many of its sister states that nondiscriminately select the names of grand jurors from a lottery wheel containing the names of hundreds of potential jurors,¹¹ Texas grants jury commissioners almost unlimited discretion to compile a small list of names from which the grand jury is impaneled.¹² The local district judges select not less than three nor more than five qualified persons from different parts of the county to serve as jury commissioners.¹³ After taking a comprehensive oath and receiving a set of instructions from the district judges, the commissioners secure from the district clerk the last tax assessment roll of the county and a list of those who are either exempt or disqualified from service on the grand jury (for example, persons previously convicted of a felony). With this information, the commissioners are free to select sixteen prospective grand jurors who meet broadly defined statutory standards.¹⁴ The names of those selected are written down in numerical sequence, placed in a sealed envelope, and delivered to the district judge in open court. When the list is opened, the judge conducts an inquiry as to their qualifications, and the first twelve who are qualified are impaneled as the grand jury for a term of three months.¹⁵

Very little is known about the actual criteria by which jury commissioners select prospective grand jurors. Interviews with former grand jury members suggest that most jurors were selected either because of their personal friendship with the commissioners or because they were associates of the commissioners' friends. The following two statements by former grand jurors appear to be representative of the process by which most jurors are selected. One grand juror recounted:

One of Judge [X]'s jury commissioners goes to our church, and I am good friends with his wife. I mentioned one or two times that I'd kind of like to serve on the grand jury, and I guess she mentioned this fact to her husband because one day he called me

10. E.g., compare S. MACCORKLE, *THE TEXAS GRAND JURY* (1966) (grand juries in Texas) with Spain, *Grand Jury, Past and Present: A Survey*, 2 AM. CRIM. L.Q. 119 (1964) (grand juries in other states).

11. Note, 21 Sw. L.J. 545, 548 (1967).

12. TEX. CODE CRIM. PROC. ANN. art. 19.06 (Supp. 1974).

13. *Id.* art. 19.01.

14. *Id.* art. 19.08.

15. *Id.* arts. 19.09, .26 (1966).

and asked if I would like to serve. I talked it over with my husband and then called him right back and said that I'd be happy to be on the jury.¹⁶

Another grand juror explained:

I teach in the School of Social Work at the University. One day our department chairman came into my office and said that he had had a call from Dean [X] of the Law School who is one of Judge [Y]'s jury commissioners. The Dean had asked our department chairman if there was anyone in the department who would like to serve on the grand jury, and for some reason or other the chairman approached me about this. I told the chairman that if he didn't mind my missing a few of my classes now and then, I would be happy to serve. The chairman said he thought it would be good experience for me, and he then called back the Dean and had me put on the list.¹⁷

Historically, most jurists have argued and the courts have officially determined that grand juries, like trial juries, should be representative of the population of the community as a whole.¹⁸ Although there is still considerable uncertainty about how this goal is to be achieved, the United States Court of Appeals for the Fifth Circuit has determined that the Constitution requires that members of Texas grand juries represent "a fair cross section [of the] community's human resources"¹⁹ In light of this judicial determination it is fair then to ask: How representative are Texas grand juries of the county populations from which they are selected? This is largely an empirical question, and for a partial answer we may compare the results of the questionnaire sent to former grand jurors in Harris County with the 1970 census figures for this same county.

16. Interview with former member of Harris County Grand Jury, in Houston, Tex., Nov. 1971.

17. *Id.*

18. *E.g.*, *Brooks v. Beto*, 366 F.2d 1 (5th Cir. 1966), *cert. denied*, 386 U.S. 975 (1967). For a study of the historical arguments regarding the composition of grand juries refer to R. YOUNGER, *THE PEOPLE'S PANEL: THE GRAND JURY IN THE UNITED STATES*, 1634-941 (1963).

19. *Brooks v. Beto*, 366 F.2d 1, 14 (5th Cir. 1966), *cert. denied*, 386 U.S. 975 (1967).

TABLE I
 SOCIOECONOMIC CHARACTERISTICS OF HARRIS COUNTY
 GRAND JURORS COMPARED WITH 1970 CENSUS FIGURES
 (N=156 FOR THE QUESTIONNAIRE SAMPLE)

Sex	Percentage of Grand Juries	Percentage of County
Male	78	49
Female	22	51
<hr/>		
<u>Age</u>		
21-35	10	23
30-50	43	18
51-65	37	8
Over 65	10	5
Median juror age, 51		Median adult age, 39
<hr/>		
<u>Income</u>		
Under \$5,000	1	16
\$5,000-\$10,000	3	31
\$10,000-\$15,000	25	29
\$15,000-\$20,000	16	9
Over \$20,000	55	15
Median juror income, \$25,000		Median family income in county, \$10,348
<hr/>		
<u>Race</u>		
Anglo	82	69
Negro	15	20
Mexican-American	3	11
<hr/>		
<u>Education</u>		
Less than high school	0	24
Some high school	3	23
High school degree	8	25
Some college	34	13
College degree	32	Comparable data not available
Graduate degree	23	
Median juror education, 16 years		Median county resident education, 12 years
<hr/>		
<u>Employment</u>		
Business executive	35	
Proprietor	7	
Professional	20	Comparable data not available
Employed worker	13	
Retired	13	
Housewife	11	
Other	1	

Thus, the typical Harris County grand juror is an Anglo-Saxon male college graduate about fifty-one years of age who is quite likely to earn about \$25,000 per year while working either as a business executive or as a professional. How does this profile compare with what the 1970 census data indicates about the "typical" citizen of the county? A brief summary of the data reveals the following information about the residents of Harris County: 49 percent are male and 51 percent are female; the median adult age is thirty-nine; 69 percent are Anglo-Saxon, 20 percent are black, and 11 percent are Mexican-American; the median education is twelve years (a high school diploma); and the median family income is \$10,348.²⁰ These figures clearly demonstrate that even by rudimentary standards Harris County grand juries do not meet the judicial criterion of a fair cross section of the community's human resources. Grossly under-represented are women, young people, Negroes, Mexican-Americans, the poor, and those with less extensive educational backgrounds.²¹

What does this information suggest about the relationship between grand jury composition and the substantive decisions of the grand jury? A typical civil libertarian might ask how are the young people, the minority groups, the poor, and the oppressed to be accorded due process of law when they are not proportionally represented among those who administer the laws. Such a critic would do well, however, to consider what numerous investigations reveal about the attitudes of high-status persons toward dissident and minority factions in American society. Studies by Stouffer, Lipsett, and Hyman and Sheatsley, for example, reveal that higher-status people (those with at least a college degree and who are in the professions or who are business executives) are significantly *more* likely to be solicitous toward the rights of ethnic minorities and social dissidents than are those who come from the lower end of the social and economic spectrum.²²

On a more specific level, the interview data suggests strongly that the better educated grand jurors who work in an executive or professional capacity are more likely to possess the social efficacy to confront the district attorneys when they believe the attorneys have intentionally confused or misled them. It is often the social and economic elite who possess the intellectual capacity and sensitivity to probe into the complexities of the judicial labyrinth and to insist on due process and fair play. Many grand jurors readily stated that they were often confused and intimidated

20. STANDARD METROPOLITAN STATISTICAL AREA I, 34, 100 (1972) (Houston census tracts).

21. For comparative data on jury composition refer to bibliographic citations in Jacob, *Judicial Insulation—Elections, Direct Participation, and Public Attention to the Courts in Wisconsin*, 1966 WIS. L. REV. 801, 812-15.

22. S. LIPSETT, *POLITICAL MAN* 104 (1960); S. STOFFER, *COMMUNISM, CONFORMITY AND CIVIL LIBERTIES* 139 (1955); Hyman & Sheatsley, *Attitudes Toward Desegregation*, 211 SCIENTIFIC AM. 16 (1964). In the South, however, a very high level of education is necessary before anti-Negro attitudes are basically modified. See D. MATTHEWS & J. PROTIRO, *NEGROES AND THE NEW SOUTHERN POLITICS* 129 (1966).

by the technical language and the complexities of the judicial process and that they looked to the more mature members of the grand jury to represent them in their confrontations with the district attorney. Such older leaders are almost invariably the better educated professionals and executives on the grand jury. The following quotation by a very young member of a former Harris County grand jury provides a typical and insightful illustration:

I remember one day we were all pretty depressed about what was going on with a particular case. We were all saying to each other [when the assistant district attorney had left the grand jury room], "We're just pawns of the district attorney with this case. One minute he tells us one thing about what our powers are with this case and the next minute he tells us something else about what we can do." I felt like they all did, too, but I was pretty young, and the D.A. seemed pretty cool and experienced, and I knew I didn't want to tangle with him. Finally, when he [the assistant district attorney] came back in, old Mr. [X] stood up and really let him have it. Mr. [X] ran a big real estate firm and was a real conservative when it came to welfare and government spending and things like that, but he was pretty much of a liberal when it came to civil liberties. Well, Mr. [X] said to the D.A., "Look, I just don't have to take this. If one of my employees gave me all this doubletalk, I'd fire him on the spot. Now I want you to level with us on this thing, and I want you to put it in writing so we can show it to Carol Vance [the Harris County District Attorney] in case you're not telling us the truth." From then on the D.A. treated us with kid gloves. None of us would have dared to talk to the D.A. like that, but Mr. [X] was a big shot and I guess he is used to pushing until he gets a straight answer from people.²³

Thus one consequence of the grand jury selection process may be that it recruits those individuals in society who are not only most supportive of civil liberties but also most likely to possess the intelligence, personal self-confidence, and social efficacy to translate their instincts for fair play into substantive reality.

B. *Training and Socialization of the Grand Jury*

The grand jury begins to hear cases the very day it is impaneled. How well prepared is the average grand juror to perform his important and responsible function of determining whether there is probable cause for a citizen to be formally indicted for a felony and to be put on trial? In Harris County all new grand jurors are provided with a training program that entails three different aspects: a *voluntary* one-day training seminar conducted primarily by police and sheriff's department officials;

²³ Interview with former member of Harris County Grand Jury, in Houston, Tex., Sept. 1972.

two booklets pertaining to grand jury procedures and instructions, one composed by the District Attorney²⁴ and the other prepared by the Harris County Grand Jury Association;²⁵ and, finally, an in-depth, give-and-take discussion between the grand jury and an experienced member of the District Attorney's staff.

How adequately does this training program prepare the grand jurors for their work? First, the series of lectures by law enforcement officials seems to be of limited utility for the novice grand juror. Not only are these lectures given several days *after* the formal work of the grand jury has begun, but most grand jurors tend to agree with an evaluation that was included in a recent grand jury report: "The day-long training session was interesting, but for the most part the lectures were irrelevant to the primary functions of a Grand Jury, and many of us noted some rather unsubtle political overtones in the formal presentations."²⁶ Interviews with more than a score of former grand jurors and a content analysis of grand jury reports reveal that the primary function of the law enforcement lectures is to explain and to "plug" the work of the respective departments rather than to provide the grand juror with substantive insights into what his grand jury duties entail.

The pamphlets prepared separately by the county grand jury association and by the District Attorney are well written and provide a good summary of the formal duties and functions of the grand jury. Since these booklets are not provided until the first day of jury service, however, they cannot be read until after the grand jury has put in one full day of work, which usually consists of hearing at least fifty cases. More importantly, however, interviews with former grand jurors indicate that very few jurors read and study these booklets. This comment by one former grand juror is typical:

Yes, I took the books home with me that first night and I glanced through them, but I can't say I really read them. I figured that we'd meet our problems as we came to them, and that's about what happened. If we had a question during our deliberations, one of us would usually say, "Let's see if the booklet says anything about this." That's how we used the books when I was on the jury. I don't think any of us actually read them as such.²⁷

The give-and-take discussion between the grand jury and an assistant district attorney is usually scheduled for the first working session, and it is the final aspect of the grand juror's formal on-the-job training. When such a discussion does indeed occur, it appears to be of some utility in

24. C. VANCE, *THE HARRIS COUNTY GRAND JURY* (n.d.).

25. GRAND JURY ASS'N OF HARRIS CTY., *HANDBOOK FOR GRAND JURORS* (n.d.).

26. REPORT OF THE NOVEMBER 1971 GRAND JURY FOR THE 177TH CRIMINAL DISTRICT COURT 1 (1972).

27. Interview with former member of Harris County Grand Jury, in Houston, Tex., May 1972.

acquainting grand jurors with their new duties. This comment by a recent member of a grand jury, however, was typical:

Yes, we were supposed to meet with one of the D.A.'s at the end of the first day, and he was supposed to explain to us what the hell was going on. But can you believe this? They [the assistant district attorneys] presented us with so many cases on our first day, it got to be five o'clock and we didn't have time for anyone to explain to us what we were supposed to be doing. We heard dozens of cases that first day, and when I got home that night I was just sick. I told my wife, "I sure would hate to be one of those guys who had his case brought before us today."²⁸

How long does it take for the average grand juror to understand the duties, powers, and functions of a grand jury? The results of the questionnaire survey reveal that the typical grand juror does not claim to fully understand his basic purpose and function until well into the third full working session of the grand jury.

TABLE 2

LENGTH OF TIME REQUIRED BEFORE GRAND JURORS
SUBSTANTIALLY UNDERSTOOD THE DUTIES, POWERS,
AND FUNCTIONS OF A GRAND JURY (N=156)

Length of Time	Percentage of Grand Jurors
Understood prior to or immediately after first session	22
Understood after second session	27
Understood after fourth session	32
Understood after sixth session or longer	19

(Median time is somewhat more than the third session) .

Based on the average daily workload of 1971 (fifty-eight cases per working session), this data indicates that the grand jury hears a minimum of 116 cases before its members even claim to understand their primary duties and functions. Since the average grand jury in 1971 considered 1328 cases, the data suggests that most grand jurors stumble through the first 8 percent of their cases without fully understanding their responsibilities.²⁹

²⁸ Interview with former member of Harris County Grand Jury in Houston, Tex., Dec. 1971.

²⁹ The statistics in this paragraph are based on figures prepared by the Grand Jury Division of the Harris County District Attorney's Office in a report to District Attorney Carol Vance.

III. GRAND JURY DELIBERATIONS

This section of the article will examine the amount of time the grand jury spends deliberating on each case, the degree of evidence required for an indictment, the role of the grand jury foreman in the deliberation process, and the rate and nature of internal dissension among grand jurors.

A. *Time Allotted Per Case and Evidence Required for "Probable Cause"*

How much time does the average grand jury spend with each case to determine whether there is enough evidence to place a man on trial for a felony offense? Although the data suggests considerable variation in the amount of time spent deliberating on the various categories of cases, the evidence reveals that the typical grand jury spends only five minutes per case. (In 1971 twelve Harris County grand juries spent an estimated 1344 hours deliberating on 15,930 cases.)³⁰ This average time of five minutes includes the assistant district attorney's summary of the case and his recommendation as to how the case should be decided (about sixty seconds per case), the hearing of testimony, and the actual secret deliberations by the grand jury. By anyone's standards, justice is indeed swift.

How do the above facts accord with the amount of factual proof the grand jurors purportedly require before they are willing to bring an indictment?³¹ The questionnaire asked each former grand juror about the practice followed by his respective grand jury with regard to the degree of investigation required for each case.

TABLE 3

DEGREE OF INVESTIGATION REQUIRED FOR INDICTMENT
BY THE GRAND JURORS (N=150)

Degree of Investigation	Percentage of Grand Jurors
Although data to convict had not been discovered, were you usually persuaded to indict if the District Attorney said that such data would be obtained prior to trial?	8
Were you usually persuaded to indict only if every item of evidence sufficient to convict could be demonstrated to the grand jury?	61
Were you usually persuaded to indict if it appeared that data had been discovered that would prove at least one but not all major elements of the alleged crime?	31

30. *Id.*

31. TEX. CODE CRIM. PROC. ANN. art. 20.19 (1966). In order to indict, nine of the twelve grand jurors must vote for a true bill.

The table reveals that well over half of the grand jurors claim that their grand jury brought true bills only when every item of evidence sufficient to convict could be demonstrated to the grand jury. The question arises how is this possible when only five minutes is allotted to each case. Several explanations are possible: that the memories of the grand jurors are poor; that the questionnaire respondents intentionally misrepresented their experience so as not to make their grand jury "look bad" in the eyes of the researcher; or that even after three months of grand jury service most grand jurors are ignorant of basic rules of evidence and of the meaning of "probable cause." It is the conclusion of this researcher, based on his own experience and the contents of the in-depth interviews, that the third explanation is the correct one. Given the inadequate training and preparation of grand jurors for their judicial service and the continued reluctance of the assistant district attorneys to provide any more information than is absolutely necessary for the disposition of each case, it is not surprising that nearly two-thirds of the grand jurors felt that after five minutes they were adequately informed to decide the fate of the accused.

Does the grand jury become more efficient as its term progresses, that is, is it able to deal with a larger number of cases per hour toward the end of its term than at the beginning? Eighty-four percent of the questionnaire respondents indicated that this was their impression, and the table below clearly indicates that such was the case with the 177th Grand Jury. The 177th Grand Jury spent an average of 7.4 minutes per case during its first six working sessions while spending only 5.9 minutes per case during the final six working days.

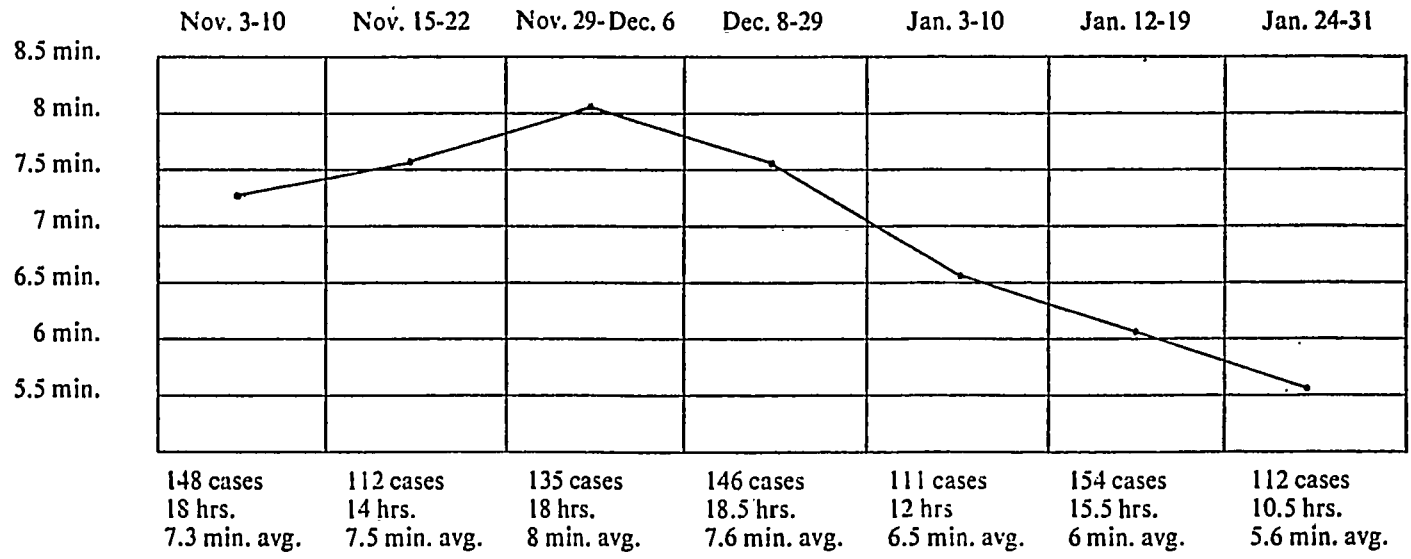
Other questions concerning the deliberation process are how many and what types of cases are actually discussed by the grand jury and how many are simply voted on without any discussion after the district attorney's sixty second summary of the facts of the case. For the 177th Grand Jury 80 percent of the cases were voted on with no discussion whatsoever.³² This percentage is probably even greater for most other Harris County grand juries, since the 177th Grand Jury spent a mean time of seven minutes per case, whereas the average figure for the other grand juries between 1969 and 1971 was five minutes.

32. Records of Robert A. Carp, member of Grand Jury impaneled by the 177th District Court, November 1971, in Harris County, Texas.

The usual procedure in Harris County is for the assistant district attorney to present his cases for the day and then to leave the jury room. Then the foreman asks each grand juror which cases he feels should be discussed. With the 177th Grand Jury, even if only one of the jurors wished to discuss a particular case, discussion occurred. The interviews suggested that other grand juries follow a similar practice.

TABLE 4

NUMBER OF MINUTES SPENT DELIBERATING ON CASES BY THE 177TH GRAND JURY*



Overall Average: 7 Minutes Per Case

*Each of these time periods includes three working sessions except the period December 8 through December 29, which includes one working session. As with other similar tables pertaining to the work of the 177th Grand Jury, the three-month session is divided into three periods each of which includes an average of 131 cases.

Table 5 suggests that the percentage of cases discussed by the grand jury tends to decrease as the term progresses. For instance, during its first nine sessions (November 3 through December 6) the 177th Grand Jury discussed 27 percent of its cases. During its last nine sessions (January 3 through January 31), however, it discussed only 12 percent of its cases. A former grand jury foreman perhaps gave the best explanation for the decreasing percentage of cases discussed:

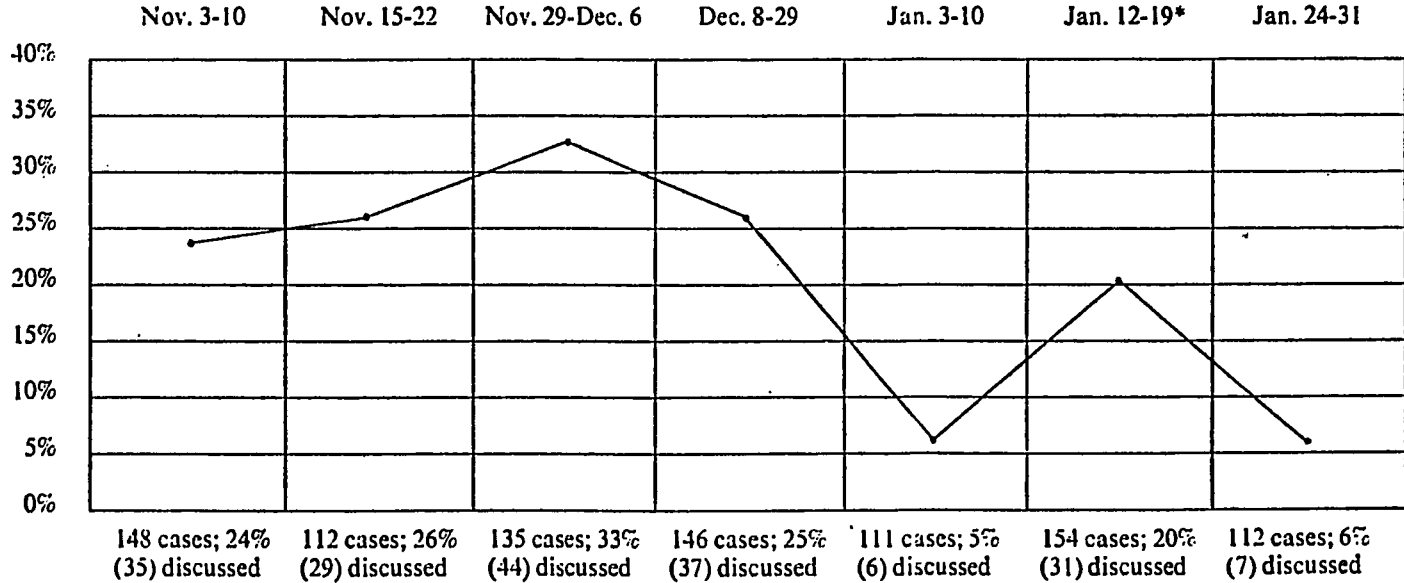
As time went on fewer and fewer of the cases were actually discussed. Toward the end of the term someone would say he wanted to discuss a particular case, and then someone else would pop up and say, "What's the point of discussing this case? We had a case just like it a couple weeks ago. You know where I stand on cases like this, and I know where you stand. Why discuss this all over again? Let's just vote on it and get on to the next case." And more often than not, nothing more would be said. We would just vote without discussing the case.³³

The phenomenon of discussing fewer cases as the term progresses probably explains the increasing grand jury "efficiency" indicated in Table 4.

33. Interview with former member of Harris County Grand Jury, in Houston, Tex., May 1972.

TABLE 5

PERCENTAGE OF CASES DISCUSSED BY THE 177TH GRAND JURY



Overall Average: 20% (189) Discussed

*The period January 12 through January 19 deviates from the overall tendency primarily because one grand juror suddenly insisted on discussing all of the otherwise routine driving-while-intoxicated cases. This behavior was caused by an unpleasant personal encounter with law enforcement officials who had charged the grand juror with drunken driving during the New Year's holiday.

Evidence from this study also suggests that grand juries do discriminate in the amount of time allotted to various types of cases. For instance, while a grand jury might spend several hours investigating and discussing a prominent murder or rape case, it might spend less than a minute on a robbery or drunken driving case. The following table, compiled with data received from questionnaire respondents, indicates the types of cases on which the grand juries spent the most time deliberating.

TABLE 6
GRAND JURORS' ESTIMATES OF
CASES ON WHICH GRAND JURIES SPENT
THE MOST TIME DELIBERATING
(N=311)*

Type of Case	Percentage of Time
Drug Crimes	29
Crimes of Passion (e.g., Murder, Rape)	27
Burglary	9
Forgery and Embezzlement	9
Theft	8
Victimless Sex Crimes (e.g., Sodomy)	8
Robbery	5
Driving While Intoxicated	5

*Because questionnaire respondents were permitted to identify more than one category, N exceeds 156.

Table 7 indicates that the 177th Grand Jury likewise gave differential treatment to various types of cases.

TABLE 7

PERCENTAGE AND TYPES OF CASES DISCUSSED BY THE 177TH GRAND JURY^a

Type of Case	Number of Cases	Percentage of Total Cases	Number of Cases Discussed	Percentage of Cases Discussed
Victimless Sex Crimes	15	2	10	67
Crimes of Passion	66	8	24	36
Drug Crimes	47	5	16	34
Theft	288	33	80	28
Burglary	136	16	26	19
Robbery	93	11	8	9
Forgery & Embezzlement	110	13	7	6
Driving While Intoxicated	110	13	6	5

^aThere are fifty-three miscellaneous cases not included in any of these types.

Table 7 reveals that the 177th Grand Jury discussed two-thirds of all victimless sex crimes but discussed only one out of twenty driving-while-intoxicated cases. Table 7 also indicates that, proportionately, the 177th Grand Jury spent almost as much time deliberating on crimes of passion and drug cases as the grand juries analyzed in Table 6 spent on these types of cases.

B. *The Role of the Grand Jury Foreman*

According to the grand-jury handbook prepared by the Harris County District Attorney,

The principal duties of the foreman are to preside over all sessions and to conduct its business in an orderly manner. . . . Generally, the foreman is the spokesman and liaison member of the grand jury to the press, the Court, or any other agency. Any mail addressed to the grand jury will be given unopened to the foreman. . . .

. . . .
The foreman should designate one of the grand jurors to serve as secretary to the jury.³⁴

Aside from these brief guidelines there are no instructions about how the

34. C. VANCE, *THE HARRIS COUNTY GRAND JURY* 7 (n.d.).

foreman should conduct himself on a day-to-day basis, nor is the foreman given any advance training or advice on the role he might play in the grand-jury deliberations. Presumably, this is something he must develop with his fellow grand jurors as the working sessions get under way.

The foreman is designated by the judge who impanels the jury; the grand jurors have no part in the foreman's selection.³⁵ This system enables the grand jury to begin its work immediately without having to "waste" any of its time or energy selecting from among its ranks the person whom they most respect and believe to be an effective leader and spokesman. It also means, of course, that the prestige and effectiveness of the foreman may be diminished, first, because the judge has very little idea beforehand who will make the most effective foreman for the particular grand jury, and second, because the designated foreman might not be the choice of the jury members themselves. The interviewees almost unanimously asserted resentment because they could not select their own foreman. This statement by one former grand juror was typical:

We all thought that we got to pick our own foreman. I don't know if I got that idea from the movies or Perry Mason or what, but some of us kind of resented the judge telling us who our leader would be. As it turned out, he [the foreman] did a pretty good job, but I doubt if our jury would have chosen him if we could have voted on it.³⁶

Despite whatever initial setback the foreman's leadership may suffer because of the "undemocratic" selection process, most grand-jury foremen appear to emerge as moderately effective leaders in their own right as the jury sessions develop. The following table indicates how questionnaire respondents described the leadership role of their respective grand-jury foremen.

TABLE 8
GRAND JURORS' OPINIONS OF THE
ROLE PLAYED BY THEIR JURY FOREMEN (N=152)

Opinion	Percentage of Jurors
He played a major role in our discussions and acted as a forceful leader.	42
He simply moderated our discussions and had about the same influence as the average grand juror.	52
He was not a forceful and effective leader and in fact did not play as significant a role as did other members of the grand jury.	6

35. TEX. CODE CRIM. PROC. ANN. art. 19.34 (1966).

36. Interview with former member of Harris County Grand Jury, in Houston, ex., Jan. 1972.

Thus, 42 percent of the grand jurors regarded their foremen as forceful leaders; about half viewed them as being no more than first among equals, and only 6 percent reported that their foremen played less than average leadership roles in the deliberations. This recollection by one former grand-jury member perhaps best exemplifies the role played by the average jury foreman:

Our foreman played a very unauthoritarian role—very low keyed. He frequently said that he didn't wish to be domineering and this was indeed the case. However, he would frequently redirect the discussions and make procedural recommendations which we followed. I think he did an effective job because I don't think we would have worked well with an authoritative foreman.³⁷

Aside from personal leadership characteristics that the designated foreman may possess, the only factor contributing to his leadership potential is that, in a morass of confusion and uncertainty about the jury's duties and functions, most grand jurors look to their foreman for guidance and instruction and expect him to perform. As one former foreman put it,

I didn't know any more about what we were supposed to be doing than anybody else, but everyone kept asking me, "Can we do this? Are we supposed to do that?" I finally got so I really studied our [grand jury] handbook every night, and I used to stop by the D.A.'s office [actually the office of Assistant District Attorney in charge of the Grand Jury Division] every now and then and asked them for advice. In time I was able to keep one step ahead of the other grand jurors, and I guess that way I earned some of their respect as a leader. But most of the time I didn't know about what was coming off any more than they did, and I doubt whether I fooled them very much.³⁸

C. *The Extent and Nature of Internal Dissension*

What types of cases cause the greatest amount of internal dissension among Texas grand juries, that is, in which cases is there most likely to be a less-than-unanimous vote among grand jurors? Before responding to this query perhaps it should first be noted that there is a rather high degree of unanimity in the voting behavior of most Harris County grand juries. This phenomenon is confirmed by interviewing former grand-jury members and by examining the voting record of the 177th Grand Jury: out of 918 cases decided by this Grand Jury, a nonunanimous vote occurred in a mere forty-two cases (5 percent).

37. Interview with former member of Harris County Grand Jury in Houston, Tex., Mar. 1972.

38. Interview with former member of Harris County Grand Jury, in Houston, Tex., Feb. 1972.

The evidence also indicates that as the grand-jury term progresses, there is a tendency toward increased unanimity in voting patterns. This evidence is in accord with one of Robert Bales's conclusions about small group decision-making behavior: As the small group continues to deliberate on a matter (or on a series of questions), there is an increased tendency toward group solidarity.³⁹

Table 9 reveals that during its first eight working days the 177th Grand Jury cast less-than-unanimous votes in 9 percent of its decisions, whereas during its last eight sessions there was a divided vote in only 1 percent of its decisions. This excerpt from a journal kept by one former grand-jury member is significant:

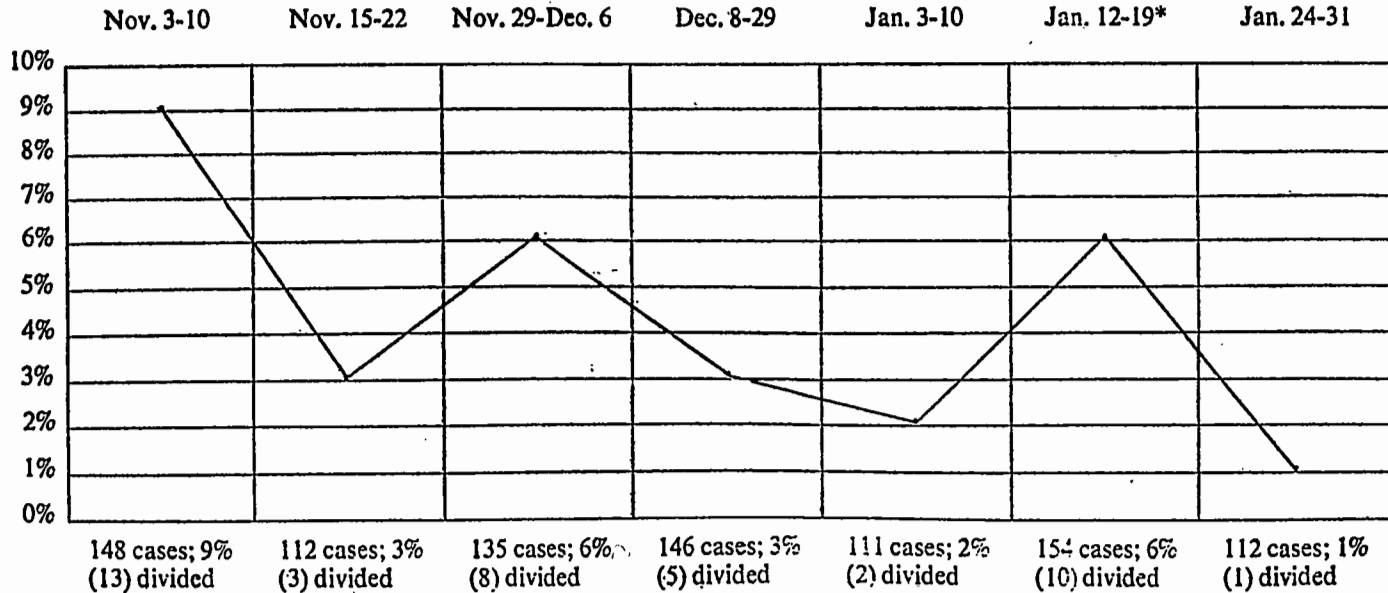
In general there is a fairly unified spirit among us, and I think we all feel the pressure to "dissent only when absolutely necessary," as Chief Justice Taft used to urge. I myself today felt inclined to bring a T.B. [true bill] in a case this afternoon, but I could see no one else agreed with my position, and so when the vote was taken I held my peace.⁴⁰

39. R. BALES, *INTERACTION PROCESS ANALYSIS: A METHOD FOR THE STUDY OF SMALL GROUPS* 138 (1950).

40. Excerpt from journal kept by former member of Harris County Grand Jury, Dec. 1971.

TABLE 9

PERCENTAGE OF DIVIDED VOTES BY THE 177TH GRAND JURY



Overall Average: 5% (42) Divided Votes

*The period January 12 through January 19 deviates from the overall tendency primarily because of the same grand juror discussed in Table 5 who suddenly began voting against an indictment on nearly all driving-while-intoxicated cases. This behavior also was caused by his personal encounter with law enforcement officials who had charged the grand juror with drunken driving during the New Year's holiday.

With respect to cases in which internal disagreement did occur, Table 10 reveals a remarkable degree of uniformity with only two exceptions: the 177th Grand Jury reached no divided votes on cases dealing with forgery and embezzlement and split its vote on one-third of all victimless sex-crime cases.

TABLE 10
CASES IN WHICH THE 177TH GRAND JURY REACHED A DIVIDED VOTE*

Crime	Number of Cases	Number of Divided Votes	Percentage of Divided Votes
Victimless Sex Crimes	15	5	33
Crimes of Passion	66	4	6
Drug Crimes	47	3	6
Theft	288	15	5
Burglary	136	5	4
Robbery	93	4	4
Driving While Intoxicated	110	4	4
Forgery and Embezzlement	110	0	0

*There are fifty-three miscellaneous cases not included in any of these categories.

Table 11 analyzes the types of cases in which the grand juries represented by the questionnaire respondents experienced the most internal dissension.

TABLE 11
GRAND JURORS' ESTIMATES OF CASES IN WHICH THE GRAND JURIES HAD THE LARGEST AMOUNT OF INTERNAL DISSENSION (N=243)*

Type of Case	Percentage of Total
Drug Crimes	40
Crimes of Passion	25
Victimless Sex Crimes	9
Forgery and Embezzlement	7
Driving While Intoxicated	7
Theft	5
Burglary	4
Robbery	2

*Because questionnaire respondents were permitted to identify more than one category, N exceeds 156.

Table 11 indicates that grand jurors most frequently divide on drug cases, crimes of passion, and on victimless sex crimes, but are more unified on cases of theft, burglary, and robbery. Such findings are not surprising, since cases in the first three categories are likely to be the most serious and complex. They are also the cases on which society in general seems to be most divided, questioning whether these offenses are really crimes at all or whether they are merely actions of social dissidents and psychopaths.

IV. GRAND JURY RELATIONS WITH THE DISTRICT ATTORNEY

The attitude of most grand jurors toward the district attorney and members of his staff is best characterized as ambivalent. On one hand, the district attorney and his staff are regarded as competent, dedicated professionals whose noble task is bringing criminals to justice. In this sense they are the "men in the white hats" whose advice should be respected and whose recommendations should be followed. On the other hand, these officials are regarded as persons who want to secure as many indictments and convictions as possible simply for the sake of prosecution alone, as men who care more about "keeping the cases moving" than about a fair and careful evaluation of each case, and as individuals who view the grand jury as a nuisance or impediment to the expeditious performance of their official duties. While all of the interviewees in this study generally praised the District Attorney's Office, they also asserted that their respective grand juries were conscious of a need "to remain independent of the D.A." and "to keep from becoming a rubber stamp."

The evidence suggests that grand jurors have three general types of complaints against the assistant district attorneys who present their daily caseloads and that these criticisms serve as continuing sources of irritation between the district attorney's staff and the grand juries throughout the three-month term. First, grand jurors tend to complain that the assistant district attorneys present them with too many cases each day and that as a consequence the grand jury does not have time to consider each case carefully enough. Most grand jurors feel compelled by the district attorneys to deal with an enormous number of cases in a considerably short period of time. One former grand juror explained:

They [the assistant district attorneys] kept telling us, "You're not turning out as many cases as the other grand juries. You know, if you get behind, you might be keeping some poor fellow in jail waiting for his case to be brought to trial. Now you wouldn't want to be responsible for that, would you?" Of course, none of us wanted to keep anyone in jail needlessly because of a delay on

our part, but we did resent all the pressure they put on us to crank out those cases.⁴¹

The following excerpt from one of Harris County's local newspaper stories provides an interesting insight into how the district attorneys evaluate the quality of grand juries:

The Harris County grand jury which is investigating the Raymond G. Novelli matter has been described as an extremely effective group.

"This is one of the most efficient and effective grand juries I've ever been connected with," Gene Miles, an assistant district attorney, said.

In regard to the number of matters the group handled, Miles said, "Their term total, 2121, is one of the biggest numbers ever heard of." This is almost double the number of cases handled by most grand juries. On their final day of the first term, Miles said he could account for at least 112 matters on which they took action. . . .

.....
 "This grand jury represents classic Texans," Miles said, explaining that they "have a philosophical Texas viewpoint. If you're a Texan, you know what's way good, and what's way bad. This group is down the middle, square, extremely attentive, and very fair," Miles said. He added, "If I got in a jam, this is the group I would want to get in a jam with."⁴²

A second criticism of the district attorney's staff is that, hardened by their work, these attorneys are insensitive to the rights of the accused and blind to the inequities of our system of law enforcement. Whether such a criticism is valid is less important than the fact that many grand jurors *believe* it to be true. One former grand juror (a conservative, middle-class mother whose son had long hair) became so incensed at a statement made by one of the district attorneys during a grand-jury session that she copied it verbatim to show to her husband:

A policeman can smell a crook a mile off. That's why he stops carloads of "long-hairs" and checks for dope. There's just a good chance that when you see a group of them hippies, there's marijuana present. That's just a fact. Now you may call that harrasment, but I say that's good police work.

This type of statement by the district attorneys arguably alienates fair-play-conscious members of middle-class grand juries.

Finally, grand jurors are frequently critical of the careless and incomplete way in which many persons on the district attorney's staff

41. Interview with former member of Harris County Grand Jury, in Houston, Tex., Dec. 1971.

42. The News Citizen, Feb. 4, 1972, at 10.

43. Interview with former member of Harris County Grand Jury, in Houston, Tex., Jan. 1972.

prepare and present cases to the grand jury. One former grand juror gave an example of what he considered the carelessness of an assistant district attorney:

In one case the accused claimed he was on active military duty when the auto theft occurred. The police and the D.A. never even bothered to telephone the National Guard to check his story before bringing this case to us. The Grand Jury asked that the D.A. do this, and eventually we learned that the defendant's story was correct, and we voted a no bill. I think this is an example of the Grand Jury at its best because we saved the defendant a lot of time and expenses, but it's really something that the police or the D.A. should have done on their own.⁴³

Another grand juror once noted in the daily journal of his grand jury work, "This afternoon Mr. [X], one of the D.A.'s, apologized to us for so poorly preparing his cases today. We all concluded after he left that this is the Grand Jury acting at its best, i.e., serving as a check on a sloppy prosecutor."⁴⁴

The results of the mailed questionnaire contain additional support for this third criticism. When the respondents were asked whether they thought their respective grand juries served any other function besides simply indicting or refusing to indict persons accused of crimes, 66 percent (seventy-six of the 116 persons responding affirmatively) responded that they had caused the district attorney to investigate cases more carefully.

Despite all of these criticisms, however, the evidence suggests that most grand juries tend (or are forced by circumstances) to rely heavily on the skill and integrity of the assistant district attorneys in deciding whether to bring an indictment. The questionnaire asked the respondents to identify the *usual* practice of the grand jury in bringing an indictment. Table 12 contains the results of this inquiry.

TABLE 12
USUAL BASIS OF INDICTMENTS BY THE GRAND JURIES (N=137)

Bases	Percentage of Total
Usually indicted on the basis of what the District Attorney said the file contained	47
Usually indicted on the basis of what you found the file to contain by your own investigation	21
Usually indicted only after calling for full demonstration or proof sufficient to convict (including calling of witnesses)	32

44. Interview with former member of Harris County Grand Jury, in Houston, Tex., Dec. 1971.

The table indicates that over half of the grand juries represented usually indicted only after investigating beyond the district attorneys' representations of the evidence in the files. Given the average time of five minutes per case, such claims could not possibly have been the usual practice of any of the grand juries. What is perhaps most significant, however, is that nearly half of all grand juries (the author believes this to be a highly conservative figure) usually take action on cases solely on the basis of what the district attorney says the defendant's file contains without even bothering to examine the file or to require full demonstration by the district attorney.

Table 13 contains the results of the questionnaire inquiry concerning the categories of cases in which the grand jury is most likely to refuse to follow the recommendations of the district attorney.

TABLE 13
GRAND JURORS' ESTIMATES OF
CASES IN WHICH THE GRAND JURIES MOST FREQUENTLY
DISAGREED WITH THE DISTRICT ATTORNEY (N=172)*

Type of Case	Percentage of Total
Drug Crimes	44
Crimes of Passion	18
Victimless Sex Crimes	11
Driving While Intoxicated	9
Forgery and Embezzlement	6
Theft	5
Burglary	3
Robbery	3

*Because questionnaire respondents were permitted to identify more than one category, N exceeds 156.

The table reveals that the crimes that caused the greatest amount of dissension among the grand jurors are the same crimes that resulted in the most disagreement between grand juries and the district attorneys: drug cases, crimes of passion, and victimless sex crimes.

The questionnaire results exactly parallel the data collected from the 177th Grand Jury. This grand jury, which refused to follow the district attorney's recommendations in only 6 percent of its cases, disagreed with the district attorneys in 28 percent of the drug cases, 27 percent of the

victimless sex crime cases, and 17 percent of the crimes of passion.⁴⁵

TABLE 14

CASES IN WHICH THE 177TH GRAND JURY REFUSED
TO FOLLOW THE RECOMMENDATIONS OF THE DISTRICT ATTORNEY*

Type of Cases	Number of Cases	Number of Disagreements with District Attorney	Percentage of Disagreements
Drug Cases	47	13	28
Victimless Sex Crimes	15	4	27
Crimes of Passion	66	11	17
Theft	288	20	7
Burglary	136	7	5
Forgery and Embezzlement	110	2	2
Robbery	93	1	1
Driving While Intoxicated	110	1	1

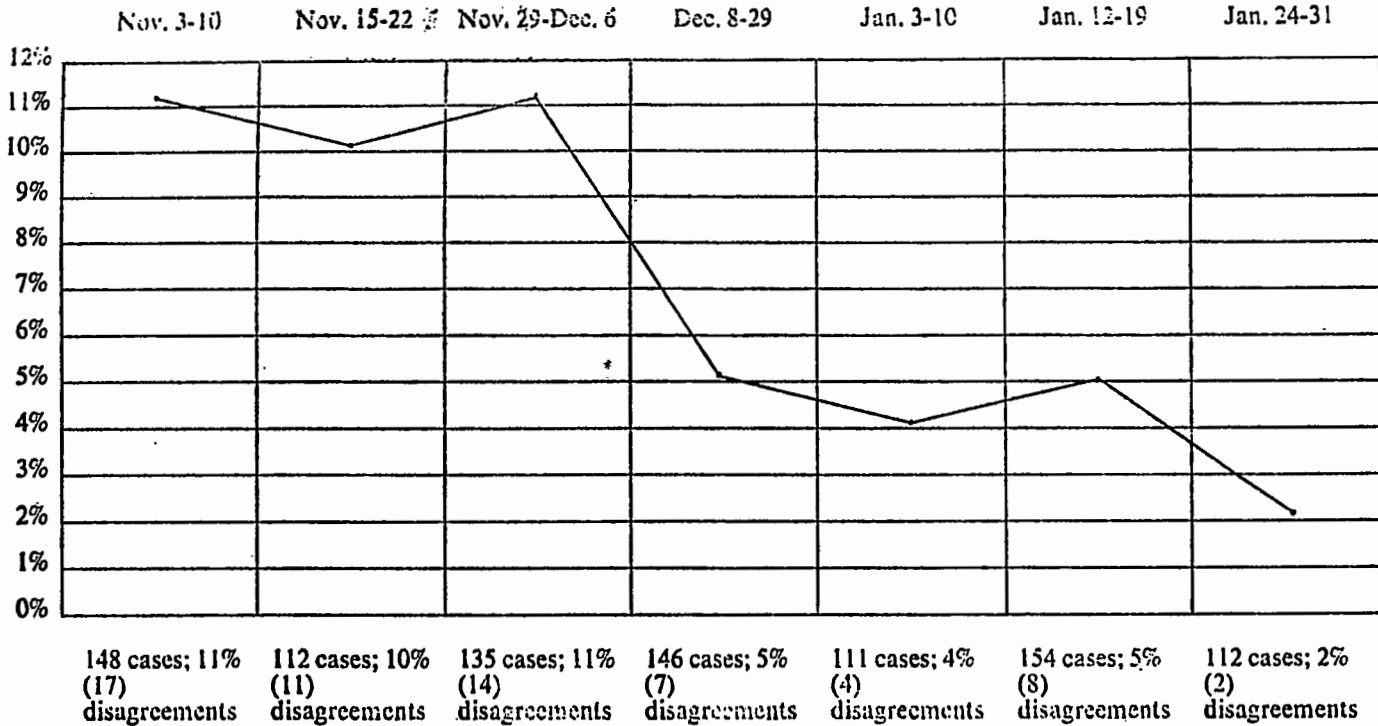
*There are fifty-three miscellaneous cases not included in any of these categories.

Table 15 concerns the change in the rate of disagreement between the 177th Grand Jury and the district attorney as its term progressed. The table seems to indicate that the longer the grand jury is in session the more its decisions are likely to be in accord with the district attorney's recommendations. More careful analysis reveals, however, that this is not necessarily the case. For the 177th Grand Jury, the evidence suggests that the district attorneys became less likely to present to the grand jury cases in which they believed the jury would vote contrary to their recommendations. For example, of the first 137 cases presented to the grand jury, twenty-five (18 percent) were drug cases, whereas only three (2 percent) of the following 123 cases dealt with drug crimes. Apparently, the district attorneys had determined after a few weeks that they would be more successful by taking their drug cases to one of the other two grand juries sitting at the same time. In fact, this determination was con-

45. Disagreement with the district attorney was defined as a case where at least one of the following conditions occurs: district attorney recommends true bill and grand jury votes no bill; district attorney seeks no bill and grand jury brings true bill; grand jury indicts for a crime other than the one recommended by district attorney; grand jury requires district attorney to collect additional evidence for a particular case before they will consider it.

TABLE 15

PERCENTAGE OF CASES ON WHICH THE 177TH GRAND JURY
DID NOT FOLLOW THE DISTRICT ATTORNEY'S RECOMMENDATIONS



1924

HARRIS COUNTY GRAND JURY

ceded by one of the district attorneys during a working session when a grand juror asked, "Why aren't you giving us any more drug cases?" The attorney replied candidly, "Well, you folks are requiring so much [proof] of us with those cases that we've had to take them to the other grand juries or we're going to get way behind." Therefore, a phenomenon that may well occur in Harris County is for the district attorneys to "size up" the grand juries during their first several working sessions and then to present cases to the grand jury that is most likely to act in accordance with the district attorneys' wishes. To what extent this occurs is unknown, but that it does occur to some degree is beyond doubt.

V. SOME GENERAL CONCLUSIONS AND SUGGESTIONS FOR FUTURE RESEARCH

There are several impressions about the composition, inter-workings, and functions of the grand jury that bear emphasis. First, the data strongly indicates that the make-up of the grand jury is not truly representative of the community at large, since there is a marked bias in favor of the upper social and economic elements of society. The evidence also suggests, however, that higher status persons are not only more likely to be solicitous of the rights of the accused than are lower status citizens but are also more likely to possess the intelligence and social efficacy to demand full due process from hardened, work-weary district attorneys. Thus, the grand juries' potential to contribute to civil libertarianism is due directly to their nonrepresentative character rather than limited by this character.

Second, one may well conclude that whatever their potential for according full due process to the accused, grand juries fall woefully short of the mark, and, as a consequence, the very purpose and utility of the grand-jury system itself must be called into question. There are a variety of reasons why the grand jury does not fulfill its ideal function of carefully screening and evaluating the prosecutor's evidence to determine probable cause that a crime was committed. One reason stems from the patently inadequate training program for newly selected grand jurors. Since grand jurors do not learn systematically from an independent source the full measure of their duties, functions, and prerogatives, there exists the strong possibility that they will become "rubber stamps" of the district attorney's staff. This is not to suggest that all grand juries become mere tools of the district attorney, but the potential for this result is by no means minimal. Jurors who do not fully understand their basic functions, who do not comprehend the meaning of "probable cause," and who do not know how to conduct careful, complete investigations of each case are prime candidates to be manipulated by artful and experienced public prosecutors. Moreover, the evidence indicates that the district attorneys do indeed take advantage of ignorant grand juries by withholding significant pieces of information from grand jury purview and by deliberately

routing cases to the grand jury that they expect will act most favorably.

In addition, the never-ending flow of cases with which grand juries are daily bombarded places another obstacle in the path of a full and fair hearing for all those accused of felonies. Given the generally vague and inaccurate nature of the police reports and of the district attorney's file on the accused, five minutes per case is certainly not enough time to spend on the determination of probable cause.

Besides the fact that only a small percentage of cases (probably no more than 5 percent) are examined with any care at all by the grand jury, the evidence suggests that even the selection of that 5 percent is an arbitrary process reflecting the bias of the upper-middle-class grand jury composition. The evidence reveals that the vast majority of these cases includes the bizarre, unusual, or "important" cases that are covered by the news media and that frequently involve the names of well-known local personages, businesses, and organizations. Murder of a prominent socialite, corruption in the local fire department, and alleged immoral conduct by professors at a local state university have all been subjects of extensive grand-jury investigations in Harris County. Such cases are regarded as significant by upper-middle-class grand juries, because the subject matter has a special appeal to the moral, ethical, or even salacious instincts of the middle-class mentality. On the other hand, the robbery of a liquor store, the stabbing death of a derelict in a ghetto bar, and the forgery of a credit card tend to be regarded as 'routine, boring cases by most grand jurors. As one grand juror said in candid jest,

We kind of looked forward to the rape and sodomy cases and stuff like that because they broke the routine. I mean if you've heard one bad check case, you've heard them all. But the unusual cases were a little more interesting, and we kind of took our time with them.

The result of this bias may be that the more bizarre, infamous, or salacious the case, the greater the likelihood that it will be among the small percentage of cases in which the grand jury carefully performs the investigation. Conversely, the more routine and uninteresting the case, the greater the likelihood that it will be hastily concluded in reliance on the district attorney's advice that any mistakes will be corrected at trial. Since 46 percent of all Harris County grand-jury indictments since 1950 have ended in either dismissals or acquittals,⁴⁶ one may well assume that many mistakes are indeed passed over by bored, unresponsive, and overworked grand juries.

Finally, the data reveals that some of the complex social problems that divide society as a whole, such as marijuana and hard drug laws, the possible pathology of the murderer and the rapist, and the permis-

46. C. VANCE, *THE HARRIS COUNTY GRAND JURY 5* (n.d.).

sibility of "abnormal" sexual relations between consenting adults cause disagreement not only among individual members of the grand jury but also between the grand jury and the district attorney's staff. Moreover, the inordinate amount of time the grand jury spends deliberating on these cases and the level of dissension that these discussions evoke also reflect the upper-middle-class composition of the grand jury. It is now common knowledge among social scientists that concern with reform of the narcotic laws and revision of the criminal code pertaining to sexual mores is almost exclusively a middle and upper-middle-class phenomenon.

Before the internal dynamics and characteristics of the grand jury can be fully discovered, additional data on several aspects of the institution must be compiled. First, much more information must be discovered about the selection of grand jurors. Research must produce specific answers to questions such as these: Who are the jury commissioners and on what basis are they selected? What criteria do they use in selecting prospective grand jurors? What standards does the judge use in designating grand-jury foremen? Second, students must acquire more knowledge about the grand jurors themselves. What are their values and what are their attitudes toward the police, the judicial system, and those arrested for a variety of crimes? The additional use of questionnaires and in-depth interviews with a large cross-section of grand jurors is necessary before an accurate profile of the typical grand juror can be drawn.

More evidence on grand-jury deliberations is also needed. Which types of grand jurors are likely to have more influence in the deliberations than others? Some evidence in this study suggests that grand jurors may give deference to a juror whose race or profession relates to the subject matter of a particular case. For example, the members of the 177th Grand Jury listened attentively to the only black on the jury in cases involving a black defendant charged with police harassment. They also gave considerable deference to the only lawyer on the jury in cases that hinged on highly technical legal questions. Do grand juries develop a form of *stare decisis* (clearly a practice of the 177th Grand Jury) as their terms progress? Is the grand-jury foreman more likely to be on the winning side of divided votes than other grand jurors?

Finally, more data is needed on the influence and role of the assistant district attorneys in relation to the grand jury. Are some district attorneys more successful than others in obtaining desired results from the grand jury? What tactics do district attorneys employ in preparing and presenting cases to grand juries? To what extent do district attorneys present specific cases (or types of cases) to a grand jury that is considered most likely to resolve the cases in accordance with the district attorneys' wishes? If answers to these questions are found, we will gain a clearer understanding of an institution that at this time remains largely unexplored by students of the judicial process.

THE COMMISSIONER METHOD OF SELECTING GRAND JURORS: A CASE OF A CLOSED AND UNCONSTITUTIONAL SYSTEM

Robert A. Carp^o
Claude K. Rowland^{o*}

I. INTRODUCTION†

It is a firm and well-established principle of constitutional law that both the grand and the petit jury be "a body truly representative of the community,"¹ composed of "the peers or equals of the person whose rights it is selected or summoned to determine, that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds."² Less firmly established, however, are such questions as: What constitutes a legally recognized class whose exclusion from jury service would violate the equal protection clause? What is the precise degree to which the Constitution permits the composition of the grand or petit jury to vary from the socio-economic characteristics of the community from which it is drawn? Under what conditions does a grand or petit jury selection system—nondiscriminatory on its face—become discriminatory in its application and implementation?

It is to the last of these questions that this article is addressed. More precisely, it is the central thesis of this study that the commissioner system of selecting jurors, particularly grand jurors in Texas, is inherently incapable of producing a panel that is "truly representative of the community" and is therefore unconstitutional. Evidence to support this thesis will be organized and marshaled in the following manner. First, it will be necessary to review the literature which demonstrates that grand jurors in Texas, as well as

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1. *Smith v. Texas*, 311 U.S. 128, 130 (1940).

2. *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880). Congress has also long recognized such a right and has provided a criminal sanction for its violation:

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than \$5,000.

18 U.S.C. § 243 (1970).

petit and grand jurors in other states, selected by the commissioner method are not representative of the communities from which they are chosen. Second, the authors will outline briefly the two major hypotheses to be validated by the study's empirical data, that is, the hypotheses to explain why Texas grand juries—and other states' jurors selected by commissioners—are unrepresentative of their respective communities. This section also contains a short summary of the study's research methodology and data sources. The article will then analyze in detail the two explanatory hypotheses which are crucial to validate the study's central thesis. Finally, proposals for reform of the jury selection process will be offered in an attempt to make the process conform to the constitutional requirements.

II. A REVIEW OF THE LITERATURE DOCUMENTING THE UNREPRESENTATIVE CHARACTER OF JURIES CHOSEN BY COMMISSIONERS

While the representative characteristics of juries have been the subject of litigation for almost a century, the topic has only very recently been the focus of systematic, rigorous research by judicial scholars trained in social science methodology. Indeed, the *Houston Law Review* in 1974 was the first journal ever to publish the results of a lengthy, empirical investigation of the socio-economic characteristics of grand juries in a particular geographic area.³ Examining the nature of grand jury composition in Harris County, Texas, between 1969 and 1972, the author concluded that "the typical Harris County grand juror is an Anglo-Saxon male college graduate about fifty-one years of age who is quite likely to earn about \$25,000 per year while working either as a business executive or as a professional."⁴

Using the 1970 census figures for Harris County, the author provided the following profile of the typical county resident:

49 percent are male and 51 percent are female; the median adult age is thirty-nine; 69 percent are Anglo-Saxon, 20 percent are black, and 11 percent are Mexican-American; the median education is twelve years (a high school diploma); and the median family income is \$10,348.⁵

The obvious conclusion was that

even by rudimentary standards Harris County grand juries do not meet the judicial criterion of a fair cross section of the community's human resources. Grossly underrepresented are women, young people, Negroes, Mexican-Americans, the poor, and those with less extensive educational backgrounds.⁶

3. Carp, *The Harris County Grand Jury—A Case Study*, 12 *Hous. L. Rev.* 90 (1974) [hereinafter cited as Carp].

4. *Id.* at 98.

5. *Id.*

6. *Id.* See Appendix I for the total compilation of statistical data for this study.

Since the publication of this study, subsequent research on the same subject has been performed to bring the findings up to date. Such research reveals that between 1973 and mid-1975 Harris County grand juries have to some degree become more representative of the local community. For example, the percentage of Blacks has increased from 15 to 18 percent, the number of Mexican-Americans has jumped from 3 to 11 percent, and the percentage of female grand jurors has increased from 22 to 32 percent. No other changes of any significance were noted during that three-year period.⁷

What has been the cause of this modest but impressive increase in the representative character of Harris County grand juries, and how significant is this apparent trend? As to the first of these questions, the evidence suggests two reasons why there are now more Blacks, Mexican-Americans, and women on the county's grand jury rosters.

Reason one stems from a district court decision handed down in Harris County in the spring of 1974. In *Texas v. Barriga*⁸ a group of five defendants, three of whom were Mexican-American, moved to quash their indictments for charges involving assault with intent to murder a police officer. The basis of their motion was that Spanish-surnamed individuals had been excluded from Harris County grand juries in general and from the indicting jury in particular. During the course of the hearing the authors of this article were summoned by the plaintiffs to serve as expert witnesses with the findings of the initial Harris County grand jury study serving as the basis of their testimony. In a well-publicized decision, Judge Andrew Jefferson granted the defense motion and quashed the indictments. Since that time scores of criminal defendants, primarily Black and Mexican-American, have instituted suits challenging the ethnic composition of the county's grand juries. Confidential interviews with numerous court personnel reveal that after these grand jury challenges began to erupt, many district judges, in a determined effort to nip the problem in the bud, began to instruct their grand jury commissioners to make a concerted effort to increase minority group representation on their grand jury panels. One key judicial officer stated in a confidential interview:

After you guys did that [grand jury] study, all the D.A.'s and judges were afraid of being flooded with hundreds of motions to quash, and so the word was put out [presumably by the judges to their commissioners] to make sure there were more Blacks, women, and Mexicans on the grand juries.

Another reason for the increase in minority group representation on

7. C. Rowland, *The Impact of Grand Jury Composition on Grand Jury Performance: An Exploratory Study in Harris County, Texas 42-70* (May 1976) (unpublished thesis in University of Houston Library).

8. Crim. Nos. 202621 through 202625, Dist. Ct. of Harris County, 208th Judicial Dist. of Texas, April 12, 1974.

grand juries since 1972 is that three new district judges have been added to the bench during the past three years, all of whom have made significant attempts to increase the number of Blacks, females, and Mexican-Americans on their grand juries. These three judges, McMaster, Jefferson, and Price, have convened grand juries with almost twice as many women and minority group members as their twelve colleagues. One may hypothesize that the new judges have probably been more receptive to the demands of civil rights activists and to social change in general, and that therefore they have been more inclined to urge their commissioners to actively recruit minority group members for grand jury service.

Does this trend during the past three years truly indicate that grand juries are becoming more representative of the community, or are the above-mentioned findings more cosmetic than real? Unfortunately, the evidence suggests that the latter interpretation is more correct. This is so because careful examination of the data and reexamination of the evidence of the original Harris County grand jury study reveal that while Black, Mexican-American, and female participation on grand juries has increased, the individual group members in question are highly *unrepresentative* of their respective communities. For example, only 23 percent of all Harris County adults have ever gone beyond high school, whereas 91 percent of all Black grand jurors, 90 percent of all female grand jury members, and 83 percent of all Mexican-American grand jurors have attended college or hold graduate degrees. Thus, while females and minority group members are now superficially more prominent on the county's grand jury panels, this fact must be qualified by the observation that for the most part only the educationally elite members of these communities are asked to serve. Such individuals are therefore quite atypical of the population groups from which they are drawn, making the improvement in recent years more apparent than real.

A discussion of another study conducted since 1972 of the unrepresentative character of Texas grand juries is in order at this time. Such a study was performed between 1975 and 1976 in the rural Texas county of Nacogdoches. It was conducted to gather data in support of a class action suit in the United States District Court for the Eastern District of Texas.⁹ The plaintiffs charged that the older, white male, well-to-do commissioners had used their vast discretion in selecting grand jurors to systematically exclude young people, Blacks, females, and the poor. Evidence covering the previous ten-year period was cited to show that while the county population was 21.4 percent Black and 53 percent female, the percentage of such persons who served as jury commissioners during that same time period was 1 percent and 2 percent respectively.

9. *Weaver v. Grand Jury Comm'r*, Civil No. TY-75 (E.D. Tex., filed Nov. 26, 1975).

1977]

The primary thrust of the plaintiff's evidence focused on data compiled by a team of lawyers and social science researchers which compared 1970 census figures for the county with the socio-economic characteristics of grand jurors seated between 1965 and 1975. In essence, the plaintiffs were able to provide the following statistics, none of which were challenged by the respondents: In this rural county of 36,362 citizens, 47.5 percent were over 18 and under 35 years of age, while only 9 percent of the seated grand jurors were within this age range; 53 percent were female, but only 13 percent of the jurors were women; and 21.4 percent were Black, whereas only 6 percent of the grand jurors were of the Negro race. Indirect and less precise evidence was also cited to establish that individuals whose annual incomes were below \$5,000 were highly underrepresented on the Nacogdoches grand juries.¹⁰

This study is relevant for two reasons. First, its findings correspond rather closely to those of the before-mentioned statistics for Harris County, thereby indicating that the unrepresentative characteristics of commissioner-selected grand juries may well be a state-wide phenomenon. Second, the fact that Nacogdoches is a rural county—less than one-fiftieth the size of Harris County—suggests that the discrimination against youth, Blacks, females, and the poor is not unique to urban counties but may be true for the state's rural areas as well.¹¹

In order for this review of the literature to be complete, it is necessary to note that the unrepresentative character of juries has come under study and attack in many states other than Texas. The United States Supreme Court has often lent a sympathetic ear to plaintiffs who challenged their criminal convictions on the ground that cognizable classes were systematically excluded from the grand juries that indicted them,¹²

10. For a more extensive review of these statistics and the constitutional arguments they support, see Brief for Plaintiff, *Weaver v. Grand Jury Comm'r*, Civil No. TY-75 (E.D. Tex., filed Nov. 26, 1975) (on file with Houston Law Review). Unchallenged testimony was also introduced at the trial to indicate that those Blacks who had been called to serve on the grand juries, both in the past and in the most recent term, were almost entirely those who constituted the social and economic elite in the Black community.

11. Other unpublished studies of Texas counties likewise point to the conclusion that grand juries significantly underrepresent important segments of the community. For example, a Texas Civil Liberties Union report offered this finding regarding exclusion of Mexican-Americans from the grand jury rolls in rural Hidalgo County: "Hidalgo County, Texas, has a population that is approximately 79.2% Mexican-American; yet of the approximately 1,000 persons nominated for potential service on grand juries in the last 11 years, 39.7% have been of Mexican descent." Memorandum from David G. Hall, Director, ACLU Foundation—Southern Texas Project, to Texas Grand Jury Conference Participants, June 18, 1974 (on file with Houston Law Review).

12. *Alexander v. Louisiana*, 405 U.S. 625 (1972); *Arnold v. North Carolina*, 376 U.S. 773 (1964); *Eubanks v. Louisiana*, 356 U.S. 584 (1958); *Reece v. Georgia*, 350 U.S. 85 (1955); *Cassell v. Texas*, 339 U.S. 282 (1950); *Hill v. Texas*, 316 U.S. 400 (1942); *Smith v. Texas*, 311 U.S. 128, 129-30 (1940); *Pierre v. Louisiana*, 306 U.S. 354, 356-58, 362 (1939); *Rogers v. Alabama*, 192 U.S. 226, 231 (1904); *Carter v. Texas*, 177 U.S. 442, 447 (1900); *Bush v. Kentucky*, 107 U.S. 110, 121 (1883).

the trial juries that found them guilty,¹³ or both.¹⁴

In recent years Supreme Court interest in the composition of juries has again focused upon the commissioner system of jury selection. Although the court has been willing to scrutinize strictly the administration of this system, it has consistently refused to invalidate the system itself.^{14.1} In *Carter v. Jury Commission*¹⁵ plaintiffs sought *inter alia* an injunction against enforcement of the Alabama statutes under which jury commissioners were given vast discretion in the manner in which they compiled lists of prospective grand and petit jurors. In the companion case of *Turner v. Fouche*¹⁶ plaintiffs likewise sought to enjoin enforcement of certain provisions of Georgia law which granted wide discretionary powers to its grand jury commissioners. The plaintiffs in both cases were able to cite overwhelming evidence, unchallenged by either the respondents or the Court, that the states' jury panels grossly underrepresented a sizeable portion of the community's Black citizens.¹⁷ While the *Carter* Court acknowledged that the product of the commissioner-selection method had produced unrepresentative jury panels, it nevertheless refused to grant most of the sought after injunctive relief because the Court refused to recognize the existence of a causal link between the commissioner selection method and the unrepresentative juries which it invariably produces.¹⁸ Citing the precedents set forth in *Franklin v. South Carolina*¹⁹ and *Smith v. Texas*,²⁰ the *Carter* Court acknowledged the nearly unbridled judgmental authority of the commissioners but concluded that the respective statutory schemes were not *prima facie* unfair or unconstitutional.²¹ While conceding the possibility of abuse, the *Smith* Court concluded that the statutes in question were in principle "capable of being carried out with no . . . discrimination what-

13. See, e.g., *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Avery v. Georgia*, 345 U.S. 559 (1953); *Hollins v. Oklahoma*, 295 U.S. 394 (1935).

14. *Peters v. Kiff*, 407 U.S. 493 (1972); *Sims v. Georgia*, 389 U.S. 404, 407-08 (1967); *Whitus v. Georgia*, 385 U.S. 545 (1967); *Swain v. Alabama*, 380 U.S. 202 (1965); *Coleman v. Alabama*, 377 U.S. 129 (1964); *Patton v. Mississippi*, 332 U.S. 463 (1947); *Hale v. Kentucky*, 303 U.S. 613 (1938); *Norris v. Alabama*, 294 U.S. 587, 589 (1935); *Martin v. Texas*, 200 U.S. 316, 319 (1906); *Neal v. Delaware*, 103 U.S. 370, 396-97 (1881); *Strauder v. West Virginia*, 100 U.S. 303 (1880). See generally *Van Dyke, The Grand Jury: Representative or Elite?*, 28 *HASTINGS L.J.* 37 (1977).

14.1 See *Turner v. Fouche*, 396 U.S. 346, 355 (1970); *Carter v. Jury Comm'n of Greene County*, 396 U.S. 320, 335-36 (1970); *Smith v. Texas*, 311 U.S. 128, 130-31 (1940); *Franklin v. South Carolina*, 218 U.S. 161, 168 (1910).

15. 396 U.S. 320 (1970). See also *United States v. Hyde*, 448 F.2d 815 (5th Cir. 1971). For distinctions between jury challenges raised by civil petitioners and criminal defendants see Comment, *The Civil Petitioner's Right to Representative Grand Juries and a Statistical Method of Showing Discrimination in Jury Selection Cases Generally*, 20 *U.C.L.A. L. REV.* 581 (1973).

16. 396 U.S. 346 (1970). For a reaffirmation of the *Turner* standard see *Foster v. Sparks*, 508 F.2d 805, 811 app. (5th Cir. 1975). Selection systems that allow a high degree of commissioner discretion have been held to reduce tolerable grand juror population disparities. See *Sanford v. Hutto*, 394 F. Supp. 1278 (E.D. Ark. 1975).

17. 396 U.S. at 324-28; 396 U.S. at 356-59.

18. 396 U.S. at 338.

19. 218 U.S. 161 (1910).

20. 311 U.S. 128 (1940).

21. 396 U.S. at 334-36.

soever.²² It should be noted that the Texas selection system is the center of controversy in a case now pending before the Supreme Court.^{22.1} Although the lower federal courts focused on a separate issue,^{22.2} the Court has the opportunity to reevaluate its past position concerning the constitutionality of the Texas system. Based on the findings to be discussed below, the Court should declare the system unconstitutional.

To summarize, during the past several years an impressive amount of data has been collected to suggest that in states where commissioners have almost unlimited discretion in the selection of jurors, the result is a series of jury panels that significantly underrepresent important segments of the community in both urban and rural areas—young people, women, the poor, ethnic minorities, and those with less extensive educational backgrounds. While efforts have been made in recent years in Harris County (and in recent months in Nacogdoches County) to increase the representation of ethnic minorities and women on the grand juries, such efforts are no more than cosmetic reforms because the minority and female jurors continue to be drawn almost entirely from the most elite social and economic strata of their respective communities. Finally, the literature suggests that states other than Texas that use the commissioner selection method have jury panels that are likewise unrepresentative of the community at large, a conclusion not disputed by the United States Supreme Court.

III. THE TWO PRINCIPLE HYPOTHESES OF THE STUDY AND THE METHODOLOGY BY WHICH THEY ARE TO BE TESTED

A. *The Hypotheses to Be Validated*

The first and most important hypothesis of this article is that contrary to the Supreme Court's position, there is in fact a very real causal link between unrepresentative juries and the commissioner selection method which produces them. Evidence for this hypothesis is derived from three ancillary propositions which the accumulated evidence supports: (1) that the socio-economic characteristics of the commissioners are extraordinarily similar to the jurors whom they select, and indeed that a similar correspondence exists between the criminal court judges and the commissioners whom they appoint; (2) that commissioners tend overwhelmingly to appoint their personal friends, relatives, and associates to the jury panels, and that most commissioners were personally acquainted with the appointing judge *prior* to the appointment; and (3) that a substantial portion of the commissioners have served more than once either as commissioners or as grand jurors. If

22. 311 U.S. at 130-31.

22.1 *Partida v. Castaneda*, 524 F.2d 481 (5th Cir. 1975), *cert. granted*, 96 S. Ct. 2645 (1976).

22.2 *Partida v. Castaneda*, 384 F. Supp. 79 (S.D. Tex. 1974), *rev'd*, 524 F.2d 481 (5th Cir. 1975), *cert. granted*, 96 S. Ct. 2645 (1976).

proven, these three corollaries should demonstrate that the grand jury selection process is part of a nearly closed system representing a very narrow segment of the community at large. In other words, there is a causal link between the unrepresentative character of grand jurors and the commissioners who choose them and likewise between the judges who name the commissioners.

The second principal hypothesis of the study is that the burdensome, time-consuming nature of grand jury service itself effectively precludes a true cross section of the community from serving as grand jurors. While such a condition is not in and of itself a critique of the commissioner selection process, it does indicate nevertheless that even if the commissioners did a more effective job in seeking out a true cross section of the community, the very nature of grand jury service would tend to exclude all but the very same narrow elite who presently serve as grand jurors. In addition, the expensive and demanding nature of grand jury service tends to perpetuate the closed system which unconstitutionally excludes the vast majority of the citizenry from their right and duty to serve as grand jurors.

B. Methodology

Data to support these hypotheses derive from three principal sources. The first was a mailed questionnaire which was sent to all persons who had served as grand jury commissioners between 1969 and 1974. The questionnaire solicited information about the socio-economic characteristics of the commissioners; the commissioners' prior experiences in that same role or in the capacity of a grand juror; the standards used by the commissioners in selecting potential grand jurors, including the nature of the commissioners' relationship with the potential jurors; the reasons why persons whom the commissioners contacted refused to serve as grand jurors; and the commissioners' opinions about the primary function of the grand jury. The response rate from the questionnaires was 55 percent (N=153), which is sufficiently high to warrant valid generalizations about the overall population under study:²³

Second, formal and informal interviews were conducted in person and by telephone with a sizeable number of past and present jury commissioners, criminal court judges, members of the District Attorney's staff, state legislators interested in grand jury reform, and lawyers who had some personal knowledge and/or experience with the Texas grand jury system. Because of the rather sensitive nature of the subject matter, all interviewees were guaranteed absolute confidentiality, and in relating the valuable material they provided, we have attempted to respect their anonymity.

Finally, a variety of miscellaneous reference sources were used for

23. The response rate would have been about 10% greater were it not for the fact that many former commissioners have moved out of town or have died since their service as commissioners.

this study in order to acquire the necessary factual data to supplement the two above-mentioned data bases. These sources included such items as official census records, federal and state case law reporters, law review articles, compendia of various state codes pertaining to jury selection, and records compiled by the Harris County District Attorney's Office.

IV. THE CAUSAL LINK BETWEEN UNREPRESENTATIVE JURIES AND THE COMMISSIONER SELECTION METHOD

A. *The Commissioners' Freedom to Discriminate*

Before one can demonstrate a causal link between the commissioner selection system and the unrepresentative grand juries that it produces, it is first necessary to document the commissioners' vast discretionary powers which enable them to select their friends and neighbors for grand jury service rather than to seek out a true cross-section of the community.

In Texas grand jury commissioners first must swear to a rather nebulously worded oath which in essence requires them to refrain from knowingly selecting unfit and unqualified grand jurors and to refrain from discussing pending criminal cases with any of the potential grand jurors.²⁴ After this they "shall be instructed by the judge in their duties,"²⁵ which may or may not provide them with exacting guidelines for selecting potential jurors, a subject to be addressed below. At this point the three to five commissioners²⁶ together select "not less than 15 nor more than 20 persons from the citizens of different portions of the county to be summoned as grand jurors. . . ."²⁷

What legal standards must these commissioners bear in mind in making their important selections? In sum, the law requires potential grand jurors to be citizens of the county and state, qualified to vote in the county, of sound mind and good moral character, able to read and write, and free of any felony convictions.²⁸ Such qualifications are not peculiar to Texas nor to any particular region of the United States. Almost every state requires that its jurors be United States citizens,²⁹ residents of the local community,³⁰

24. TEX. CODE CRIM. PROC. ANN. art. 19.03 (1966).

25. *Id.* art. 19.04.

26. *Id.* art. 19.01 (Supp. 1976).

27. *Id.* art. 19.06.

28. *Id.* art. 19.08.

29. See, e.g., ARIZ. REV. STAT. ANN. §§ 21-201, 16-101 (1975); WIS. STAT. ANN. § 255.01(1) (1971).

30. See, e.g., CAL. CIV. PROC. CODE § 198 (West 1973); WASH. REV. CODE ANN. § 2.36.070(2) (Supp. 1975).

of a certain minimum age,³¹ and able to understand English.³² In addition, some states also require jurors to be of good moral character or the like,³³ to be intelligent,³⁴ or well informed.³⁵ While such qualifications may sound noble and impressive, it requires little thought to conclude that for all practical purposes jury commissioners are still legally free to exercise enormous discretion in compiling their lists of potential grand jurors.

At this point one may ask the question: do the county judges specifically encourage their commissioners to attempt to secure a true cross section of the community as they contact potential grand jurors? When asked this question on the mailed questionnaire, a mere 22 percent of the commissioners indicated that their appointing judges has specifically advised them to be mindful of socio-economic factors in making their selections. A number of the commissioners' responses to this open-ended question are insightful and worthy of quoting verbatim.

Some commissioners obviously received from their judges instructions which were ideal from the standpoint of securing a well-balanced jury panel. For example, one commissioner reported that his judge said, "try to select someone geographically from all over the county and get women, Blacks, etc., of different social and ethnic background so the grand jury can be representative of the people of the county." Another commissioner who had served in that capacity for two separate judges at different times

31. See, e.g., COLO. REV. STAT. ANN. § 13-71-109 (1973) (18 years old); HAWAII REV. STAT. § 612-4(1) (Supp. 1975) (18 years old); MD. ANN. CODE § 8-104 (1974) (18 years old); NEB. REV. STAT. § 25-1601(1) (1975) (21 years old); R.I. GEN. LAWS ANN. § 9-9-1 (Supp. 1975) (21 years old).

32. See, e.g., PA. STAT. ANN. tit. 17, § 1333 (Supp. 1976). Vermont has delegated the function of determining qualifications to court administrators. VT. STAT. ANN. tit. 4, § 952 (1972).

33. CONN. GEN. STAT. ANN. § 51-217 (Supp. 1976); ILL. REV. STAT. ch. 78, § 2 (1969) ("fair character"); IOWA CODE § 607.1 (1971); KY. REV. STAT. ANN. § 29.025 (1971) ("temperate, discreet, and of good demeanor"); NEB. REV. STAT. § 25-1601(1) (1975) ("fair character"); N.Y. JUDICIARY LAW § 504(4) (McKinney 1975); OKLA. STAT. ANN. tit. 38, § 28A (Supp. 1975); S.C. CODE ANN. § 38-52 (Supp. 1975); TEX. REV. CIV. STAT. ANN. art. 2133, § 2 (1964); WIS. STAT. ANN. § 255.01(5) (1971). Another phrase frequently found is "approved integrity." See, e.g., CONN. GEN. STAT. ANN. § 51-217 (Supp. 1976); ILL. REV. STAT. ch. 78, § 2 (1969); NEB. REV. STAT. § 25-1601(1) (1975); see MISS. CODE ANN. § 13-5-1 (1972) (not a "habitual drunkard"); MO. ANN. STAT. § 494.010 (Supp. 1976) ("sober"); OKLA. STAT. ANN. tit. 38, § 38(B)(6) (Supp. 1975) ("habitual drunkards" not qualified); TENN. CODE ANN. § 22-102 (1955) (same); W. VA. CODE ANN. § 52-1-2 (1966) (same). Cf. WASH. REV. CODE ANN. § 2.36.110 (1961) ("unfit persons" must be excused).

34. CAL. CIV. PROC. CODE § 198 (West 1973); IOWA CODE ANN. § 607.1 (1975) ("sound judgment"); MO. ANN. STAT. § 494.010 (Supp. 1976); NEB. REV. STAT. § 25-1601(1) (1975); N.Y. JUDICIARY LAW § 596(5) (McKinney 1975) (only for cities over one million in population); OKLA. STAT. ANN. tit. 38, § 28A (Supp. 1975) ("sound mind and discretion"); S.C. CODE ANN. § 38-52 (Supp. 1975) ("sound judgment"); UTAH CODE ANN. § 78-46-8(5) (1953) ("sound mind and discretion"); WIS. STAT. ANN. § 255.01(5) (1971) ("sound judgment"); WYO. STAT. ANN. § 1-77(2) (Supp. 1975).

35. ILL. REV. STAT. ch. 78, § 2 (1969); NEB. REV. STAT. § 25-1601(1) (1975); see CONN. GEN. STAT. ANN. § 51-217 (Supp. 1976) ("fair education"). See also Note, *The Congress, the Court and Jury Selection: A Critique of Titles I and II of the Civil Rights Bill of 1966*, 52 VA. L. REV. 1069, 1072-73 (1966) (collecting references).

recalled that "both judges suggested we try to provide a good cross section representation of the county, *i.e.*, include Anglo, Black, Mexican-American and female nominees. One also suggested we consider a cross section of business, professional, labor, white-collar and blue-collar citizens."

Such ideal guidelines tended, however, to be exceptions to the rule even for the 22 percent of the commissioners who received any special instructions at all. Most of these commissioners reported that their judges seemed to encourage a sort of tokenism in the jury selection process so that the resulting jury panels would contain just enough minimal diversity to immunize the panel from a later charge of grand jury bias. The following accounts by several commissioners reveal the more typical type of instructions from the judges:

The judge told us [commissioners] that we need one woman, one Black, and a couple of labor people . . . All the other commissioners [except the one reporting here] were car dealers, and sometimes six of the twelve grand jurors were car salesmen.

• • •

The judge said he would *like* to have at least one woman in my selection.

• • •

The judge wanted to have at least two Latin-Americans and two Blacks.

One minority group commissioner gave this rather candid account of what he knew the judge expected of him: "But being a Black commissioner inferred strongly to pick several potential jurors of color [sic] or other minority extraction, *e.g.*, Chicano, Jewish, Cajun, or other swarthy likes."

In sum, it appears that the statutes give enormous discretion to the commissioners to select almost whomever they please as potential grand jurors and that this discretion is not tempered by the instructions they receive from their appointing judges. While a few judges do encourage their commissioners to make the effort to contact a good cross section of the local citizenry, most of these judges appear to be motivated more by a precautionary desire to obtain a token diversity than by a genuine commitment to secure grand juries that meaningfully represent the community at large.

B. The Similarity of the Socio-economic Backgrounds of the County's Grand Jurors, Commissioners, and Judges

Given the wide discretionary authority of jury commissioners, it is necessary to document the causal link between such authority and the unrepresentative juries which they foster. This will be done by presenting the evidence for the three before-mentioned corollary propositions, the first of which contends that predominantly affluent, well-educated, upper middle-class, Anglo-Saxon, male commissioners select grand jurors with aston-

ishingly similar characteristics.

For the locality under study here, Harris County, Texas, the results of the mailed questionnaire provide the following profile of the typical grand jury commissioner: 88 percent are male, 76 percent are white, 85 percent are between the ages of 36 and 65, 61 percent hold college or graduate degrees, 81 percent are either business executives or professionals, and 64 percent have incomes in excess of \$25,000 per year. One need only compare these facts and figures with those for county residents in general to see what an elite and unrepresentative group of citizens these commissioners comprise. The following three tables will assist in demonstrating this conclusion.

The obvious conclusion from Table 1 is that grand jury commissioners, like the jurors whom they select, grossly underrepresent females, Mexican-Americans, young people, those with less extensive educational backgrounds, those of low prestige employment, and those with low to moderate incomes. It is interesting to note that the percentage of Black commissioners (19%) is almost equal to the percentage of Black citizens in the county (20%). This hopeful sign, however, is as deceptive as was the before-mentioned fact that the percentage of Black grand jurors (15%) is reasonably

TABLE 1

SOCIO-ECONOMIC CHARACTERISTICS OF HARRIS COUNTY
GRAND JURY COMMISSIONERS BETWEEN 1969 AND 1974

(N=153 FOR THE QUESTIONNAIRE SAMPLE)

Sex	<u>Male</u> 88%	<u>Female</u> 12%				
Race	<u>Black</u> 19%	<u>White</u> 76%	<u>Mexican-American</u> 5%			
Age at Time of Service as Commissioner		<u>21-35</u> 11%	<u>36-50</u> 43%	<u>51-65</u> 42%	<u>Over 65</u> 4%	
Education	<u>Some High School</u> 5%	<u>High School Degree</u> 7%	<u>Some College</u> 27%	<u>College Degree</u> 23%	<u>Graduate or Professional Degree</u> 38%	
Occupation	<u>Business Executive</u> 45%	<u>Professional</u> 36%	<u>Clerical or Retail Sales</u> 7%	<u>Craftsman or Laborer</u> 6%	<u>Housewife</u> 6%	
Family Income	<u>Under \$5,000</u> 0%	<u>\$5,000 to \$10,000</u> 3%	<u>\$10,000 to \$15,000</u> 7%	<u>\$15,000 to \$25,000</u> 26%	<u>\$25,000 to \$40,000</u> 23%	<u>Over \$40,000</u> 41%

close to the percentage of Blacks in Harris County (20%). Close examination of the data reveals that Black commissioners, like Black grand jurors, come almost exclusively from the very elite strata of the Black community: 71 percent of the Black commissioners are either business executives or professionals, and 66 percent hold college or graduate degrees. Poor Blacks with low-paying, low prestige jobs are no more represented among the jury commissioners than they are among grand jurors.

Table 2 provides a vivid data-set to verify the proposition that jury commissioners and their grand jury appointees come almost entirely from the same narrow social and economic elite segment of the community. The figures for sex, race, age, education, occupation, and family income³⁶ bear a remarkable similarity to one another.

One may ask at this point whether there is any causal link between the behavior of the elitist grand juries and the elitist commissioners who select them; or, stated another way, would the nature of grand jury activity be any different if its members were chosen in a manner that would guarantee a more representative sample of the community? This question was addressed more directly in the previous study of Harris County grand juries³⁷ which concluded *inter alia* that the district attorney's recommendations to indict or not to indict are followed without question at least 94 percent of the time,³⁸ and that "[t]he never-ending flow of cases with which grand juries are daily bombarded places another obstacle in the path of a full and fair hearing for all those accused of felonies."³⁹

Evidence from the present study suggests that the reluctance of grand juries to question the district attorney and to take more time with each case may be traced to the values and attitudes of their elitist membership. To illustrate, the commissioners were asked on the questionnaire to indicate what they believed to be the *most* important function of the grand jury among the following three options:

- (1) To conduct lengthy investigations of criminal activity in the community;
- (2) To serve as a check on the district attorney who might be prosecuting an individual without proper or sufficient evidence; or
- (3) To aid the district attorney in processing cases as rapidly and as efficiently as possible so as not to cause a logjam in the judicial process.

36. The information on Houston-area inflation in Table 2 was secured from a telephone interview with an official in the U.S. Bureau of Labor Statistics. The data was computed from various sections of the Bureau's 1973 through 1975 statistics taken from recent editions of the *Consumer Price Index for Urban Wage Earners and Clerical Workers* published by the U.S. Government Printing Office.

37. Carp, *supra* note 3.

38. *Id.* at 115. See also Houston Chronicle, Sept. 12, 1976, § 7, at 5, col. 1.

39. Carp, *supra* note 3, at 119.

Nine percent of the commissioners opted for the first choice; 49 percent chose the second alternative; and 42 percent selected the third option. Responses were remarkably similar when correlated with the commissioners' backgrounds with one notable exception. While 49 percent of the commissioners as a whole believe the grand jury's primary function is to serve as a check on the district attorney, 75 percent of the commissioners who hold blue-collar jobs (craftsmen and laborers) hold this belief.⁴⁰ One may infer from these facts that if there were more blue-collar commissioners, there

TABLE 2

SOCIO-ECONOMIC CHARACTERISTICS OF HARRIS COUNTY
GRAND JURY COMMISSIONERS COMPARED WITH THE
COUNTY'S GRAND JURORS

(N=153 AND 156 RESPECTIVELY)

	Commissioners	Grand Jurors
<u>Sex</u>		
Male	88%	78%
Female	12%	22%
<u>Race</u>		
Black	19%	15%
White	76%	82%
Mexican-American	5%	3%
<u>Average Age at Time of Service</u>	48 years	51 years
<u>Average Education</u>	16 years (college degree)	16 years (college degree)
<u>Occupation (excluding housewives and retired persons)</u>		
High status positions	81%	62%
Low status positions	13%	13%
<u>Median Annual Income in 1975</u>	\$35,000	\$32,250*

*This figure was adjusted upward from the \$25,000 amount which appears in Appendix I as the average grand juror family income in 1972. Such an adjustment was necessary because of the 29 percent wage inflation which occurred in the Houston area between 1973 and 1975.

40. One might also expect Black, Mexican-American, and perhaps female commissioners to see the primary function of the grand jury as a potential check on the district attorney. However, the fact that such individuals come almost entirely from the elite segments of their respective communities and not from a real cross section is the probable reason why such persons view the grand jury's primary function in the same light as their Anglo, male counterparts.

would likely be more blue-collar workers on the grand jury panels. Such a condition would likely result in grand juries that serve as a greater check on the district attorney and less as machines which, for the sake of administrative efficiency, rubber-stamp the prosecutor's recommendations. Such a hypothesis is admittedly tentative at this point, but it is highly suggestive.

To complete the corollary that grand jurors and jury commissioners are drawn from the elite strata of the community, it is now appropriate to demonstrate that the judges who appoint the commissioners likewise come from this identical segment of society.

Table 3 provides further evidence that *all* participants in the grand jury selection process hail from the same high rung of the social and economic ladder. Judges, like the commissioners whom they appoint and like the grand jurors whom they in turn select, are conspicuous for the comparative absence among their ranks of women, ethnic minorities, young people, those with modest educational backgrounds, and the poor.⁴¹ This observation is not made to criticize the attributes of the local judges, but rather to round out the general thesis that the unrepresentative character of the

TABLE 3

SOCIO-ECONOMIC CHARACTERISTICS OF HARRIS COUNTY
CRIMINAL DISTRICT COURT JUDGES COMPARED WITH THE
COUNTY'S GRAND JURY COMMISSIONERS

(N=12 AND 153 RESPECTIVELY)

	<u>Judges</u>	<u>Commissioners</u>
<u>Sex</u>		
Male	100%	88%
Female	0%	12%
<u>Race</u>		
Black	8%	19%
White	92%	76%
Mexican-American	0%	5%
<u>Average Age</u>	52 years	48 years
<u>Average Education</u>	19 years (professional degree)	16 years (college degree)
<u>Median Annual Income in 1975</u>	\$43,600	\$35,000

41. In terms of socio-economic characteristics, Harris County judges are highly similar to their counterparts throughout the state. See B. HENDERSON & T. SINCLAIR, *THE SELECTION OF JUDGES IN TEXAS* 51-68 (1965). For a review of similar findings for state judges in general, see H. GLICK & K. VINES, *STATE COURT SYSTEMS* 36-51 (1973).

county's grand juries is not due to mere chance. On the contrary, it is the logical and inevitable consequence of a system designed to insure that only the socio-economic and educated elite will ever dominate commissioner-selected grand jury panels. The thesis is further supported in the forthcoming segment of this article which demonstrates that this closed system is bolstered and maintained by the fact that nearly all its participants are personal friends or associates of one another.

C. The Degree and Consequences of the Interpersonal Relationships Among the Grand Jurors, Commissioners, and Judges

A fact long recognized by students of social science is that people tend to know and associate with persons of similar social and economic backgrounds and that they tend to have comparatively few relationships with those from a different socio-economic milieu.⁴² Such a fact is relevant here because it is consistent with evidence that judges appoint their friends and acquaintances as commissioners, who in turn select their respective associates and neighbors for grand jury service, thereby insuring the semiclosed nature of the grand jury system.⁴³

Documentation of this phenomenon should begin with a consideration of this question: To what extent were the grand jury commissioners personally acquainted with the judges prior to the time of their respective appointments? The results of the mailed questionnaire indicate that 42 percent of the commissioners knew their appointing judges very well prior to their appointment and that another 42 percent were casually acquainted with the appointing judge. Only 16 percent indicated that they were not personally acquainted with the judge who selected them prior to their appointments. The evidence suggests, however, that such persons were selected on the basis of a personal recommendation from a third party who was a friend of both the judge and the commissioner. Thus, 84 percent of the commissioners were among the judge's circle of friends prior to the appointment date, and many of the remaining commissioners moved within similar circles since they and the judge at least had a mutual acquaintance.

What then was the nature of the relationship between the commissioners and the grand jurors whom they selected? Again the mailed questionnaire results are highly revealing. When asked the question, "Of the grand jurors you nominated, how many did you know on a personal basis?" an overwhelming 66 percent of the commissioners responded that they knew *all* the potential grand jurors personally, and another 22 percent claimed

42. See, e.g., D. BYRNE, *THE ATTRACTION PARADIGM* (1971); Tagiuri, *Person Perception*, in 3 *HANDBOOK OF SOCIAL PSYCHOLOGY* 395-449 (2d ed. G. Lindzey and E. Aronson eds. 1969).

43. For evidence to show that at the local level persons tend to recruit for political office individuals of similar socio-economic backgrounds, see Prewitt & Eulau, *Social Bias in Leadership Selection, Political Recruitment, and Electoral Context*, 33 *J. OF POL.* 293 (1971). See also L. SELIGMAN, *PATTERNS OF RECRUITMENT* 244-63 (1974).

to know most of them. Only 12 percent of the commissioners said they knew on a personal basis only half or less of the jurors they selected. For this latter group the name of the potential grand juror was given to the commissioner by a third party who was personally acquainted with both individuals.⁴⁴

Such findings are not very surprising for two reasons. First, if the commissioners are to take seriously their charge to select only persons "of sound mind and good moral character," the only way this duty could be conscientiously performed would be for the commissioner to select his neighbors, associates, fellow church and club members, and other acquaintances for grand jury service. Since one could not know the quality of mind and character of a total stranger, it is logical to assume that commissioners turn to their circle of personal friends for grand jurors because it is only such persons that he could know well enough to assess their intelligence and reputation. Second, one may assume that commissioners turn to their day-to-day associates for potential grand jurors because it is simply the course of least resistance to do so. To acquire information on the character, literacy, and quality of mind of theretofore unknown persons of different races in various parts of the county would be a major undertaking for a busy, well-paid commissioner whose compensation for his jury selection duties is but ten dollars per day.⁴⁵ How much simpler merely to turn to one's well-respected co-workers or relatives for potential grand jurors, especially when neither the statutes nor the judge's instructions require any greater effort on the commissioner's part.

The literature suggests furthermore that the grand juror's personal acquaintance with the individual(s) who select them is not unique to Texas. In California, for example, a study revealed that "jurors are usually outstanding members of the community who are selected in part on the basis of their civic activity and are often well known to the superior court judges who nominate them."⁴⁶ Indeed, in Ventura County, California, the *Grand Jury Handbook* states that "... each member of this panel from which this jury has been selected was chosen because he or she was known to one or more of the judges who had confidence in your integrity, fairness, and good judgment."⁴⁷ One may infer that in those other states in which jurors are selected by designated officials, rather than on a random basis, the officials are at least personal acquaintances of the jurors they select. This is so because these states require the appointing officials to consider rele-

44. For illustrations of how commissioners go about selecting their friends and neighbors for grand jury service, see Carp, *supra* note 3, at 93-94.

45. TEX. CODE CRIM. PROC. ANN. art. 19.01 (Supp. 1976).

46. Comment, *The California Grand Jury—Two Current Problems*, 52 CALIF. L. REV. 116 (1964).

47. B. Olson, *The California Grand Jury: An Analysis and Evaluation of Its Watchdog Function* 101 (1966) (unpublished thesis in University of Houston Law Library), quoting VENTURA COUNTY GRAND JURY HANDBOOK 1 (1964).

vant personal information about the potential jurors,⁴⁸ and such information could not be acquired unless there were interpersonal ties between the officials and the appointees.

In sum, it is contended that in the particular locality here under study, and probably in all other states where grand and/or petit jurors are selected by certain designated officials, there is an overwhelming tendency for the appointing officials to be close or intimate associates of the jurors whom they appoint. This might not be so unfortunate if the appointing officials came from a wide cross section of society, but the fact that they came almost entirely from the community elite creates the very real possibility that the subsequent jury panels will be highly unrepresentative in their composition. Such a state of affairs was fully recognized by the United States Supreme Court in *Turner v. Fouche*⁴⁹ in which the Court rejected a nearly all-white jury panel which had been appointed by an all-white jury commission:

In the face of the commissioners' unfamiliarity with Negroes in the community and the informality of the arrangement by which they sought to remedy the deficiency in their knowledge upon compiling the jury list, we cannot assume that inquiry would not have led to the discovery of many qualified Negroes.

In sum, the appellants demonstrated a substantial disparity between the percentages of Negro residents in the county as a whole and of Negroes on the newly constituted jury list. They further demonstrated that the disparity originated, at least in part, at the one point in the selection process where the jury commissioners invoked their subjective judgment rather than objective criteria. The appellants thereby made out a prima facie case of jury discrimination, and the burden fell on the appellees to overcome it.⁵⁰

It is probable that the Supreme Court's decision in the above case regarding Taliaferro County, Georgia, is likewise valid for Harris County, Texas—that is, a white, male elite set of jury commissioners, exercising their vast discretionary powers permitted by state law, have succeeded in creating jury panels almost totally dominated by their male, Anglo, upper middle-class friends and neighbors. Moreover, as previously argued, such a state of affairs is no accident, but rather the logical and inevitable consequence of the grand jury selection system as it exists in Texas and in its sister states which use similar procedures to empanel their grand and petit juries.

D. *The Consequences of Commissioners Serving Multiple Terms as Grand Jurors*

One final proposition that suggests the semiclosed character of the

48. Refer to notes 29-35 *supra* and accompanying text.

49. 396 U.S. 346 (1970).

50. *Id.* at 360.

county's grand jury system is the fact that a sizable portion of the commissioners have served in that capacity more than once, and that a significant majority of the commissioners have been asked to serve as grand jurors. Such multiple and overlapping service records are further evidence of the rather exclusive nature of the grand jury selection process.

Responses to the mailed questionnaire reveal that 19 percent of the commissioners have served more than one term and that some have served as many as seven terms. As for the number of commissioners contacted for grand jury service, 70 percent have been called to serve as grand jurors at least once, and 22 percent have been called on more than one occasion. Such findings are fairly consistent for all racial groups within the county: 76 percent of the Blacks, 69 percent of the whites, and 71 percent of the Mexican-Americans responding to the questionnaire have been tapped for grand jury duty in addition to their service as commissioners. Such findings might not be surprising for a rural county with a limited population, but for a county of over two million citizens these facts are particularly noteworthy because they strongly suggest the absence of any meaningful effort to bring a wide cross section of the community into the grand jury selection process.

V. THE BURDENSOME NATURE OF GRAND JURY SERVICE GUARANTEES THAT ONLY A SMALL PORTION OF THE ELITE CAN SERVE

The second principal hypothesis of this article is that the time consuming and expensive demands of grand jury service preclude most citizens from serving as grand jurors, even if a true cross section of the community were tapped for such service. This proposition is not a criticism of the grand jury selection method per se, for it would be true even if potential grand jurors were contacted on a random basis. Rather, it provides evidence to show that grand jury service would be possible for only a narrow strata of the elite even without the biased nature of the commissioner selection method.

In most urban Texas counties the usual term of grand jury service is three months, and the law permits a ninety-day extension if the work load or special circumstances require it.⁵¹ In Harris County, the average grand jury meets two full days per week and works a total of about twenty-six days for the three-month period, unless it is authorized to serve for an additional ninety days, in which case the work load doubles. For this important and Herculean task the grand juror receives only five dollars per day plus the costs of parking and lunch. Thus, for all practical purposes, to consent to be a grand juror indicates a capacity and a willingness to work almost

51. TEX. CODE CRIM. PROC. ANN. art. 19.07 (1966).

gratuitously for more than 200 hours spanning at least a three-month period.⁵²

How many people have that much time to spare, have the kind of jobs that permit such absences—especially with pay, have the resources to pay for babysitters or maids, and have adequate transportation to take them to the courthouse twice a week for at least three months? Not many. The evidence suggests that for the most part only those who are well-to-do and/or have guaranteed monthly salaries, those with young children at home who can afford to pay the costs of babysitters or child care centers, and those who have a second family car can pay the costs in time and money to serve on grand juries.

When the commissioners were asked to identify the major reasons why persons whom they contacted for grand jury duty refused to serve, 93 percent pointed to one of the following three options: the potential grand juror "didn't have the time," "couldn't afford to serve because of financial considerations," and "couldn't leave young children at home."

There are of course many ways in which grand jury service could be made less a function of *noblesse oblige* and more open to those of middle to lower socio-economic class backgrounds. This subject will be addressed more directly in the final segment of this article dealing with possible reform of the system. At the present time, however, it is possible to conclude that the excessive demands of time and money inherent in grand jury duty serve to exclude most citizens from the grand jury rolls. This phenomenon, while not in itself a shortcoming of the commissioner selection method, serves to reinforce the consequences of the present method of grand juror selection, that is, to guarantee that a true cross section of the community will never serve on grand juries in this state and in states having similar types of grand jury systems.

VI. CONCLUSIONS AND SUGGESTIONS FOR REFORM

A. *Summary of the Research Findings*

This study began by pointing to the undisputed principle of constitutional law that both grand and petit juries must be composed of persons who comprise a true cross section of the community's human resources. The focus then shifted to the question of the conditions under which a jury selection system, nondiscriminatory on its face, can foster invidious discrimination in the way it is applied and implemented. More specifically, the Supreme Court's position was analyzed regarding those states which permit their grand and petit jurors to be selected by commissioners or other designated officials who possess vast discretionary powers of selection. In essence

52. It should be pointed out, however, that in the rural, less populous counties, grand jury service is somewhat less burdensome because of lighter case loads.

the Court has said that such systems are not *inherently* unconstitutional because there is no causal link between the commissioner selection process and the unrepresentative jury panels which they usually produce. It has been the central thesis of this article to challenge the Supreme Court's position on this point by demonstrating that the commissioner selection method in general and the grand juror selection system in Texas specifically *are* inherently incapable of producing jury panels whose composition is in accord with the constitutional mandate.

To validate this thesis it was necessary first to document the unrepresentative nature of grand jury panels in Texas and of juries in other states that use a commissioner-type selection method. Two hypotheses were then set forth in an attempt to prove this central thesis. The first was that there is indeed a causal link between biased jury composition and the commissioners who are responsible for them. This hypothesis was supported by three corollary propositions: (1) There is a preponderance of evidence for the locality under study here that the grand jurors, the commissioners, and the county judges all come from a narrow strata of the community's elite which largely excludes women, ethnic minorities, young people, those of lesser educational backgrounds, and the poor. Furthermore, it was shown that the few women and ethnic minority persons who do serve on grand juries are highly unrepresentative of their respective communities, and that the behavior of elite grand juries may well be a function of the elite commissioners who choose them, that is, blue-collar commissioners are more likely to select grand jurors who will serve as a check on the prosecutor than are their white-collar counterparts. (2) The reason why nearly all the participants in the grand jury system are from the same elite is because social science evidence and data from the questionnaires indicate that "like chooses like." Moreover, state law and simple convenience make it lawful, easy, and natural for judges to appoint their friends and associates as commissioners, who in turn select their respective acquaintances and neighbors for grand jury service. (3) Finally, the portion of the community that is drawn into grand jury service is limited further, since commissioners often serve as grand jurors and vice versa, and because commissioners occasionally serve more than one term.

The second hypothesis to be validated is that the expensive and time-consuming nature of grand jury service tends to reinforce the consequences of the first hypothesis in that it tends to discourage most hourly wage earners, women with young children, and the poor from serving on grand juries even if they were asked to serve.

Thus, it appears that the elusive missing link between the commissioner method of jury selection and the closed and unrepresentative jury panels which it inevitably produces has been found. While the hard data on this investigation are obviously most conclusive for the particular locality under study here, the evidence suggests that the conclusions set forth herein may be valid as well for other states with similar jury selection methods.

B. *Proposals for Reform of the System*

It is appropriate at this time to offer some suggestions for reform of the process by which grand jurors are selected and of the nature of grand jury service itself. While there are countless proposals one could make regarding this process,⁵³ this discussion shall be confined solely to those reforms which will make grand jury panels more representative of the community and which will make grand jury service less burdensome and thus more accessible to a wider spectrum of the citizenry.

In light of the main thrust of this article, the first and inevitable question which poses itself regarding reform of the grand jury selection process is whether the commissioner method can be modified or reformed in some way so that its essential features and *raison d'être* are maintained. The answer to this question must be no. The assumption that earnest, well-intentioned jury commissioners can and will select jury panels that truly reflect the community's human resources is a facile, naive, bankrupt proposition which has been buried by an avalanche of contradictory evidence.⁵⁴

With what then is the commissioner selection method to be replaced? If the goal is to select juries truly reflective of the community, the only plausible alternative is for grand jurors to be selected at random from a list of all persons in the particular jurisdiction who are eligible for jury service. In Texas this would mean that grand juries would be empaneled in the same way that trial or petit jurors are now chosen, that is, "selected by drawing the names of registered voters from a jury wheel or by means of a computer that has been programmed with the voting list and a table of random numbers."⁵⁵ Indeed, such a proposal has been under consideration by the Committee on Criminal Jurisprudence of the Texas House of Representatives. Since 1974 the Hon. Craig A. Washington has urged his fellow committee members to support legislation which would provide for the selection of grand jurors "... in the same manner as the selection and summons of panels for the trial of civil cases in the district courts."⁵⁶ As of this time, however, no action has been taken on the proposed legislation.

Such a reform would follow the pattern for the selection of federal grand and petit jurors set forth in the Jury Selection and Service Act of

53. For example, it could be argued that grand juries would operate more effectively if they were permitted to select their own foremen. See Carp, *supra* note 3, at 106-08.

54. The making of this statement is not meant to impugn in any way the integrity, honesty, or earnestness of the commissioners themselves. No evidence has been uncovered to indicate that the commissioners abuse or take lightly their responsibilities as officers of the court. Rather, it is suggested that the commissioner selection method itself is inherently defective regardless of the motives of those who implement it.

55. C. McCLESKEY, E. DICKENS, & A. BUTCHER, *THE GOVERNMENT AND POLITICS OF TEXAS* 203 (5th ed. 1975).

56. Draft of a proposal to amend TEX. CODE CRIM. PROC. ANN. art. 19.01 (Supp. 1974) first submitted to the Committee on Criminal Jurisprudence of the Texas House of Representatives by Rep. Craig A. Washington in 1975, at 1 (on file with Houston Law Review). The proposal was subsequently introduced as Tex. H.B. 119, 65th Leg. (1977).

1968.⁵⁷ This Act provides *inter alia* that federal juries "must be drawn by lot from the voting-registration lists of area or district citizens by the jury clerk, who uses these names to form a jury panel, or *venire*."⁵⁸ This congressional reform bill was prompted by a 1966 Fifth Circuit ruling which held that a Louisiana defendant's rights had been violated precisely because his petit jury had not been selected from a cross section of the community,⁵⁹ but under the so-called key-man system, which closely resembles the commissioner selection method in Texas.

If Texas were to adopt the federal method for the selection of its grand jurors, essentially the same method it now uses for its trial juries, it is clear that a meaningful sample of the community could be tapped for grand jury service. Such a sample would be significantly more representative of the counties' human resources and would thus be more in keeping with the letter and spirit of the equal protection clause.

A word of caution about the above-mentioned reform is also in order because if it is implemented under existing conditions in the state, one of the first effects would be to lower the educational level of the average grand jury. Given the fact that at the present time it is largely the best educated grand jurors who are most likely to take an independent stand vis-a-vis the prosecutor,⁶⁰ such a reform taken by itself might well be a step in the wrong direction even though the constitutional standard of representativeness had been met. More specifically, the previous study of Harris County grand juries revealed that most grand jurors are woefully ignorant of the duties, powers, and functions of the grand jury and that only the elite tend to possess the efficacy, knowledge, and confidence to question the recommendations of the district attorney.⁶¹ Thus, to recommend a reform that merely abolishes the elite character of grand juries would seem paradoxical at best. Therefore, the previously articulated call for the development of a sophisticated, meaningful training program for newly selected grand jurors must be reaffirmed, so that prior to beginning their work, grand jurors learn "the full measure of their duties, functions, and prerogatives"; the meaning of "probable cause"; and "how to conduct careful, complete investigations of each case."⁶² Without this corresponding reform measure, the random selection of grand jurors could result in a cruel hoax whereby the requirements of the equal protection clause are met at the expense of the equally important due process clause.

As for easing the burdens of grand jury service, the discussion must begin by recognizing that all duties and obligations of the citizenry in a

57. 28 U.S.C. §§ 1861-69, 1871 (1970).

58. H. ABRAHAM, *THE JUDICIAL PROCESS* 114 (3d ed. 1975); see 28 U.S.C. § 1863 (1970).

59. *Scott v. Walker*, 358 F.2d 561 (5th Cir. 1966).

60. *Carp*, *supra* note 3, at 96-97.

61. *Id.* at 97-99.

62. *Id.* at 118-19.

free society carry with them some degree of hardship, whether it is taking the time to stand in a long line at a polling booth on election day, keeping well-informed about current social and political issues, or serving as a petit juror for a couple of days every few years. But few obligations of citizenship are as demanding in terms of time, money, and inconvenience as serving on a grand jury. It is the purpose of the final portion of this article to suggest some reforms which should significantly lighten these burdens and thereby make grand jury service possible for the vast majority of citizens.

One reform that has been proposed is to shorten the length of the grand jury's term from ninety to thirty days.⁶³ Such a proposal, if adopted, would reduce the number of required days of service by two-thirds and would have a major impact on the urban county grand juries which must usually serve out their full three-month terms. Similar proposals call for the creation of additional grand juries in counties with heavy case loads so that the average grand jury might have to meet less frequently, perhaps one day a week instead of two. Likewise, some grand jury sessions might be scheduled to meet during the evenings or on Saturdays, thereby affording an opportunity to those citizens whose employment or familial responsibilities preclude their serving during weekdays.

Finally, grand jurors should receive more than token compensation for their services so that hourly wage earners, those who must hire babysitters, and those who require special transportation to the court house, need not refuse grand jury service because of the undue financial demands it so often imposes. What is fair and adequate compensation is a somewhat arbitrary question, but the \$20 to \$25 per day paid to federal grand jurors⁶⁴ would appear to be a minimum level toward which the State should strive. While this and the other reforms designed to ease the burden of grand jury service may still fall short of accommodating the needs of all persons, at least they should bring this obligation of citizenship within the means of a more sizable portion of the community than is now the case.

In conclusion, it should be noted that the lion's share of the evidence and arguments set forth herein have been offered to critique the system under which grand jurors are selected and serve, a system which many still support with enthusiasm. The stance taken in this article was not taken out of malice toward the system but rather because the hard, empirical evidence indicates that reform is required if the constitutional standards of equal protection and due process are to be met. It is fortunate, however, that not only can these constitutional requirements be achieved, but that they can also be attained with a minimum of cost, effort, and time. Indeed, the first of the proposed reforms, replacing commissioners with a random

63. This very proposal was made by Rep. Craig A. Washington to the Committee on Criminal Jurisprudence of the Texas House of Representatives. Refer to note 56 *supra* and accompanying text.

64. H. ABRAHAM, *THE JUDICIAL PROCESS* 108 (3d ed. 1975).

selection method, promises to be less costly and more efficient than the present system. The reforms designed to ease the burden of grand jury service require no constitutional revisions nor vast expenditures of public monies; all could be accomplished through legislative action. Given the importance of the constitutional standards involved and the ease by which they could be attained, efforts toward reform should begin immediately.

APPENDIX I

SOCIO-ECONOMIC CHARACTERISTICS OF HARRIS COUNTY
GRAND JURORS COMPARED WITH 1970 CENSUS FIGURES

(N=156 FOR THE QUESTIONNAIRE SAMPLE)

<u>Sex</u>	<u>Percentage of Grand Jurors</u>	<u>Percentage of County</u>
Male	78	49
Female	22	51
<hr/>		
<u>Age</u>		
21-35	10	23
36-50	43	18
51-65	37	8
Over 65	10	5
Median juror age, 51		Median adult age, 39
<hr/>		
<u>Income</u>		
Under \$5,000	1	16
\$5,000-\$10,000	3	31
\$10,000-\$15,000	25	29
\$15,000-\$20,000	16	9
Over \$20,000	55	15
Median juror income, \$25,000		Median family income in county, \$10,348
<hr/>		
<u>Race</u>		
Anglo	82	69
Black	15	20
Mexican-American	3	11
<hr/>		
<u>Education</u>		
Less than high school	0	24
Some high school	3	23
High school diploma	8	25
Some college	34	13
College degree	32	Comparable data not available
Graduate degree	23	
Median juror education, 16 years		Median county resident education, 12 years
<hr/>		
<u>Employment</u>		
Business executive	35	
Proprietor	7	
Professional	20	
Employed worker	13	Comparable data not available
Retired	13	
Housewife	11	
Other	1	

Exhibit No. 5

John B. Holmes, Jr.
DISTRICT ATTORNEY



DISTRICT ATTORNEY'S BUILDING
201 FANNIN
HOUSTON, TEXAS 77002

September 12, 1979

United States Commission on Civil Rights
609 Fannin St., Suite 2021
Houston, Texas 77002

Dear Members:

Pursuant to your request of September 11, 1979, I respectfully submit this information on minority recruitment:

ASSISTANTS:

Hispanic Males	10
Hispanic Females	1
Black Males	7
Black Females	3
White Males	98
White Females	14
TOTAL	133

INVESTIGATORS:

Hispanic Males	2
Black Males	4
White Males	27
White Females	1
TOTAL	34

SECRETARIES:

Hispanic Females	14
Black Females	9
White Females	61
TOTAL	84

OTHER:

Hispanic Males	1
Hispanic Females	2
Black Males	4
Black Females	3
White Males	16
White Females	6
TOTAL	32

United States Commission on Civil Rights
 Page 2
 September 12, 1979

TOTAL:

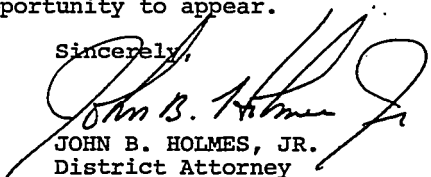
Hispanic Males	13
Hispanic Females	17
Black Males	15
Black Females	9
White Males	141
White Females	82
TOTAL	277

The recruiting efforts of this office since 1976 have doubled the percentage of female and minority attorneys. During this period the attorney staff increased by twenty-seven, with twenty-one of these positions filled by females and minorities. We are continuing our efforts in the area of minority recruitment. In my opinion, this effort has been substantially increased by my appointment of James England as Deputy Chief in charge of recruiting. This position was formerly held by a white prosecutor. Mr. England is a black prosecutor.

I pledge to you and this community that we shall discharge our responsibilities in this area in a manner that commands respect.

Thank you for the opportunity to appear.

Sincerely,



JOHN B. HOLMES, JR.
 District Attorney

JBH, Jr./jt

By Hudson-GuerraH. B. No. 154421
D. C. 1925

3

A BILL TO BE ENTITLED

AN ACT

relating to limiting the use of deadly force by peace officers when there is no danger of bodily harm to any person; amending Article 1222, Texas Penal Code, 1925, and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Article 1222, Penal Code of Texas, 1925, is amended to read as follows:

"Article 1222. IN PREVENTING FELONIES, ETC.

"Section 1. Homicide is justifiable when inflicted for the purpose of preventing murder, rape, robbery, maiming, disfiguring, castration, arson, burglary and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own, whether the homicide be committed by the party about to be injured or by another in his behalf, when the killing takes place under the following circumstances:

"1. It must reasonably appear by the acts or by words coupled with the acts of the person killed that it was the purpose and intent of such person to commit one of the offenses named.

"2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.

"3. It must take place before the offense committed by the party killed is actually completed, except that in case of rape

the ravisher may be killed at any time before he has escaped from the presence of his victim, and except in the cases hereinafter enumerated.

"4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is completed so long as the offender is still inflicting violence, though the mortal wound may have been given.

"5. If homicide takes place in preventing a robber, it is justifiable if done while the robber is in the presence of the one robbed or is flying with the property taken by him.

"6. In case of maiming, disfiguring or castration, the homicide may take place at any time while the offender is mistreating with violence the person injured, though he may have completed the offense.

"7. In case of arson the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.

"8. In cases of burglary and theft at night, the homicide is justifiable at any time while the offender is in the building or at the place where the theft is committed, or is within reach of gunshot from such place or building.

"9. When the party slain in disguise is engaged in any attempt by word, gesture or otherwise to alarm some other person or persons and put them in bodily fear.

"Section 2. This article does not apply to a police officer whether he is making an arrest or not unless he is violently resisted or has reason to fear danger of bodily harm to himself

or to others."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

H.B. No. 1544

By *Gilman*

A BILL TO BE ENTITLED

AN ACT

relating to the use of deadly force by peace officers when there is no danger of bodily harm to any person; amending Article 1222, Texas Penal Code, 1925, and declaring an emergency.

FILED MAR 9 1973

READ FIRST TIME
AND REFERRED TO COMMITTEE ON

Criminal Jurisprudence
[Signature]

By HernandezH. B. No. 913

A BILL TO BE ENTITLED

AN ACT

relating to capital murder by a peace officer of an individual under arrest; amending Subsection (a), Section 19.03, Penal Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subsection (a), Section 19.03, Penal Code, is amended to read as follows:

"(a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:

"(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

"(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnaping, burglary, robbery, aggravated rape, or arson;

"(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

"(4) the person commits the murder while escaping or attempting to escape from a penal institution; [or]

"(5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution; or

~~"(6) the person, while on duty as a peace officer, murders another who is under arrest and is not attempting to~~

rescued."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

H. B. No. 412

By Hernandez

**A BILL TO BE ENTITLED
AN ACT**

relating to capital murder by a peace officer of an individual
under arrest; amending Subsection (a), Section 19.03, Penal Code.

FEB 3 1977

1. Filed with the Chief Clerk.

FEB 7 1977

2. Read first time and referred to Committee on _____

Criminal Jurisprudence

3. Reported favorably (as amended) and sent to Printer at _____ M.
unfavorably (time)

4. Printed, distributed and sent to the Committee on Calendars at _____ M.
(time)

5. Read second time (amended); passed to third reading (failed) by (Non-Record
Vote) (Record Vote of _____ yeas, _____ nays, _____
present, not voting).

6. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed
prevailed (failed) by a (Non-record vote) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

7. Constitutional Rule requiring bills to be read on three several days suspended (failed to
suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____
present, not voting.

8. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, _____ present, not
voting.

9. Caption ordered amended to conform to body of bill.

10. Motion to reconsider and table the vote by which H.B. _____ was final
prevailed (failed) by a (Non-record) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

11. Ordered Engrossed at _____ : _____ M.
(time)

12. Engrossed.

13. Returned to Chief Clerk at _____ : _____ M.
(time)

14. Sent to Senate.

15. Received from the House _____

16. Read, referred to Committee on _____

17. Reported favorably _____

18. Reported adversely, with favorable Committee Substitute; Committee _____
read first time.

19. Ordered not printed

20. Regular order of business suspended by _____
(a viva voce vote.)
(_____ yeas, _____ n

Chief Clerk of the Hou.

427

By MorenoH. B. No. 1626

A BILL TO BE ENTITLED

AN ACT

relating to the establishment in certain cities of boards to receive and act on complaints of police misconduct.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. COMMUNITY RELATIONS BOARD. A municipality with a population of more than 200,000 according to the last preceding federal census must have a community relations board.

Sec. 2. COMPOSITION OF BOARD. (a) The board is composed of five residents of the city who are appointed by the mayor of the city. The board shall include a person who is an officer of at least captain rank in the police department, an attorney licensed to practice law in this state, and a licensed physician.

(b) The mayor shall appoint persons to the board so that the racial and ethnic backgrounds of the various board members reflect, to the greatest extent possible, the proportional representation of various racial and ethnic groups in the city's population.

(c) Members of the board serve two-year terms. Board members receive no compensation, but may be reimbursed for their expenses incurred on board business as provided by act of the governing body of the city.

Sec. 3. POWERS AND DUTIES OF BOARD. (a) The board shall receive and dispose of complaints against police officers as provided in Section 4 of this Act. If the city has an internal affairs division or similar body within its police department that

receives complaints within the board's jurisdiction, a complaint must be filed originally with that body, but a person dissatisfied with the department's disposition of the matter may appeal to the board. An appeal must be filed before the 31st day after the final disposition of the matter by the departmental body. If an appeal is filed, board review is de novo review, comparable to the review of a justice court decision in the county court. However, the action taken by the departmental body is not suspended by the appeal.

(b) The board may adopt rules consistent with this Act to govern its proceedings.

Sec. 4. COMPLAINTS. (a) Any person who believes a police officer of a city covered by this Act used excessive force or abused his authority in the discharge or purported discharge of his duties may file a written complaint with the board. The complaint must be filed not later than the 90th day after the act complained of occurred. The board shall send a copy of the complaint to the accused police officer as soon as possible after it is received. The police officer may file a written statement in his defense.

(b) The accused officer or the complainant is entitled to a hearing on the complaint if he makes a timely request for a hearing. A request from a complainant is timely if it is made before the 10th day after the complaint is filed. A request from an accused police officer is timely if it is made before the 10th day after he receives a copy of the complaint. The board at any time may order a hearing on its own motion.

(c) If a hearing is held, the parties are entitled to at

least 14 days' notice of the date, time, and place of the hearing.

(d) A party may be represented by counsel in any part of the proceedings.

(e) The board shall conduct proceedings as informally as possible, consistent with the principles of due process of law.

(f) On hearing the matter or, if no hearing is held, on examining all evidence submitted to it, the board shall decide on the merits of the complaint and issue a written opinion. The board in its decision may order the suspension, demotion, or discharge of the police officer; issue a reprimand; or exonerate the police officer of the charge. The opinion must be signed by those members of the board who support it.

Sec. 5. EFFECT OF CIVIL SERVICE COMMISSION DECISION. If the decision of a civil service commission is inconsistent with the board's disposition of a case based on the same transaction, the board's decision prevails.

Sec. 6. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

A BILL TO BE ENTITLED

AN ACT

relating to the establishment in certain cities of boards to receive and act on complaints of police misconduct.

MAR 9 1977

1. Filed with the Chief Clerk.

MAR 10 1977

2. Read first time and Referred to Committee on

Intergovernmental Affairs

3. Reported favorably (as amended) and sent to Printer at _____ M. unfavorably (time)

4. Printed, distributed and sent to the Committee on Calendars at _____ M. (time)

5. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ nays, _____ present, not voting).

6. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-record vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

7. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

8. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ nays, _____ present, not voting).

9. Caption ordered amended to conform to body of bill.

10. Motion to reconsider and table the vote by which H.B. _____ was finally prevailed (failed) by a (Non-record) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

11. Ordered Engrossed at _____ M. (time)

12. Engrossed.

13. Returned to Chief Clerk at _____ M. (time)

14. Sent to Senate.

15. Received from the House _____ Chief Clerk of the House

16. Read, referred to Committee on _____

17. Reported favorably _____

18. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

19. Ordered not printed.

20. Regular order of business suspended by (a viva voce vote.) _____ yeas, _____

By Ron Wilson

H.B. No. 1582

A BILL TO BE ENTITLED

AN ACT

relating to the establishment in certain cities of a civilian complaint review board to receive certain complaints about police officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. CREATION OF CIVILIAN COMPLAINT REVIEW BOARD. A municipality with more than 1,200,000 inhabitants according to the last preceding federal census must have a civilian complaint review board.

Sec. 2. COMPOSITION OF BOARD. (a) The board is composed of five residents of the city who are appointed by the mayor of the city as follows:

(1) two members whose appointments must be approved by a majority vote of the full membership of the governing body of the city;

(2) one member who is appointed from a list of nominees submitted to the mayor by the chief of police; and

(3) two members who are appointed from a list of persons nominated by majority vote of the district judges having jurisdiction in the county in which the majority of the population of the city resides.

(b) These nominees and appointments must include an assistant district attorney and an attorney licensed to practice law in this state who devotes a substantial portion of his practice

to defending criminal cases.

Sec. 3. DUTIES OF THE BOARD. (a) The board shall receive from any person complaints of excessive use of force or abuse of authority by a police officer.

(b) The board shall decide by majority vote whether or not to hold a hearing on the complaint.

(c) The board may hold hearings, as an adversary hearing, if both parties are represented by counsel, or as an informal hearing with the board examining parties and receiving testimony.

(d) The board may decide by majority vote to exonerate a peace officer or to recommend a reprimand, suspension, demotion, or termination of a peace officer. The decision shall be sent to the chief of police, the mayor of the city, and the civil service commission, if there is one having jurisdiction over the police department.

Sec. 4. PROCEDURES FOR RECEIVING COMPLAINTS AND HOLDING HEARINGS. (a) Complaints of an alleged act of excessive force or abuse of authority must be filed within 90 days of the alleged act.

(b) Within 21 days after a complaint is filed, the board shall notify the complainant whether or not a hearing will be held.

(c) The board shall send a copy of the complaint to the officer who is accused by the complainant.

(d) An accused peace officer or a complainant may request a hearing on the complaint.

(e) If the board votes to hold a hearing, the parties must be notified at least 14 days before the date of the hearing as to the date, time, and place of the hearing.

(f) Parties may be represented by counsel.

(g) The board shall decide on the merits of the complaint and take action as provided in Subsection (d) of Section 3 of this Act. The board shall issue a written statement of the decision.

Sec. 5. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

1582

By Ron Wilson

**A BILL TO BE ENTITLED
AN ACT**

relating to the establishment in certain cities of a civilian complaint review board to receive certain complaints about police officers.

MAR 9 1977

MAR 10 1977

1. Filed with the Chief Clerk.
2. Read first time and Referred to Committee on Intergovernmental Affairs
3. Reported favorably (as amended) and sent to Printer at _____ M. unfavorably _____ (time)
4. Printed, distributed and sent to the Committee on Calendars at _____ M. _____ (time)
5. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ nays, _____ present, not voting).
6. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-record vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).
7. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four fifths vote of _____ years, _____ nays, and _____ present, not voting.
8. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ nays, _____ present, not voting).

9. Caption ordered amended to conform to body of bill.
10. Motion to reconsider and table the vote by which H.B. _____ was finally prevailed (failed) by a (Non-record) (Record Vote of _____ years, _____ nays, and _____ present, not voting).
11. Ordered Engrossed at _____ M. _____ (time)
12. Engrossed.
13. Returned to Chief Clerk at _____ M. _____ (time)
14. Sent to Senate.
15. Received from the House _____ Chief Clerk of the House
16. Read, referred to Committee on _____
17. Reported favorably, _____
18. Reported adversely, with favorable Committee Substitute; Committee _____ read first time.
19. Ordered not printed.
20. Regular order of business suspended by _____ (a viva voce vote.)

435

it is so enacted.

H. No. 1265

By [Signature]

**A BILL TO BE ENTITLED
AN ACT**

relating to certain assaults and the penalty for certain assaults; amending Subsection (a), Section 22.02, and Subsection (c), Section 22.03, Penal Code; and declaring an emergency.

- _____ 8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present and not voting.
- _____ 9. Read third time (amended) and finally passed by following vote: (Non-record vote) (Record Vote of _____ yeas, _____ nays, _____ present and not voting).
- _____ 10. Caption ordered amended to conform to body of bill.
- _____ 11. Motion to reconsider and table the vote by which H.B. _____ was finally passed prevailed (failed) by a (Non-record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present and not voting).

MAR 5 1975

1. Filed with the Chief Clerk of the House.

MAR 10 1975

2. Read first time and referred to Committee on Criminal Jurisprudence

Chief Clerk of the House

3. Fiscal note requested from Legislative Budget Board by _____

_____ 12. Sent to Engrossing Clerk _____

4. Reported favorably (unfavorably) (as amended) and sent to Printer _____ M.

Engrossing Clerk of the House

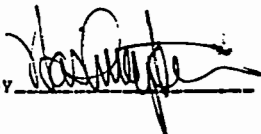
5. Printed, distributed by Calendar Clerk and sent to Committee on _____ M.

_____ 14. Returned to Calendar Clerk _____

6. Read second time (amended) and ordered engrossed by (Non-record vote) (Record Vote of _____ yeas, _____ nays, _____ present and not voting).

_____ 15. Sent to Senate.

7. Motion to reconsider the vote by which H. B. _____ was ordered engrossed and to table the motion to reconsider prevailed (failed) by (Non-record vote) (Record Vote of _____ yeas, _____ nays, and _____ present and not voting).

By 

91 B. No. 904

A BILL TO BE ENTITLED

AN ACT

relating to certain murders by peace officers and by employees of penal institutions constituting capital murder; amending Subsection (a), Section 19.03, Penal Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subsection (a), Section 19.03, Penal Code, is amended to read as follows:

"(a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:

"(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

"(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson;

"(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

"(4) the person commits the murder while escaping or attempting to escape from a penal institution; [e]

"(5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution;

"(6) the person, while on duty as a peace officer,

murders another who is under arrest and is not attempting to escape; or

"(7) the person, while on duty as an employee of a penal institution, murders a prisoner who is incarcerated in the institution and is not attempting to escape."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

H.B. 904 by Washington

BILL ANALYSIS

Background Information:

Section 19.03 P.C. provides specific types of capital murders which potentially carry the punishment of either life imprisonment or death by electrocution.

What the Bill Proposes to Do:

Amends Subsection (a), Section 19.03 P.C. by adding two offenses to the definition of capital murder. A peace officer or penal institution employee who murders a person in custody who is not attempting to escape would be subject to capital murder sanctions (life imprisonment or death by electrocution).

Section by Section Analysis:

Section 1. Amends Subsection (a), Section 19.03 P.C. by adding two offenses to the definition of capital murder. A peace officer or penal institution employee who murders a person in custody who is not attempting to escape would be subject to capital murder sanctions (life imprisonment or death by electrocution).

Section 2. Emergency Clause.

Summary of Committee Action:

This bill was considered in Public Hearing on March 1, 1977 and was referred to a subcommittee. The subcommittee reported the bill back favorably without amendments. On March 30, 1977 the full Committee reported the bill favorably without amendments by a vote of 9 ayes, 1 nay, 0 present, not voting and 1 absent.

H. B. No. 904

ABILL TO BE ENTITLED

AN ACT

relating to certain murders by peace officers and by employees of penal institutions constituting capital murder; amending Subsection (a), Section 19.03, Penal Code.

FEB 3 1977

1. Filed with the Chief Clerk.

FEB 7 1977

2. Read first time and Referred to Committee on Criminal Jurisprudence

MAR 30 1977

3. Reported favorably (amended) and sent to Printer at APR 8 1977 (time) 4:25 AM

APR 6 1977

4. Printed distributed ~~to the Committee on~~ at 2:15 PM (time)

APR 6 1977

Sent To Committee On Calendars 2:30 pm

5. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ nays, _____ present, not voting).

6. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-record vote) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

7. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ years, _____ nays, and _____ present, not voting.

8. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ nays, _____ present, not voting).

10. Motion to reconsider and table the vote by which H.B. _____ was finally prevailed (failed) by a (Non-record) (Record Vote of _____ years, _____ nays, and _____ present, not voting).

11. Ordered Engrossed at _____ : _____ M. (time)

12. Engrossed.

13. Returned to Chief Clerk at _____ : _____ M. (time)

14. Sent to Senate.

Chief Clerk of the House

15. Received from the House _____

16. Read, referred to Committee on _____

17. Reported favorably _____

18. Reported adversely, with favorable Committee Substitute; Committee Sub read first time.

19. Ordered not printed.

20. Regular order of business suspended by _____ (time) _____ years, _____

Exhibit No. 7

HUMAN BEHAVIOR COURSES

1. Dr. J. P. Matthews Phd.

Sociology: 10 hrs.

Dr. Matthews began instructing the cadets about Sociology since Class #79. Throughout his class, Dr. Matthews attempts to explain the relationships of specific cultural groups with other groups, law enforcement, and with individual officers. Dr. Matthews also attempts to address group interactions and group expectations as they apply to individual officers.

2. Dr. G. F. Riede Phd.

Psychology: 8 hrs.

Dr. Riede began instructing the cadets about psychology since Class #79. Dr. Riede attempts to define and clarify specific behavioral aspects of psychology which may or may not influence police behavior, depending upon the situations. The class is also instructed in identifying and coping with abnormal, as well as normal, behavioral problems police officers encounter on a daily basis.

3. Dr. J. A. Barrum Phd.

Human Relations: 8 hrs.

Dr. Barrum began instructing the cadets about human relations since Class #79. Dr. Barrum attempts to stress the importance of non-verbal and verbal behavior and how it may or may not affect various groups and individuals, which could cause problems for police officers. Once the problems have been identified, Dr. Barrum relates to the class various methods and solutions which are designed to minimize the problems effectively and safely.

4. Dr. R. W. Pease Phd.

Communicative Skills: 22 hrs.

Dr. Pease also began instructing the cadets about communicative skill since Class #79. Dr. Pease spends a great deal of time monitoring, measuring, and instructing various skills such as grammar, spelling, speaking proficiency, and so on. Dr. Pease not only identifies specific problem areas, but attempts to resolve these problems by suggesting remedies to each cadet's specific problem(s).

5. Dr. G. Quintanilla Phd.

Multi-Cultural Stress Awareness: 6 hrs.

Dr. Quintanilla has been instructing the cadets in the area of Mexican-American culture for the past one to two years. She has attempted to identify and relate, to the cadets, specific types of behavior which occur in the Mexican-American community. This behavior is then scrutinized in an effort to explain how it may or may not affect relationships with other people as well as with individual police officers.

6. F.B.I, Agent Bob Wyatt

Human Sexuality: 8 hrs.

Mr. Wyatt has been instructing the cadets about the numerous aspects of human sexuality for several years. The class is dissected into two rather distinct areas: 1) identification of sexual problems, and 2) resolving those specific problems. This course is of considerable interest in that most people are unaware of what "normal sex" means to various types of individuals. Police officers must know how to cope with people who exhibit these unusual characteristics.

7. Dr. Jones Phd.

Cultural Awareness: 6 hrs.

Dr. Jones' class deals with the behavioral aspects of blacks. Dr. Jones attempts to expose the cadets to behavioral differences and similarities between the blacks and how such behavior might affect the police or cause the police to react in an adverse manner. Dr. Jones concludes by trying to identify methods which would resolve these potential confrontations. An analysis of black history is also a part of the presentation. Dr. Jones makes an effort to tailor each presentation to the needs of the cadet class.

8. Officers Day and Roman

Police/Citizen Interaction: 4 hrs.

This course is specifically designed to help each officer:

- 1) Develop an awareness that community attitudes toward police are based on the officers individual interactions with the citizen,
- 2) Recognize the easiest and most self-rewarding approach to positive police work is in treating all citizens with respect, dignity and understanding, and
- 3) Recognize that police officers often fail to meet community expectations in the majority of police-citizen interaction.

9. Mrs. Lancelin

Citizen/Police Interaction: 2 hrs.

This course is designed to allow a citizen of the community to address the class on how she and other members of the community react to police interactions and/or confrontation. It is hoped that it will allow the cadets an opportunity to envision how their position of authority will affect various members of the community.

Other courses which are indirectly related to the field of human behavior include:

- 1) Mental Retardation/Disturbance
- 2) Professional Demeanor
- 3) Crisis Intervention
- 4) Moral Responsibility
- 5) Occupational Stress and Tension

Exhibit No. 8

STANDARDIZED EVALUATION GUIDELINES

The following "1", "4", and "7" scale value definitions represent a basis for evaluating and rating a Probationary Officer's performance. As guidelines, these definitions serve as a means of program standardization and continuity.

APPEARANCE

1. GENERAL APPEARANCE

- "1" Overweight, dirty shoes and uniform, unkempt hair, dirty uniform, offensive body odor
- "4" Neat, clean uniform and weapon, well groomed hair, shined shoes
- "7" Tailored clean uniform, spit shined shoes and leather, command presence

ATTITUDE

2. ACCEPTANCE OF CRITICISM

- "1" Rationalizing, defensive, refuses to make corrections, views criticism as negative
- "4" Accepts criticism in a positive manner and applies it to furthering job processes
- "7" Solicits criticism in order to improve performance, never argues or blames others

3. ATTITUDE TOWARD POLICE WORK

- "1" Takes police work as only a job, uses job for ego trip, abuses his authority, no dedication
- "4" Expresses active interest toward the job
- "7" Utilizes off-duty time to further professional knowledge, maintains high ideals toward professional responsibilities

KNOWLEDGE

4. KNOWLEDGE OF DEPARTMENT POLICIES AND PROCEDURES

"1" Has no knowledge of departmental policies and procedures and makes no attempt to learn

"4" Familiar with most commonly applied departmental policies and procedures.

"7" Exceptional knowledge of departmental policies and procedures

5. KNOWLEDGE OF PENAL CODE

"1" Doesn't know elements of basic sections

"4" Working knowledge of commonly used sections and is able to use the penal code to find sections seldom used

"7" Outstanding knowledge of penal code and its various sections and is able to apply it to both normal and unusual criminal activity.

6. KNOWLEDGE OF CITY ORDINANCES

"1" Doesn't know elements of basic sections

"4" Familiar with most commonly used sections, relates elements to observed violations

"7" Outstanding knowledge of commonly used sections, relates it and applies it to both normal and unusual situations

7. KNOWLEDGE OF TRAFFIC LAWS

"1" Doesn't know elements of basic sections

"4" Working knowledge of commonly used sections, relates elements to observed traffic related activity

"7" Outstanding knowledge of commonly used sections, relates it and applies it to both normal and unusual traffic related situations

8. KNOWLEDGE OF SEARCH AND SEIZURE

"1" Doesn't know elements of basic sections

"4" Familiar with most statutory requirements, relates requirements to observed situations

"7" Outstanding knowledge of statutory requirements, relates requirements and applies them to both normal and unusual situations

9. KNOWLEDGE OF LAWS OF EVIDENCE

"1" Doesn't know the elements of basic sections

"4" Familiar with most statutory requirements, relates requirements to observed situations

"7" Outstanding knowledge of statutory requirements and applies them to both normal and unusual situations

10. KNOWLEDGE REFLECTED IN VERBAL TESTS

"1" Consistently unable to answer FTO's questions correctly (0%)

"4" Answers most of FTO's questions correctly (70% to 90%)

"7" Answers all of FTO's questions correctly (100%)

11. KNOWLEDGE REFLECTED IN FIELD PERFORMANCE TESTS

"1" After receiving training, unable to apply training to practical situations

"4" After FTO instructs in proper procedure, Probationary Officer is usually able to apply instruction

"7" After training, the Probationary Officer makes no mistakes

12. DRIVING SKILL: NORMAL CONDITIONS

"1" Constantly violates traffic laws, involved in chargeable accidents, lacks dexterity and coordination during vehicle operation

"4" Ability to maintain control of vehicle while being alert to activity outside of vehicle, practices good defensive driving techniques

"7" Sets good example of lawful, courteous driving while exhibiting good manipulative skill required of police officer (i.e., operate radio, utilize hot sheet, etc)

13. DRIVING SKILL: MODERATE AND STRESS CONDITIONS

"1" Involved in accidents, over uses red lights and siren, excessive and

unnecessary speed, fails to slow for intersections and loses control on corners.

"4" Maintains control of vehicle, evaluates driving situations and reacts properly (i.e., proper speed for conditions)

"7" High degree of reflex ability and competence in driving skills

14. USE OF KEY MAP: ORIENTATION SKILL/RESPONSE TIME TO CALLS

"1" Unaware of his location while on patrol, does not understand proper use of key map, unable to relate his location to his destination, not familiar with the district and beat structure

"4" Reasonable knowledge of his location in most situations, can quickly use key map to find streets and then apply key map to get himself there

"7" Retains prior key map information and is able to get to destination by shortest or quickest route

15. ROUTINE FORMS: ACCURACY/COMPLETENESS

"1" Unable to determine proper form for given situations, forms incomplete

"4" Knows most standard forms and understands format, completes forms with reasonable accuracy and thoroughness

"7" Consistently and rapidly completes detailed forms with no assistance, high degree of accuracy

16. REPORT WRITING: ORGANIZATION/DETAILS

"1" Totally incapable of organizing events into written form

"4" Converts most field situations (investigations) into logical sequence of thought to include all elements of the situation and reduce that information to writing

"7" A complete and detailed account of what occurred from beginning to end, written and organized so as to assist any reader in comprehending the occurrence.

17. REPORT WRITING: LEVEL OF USAGE/GRAMMAR/SPELLING/NEATNESS

"1" Illegible, misspelled words, incomplete sentence structure,

"4" Average level of grammar, spelling and neatness are such that errors in this area are rare and do not impair understanding

"7" Very neat and legible, no spelling mistakes and excellent grammar

18. REPORT WRITING: APPROPRIATE TIME USED

"1" Requires 2 - 3 hours to complete simple basic reports

"4" Completes simple basic reports in 30 minutes

"7" Completes simple basic reports in no more time than that of a skilled, veteran officer. (evaluate this depending on the type of report and what you consider normal time to complete)

19. FIELD PERFORMANCE: NON-STRESS CONDITIONS

"1" Seemingly confused and disoriented as to what action should be taken in a given situation

"4" able to assess situation and take proper action

"7" Requires no assistance and always takes proper course of action

20. FIELD PERFORMANCE: STRESS CONDITIONS

"1" Becomes emotional and panic stricken, unable to function, loses temper

"4" Exhibits calm and controlled attitude, does not allow situation to further deteriorate

"7" Maintains control and brings order under any circumstance without assistance

21. SELF-INITIATED FIELD ACTIVITY

"1" Does not see, or avoids activity, does not follow-up on situations rationalizes suspicious circumstances

"4" Recognizes and identifies suspected criminal activity, makes cases from routine activity

"7" Catalogs, maintains and uses information given at briefings and from watch bulletins for reasonable cause to stop vehicles and persons

and makes subsequent, good quality arrests

22. OFFICER SAFETY: GENERAL

"1" Frequently fails to exercise officer safety

- a. exposes weapon to suspect (baton, mace, handgun, etc)
- b. Fails to keep handgun free during enforcement situations.
- c. stands directly in front of violator's car door
- d. fails to control suspects movements
- e. does not maintain sight of violator while writing citation
- f. failure to use illumination when necessary
- g. fails to advise dispatcher when leaving vehicle
- h. fails to maintain good physical condition
- i. fails to utilize or maintain personal safety equipment properly
- j. does not foresee potentially dangerous situations
- k. points gun at other officers
- l. stands too close to vehicular traffic
- m. stands in front of door when knocking
- n. fails to have weapon ready when appropriate
- o. fails to cover other officers
- p. fails to search police vehicle prior to duty or after transporting prisoner, fails to check equipment
- q. stands between police vehicle and violator's vehicle when issuing citation

"4" Understands principles of officer safety and generally applies them

"7" Always keeps in a safe position, always watchful on his approach

to a call and able to do the same for his partner, does not become paranoid or overconfident

23. OFFICER SAFETY: MENTAL CASES AND PRISONERS

"1" Frequently violates officer safety standards as detailed in number 22 (1) above, and

- a. fails to "pat search" or confronts suspicious persons while seated in police vehicle
- b. fails to handcuff potentially hazardous prisoners
- c. fails to thoroughly search prisoners or their vehicles
- d. fails to maintain position of advantage with prisoners to prevent attack or escape

"4" Generally displays awareness of potential danger from mental cases and prisoners, maintains position of advantage

"7" Always maintains position of advantage and is alert to changing conditions

24. CONTROL OF CONFLICT: VOICE COMMAND

"1" Improper voice inflection (i.e., too soft, too loud, confused voice, voice command or indecisive, poor officer bearing)

"4" Speaks with authority in a calm clear voice

"7" Always gives appearance of complete command through voice tone and bearing

25. CONTROL OF CONFLICT: PHYSICAL SKILL

"1" Cowardly, physically weak or uses too little or too much force for given situation, unable to use proper restraints

"4" Maintains control without excessive force, good physical control

"7" Excellent knowledge and ability to use restraining holds, always prepared to use necessary force, above average physical conditioning

26. USE OF COMMON SENSE AND GOOD JUDGEMENT

"1" Acts without thought or is indecisive, naive

"4" Able to reason out a problem and relate it to what he is to do, good perception and ability to make his own decisions

"7" Excellent perception in foreseeing problems and arriving at advance solutions

27. RADIO: APPROPRIATE USE OF

"1" Misinterprets radio transmissions or fails to use it in accordance with set policy,

"4" Has good working knowledge of use of radio and applies knowledge

"7" Uses radio with ease and confidence in all receiving and sending situations, never misinterprets transmissions, does not waste air time keeps dispatcher well advised of activity

28. RADIO: LISTENS AND COMPREHENDS

"1" Repeatedly misses his call sign and is unaware of traffic on adjoining beats, frequently has to ask dispatcher to repeat transmission or does not comprehend message

"4" Copies most radio transmissions and quickly makes a written record, always aware of, and quickly reacts to traffic on adjoining beats, comprehends transmissions to other units and remains aware of activities of other units

29. RADIO: ARTICULATION OF TRANSMISSIONS

"1" Does not pre-plan before transmitting message. Under or over modulation resulting in dispatcher constantly asking for repeat. "clips" first or last part of transmission by improper use of mike switch

"4" Uses proper procedure with short concise transmissions

"7" Always uses proper procedure with clear calm voice, even under stress conditions, never "clips" part of transmission and is never required to repeat message due to transmission error

RELATIONSHIPS

30. WITH CITIZENS: GENERAL

"1" Abrupt, belligerent, and over-bearing, introverted and uncom-

Communicative

"4" Courteous, friendly and empathetic, communicates in a professional and unbiased manner

"7" Established rapport and is always objective, always appears to be at ease in any person-to-person situation

31. WITH MINORITIES: BLACKS/MEXICAN-AMERICANS

"1" Evident hostility or sympathy toward minorities because of prejudice, bias or pity

"4" Appears to be at ease and does not feel threatened by presence of minorities

"7" Seems to understand cultural differences and effects on relations and reacts accordingly

32. WITH FIELD TRAINING OFFICER

"1" Constant rationalization of mistakes to FTO, resists any teaching technique or argues with FTO, patronizes FTO or is sarcastic

"4" Asks pertinent questions and is objective in his desire to learn

"7" Understands and maintains excellent student-teacher relationship.

33. WITH OTHER OFFICERS

"1" Considers himself superior to other Probationary Officers, gossips about other officers to belittle others or to play one against another, does not associate with others.

"4" Good peer relationships and is accepted as a group member

"7" Peer group leader, actively assists other Probationary Officers, has excellent rapport with all other line officers

34. WITH SUPERVISORS AND COMMAND OFFICERS

"1" Insubordinate, gossips about superiors, patronizes superiors,

"4" Understands and adheres to chain of command, respects superior authority

Exhibit No. 9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANDREW L. KELLEY, Individually and :
on behalf of all others similarly :
situated, :
Plaintiff, :

VS. :

THE CITY OF HOUSTON, TEXAS, THE :
CIVIL SERVICE COMMISSION OF THE :
CITY OF HOUSTON, :

and :

FRED HOFHEINZ, Mayor; R.J. CLARK, :
Acting Chief of Police; DAVE :
LAUFMAN, Chairman, Houston Civil :
Service Commission; CLIFF TUTTLE, :
Vice Chairman, Houston Civil :
Service Commission; ALVIN L. :
HENRY, Member, Houston Civil Ser- :
vice Commission; and H.S. LAINIER, :
Civil Service Director, City of :
Houston, :

CIVIL ACTION NO.

75-H-1536

Individually and as officers :
of the City of Houston and :
officers and/or members of :
the Houston Civil Service :
Commission, and their agents, :
assigns and successors in of- :
fice, :

Defendants. :

COMPLAINT

I. PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief from practices which discriminate against Blacks on the basis of their race with respect to employment opportunities in the Police Department of the City of Houston, Texas, in violation of 42 U.S.C. §§1981, 1983 and 2000e et seq., and the Fourteenth Amendment to the Constitution of the United States. Plaintiff Andrew L. Kelley brings this action on behalf of himself and all others similarly situated.

II. JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1343(3), 1343(4), 2201 and 2202 and 42

U.S.C. §2000e-5(f). This is a suit in equity authorized and instituted pursuant to §2000e-5(f) of Title VII of the Act of Congress, known as the Civil Rights Act of 1964, as Amended (42 U.S.C. §2000e et seq.) providing for injunctive and other relief against racial discrimination in employment. This suit is also brought pursuant to 42 U.S.C. §1981, providing for equal rights of all persons within the jurisdiction of the United States and pursuant to 42 U.S.C. §1983 and the Fourteenth Amendment of the Constitution of the United States, to redress the deprivation under color of law of rights, privileges, and immunities secured by the Equal Protection Clause of the Fourteenth Amendment. The matter in controversy exceeds the sum or value of Ten Thousand (\$10,000) Dollars, exclusive of interest and costs.

III. PLAINTIFF

3. Plaintiff Andrew L. Kelley is a black citizen of the United States and a resident of the City of Houston in the State of Texas. Plaintiff Kelley was first employed with the Defendant Police Department of the City of Houston, Texas on or about September 4, 1958 as a Patrolman, Probationary. He is presently employed as a Patrolman.

IV. DEFENDANTS

4. Defendant City of Houston, Texas is a municipal corporation chartered and operating under the laws of the State of Texas. At all material times Defendant, City of Houston, has done business in the State of Texas and has been and continues to be an employer within the meaning of 42 U.S.C. §2000e-(b). This Defendant at all material times has engaged and continues to engage in an industry affecting commerce, employing more than twenty-five (25) persons.

5. Defendant Civil Service Commission of the City of Houston (hereinafter referred to as "Civil Service Commission") exists by provision of the Charter of the City of Houston and is responsible for administering the civil service system of the City of Houston. This responsibility includes setting standards for and administering entrance procedures and exami-

nations, and promotional procedures and examinations, relating to employment opportunities in the Police Department.

6. Defendant Fred Hofheinz is Mayor, Chief Executive and Chief Administrative Officer of the City of Houston. Defendant Hofheinz is vested with authority over the administration of the City's affairs which include the operation and activities of the Police Department, and is vested with authority to appoint and remove all heads of City departments.

7. Defendant R.J. Clark is Acting Chief of the Police Department. He is responsible for the administration and operation of the Police Department, including the administration and operation of parts of the procedures and standards for appointment, assignment and promotion of policemen.

8. Defendants Dave Laufman, Cliff Tuttle and Alvin L. Henry are Chairman, Vice-Chairman, and Member, respectively, of the Civil Service Commission. Collectively, in their capacities as members of the Commission, they are responsible for the administration and operation of the civil service system of the City of Houston.

9. Defendant H.S. Lainier is Civil Service Director of the City of Houston and in that capacity serves as executive head of the Civil Service Commission staff. He directs and supervises all of the Commission's administrative and technical activities, which include holding examinations, passing upon qualifications of applicants, and establishing eligible lists and certifying names of eligibles to department heads for appointments and promotions in the City's departments.

10. The Defendants named in Paragraphs 6-9, supra, are sued as individuals and in their official capacities as officers of the City of Houston and its departments and agencies. All of these Defendants have been, are presently, and will be acting under color of authority and law of the State of Texas and the City of Houston. All of the Defendants are engaged in and are responsible for the administration, management, regulation, supervision and control of all or some parts of

the Police Department. The Defendants are responsible for the creation, implementation and enforcement of the procedures, policies, practices, customs and usages complained of below which discriminate on the basis of race against Plaintiff and the class he represents with respect to employment opportunities in the Police Department.

V. CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action in his own behalf and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all past, present and future black employees of the Police Department, all past, present and future black applicants for employment in the Police Department, and all black persons who would apply or would have applied and completed the processing procedures for employment with the Police Department but for the Defendants' racially discriminatory hiring and employment practices and reputation therefor. Plaintiff's class is so numerous that joinder of all members is impracticable, and there are questions of law and fact common to the class. Plaintiff's claims are typical of the claims of the class, and Plaintiff will fairly and adequately protect the interests of the class. The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VI. STATEMENT OF FACTS

12. The Defendants and their agents and employees have discriminated and are continuing to discriminate on the basis of race against black applicants for employment with the Police Department, and against black employees of the Police Department.

13. Plaintiff Andrew L. Kelley, a graduate of Prairie View University, was first employed with Defendant Police Department on or about September 4, 1958 as a Patrolman, Probationary. He is presently classified as a Patrolman. On or about May 30, 1974, Plaintiff was examined for the

position of Sergeant in the Police Department. His rank was 58, which on information and belief makes his selection unlikely. Plaintiff's score on said test was a composite of "performance rating", "seniority points", and "written test". Plaintiff asserts that this promotional examination is in violation of law for the reasons that will be asserted in Paragraph 17 below. Plaintiff has previously taken the examination for Detective in the Police Department, but has not been selected. Plaintiff asserts that this promotional examination and the inclusion of the "performance rating" in the determination of the total score is in violation of law for the reasons that will be set out in Paragraph 18 below. Plaintiff and members of the class he represents have been deterred from taking these promotional examinations because of the belief that their use and administration are racially discriminatory. Plaintiff was one of a few black police officers who complained to the Mayor of the City of Houston in or about 1971 or 1972 about racially discriminatory employment practices of the Police Department. Plaintiff has registered complaints with his Lieutenant about the poor conditions of patrol cars assigned to black police officers. Plaintiff had twice spoken with then Police Chief C.M. Lynn about racially discriminatory employment practices of the Police Department. Plaintiff's days off were changed purportedly because of the fact that his "activity was too low" and other actions were taken. Plaintiff asserts that this action was without cause and was taken because of his race and color and in retaliation and harassment for his complaints about the racially discriminatory employment practices of the Police Department.

14. Black policemen are discriminated against with respect to promotions and duty assignments with the Police Department. The discrimination has resulted in the creation and maintenance of several all white jobs and duty classifications within the Police Department.

15. The Defendants' failure and refusal to implement substantial and continuing efforts to recruit black appli-

cants for employment in the Police Department have resulted in the perpetuation of its discriminatory reputation and the effects of past discrimination. Because of Defendants' discriminatory reputation and practices, blacks are deterred from applying for positions in the Police Department.

16. In order to be eligible for employment as a police officer an individual must meet the Department's height, weight, age and education requirements. Applicants for the position of policeman first apply at the Civil Service Commission where they are screened to determine whether they meet the height, weight, age and education requirements. Applicants who meet those requirements are interviewed by Police Department personnel officers. The questions asked during those interviews are generally directed toward eliciting information on the applicant's background and character. If an applicant is not disqualified by reason of responses given during the interview, he is instructed to obtain further background information, including a credit check, and is given a second application form to be completed and returned to the Police Department. All applicants must undergo a background investigation before being accepted into the Police Academy. If the applicant completes and returns the second application form and passes the background investigation, he is notified to report for a polygraph examination. On information and belief, the questions asked on the polygraph vary and all applicants are not asked the same questions. The polygraph examination is purportedly administered to determine whether the applicant is morally fit to become a policeman. If the applicant passes the polygraph examination he is notified in writing to report to the Police Academy to begin training. On reporting to the academy, the applicant is required to undergo and pass a physical examination. If the applicant satisfies all of the foregoing requirements, he begins the academy training program. Written examinations are given at the end of each week and at the end of the training.

The examinations purport to question the applicant on information covered during the course of instruction. On satisfactory completion of the 8-week academy course, the applicant enters the Police Department as a probationary policeman and remains in that status for a period of six months.

VII. STATEMENT OF CLAIM

17. The Defendants, their agents and employees have and are engaged in acts, practices, policies, customs and usages made unlawful by 42 U.S.C. §1981, §1983 and Title VII of the Civil Rights Act of 1964, as Amended, 42 U.S.C. §2000e et seq., and the Fourteenth Amendment to the United States Constitution which have denied Plaintiff and the members of his class equal employment opportunities and conditions of employment because of their race. These acts and practices include, but are not limited to the following:

- a. Failing to recruit and hire black applicants for employment on the same basis as white applicants, or in a manner which affords blacks employment opportunities equal to those which have been provided to whites;
- b. Requiring applicants to undergo background investigations and oral interviews which exclude a disproportionately high number of black applicants for employment as compared with white applicants because:
 - (i) Factors are used to deny employment to black persons which are not related to job performance;
 - (ii) arbitrary discretion is vested in the Defendants and their agents and employees to decide whether or not to employ an applicant, and this arbitrary discretion has been used by the Defendants and their agents and employees to exclude a disproportionately high percentage of blacks as compared to whites;
- c. Requiring applicants to undergo polygraph examinations which are administered in an arbitrary and racially discriminatory manner so as to exclude a disproportionately high percentage of blacks as compared to whites;

- d. Requiring applicants to fulfill education and testing requirements which exclude a disproportionately high percentage of blacks as compared to whites and have not been shown to be valid predictors of successful job performance; and
- e. Failing to take appropriate action to correct the present effects of past racially discriminatory acts and practices.

18. The Defendants, their agents and employees have and are engaged in acts and practices which discriminate on the basis of their race against black police officers with respect to assignments, promotions and other terms and conditions of employment in the Police Department. These acts and practices include, but are not limited to, the following:

- a. Using a system of proficiency ratings which, due to their subjective and discriminatory application, deny blacks equal opportunity to be considered for promotions;
- b. Requiring applicants for promotion to pass written promotional examinations which exclude a disproportionately high percentage of black candidates for promotion as compared to whites, and which have not been shown to be valid predictors of successful job performance in the Police Department;
- c. Maintaining all-white job classifications and refusing to consider blacks for said classifications;
- d. Reprimanding and harassing black police officers because of their race or color;
- e. Assigning black police officers patrol cars which are in poor working condition more often than whites because of their race or color; and
- f. Failing to take appropriate action to correct the present effects of past racially discriminatory acts and practices.

19. The acts, conditions and practices alleged in Paragraphs 17 and 18 above deprive Plaintiff and the class of blacks he represents of rights secured by 42 U.S.C. §1981, 42 U.S.C. §1983, 42 U.S.C. §2000e et seq and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

20. On or about January 8, 1975, within one hundred and eighty (180) days of the occurrence of the acts complained of, Plaintiff Kelley filed a written charge of discrimination under oath with the Equal Employment Opportunity Commission naming Defendant City of Houston's Police Department as Respondent. On or about July 25, 1975, Plaintiff Kelley received his Notice of Right to Sue Within Ninety Days, dated July 24, 1975, from the United States Department of Justice advising him that he was entitled to institute a civil action in the appropriate United States District Court with respect to said charge.

21. The City of Houston does not have a law prohibiting the unlawful employment practices alleged herein.

22. The State of Texas has a law (Vernon's Annotated Revised Civil Statutes of Texas, Article 6252-16) which prohibits discrimination in employment by any officer or employee of the state or any political subdivision of the state because of a person's race, religion, color, sex, or national origin. However, the State of Texas has failed to take any action towards resolving Plaintiff Kelley's charge, as filed with the Equal Employment Opportunity Commission.

PRAYER

Plaintiff and the class he represents have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and they are now suffering and will continue to suffer irreparable injuries from the Defendants' acts and practices described above. Unless restrained by order of this Court, the Defendants will continue to engage in these or similar acts and practices. This suit for preliminary and permanent injunctions and declaratory judgment are their only means of securing adequate relief.

WHEREFORE, Plaintiff prays that this Court:

1. Issue a declaratory judgment that the employment practices and conditions with respect to the Police Department set forth above are violative of rights of the Plaintiff and the class he represents as secured by 42 U.S.C. §1981,

42 U.S.C. §1983, 42 U.S.C. §2000e et seq., and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

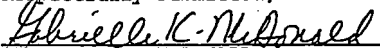
2. Issue preliminary and permanent injunctions restraining the Defendants, their agents, employees, assigns, successors in office, and all persons in active concert or participation with them or any of them from engaging in any racially discriminatory employment practice, or in any practice which operates to continue the effects of past racially discriminatory employment practices, with respect to employment opportunities in the Police Department, and specifically from:

- a. Engaging in any of the racially discriminatory employment practices alleged in paragraphs 17 and 18 above;
- b. Failing to adopt and implement qualification standards and procedures for recruitment, hiring, assignment and promotion which make employment opportunities in the Police Department available to Black employees and applicants for employment on the same basis as those opportunities have been available to white employees and applicants, and which do not impose background and polygraph examinations, or interview, education and testing requirements, which have a racially discriminatory effect;
- c. Failing to take all appropriate affirmative actions to overcome the present effects of past racially discriminatory acts and practices, including at least the following affirmative steps:
 - (i) conducting an effective program designed to inform the black community of employment opportunities available in the Police Department;
 - (ii) hiring and promoting, and assigning to previously all-white classifications, sufficient numbers of blacks in the Police Department to overcome the effects of past discrimination;
 - (iii) offering to the named Plaintiff and other members of his class who have sought promotions within the Police Department and were discriminatorily rejected the next available positions in the Department to which they applied, with seniority and other benefits from the date they would have been hired in the absence of discrimination; and

- (iv) providing monetary compensation to the Plaintiff and other members of his class for the loss they suffered as a result of the Defendants' discriminatory employment practices.

Plaintiff further prays for such additional relief as the cause of justice may require, including his costs, disbursements and reasonable attorneys' fees in this action.

Respectfully submitted,


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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANTHONY COMEAUX, ROBERT L. *
CRANE, JAMES L. DOTSON, *
BARBARA J. ELLISON, WILLIE *
FIELDS, STEVEN FUNDERBURK, *
BENNIE L. GREEN, DONALD R. *
HARDY, RICHARD HUMPHREY, *
JOHN R. McDONALD, McLOY *
MEDLOCK, ALVIN V. YOUNG, SR., *
Individually and on behalf of *
all others similarly situated, *
Plaintiffs, *

V. *

CIVIL ACTION NO. 76-H-1754

THE CITY OF HOUSTON, JAMES *
McCONN, in his official *
capacity as Mayor of the *
City of Houston; THE CITY *
OF HOUSTON CIVIL SERVICE *
DEPARTMENT, THE HOUSTON *
POLICE DEPARTMENT, *
Defendants. *

PLAINTIFFS' FIRST AMENDED COMPLAINT

This is an action for damages and declaratory and injunctive relief brought pursuant to 42 U.S.C. Section 1981 providing for equal rights of all persons in every state and territory within the jurisdiction of the United States and 42 U.S.C. Section 1983, which makes unlawful the deprivation, under color of statute, ordinance, regulation, custom or usage of the State, of any rights, privileges or immunities secured by the Constitution and the Laws of the United States and 42 U.S.C. Section 2000(e) et seq. preventing discrimination in employment on the basis of race.

I.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to (a) 28 U.S.C. Section 1331, in that this action arises under the Fourteenth Amendment of the Constitution of the United States and 42 U.S.C. Section 1981 and Section 2000(e) et seq. and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Ten Thousand (\$10,000.00) Dollars; (b) 28 U.S.C. Section 1343, which provides for original jurisdiction of this Court in suits arising under 42 U.S.C. Sections 1981 and 1983; and (c) 28 U.S.C. Sections 2201 and 2202 authorizing this Court to enter

a declaratory judgment.

II.

PARTIES

The Plaintiffs are all adult Black citizens of the United States and residents of the State of Texas.

Plaintiff ANTYONY COMEAUX is a Sargeant and at all times material hereto, he was and is employed by the Houston Police Department (hereinafter referred to as HPD); at its facilities in Houston, Texas.

Plaintiff ROBERT L. CRANE is a retired officer and at all times material hereto, he was employed by the HPD at its facilities in Houston, Texas.

Plaintiff JAMES L. DOTSON is an officer and at all times material hereto, he was and is employed by the HPD at its facilities in Houston, Texas.

Plaintiff BARBARA J. ELLISON is an officer and at all times material hereto, she was and is employed by the HPD at its facilities in Houston, Texas.

Plaintiff WILLIE FIELDS is an officer and at all times material hereto, he was and is employed by the HPD at its facilities in Houston, Texas.

Plaintiff STEVEN FUNDERSURK was an applicant for employment with the HPD who was refused employment on a racially motivated basis. At all times material hereto, he was and is eligible for employment with the HPD.

Plaintiff BENNIE L. GREEN is an officer and at all times material hereto, he was and is employed by the HPD at its facilities in Houston, Texas.

Plaintiff DONALD R. HARDY was an applicant for employment with the HPD who was refused employment on a racially motivated basis. At all times material hereto, he was and is eligible for employment with the HPD.

Plaintiff RICHARD HUMPHREY is a Sargeant and at all times material hereto, he was and is employed by the HPD at its facilities in Houston, Texas.

Plaintiff McLOY MEDLOCK is a Detective and at all times material hereto, he was and is employed by the HPD at its facilities in Houston, Texas.

Plaintiff ALVIN V. YOUNG, SR., is an Officer and at all times material hereto, he was and is employed by the HPD at its facilities in Houston, Texas.

Defendant, JAMES McCONN is Mayor of the City of Houston and Chief Executive Officer. Defendant McCONN is an adult citizen of the United States and a resident of the State of Texas. Defendant McCONN is sued in his official capacity only.

Defendant City of Houston is a legally incorporated municipality under the laws of the State of Texas.

Defendant Houston Police Department is a department within the City of Houston.

Defendant Civil Service Department is a departement within the City of Houston.

III.

Plaintiffs bring this action pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure on their own behalf, and on behalf of all other Blacks who are employed or who have been employed or who may in the future be employed by HPD at its facilities located in Houston, Harris County, Texas. In all respects and particulars regarding the discriminatory practices complained of herein, Blacks have been, and will continue to be treated alike.

These persons, similarly situated, are persons who have been and continue to be subjected to the unlawful discriminatory practices, policies, customs and usages which have been instituted and are presently maintained by the HPD, as hereinafter will become more fully apparent.

The class consists of those Blacks who are employed, or who have been employed, or who may in the future be employed by Defendants at its facilities in Houston, Harris County, Texas. These persons are so numerous that joinder of all members of the class is impracticable. The claims of the named Plaintiffs are typical of the claims of the class, and the interests of the class will be adequately represented and protected by the named Plaintiffs.

There are common questions of law growing from common questions of fact affecting the rights of the members of this class who are and continue to be limited, classified and discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise adversely affect their status as employees because of their race. Defendants have acted or refused to act on grounds generally applicable to the class.

Members of the class represented by the named Plaintiffs are similarly postured in that they hold or have held a variety of jobs and have been similarly discriminated against in matters of recruiting, testing, job assignments, benefits, training, hiring, promotions, transfers and other terms and conditions of employment made unlawful by employment practices which have in the past and continue presently to adversely affect and deprive Plaintiffs and the members of their class of equal terms, conditions and privileges for employment because of their race.

IV.

Defendants have intentionally engaged in the following practices, policies, customs and usages made unlawful by the Civil Rights Act of 1866, and 1964, 42 U.S.C. Sections 1981, 1983 and 2000(e) et seq.

A. Defendants have maintained and continue to maintain discriminatory employment policies with respect to recruiting, testing, job assignments, benefits, training, hiring, promotions, transfers and other terms and conditions of employment which have the effect of limiting, classifying and segregating Black employees solely on account of their race.

B. Defendants have maintained and continue to maintain a policy of relegating Black employees to less remunerative and less responsible job positions and assignments.

C. Defendants have maintained and continue to maintain employment policies which have the effect of systematically excluding Black employees from obtaining advancement on an equal basis with White employees.

D. Defendants have maintained and continue to maintain employment policies which have effect of systematically excluding Black employees from qualifying for job placements, job assignments, job transfers and/or job training programs.

E. Defendants have maintained and continue to maintain a discriminatory recruitment and hiring process which effectively excludes Blacks from employment by means of a variable investigatory procedure which systematically excludes Black applicants in favor of White applicants.

F. The HPD, in conjunction with the Civil Service Department maintain a testing mechanism for promotional qualification which has the effect of excluding Blacks disproportionately to Whites.

In addition for the foregoing:

Plaintiff Comeaux would show that although he has taken the Sergeant's exam in two consecutive years and scored high, he was not made a Sergeant until late 1978 because of a testing system that disparately works against Blacks.

Plaintiff Robert Crane would show that although he had applied for job assignments and transfers while employed with the HPD, said denials were made on a racial basis.

Plaintiff Dotson would show that although he had applied for transfers to various departments, he was denied the transfers on a racial basis, and further, that he was subjected to undue harrassment from fellow employees because of his race.

Plaintiff Ellison would show that she has been subject to unequal terms and conditions of employment because of her race.

Plaintiff Fields would show that although he passed the Detective's examination, he was denied a promotion because of the HPD's discriminatory promotional practices. In addition, Plaintiff Fields was denied a transfer to another department for which he was fully qualified and was denied because of his race.

Plaintiff Funderburk would show that he was wrongfully denied employment on the basis of race with the HPD even though he was fully qualified and eligible for employment.

Plaintiff Green would show that he was not treated equally with White officers in the Department with regard to terms and conditions of employment solely on the basis of his race and has suffered because of Defendants' subjective efficiency rating system which affects Blacks disparately and limits their mobility within the Department.

Plaintiff Hardy would show that he was wrongfully denied employment because of his race even though he was fully qualified and eligible for employment.

Plaintiff Humphrey would show that although he took the Lieutenant's exam and scored well, he was denied a promotion to Lieutenant because of the HPD's subjective testing and qualifying practices and procedures.

Plaintiff McDonald would show that he was denied a promotion to Sergeant until late 1978 because of the HPD's subjective means of promotion that disparately affects Blacks and keeps them from being promoted.

Plaintiff Medlock would show that even though he took the Lieutenant's examination and scored well, he was denied a promotion to Lieutenant because of HPD's discriminatory promotional practices and procedures utilizing subjective tests and efficiency ratings.

Plaintiff Young, would show that he has been harrassed because of his race by means of conditions of employment that would not be the same for White officers.

In addition, the Plaintiffs would show that:

(1) Black employees are under-represented in the ranks of the Houston Police Department in that there are only 112 Black officers out of 2650 police officers; that there are 5 Black Detectives out of a total of 305 Detectives; that there are 2 Black Sergeants out of a total of 215 Sergeants; that of approximately 72 Lieutenants, 26 Captains and 9 Deputy Chiefs, none are Black.

(2) Examinations for promotion have never been validated and involve practices that exclude Blacks from meaningful participation through their disparate effects.

(3) As a class, Blacks score lower on efficiency ratings because of subjective evaluations made by white superiors and said ratings have the effect of varying inversely with the degree of ambition and initiative displayed by the employee in regards to seeking promotions etc.

(4) Of two newly created federally funded programs available to law enforcement personnel, no Blacks work in either program.

(5) The process of recruiting, disproportionately and discriminatorily excludes Blacks because of (a) the subjective authority to summarily exclude applicants given to the individual investigating officer, (b) the dehumanizing and degrading measures that applicants are subjected to which by their connotations and emphasis constitute racial slurs, and (c) the discriminatory selection process which disqualifies Black applicants through subjective means that do not disqualify White applicants.

The foregoing allegations are intended to be representative but not exclusive of a pervasive Department-wide practice of discriminating against Plaintiffs and the members of their class solely on account of their race. The effect, purpose and intent of the policies and practices pursued by the Defendants herein have been and continue to be to limit, classify, segregate and otherwise discriminate against Plaintiffs and the members of their class solely on account of their race.

V.

Plaintiffs Comeaux, Dotson, Ellison, Fields, Funderburk, Green, Humphrey, Hardy, McDonald, Medlock and Young filed employment discrimination charges with the EEOC. They were given their Notices of Right to Sue in November, 1978 and proceeded to assert their claims under Title VII of the Civil Rights Act of 1978. Fields claims are still being investigated by the EEOC and will proceed to assert his claims once given a Notice of Right to Sue.

Plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury by the practices, policies, customs and usages of the Defendants complained of herein until the same are enjoined by this Court. Plaintiffs and the members of their class have no plain, adequate or complete remedy at law to

redress the wrongs herein alleged and this suit for a preliminary injunction and declaratory judgment are their only means of securing adequate relief.

WHEREFORE, Plaintiffs pray that this Court advance this case on the docket, order a speedy hearing at the earliest practicable date and cause this action to be in every way expedited and upon such hearing to:

(1) Grant Plaintiffs and the class they represent a preliminary and permanent injunction enjoining the Defendants, their agents, successors, employees and those acting in concert with them and at their direction from continuing to maintain the policies, practices, customs and usages which discriminate against the Plaintiffs and the members of their class because of their race, with respect to recruiting, testing, promotions, assignments, training, transfers, hiring, and other terms and conditions of employment.

(2) Grant Plaintiffs and the class they represent a declaratory judgment that the practices, policies, customs and usages complained of herein are violative of their rights protected by 42 U.S.C. Sections 1981, 1983 and 2000 (e) et seq.

(3) Grant Plaintiffs and each member of their class back wages, promotions and seniority due as a result of the unlawful practices, policies, customs and usages maintained by the Defendants which have denied and continue to deny Plaintiffs and the members of their class equal employment opportunities because of their race.

(4) Order the Defendants to take such affirmative action necessary to correct the practices, policies, customs and usages which have in the past and continue presently to discriminate against Plaintiffs and the members of their class because of their race.

(5) Grant Plaintiffs and each member of their class their Court costs incurred herein, reasonable attorneys' fees as an incident of said costs, any compensatory or punitive damages reasonable, and such further additional or alternative relief

and affirmative action orders as may appear to this Court to be equitable and just.

RESPECTFULLY SUBMITTED,

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OF COUNSEL:

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OCT 18 1979

REGINALD TARVER, et al.,
Plaintiffs,
v.
CITY OF HOUSTON, et al.,
Defendants.

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V. BAILEY THOMAS, CLERK

PRobinson

CIVIL ACTION NO.

73-H-1487

CONSENT DECREE

A. General Terms

1. This Consent Decree is entered in full settlement of all claims of racial discrimination by the defendants against the named plaintiffs and the members of the subclasses defined by the Order entered herein on August 25, 1978:

(a) All past, present and future black applicants for firefighter or police officer positions with the Houston Fire and Police Departments; and

(b) All black firefighters and fire officials who have been, are being, or may in the future be, harmed by any of the following practices which are challenged as unlawful in this action: the Fire Academy examinations, the Fire Department promotional examinations which have a disproportionately adverse effect on blacks, and the Fire Department's pattern of assigning black firefighters and fire officials to fire stations in predominantly black areas of the city.

The claims, if any, of present and former black Fire Cadets and firefighters which go beyond the scope of the issues described in subparagraph (b) are not resolved by the Consent Decree. The claims, if any, of present and former black firefighters or police officers for hiring discrimination, occurring on or after October 30, 1971, and which may have delayed their hire, are

resolved by this Consent Decree. The claims of all presently or previously rejected black applicants for positions as fire-fighters or police officers are resolved by this Consent Decree.

2. The plaintiffs, and each member of the defined classes, shall be bound by the settlement of the claims covered by this lawsuit and embodied in this Consent Decree, and by the orders entered or to be entered by the Court with respect to back pay. The plaintiffs and the class members shall each be bound fully by the doctrines of res judicata and of collateral estoppel with respect to these claims. The provisions of this paragraph apply equally to claims of racially disparate treatment and to claims of the racially disparate impact of facially neutral criteria.

3. Neither the existence of this Consent Decree, nor the defendants' willingness to enter into it, shall constitute any admission of any civil rights violations whatsoever. This Consent Decree shall not be admissible into evidence in any proceeding as evidence of any civil rights violations on the part of the defendants. This Consent Decree shall, however, be admissible in any proceeding involving (1) the defendants' compliance with the terms of this Consent Decree, (2) a motion filed by any party to modify the terms of this Consent Decree, (3) the question whether a particular person is bound by this Consent Decree, or (4) the question whether a particular person is asserting a claim against the defendants which is encompassed by this Consent Decree.

4. The confidentiality provisions contained in the Order entered herein on October 31, 1978 shall be continued for the life of any part of this Decree, with it agreed and understood that said Order applies to both Fire and Police Department records. All records of a type subject to that Order which have previously been, or will hereafter be, provided by the defendants to the plaintiffs in formal or informal discovery, and all further copies of such records made by the plaintiffs

(with the exception of deposition materials, materials relating to the validation studies in this case, and documents filed in the public record of this case), shall be delivered to counsel for the defendants within a reasonable period after the expiration of the part of the Consent Decree to which they relate. Within the same period of time, plaintiffs shall destroy all documents (with the exceptions noted above), prepared by their counsel or the employees of their counsel, which identify specific applicants for employment with, or specific past or present employees in, firefighter, Fire Cadet or police officer positions.

5. The confidentiality provisions of paragraph 4 shall be extended to statistical information regarding persons of a particular race who apply, or have applied, for firefighter or police officer positions, except where such information has previously been filed of record herein, and to such other classes of information as the parties agree shall be kept confidential. In the event that the parties are unable to agree whether a particular record or class of records should be kept confidential, the matter shall be submitted to the Court for resolution.

6. If any question should arise between the parties as to the implementation or meaning of any provision of this Consent Decree, as to the defendants' compliance with any provision of this Consent Decree, or as to any future allegations of discrimination within the areas covered by this Consent Decree, the parties shall attempt to resolve the matter informally before presenting the matter to the Court for its resolution. No party shall present such a matter to the Court until thirty days after having notified opposing counsel of the problems, except where circumstances render the matter urgent. Any papers filed with the Court shall be filed under seal if, and to the extent, any data or documents are included therein which fall within the scope of the confidentiality provisions of paragraph ~~4. or 5.~~ The defendants may make and keep such racial identifications on official records as will be helpful in their administration of the provisions of the Consent Decree.

7. Plaintiffs and their counsel may contact class members for the purpose of monitoring the defendants' compliance with this Consent Decree and for the purpose of obtaining information which will help to effectuate the purposes of this Consent Decree. Where, as a result of class contact or otherwise, plaintiffs have reason to believe defendants are in non-compliance with the terms of this Consent Decree, the basis for such belief, including the identification of individuals providing information to plaintiffs, and the nature of the alleged non-compliance, including the identification of individuals adversely affected, shall be provided defendants as soon as reasonably possible.

B. Provisions Relating to the Police Department

8. The Court shall retain jurisdiction over this part of the Decree for a period of four years from the date of its final approval by the Court. The reporting requirements described in paragraph 9 shall continue for as long as the Court retains jurisdiction over this part of the Decree. Upon a showing of good cause, plaintiffs may petition the Court for extension of the period of retention of jurisdiction and of reporting.

9. The reporting requirements during the term of this part of the Consent Decree shall consist of the following information for each Police Academy class:

- (a) the number of applicants for the Police Academy class, by race and sex;
- (b) the number of applicants for the class who were rejected at the preliminary stage, separately by each reason for rejection, broken down by race and sex;
- (c) the number of applicants for that class who withdrew, by race and sex;
- (d) the number of applicants for that class who failed to provide the necessary documents to the Police Department, by race and sex;

(e) the number of applicants for that class, by race and sex:

(1) who were investigated and were rejected;

(2) who were investigated and were approved; and

(3) for whom the process was not completed and who were referred to the next class.

(f) documentation respecting individuals who were investigated, to include background investigations, interoffice memoranda recommending acceptance or rejection, termination letters, rejection letters and acceptance letters;

(g) explanatory documentation respecting those applicants, if any, accepted or rejected based upon extreme problems or extenuating circumstances where such acceptance or rejection is contrary to the express provisions of paragraph 12 of this Consent Decree, but is authorized by the provisions of paragraph 13 of this Consent Decree.

The defendants shall also provide plaintiffs, as of the end of each year during the term of this part of the Consent Decree, with the total number of police officers then employed by the defendants, and with the number of black police officers then employed.

10. The statistical information described in subparagraphs 9(a)-9(e), as well as the copies of the Police Department's statistical reports broken down by Academy class from Class 52 to Class 84, shall not be made public by the plaintiffs or their counsel. Counsel for plaintiffs may, however, make limited disclosures of this information to class

members or putative class members where this will further the purposes of this Consent Decree or aid in the investigation or resolution of any disputes arising thereunder. Plaintiffs may also disclose such information in any papers filed with the Court subject to the provisions of paragraph 6.

11. Where cause exists, plaintiffs may petition the Court for the right to inspect and/or copy further documentation respecting applicants for a given Academy class or classes.

12. Existing selection criteria and procedures, including the requirement of a high school degree or Texas G.E.D. equivalency certificate, shall be continued, subject to the rights of defendants to make changes or modifications as described in paragraph 15 herein, with the following criteria defined and limited as follows:

(a) Separation from Spouse, Common-Law Relationships, Illegitimate Children and Abortions:

While proper areas of inquiry, the facts that an individual is separated from his or her spouse, is engaged in a common-law relationship, is a parent of one or more illegitimate children, and/or has had an abortion shall not serve automatically to disqualify him or her from employment with the Houston Police Department. The underlying facts and circumstances will be considered, as described below. Based upon an assessment of relevant facts and circumstances underlying the separation from spouse and/or common-law relationship, an applicant may be temporarily disqualified where it is determined that the separation from spouse or the common-law relationship will serve as an impediment to an applicant's successful and uninterrupted completion of Academy training. With respect to illegitimate

children, whether the parent is providing support and/or maintenance for an illegitimate child or illegitimate children will be considered in assessing an applicant's level of responsibility or irresponsibility. With respect to abortions, inquiry may be made as to whether or not the abortion(s) was (were) legal based upon either the standards in effect at the time of the abortion(s) or the current standards of legality. When the disqualification is, under the provisions of this paragraph, of a temporary nature, the applicant shall be notified of that fact and that the applicant may make reapplication upon resolution of the problem in question.

(b) Credit and Financial Responsibility: An applicant's history of credit problems as evidence of financial irresponsibility may properly be considered and/or serve as a basis for temporary disqualification under the following circumstances:

- (1) if at the time of application the applicant had a total of at least \$500.00 in debts, other than for medical or hospital services, which were past due by at least 90 days; or
- (2) if at the time of application the applicant had suffered at least two collection actions -- either accounts placed for collection with a collection agency or lawsuits filed -- within the 24 months immediately preceding the application; or
- (3) if there exists a pattern of applicant conduct evidencing efforts by the applicant to defraud his or her creditors; or

(4) if the applicant's cashing of worthless checks was in a number (or under circumstances) demonstrating either serious financial irresponsibility or an attempt to defraud.

In cases involving subparagraphs (3) and (4), the investigator shall set forth in detail each of the facts leading to the described conclusions, as part of the background investigation report. With respect to applicants disqualified under the terms of subparagraphs (1) and (2), such applicants shall be advised that the credit problem is only a temporary disqualifier and that the applicant may make reapplication upon resolution of the credit problem. Notwithstanding the foregoing provisions of this subparagraph ("Credit and Financial Responsibility"), an applicant shall not be finally accepted for the Academy until such time as necessary arrangements and/or actions have been taken to render the applicant current in his or her debts or financial obligations, and the applicant shall be so informed at the time of the final interview. A letter stating the Police Department's intention to hire the applicant, if such arrangements can be made, shall be provided to the applicant as soon as possible after the final interview.

(c) Extramarital Affairs: Whether the applicant is having, or has within the 90 days preceding the application had, one or more extramarital affairs will not be grounds for his or her disqualification unless (1) the applicant's prior work performance has been adversely affected by such affair(s), (2) there is cause to believe that such affair(s) will result in the breakup of the marriage during the period of Academy training, or (3) there

is cause to believe that such affair(s) will adversely affect the applicant's successful and uninterrupted completion of the Academy training. Any disqualification under this subsection will be fully documented.

(d) Consensual Sexual Activity: An applicant shall not be disqualified for, and no weight shall be given to, non-deviant private sexual activity between (1) the applicant and an adult member of the opposite sex or (2) the applicant and a juvenile member of the opposite sex when, at the time of the sexual activity, the applicant was also a juvenile and was roughly the same age as the juvenile member of the opposite sex.

(e) Juvenile Criminal Behavior: Juvenile criminal behavior (whether based upon convictions or admissions) may be considered disqualifying and accorded appropriate weight, depending upon the relevant surrounding facts and circumstances, only under the following conditions:

(1) As a juvenile, the applicant committed a felony for which the applicant was tried and convicted as an adult; or

(2) As a juvenile, the applicant committed a crime involving the infliction of, or an attempt to inflict, serious physical injury on another person; attempt to commit, or the commission of, a sexual assault upon another person; or which involved the use of a dangerous or prohibited weapon;

Juvenile thefts will be assessed in the same manner as adult thefts.

(f) Adult Criminal Behavior: Adult criminal behavior, whether based upon a conviction or admission, may be disqualifying or accorded appropriate weight, based upon the relevant surrounding facts or circumstances, only under the following conditions:

(1) A felony conviction; or

(2) The admission of having committed a felony within the appropriate period of limitations; or

(3) The admission of having ever committed a felony or serious criminal offense which involved the infliction of, or the attempt to inflict, serious physical injury on another person; the attempt to commit, or the commission of, a sexual assault upon another person; or which involved the use of a prohibited or dangerous weapon; or

(4) The admission of having committed any felony or misdemeanor which the Houston Police Department states in a written order to all Police Department Recruiting and Selection personnel will always result in the automatic disqualification of any applicant; or

(5) Convictions for, or admissions of, thefts committed within the three years prior to the date of application, where such thefts occurred on at least four occasions within the three-year period; or, within the twelve months immediately preceding the application, the applicant was convicted of or admitted a theft involving an amount of at least \$25.00 in value.

The definition of "thefts" for this purpose includes, but is not limited to, shoplifting, switching price tags where the amount of the differences in prices is as stated above, and similar behavior.

(g) Criminal Behavior by the Applicant's Family, Relatives or Friends: Evidence of crimes committed by members of an applicant's family, an applicant's relatives or friends shall not serve as grounds for disqualification except where the applicant is living with or is substantially under the influence of such family member, relative or friend, or where the applicant's relationship with such family members, relatives, or friends will adversely affect the applicant's ability uniformly to enforce the law. In any instance where an applicant's living with any such family member, relative or friend would otherwise serve as a disqualifying factor, the applicant shall be so advised and instructed that he or she may be considered if he or she moves or otherwise terminates the living arrangement in question. With respect to non-serious and non-public violations of the law, the applicant's reluctance to arrest, or forceably to prevent such violations by family members, relatives, or friends will not serve as grounds for disqualification except in those instances where the applicant permitted or condoned the criminal activity under circumstances where the applicant could have controlled and/or prevented it.

(h) Employment References: Except where the information is otherwise of a disqualifying nature, a negative employment reference from an employer with whom the applicant's employment ended more than two years prior to the date of the application shall not serve as grounds for disqualification; provided, however, that this provision shall be inapplicable where the applicant has been substantially unemployed for the referenced two-year period. With respect to employment references relating to employment within the two-year period prior to the applicant's application, the following provisions shall be applicable:

(1) Derogatory or negative information shall be relied upon only where the standards used by the employer for the performance and conduct of the applicant in question are specified (e.g.: reliance shall not be placed upon a reference stating that an applicant's attendance was "poor" without stating the number of days the applicant was absent or tardy during the stated period, or the level of attendance problems necessary before the employer would consider an employee's attendance to be "poor");

(2) Derogatory or negative references within areas of subjective judgment such as maturity, intelligence, and "fitness for police work" shall not be considered disqualifying or given any probative weight;

(3) Derogatory or negative references, except where otherwise disqualifying in nature,

shall not be considered disqualifying if based upon acts or occurrences predating the application by more than two years; and

(4) Derogatory and negative references shall not be considered disqualifying where provided by a person who is not personally familiar with the applicant's work, provided, however, that this provision shall not preclude reliance upon derogatory or negative information obtained from "business records".

(i) Appearance and Bearing: The applicant's appearance and bearing at the final interview shall not be considered with respect to the selection or approval decision unless the applicant has been informed, in writing at least one day prior to the interview, that appearance and bearing will be considered. An applicant rejected in whole or in part because of his or her appearance and bearing at the final interview shall be so notified and given an opportunity, at his or her option, to go before the Civil Service Department or a different panel of officers from the Houston Police Department, for the purpose of obtaining an independent opinion as to his or her appearance and bearing.

(j) Marijuana: The applicant's views on the adequacy or the liberalization of existing marijuana legislation shall not serve as a basis for disqualification and shall be given no weight in the rejection or approval decision. Marijuana usage and disqualification shall be governed by the terms of subparagraph 12(f)(4) -- "Adult Criminal Behavior".

(k) Organizational Affiliation or Sympathy:

With respect to an applicant's organizational affiliations or sympathies, the following provisions shall be applicable:

(1) It shall not be a ground for disqualification, and no weight shall be given to the fact, that the applicant is or was in sympathy with, or was a member of, the NAACP or any other non-radical civil rights organization;

(2) Questions regarding radical group affiliation or sympathy will not be asked unless the term "radical group" is defined and explained to the applicant.

(3) It shall not be a ground for disqualification, and no weight shall be given to, an applicant's organizational affiliations or sympathies, in the absence of evidence, or an admission, (a) that the applicant personally agrees with, or has participated in, the unlawful actions of the organization or any advocacy of violence by the organization, or (b) that the applicant personally believes in the racial superiority of any group, or (c) that such connection would interfere with the applicant's ability to enforce the law against such groups or its members.

(1) Demonstrations: It shall not be a ground for disqualification, and no weight shall be given to the fact, that the applicant has participated in a demonstration unless there is evidence, or an admission, that the applicant violated the law during the course of the demonstration.

(m) Academic Potential: An applicant's high school grades or class rank, I.Q. scores or performance in college courses may be considered in assessing whether or not the applicant possesses the ability to learn the materials taught at the Police Academy, but only under the following conditions:

(1) There are no other probative indications that the applicant possesses the ability to learn the materials taught at the Police Academy; and

(2) The applicant has taken, and failed, a reading comprehension test (which utilizes cutoff scores set no higher than reasonably necessary to achieve the desired screening goal), or the applicant's academic performance and/or I.Q. is below a pre-established level of acceptability.

With respect to subparagraph 12(m) (2), an applicant may be rejected based upon academic performance and/or I.Q. scores only where the Houston Police Department has issued a written order to all Police Department Recruiting and Selection personnel establishing a cutoff level below which all applicants will be rejected. Advance notification of such cutoff level will be provided to plaintiffs.

(n) Contradictory Information: Asserted contradictory information shall not serve as a ground for disqualification, or be given weight in the decision to reject or to approve an applicant, unless the applicant is given a fair and equitable opportunity to explain the asserted contradiction. Where the asserted contradiction is restricted to information supplied by the applicant or to admissions of the applicant, the applicant shall be advised specifically and in detail of the asserted contradiction. Where the asserted contradiction is based upon information supplied from a third person under assurances of confidentiality, the degree of specificity and detail provided the applicant shall be as much as can reasonably be provided without disclosing or jeopardizing the source of the confidential information.

(o) Deceptive Polygraph Reactions: Polygraph reactions indicative of deception shall not be considered disqualifying, or given any weight in the decision to reject or to approve an applicant, unless (1) the question leading to the reaction has been repeated at least once in the course of the examination, and (2) the applicant would otherwise have been disqualified if he or she had made an admission with respect to the subject area of inquiry.

(p) Venereal Disease: Applicants shall be disqualified only where they are suffering from venereal disease at the time of their application or where they have had syphilis.

(q) Military Re-Enlistment Codes: Applicants shall not be disqualified based upon military re-enlistment codes.

(r) Prior Rejections: A prior applicant who may reapply in the future shall not be disqualified based upon the fact of a prior rejection where the prior rejection was based upon a standard or criterion which has been modified.

13. In instances of extreme problems or extenuating circumstances, applicants may be either approved or rejected despite technical non-compliance with the terms and conditions enumerated at subparts (a) through (r) of paragraph 12 herein. It is understood, however, that approvals or rejections under such circumstances shall be limited in number, and that any such approvals or rejections shall be supported by complete documentation of the underlying facts and rationale.

14. (a) Black applicants rejected on or after October 30, 1971, whose rejections were based in whole or in part upon any of the selection criteria defined at subparts (a) through (r) of paragraph 12 herein, shall be notified that these standards or criteria have been changed and shall be given an opportunity to reapply with the age limit waived as necessary to accommodate reapplication by black applicants who as of the date of reapplication exceed the maximum age requirement or fall short of a raised minimum age requirement.

(b) The defendants shall prepare a list of the names and addresses of applicants to be given notice under the provisions of this paragraph. The list shall be subject to checking by plaintiffs. The notices shall be in the form shown as Attachment A to this Consent Decree, and the defendants shall send such notices by first-class mail.

(c) To obtain the benefit of a waiver of the age limits, an applicant must reapply within ninety days of the date the notice described in subparagraph (b) was mailed.

(d) The Civil Service Department of the City of Houston shall search its records to attempt to locate the routing forms, or copies thereof, showing the names and addresses of black applicants from October 30, 1971 until Class 63 in 1974, some of whose names or addresses are not otherwise available. Plaintiffs shall be informed of the results of this search.

(e) The Police Department shall search its records to attempt to locate a log of applicants from October 30, 1971 until Class 63 in 1974, some of whose names or addresses are not otherwise available. Plaintiffs shall be informed of the results of this search.

(f) Plaintiffs shall be informed of the name, Academy class for which the reapplying applicant was processed, and result of the reapplication (including the reason for rejection, if the applicant is rejected), for each previously rejected applicant who reapplies under the provisions of this paragraph 14.

15. Defendants shall have the right to implement new or revised selection standards and procedures; provided, however, that advance notification of the proposed implementation of such new or revised standards or procedures shall be provided the Court and the plaintiffs. The advance notification obligations of this paragraph shall continue for the life of the Consent Decree. Defendants anticipate the implementation

of a professionally developed reading comprehension examination and, perhaps, a psychological test, and that the minimum age level will be raised. With respect to the reading test, defendants agree that it shall be used for screening purposes only, that it shall have a cut-off score which is set no higher than reasonably necessary to screen applicants for the Academy or probationary field training, and that it shall replace the current procedure for assessing whether or not an applicant possesses the ability to learn the material taught at the Police Academy. To the extent technically feasible, any professionally developed psychological test which may be implemented shall be racially normed. Plaintiffs have no objection to raising the minimum age requirement, but reserve the right to oppose the implementation of a test which has adverse impact upon black applicants. Plaintiffs shall be provided a copy of the validation study for the reading comprehension test, and of any psychological test as to which the scores are for any reason not normed racially.

16. The selection standards or criteria contained within subparts (a) through (r) of paragraph 12 herein shall be applied without modification or revision during the full applicant processing and training period for three Academy classes. At the conclusion of this time period, or such other period to which the Parties may mutually agree, the Parties agree to confer with respect to the continuation and/or modification of such selection standards. In the event of any irreconcilable dispute between the Parties concerning the continuation and/or modification of any such selection standards or criteria, either Party may petition the Court for resolution of the dispute.

17. Forms and interview questions shall be modified as necessary to comply with the terms of this Consent Decree.

Plaintiffs shall be provided a copy of the revised forms and list of interview questions, and a copy of the memorandum of the criminal offenses to which subparagraph 12(f)(4) is applicable.

18. The defendants shall not discriminate on the basis of race against black applicants for positions as police officers in the Houston Police Department.

19. The defendants shall not require any higher standards or qualifications of black applicants than are required of white applicants.

20. The Police Department shall continue to engage in appropriate minority recruiting efforts. It shall provide a brief summary of such minority recruiting activities to the Court and to plaintiffs at the end of each year within the life of this part of the Consent Decree.

21. A fund in the total amount of \$235,000.00 shall be set aside for payment to black applicants to the Houston Police Department who allegedly suffered racial discrimination in connection with the rejections of their applications for employment with the Houston Police Department. The procedures to be followed in disbursing this fund are described in subpart D of this decree.

22. Other than as may be specifically described herein, there shall be no retrospective relief of any kind. There shall be no grants of retroactive seniority to black applicants who previously applied and were rejected, and who thereafter applied and were hired or hereafter apply and are hired. As may be agreed upon by the Parties or directed by the Court, additional compensation from within the \$235,000.00 back pay fund may be granted black applicants who it is claimed would be entitled to retroactive seniority relief but for the provisions of this paragraph.

23. Any action of the defendants which is either required or permitted by the terms of this consent

decree, and which does not involve disparate treatment in the application of any of the Police Department's selection criteria, shall not give rise to or support any claim for back pay or damages during the term of the consent decree which may be asserted by the plaintiffs, the certified class herein, or any members of the certified class under Title VII or 42 U.S.C. § 1981 and § 1983. This provision shall not, however, preclude plaintiffs from pursuing appropriate monetary relief for acts or practices which were not in general use on February 12, 1979, which are not expressly approved under the provisions of paragraphs 12 or 15, and which plaintiffs believe to be in violation of Title VII or §§ 1981 or 1983, provided that plaintiffs shall not be entitled to seek back pay or damages as to any new or revised selection standard or procedure for which they have received advance notification under the provisions of paragraph 15, with a reasonably accurate advance estimate of the degree of any racially disparate effect in the new or revised standard or procedure, for any period prior to the receipt by counsel for defendants of a written objection by plaintiffs to the use of the new or revised standard or procedure. Thus, the defendants shall be immune from all claims for back pay or for damages arising from (1) the revised selection criteria described in paragraph 12; (2) the high school degree requirement and a raising of the minimum age limit; (3) any selection criteria disclosed to plaintiffs in discovery and in use on February 12, 1979, but not revised or eliminated in the consent decree; and (4) where advance notification under the provisions of paragraph 15, and a reasonably accurate estimate of any racially disparate effect, are provided, unless and until plaintiffs' written objection is received. Any such objection shall be specific, detailing the grounds therefor.

C. Provisions Relating to the
Fire Department

24. The Court shall retain jurisdiction over this part of the Consent Decree for a period of three years from the date of its final approval by the Court. The reporting requirements described in paragraphs 25-26 shall continue for as long as the Court retains jurisdiction over this part of the Decree. Upon a showing of good cause, plaintiffs may petition the Court for extension of the period of retention of jurisdiction and of reporting.

25. The reporting requirements for hiring and training issues during the term of this part of the Consent Decree shall consist of the following information:

(a) statistical reports on selection for that period, containing the same information and in the same format as exemplified in Attachment B;

(b) the number of Fire Cadets, broken down by race and sex:

(1) who started the Fire Academy;

(2) who were identified as having academic deficiencies or learning problems;

(3) who were provided with the tutoring assistance described in paragraph 32 of the Consent Decree and:

(a) who failed the Academy, or withdrew from the Academy in whole or in part because of academic problems;

(b) who were terminated, or withdrew, from the Academy for wholly non-academic reasons;

(c) who passed the Academy;

(4) who were not provided with the tutoring assistance described in paragraph

32 of this Consent Decree, and who failed the Academy, or withdrew from the Academy in whole or in part because of academic problems;

(5) who completed the Academy.

The defendants shall also provide plaintiffs, as of the end of each year during the term of this part of the Consent Decree, with the total number of firefighters then employed by the defendants, and with the number of black firefighters then employed.

26. The reporting requirements for the other issues during the term of this part of the Consent Decree shall consist of the following information to be provided at the end of each year during that term:

(a) separately for each fire station or facility, the number of firefighters of all ranks, broken down by race and by shift (where the information broken down by shift is available):

(1) who were regularly assigned to that station or facility as of the end of that year;

(2) who had pending requests for transfer to that station or facility, as of the beginning of that year or reporting period;

(3) who requested a transfer to that station or facility during the course of that year;

(4) who were transferred to work on a regular basis at that station or facility during the course of that year or reporting period;

(b) copies of all notifications to black firefighters which are provided pursuant to the provisions of paragraph 34 (b) herein;

(c) copies of all documents filed, prepared or used in the course of any grievance involving the failure to transfer a black firefighter to

a predominantly-white station or facility, as described in paragraph 34(b) herein;

(d) documents sufficient to show the methodology and results of the item analyses of the promotional examinations for Chauffeur positions and for Junior Captain positions, pursuant to the provisions of paragraph 36 herein.

27. The standards and criteria for the selection and hiring of firefighters which were put into effect on approximately July 5, 1978, and which were in effect as of February 5, 1979, and which are described as having been implemented in the footnotes to the "Recommendations" sections of the December, 1978 Technical Report of Drs. Steven J. Mellon, Jr., and John F. MacNaughton, An Analysis of the Minimum Selection Requirements for the Entry-Level Firefighter Position, City of Houston and the materials there referenced, shall be continued in effect by the defendants. These standards and criteria shall be changed only by agreement of the parties or by order of this Court, upon the petition of either plaintiffs or defendants and upon an adequate showing of cause for the change. Any future tests which defendants may implement shall be used for screening purposes only and shall have a cut-off score which is set no higher than reasonably necessary to screen applicants. Further, to the extent technically feasible, any professionally developed psychological test which may be implemented shall be racially normed.

28.(a) Black applicants rejected on or after October 30, 1971, but before January 1, 1978, shall be notified that the selection standards or criteria for firefighter positions have been changed and shall be given an opportunity to reapply, with the age limit waived as necessary to accommodate reapplication by black applicants who

as of the date of reapplication exceed the maximum age requirement, or fall short of the raised minimum age requirement in effect since approximately July 5, 1978.

(b) The defendants shall prepare a list of the names and addresses of applicants to be given notice under the provisions of this paragraph. The list shall be subject to checking by plaintiffs. The notices shall be in the form shown as Attachment C to this Consent Decree, and the defendants shall send such notices by first class mail.

(c) To obtain the benefit of a waiver of the age limits, an applicant must reapply within ninety days of the date the notice described in subparagraph 28(b) was mailed. Applicants applying after this deadline shall not be entitled to the benefit of a waiver of the age limits.

(d) The Civil Service Department of the City of Houston shall search its records to attempt to locate the routing forms, or copies thereof, showing the names and addresses of black applicants from October 30, 1971

until the first class in 1974, some of whose names or addresses are not otherwise available. Plaintiffs shall be informed of the results of this search.

(e) The Fire Department shall search its records to attempt to locate a log of applicants from October 30, 1971 until the first class in 1974, some of whose names or addresses are not otherwise available. Plaintiffs shall be informed of the results of this search.

(f) Plaintiffs shall be informed of the names, Academy class for which the reapplying applicant was processed, and result of the reapplication (including the reason for rejection, if the applicant is rejected), for each previously rejected applicant who reapplies under the provisions of paragraphs 28 and 29.

29. The notice described in paragraph 28 shall also be provided to the black applicants listed at Attachment E.

30. The defendants shall not require any higher standards or qualifications of black applicants than are required of white applicants. Defendants shall not discriminate on the basis of race against black applicants for positions as firefighters in the Houston Fire Department, against Black Fire Cadets, or against black firefighters in assignments to the Fire Department's various facilities and in promotions to the ranks of Chauffeur and Junior Captain.

31. The Fire Department shall continue to engage in appropriate minority recruiting efforts. It shall provide a brief summary of such minority recruiting activities to the Court and to plaintiffs at the end of each year within the life of this part of the Consent Decree.

32. (a) The Houston Fire Department shall implement a training program whereby Fire Cadets within the Academy with the academic deficiencies defined below shall be required to attend tutoring sessions of nine hours per week. Fire Cadets within the Academy who have not experienced such academic deficiencies may voluntarily attend such tutoring sessions.

(b) The academic deficiencies sufficient to trigger a Fire Cadet's mandatory participation in the tutoring program described in subparagraph 32(a) shall include any of the following:

(1) failing to make a passing grade on any major-weekly written test administered to Fire Cadets at the Fire Academy; or

(2) achieving a score on one or more of the tests administered to beginning Fire Cadets by Dr. Webster which is at or below the eighth-grade level of proficiency and performing in the Fire Academy at a level which, in the view of Academy officials or instructors, creates a substantial danger of academic failure.

(c) A Fire Cadet's obligation to participate in the tutoring program shall be for one week or until the Cadet achieves an overall passing grade average on major weekly tests.

33. (a) Black former Fire Cadets who withdrew, or who were terminated, from the Academy primarily for academic reasons on or after October 30, 1971, shall be notified of the implementation of the tutoring program and shall be advised of their opportunity to make reapplication to the Houston Fire Department under the selection standards or criteria described in paragraph 27 herein. The provisions of paragraph 28 herein shall apply with respect to the process and manner of providing notice, and with respect to waivers of the minimum and maximum age limits.

(b) Reapplications under the terms of this paragraph which do not involve a waiver of the minimum or maximum age limits must be submitted to the Fire Department within ninety days following the mailing, by first class mail, of the notice set forth in Attachment D hereto, or within forty-five days after the notice set forth in Attachment K was mailed by the Social Security Administration to the class member in question, provided that all re-applying class members shall be given a reasonable time to get their affairs in order before being required to report to the Fire Academy. - 28 -

(c) Plaintiffs shall be informed of the names of the black former Fire Cadets who reapply pursuant to the provisions of paragraph 33(a) herein, of the Academy class for which the reapplying applicant was processed, of the result of the reapplication (including the reason for the rejection, if the applicant is rejected), and of the Academy performance of each such applicant.

34. (a) With the modifications stated below, the assignment, transfer and grievance policies and procedures currently in effect shall be continued.

(b) In those instances in which a black firefighter requests a transfer to a predominantly - white station or facility, and thereafter an opening at that station for a firefighter within the black firefighter's classification is awarded to a white or Mexican-American firefighter, the black firefighter shall be advised of the reason he or she did not receive the requested transfer and shall be advised of the identity of the white or Mexican-American firefighter who did receive the transfer. If dissatisfied, the affected black firefighter may utilize the existing grievance procedure to challenge the transfer decision, without prejudice to his or her right to challenge the decision before this court under the terms of this Decree, in the event he or she believes the transfer decision to have been discriminatory.

(c) A predominantly-white station or facility, within the meaning of this paragraph, shall be defined as a station or facility in which black firefighters represent less than 20% of the total number of firefighters regularly assigned to that station or facility.

(d) The parties agree that all black firefighters for whom transfers have been sought have been transferred.

35. (a) Based upon the absence of adverse impact against blacks with respect to other promotional examinations, the parties have by agreement limited the promotional tests which are being challenged in this case to the Chauffeur and Junior Captain promotional examinations.

(b) With respect to future Chauffeur and Junior Captain promotional examinations, post-examination item analyses shall be performed according to standards generally accepted within the industrial psychological profession. Before the defendants make their final choice on the methodology of these item analyses, they shall consult with Dr. James L. Outtz, plaintiffs' expert, and shall consider his views. Where the item analysis for a given Chauffeur or Junior Captain promotional examination identifies a particular item or question which does not effectively distinguish between the persons who know the information and those who do not, each such item or question shall be eliminated, and the responses to it given no weight in determining which candidates have made passing scores, and in rank-ordering the candidates by total scores and length-of-service points.

(c) In all other respects, the promotional examination procedures now applicable to Chauffeur and Junior Captain examinations shall be continued.

36. A fund in the total amount of \$85,000.00 shall be set aside for payment to black applicants to the Houston Fire Department, and to Fire Cadets or firefighters, who allegedly suffered racial discrimination in connection with

the rejections of their applications for employment with the Houston Fire Department, in connection with the Fire Academy examinations, in connection with the Fire Department's promotional examinations, or in connection with transfer problems. The procedures to be followed in disbursing this fund are described in subpart D of this Decree. Other than as may be specifically described herein, there shall be no retrospective relief of any kind.

D. Provisions Relating to Back Pay

37. It is proposed by plaintiffs that on the date on which this Decree goes into effect the City shall pay \$10,000.00 to plaintiff Reginald Tarver, \$1,000.00 to class member Clifford Thompson, and \$1,000.00 to class member Carroll Madison, and the amounts authorized by paragraph 44 below, from the \$85,000.00 back pay fund established by paragraph 37 above for the Fire Department subclasses. It is further proposed by plaintiffs that on the same date the City shall pay \$10,000.00 to plaintiff Raymond Thomas from the \$235,000.00 back pay fund established by paragraph 21 above for the Police Department subclass. These amounts shall be in full satisfaction of all claims of these plaintiffs and class members for monetary relief in this case. All amounts stated within other paragraphs herein are based upon the amounts plaintiffs proposed be paid to the individuals stated above.

38. On the date on which this Decree goes into effect, the defendants shall deposit in separate trust accounts, bearing interest at commercial rates, the remaining \$225,000.00 in back pay for the Police Department subclass and the remaining \$73,000.00 in back pay for the Fire Department subclasses. These amounts, together with the interest accrued thereon, shall be paid to members of the appropriate subclasses as described below. Payments from these separate trust funds shall be pursuant to Court order.

39. Back pay for the Police Department subclass shall be allocated to the following groups in descending order of priority:

(a) Black applicants who applied for positions as police officers and were rejected after investigation from October 30, 1971 until December 31, 1973, where the rejection was based in whole or in part upon any of the selection criteria defined at subparts (a) through (r) of paragraph 12 herein, and who either:

(1) reapplied at some time subsequent to their original rejection, were selected, and completed the Police Academy; or

(2) reapply pursuant to the provisions of paragraph 14 above, are selected, and complete the Police Academy;

(b) Black applicants who applied for positions as police officers and were rejected after investigation from October 30, 1971 until December 31, 1973, where the rejection was based in whole or in part upon any of the selection criteria defined at subparts (a) through (r) of paragraph 12 herein, and who either:

(1) have not to date reapplied successfully and do not reapply pursuant to the provisions of paragraph 14 above; or

(2) do reapply pursuant to the provisions of paragraph 14 above but are not selected for, or do not complete, the Police Academy;

(c) Black applicants who are not described above, who applied and were rejected for positions as police officers on or after October 30, 1971, where the rejection was based in whole or in part upon any of the selection criteria defined at subparts (a) through (r) of paragraph 12 above, and who:

(1) reapplied at some time subsequent to their original rejection, were selected, and completed the Police Academy; or

(2) reapply pursuant to the provisions of paragraph 14 above, are selected and complete the Police Academy; or

(3) file a claim pursuant to notice, and with the aid of information in the City's records establish reasonable grounds for believing that they have been discriminated against to a greater extent than happened to other class members;

(d) Black applicants who are not described above, who applied and were rejected for positions as police officers on or after October 30, 1971, where the rejection was based in whole or in part upon any of the selection criteria defined at subparts (a) through (r) of paragraph 12 above, and who either:

(1) have not to date reapplied successfully and do not reapply pursuant to the provisions of paragraph 14 above; or

(2) do reapply pursuant to the provisions of paragraph 14 above but are not selected for, or do not complete, the Police Academy.

No person shall receive back pay as a member of more than one group, and any person qualifying for more than one group shall be considered a member of the highest-priority group for which he or she qualifies.

40. Back pay for the Police Department subclass shall be allocated as follows:

(a) \$125,000.00 to the group described in subparagraph 39(a), subject to the limitation that no member of the group shall receive more than \$5,000.00 in back pay;

(b) \$25,000.00 to the group described in subparagraph 39(b), subject to the limitation that no member of the group shall receive more than \$2,500.00 in back pay. - 33 -

(c) \$25,000.00 to the group described in subparagraph 39(c), subject to the limitation that no member of the group shall receive more than \$2,500.00 in back pay;

(d) the remainder of \$50,000.00 to the group described in subparagraph 39(d), subject to the limitation that no member of the group shall receive more than \$1,000.00 in back pay.

If, because of the limitations on individual recovery, some of the back pay tentatively allocated for a particular group cannot be spent for the members of that group, it shall be allocated to the other groups in order of priority, subject to the relevant limitations on individual recovery. If unforeseen circumstances make any of the above allocations inequitable, the parties reserve the right to seek a re-allocation. The right of any class member to receive any amount of back pay shall be subject to the provisions of paragraphs 47-48 below.

41. Back pay for the Fire Department subclasses shall be allocated as follows:

- (a) \$3,000.00 to the Fire Academy testing subclass;
- (b) \$8,000.00 to the promotional test subclass;
- and
- (c) the remainder of \$62,000.00 to the hiring subclass.

If unforeseen circumstances make any of the above allocations inequitable, the parties reserve the right to seek a re-allocation. The right of any class member to receive any amount of back pay shall be subject to the provisions of paragraphs 47-48 below.

42. Back pay for the Fire Academy testing subclass shall be paid, on an equal per capita basis, to each class member who did not complete the Fire Academy on or after October 30, 1971, in whole or in part for academic reasons, and who reapplies pursuant to the provisions of paragraph 33 above, is accepted, and successfully completes the Fire Academy. The maximum individual recovery under this paragraph shall be \$2,000.00. Any of the allocated funds which cannot be spent under the provisions of this paragraph shall be re-allocated to the Fire Department hiring subclass, in order of group priority, subject to the relevant limitations on individual recovery.

43. Back pay for the Fire Department promotional test subclass shall be limited to those class members who took any promotional examinations for Chauffeur or Junior Captain, resulting in rankings which were in use at any time from October 30, 1971 to date, and who were not promoted as a result of that examination. For purposes of distributing the funds set aside for the promotional test subclass, eligibility shall be based upon a formula which, on a test-by-test basis, identifies the highest-scoring subclass members who would have been promoted as a result of their final test rankings, if there had been no racially disparate effect in the final test rankings of whites and blacks. Each qualifying subclass member shall receive one equal share of the funds set aside for each time he or she qualifies under the formula.

44. Back pay for the Fire Department hiring subclass shall be allocated to the following groups in descending order of priority:

(a) Black applicants who applied for positions as firefighters and were rejected from October 30, 1971 until December 31, 1973, where the Fire Department's records do not show the rejection to have been based entirely upon objective standards currently in use by the Fire Department, and who either:

(1) reapplied at some time subsequent to their original rejection, were selected, and completed the Fire Academy; or

(2) reapply pursuant to the provisions of paragraph 28 above, are selected, and complete the Fire Academy;

(b) Black applicants who applied for positions as firefighters and were rejected from October 30, 1971 until December 31, 1973, where the Fire Department's records do not show the rejection to have been based entirely upon objective standards currently in use by the Fire Department, and who either:

(1) have not to date reapplied successfully and do not reapply pursuant to the provisions of paragraph 28 above; or

(2) do reapply pursuant to the provisions of paragraph 28 above but are not selected for, or do not complete, the Fire Academy;

(c) Black applicants who are not described above, who applied and were rejected for positions as firefighters between January 1, 1974 and January 1, 1978, or who are listed at Attachment E , where the Fire

Department's records do not show the rejection to have been based entirely upon objective standards currently in use by the Fire Department, and who:

(1) reapplied at some time subsequent to their original rejection, were selected, and completed the Fire Academy; or

(2) reapply pursuant to the provisions of paragraphs 28 or 29 above, are selected, and complete the Fire Academy; or

(3) file a claim pursuant to notice, and with the aid of information in the City's records establish reasonable grounds for believing that they have been discriminated against to a greater extent than happened to other class members;

(d) Black applicants who are not described above, who applied and were rejected for positions as firefighters between January 1, 1974 and January 1, 1978, or who are listed at Attachment E, where the Fire Department's records do not show the rejection to have been based entirely upon objective standards currently in use by the Fire Department, and who either:

(1) have not to date reapplied successfully and do not reapply pursuant to the provisions of paragraphs 28 or 29 above; or

(2) do reapply pursuant to the provisions of paragraphs 28 and 29 above but are not selected for, or do not complete, the Fire Academy.

No person shall receive back pay as a member of more than one of the groups established under the provisions of this paragraph, and any person qualifying for more than one such group

shall be considered a member of the highest-priority group for which he or she qualifies. Class members receiving back pay under the provisions of this paragraph may also receive back pay under the provisions of other paragraphs for which they independently qualify.

45. Back pay for the Fire Department hiring subclass shall be allocated as follows:

(a) \$40,000.00 to the group described in subparagraph 44(a), subject to the limitation that no member of the group shall receive more than \$5,000.00 in back pay under the provisions of this paragraph;

(b) \$12,000.00 to the group described in subparagraph 44(b), subject to the limitation that no member of the group shall receive more than \$2,500.00 in back pay;

(c) \$7,500.00 to the group described in subparagraph 44(c), subject to the limitation that no member of the group shall receive more than \$1,000.00 in back pay;

(d) the remainder of \$2,500.00 to the group described in subparagraph 44(d), subject to the limitation that no member of the group shall receive more than \$500.00 in back pay.

If, because of the limitations on individual recovery, some of the back pay tentatively allocated for a particular group cannot be spent for the members of that group, it shall be allocated to the other groups in order of priority, subject to the relevant limitations on individual recovery. If unforeseen circumstances make any of the above allocations inequitable, the parties reserve the right to seek a re-allocation.

46. (a) The interest earned on the back pay fund for the Police Department hiring subclass shall be paid to the members of that subclass. Such interest shall be allocated to the highest-priority group in that subclass on an equal per capita basis. The ceilings on individual recovery for the members of that group shall be observed. If any of the interest for the Police Department hiring subclass remains available for distribution to a lower-priority group because of the ceilings on individual recovery, the remainder shall be allocated to the next-highest priority group, and the distribution shall be as above. The remainder of the interest, if any, shall be allocated to the next-highest priority group and distributed as above. The remainder of the interest, if any, shall then be distributed to the members of the lowest-priority group without regard to the ceilings on individual recovery. If the amount of the remaining interest at any stage is so small as to make distribution to the next highest-priority group impractical or inefficient, the ceiling on individual recovery may be lifted for the preceding group by a consent order endorsed by counsel for plaintiffs and for the City defendants, and entered by the Court.

(b) The interest earned on the back pay fund for the Fire Department hiring subclass shall be allocated and distributed to the various groups within that subclass according to the same procedures described for the Police Department hiring subclass in paragraph 46(a).

(c) The interest earned on the back pay fund for the Fire Academy testing subclass shall be paid on an equal per capita basis to each member of that subclass qualifying for back pay, subject to the ceiling on individual recovery. Any interest which cannot be so distributed shall be reallocated to the Fire Department hiring subclass and distributed in accordance with the procedures referenced in paragraph 46(b).

47. The members of the Police Department hiring subclass, of the Fire Academy testing subclass, and of the Fire Department hiring subclass shall be notified of their potential rights to back pay as part of the notice they receive under the provisions of paragraphs 14, 28, 29 and 33 above. In order to be eligible for back pay and in order to identify those subclass members who have moved and can no longer be contacted and to expedite the final calculations of back pay, each class member who is not currently a firefighter or police officer shall be required to submit a statement of his or her current name, address, social security number and telephone number to counsel for plaintiffs, and such statement must be received by counsel for plaintiffs, within ninety days of the mailing of such notice to the subclass member. Exceptions may be allowed by the Court for good cause, where this will not disrupt or delay the calculations of back pay to class members. The mailed notice shall include postcards, pre-addressed to Mr. Seymour and containing the text shown in Attachment G, and claim forms as indicated in Attachment H.

48. (a) Counsel for plaintiffs shall be responsible for making individual back pay calculations, and for making the initial determinations whether there are reasonable grounds for believing that class members filing claims pursuant to the provisions of subparagraphs 39(c)(3) and 44(c)(3) have

been discriminated against. The defendants shall make their records available on a reasonable basis to counsel for plaintiffs for this purpose, and counsel for plaintiffs shall be entitled to rely on such records.

(b) The defendants may object to the inclusion of any class member in any back pay subclass or group, may object to the determination of counsel for plaintiffs that there are reasonable grounds for believing that a class member filing a claim pursuant to the provisions of subparagraphs 39(c)(3) or 44(c)(3) has been discriminated against. The defendants shall promptly present any such objections and their bases to counsel for plaintiffs, and the parties shall attempt to reach agreement on them, before filing them with the Court. Plaintiffs may also suggest the disqualification of class members from receipt of back pay, and shall present any such suggested disqualifications to counsel for the defendants, and the parties shall attempt to reach agreement on them, before filing them with the Court.

(c) Any class member whose potential entitlement to back pay would be reduced or eliminated by such objection or suggested disqualification shall be notified in writing either (1) that the parties have reached agreement regarding such objection or suggested disqualification when the agreement is filed with the court, or (2), if no agreement has been reached, that the disputed matter will be submitted to the court for decision; and such notice shall also inform the class member of the bases of such objection or suggested disqualification and of his right to challenge in court either the objection or suggested disqualification or any agreement between the parties affecting his or her potential entitlement to back pay.

(d) The Court shall resolve any objections or suggested disqualifications filed with it, and shall resolve any challenges filed by class members. The approval of the Court is not required where the parties have reached agreement on an objection or suggested disqualification and the class member has not filed a challenge.

(e) The provisions of subparagraph 48(c) requiring the notification of class members shall not apply where the nature of the defendants' objection is solely to point out a clerical or mathematical error in plaintiffs' listing of subclass members and group members and of the amounts to which they are entitled.

(f) An objection by the defendants shall be considered timely if it is made within thirty days after the submission by counsel for plaintiffs to the defendants of the information or determination to which the defendants object. A challenge by a class member will be considered timely if made within thirty days after the submission to the class member of the information required by subparagraph 48(c).

49. Class members who reapply pursuant to the provisions of paragraphs 14, 28 and 29 above will be members of different groups, and will receive differing amounts of back pay, depending on whether they successfully complete the Police or Fire Academy. To avoid delays in the payment of back pay to class members, back pay shall be paid to the Police Department subclass and to the Fire Department hiring subclass in two waves, as follows:

(a) Class members who reapply and are selected pursuant to the provisions of paragraphs 14, 28 and 29 above shall initially be considered

members of both the group they would be in if they successfully completed the Academy, and the group they would be in if they did not successfully complete the Academy. Their back pay entitlement shall be calculated separately for each such group, and the back pay entitlement of each other member of each such group shall be calculated on the assumption that the reapplying class member will be a member of that group after the Academy results are known.

(b) In the first wave of payments, the reapplying class member shall receive only the amount of his or her back pay entitlement which would be appropriate if he or she did not complete the Academy. In the first wave of payments, each other member of each such group shall receive the amount which would be appropriate if the assumption described in paragraph 49(a) were correct.

(c) When the Academy results for all reapplying class members are known, they shall be listed in their appropriate groups. Reapplying class members who complete the Academy successfully shall then be paid the difference between their first-wave payment and the amount which is appropriate in light of the results.

(d) When the reapplying class members are finally listed in their appropriate groups, each member of the group in which they were formerly listed shall then be paid the pro rata amount of the increase, if any, in their entitlement caused by the removal of the reapplying class member from their group. The limitations on individual recovery and the re-allocation provisions of paragraphs 39 and 44 shall apply unless the parties

agree that the amounts of excess individual recovery are so small as not to justify the burden of re-allocation.

50.. Within thirty days after the completion of monetary payments, the parties shall jointly file with the Clerk, under seal, a statement of the name and amount received for each class member receiving a monetary payment under this Decree.

E. Provisions Relating to Attorney's Fees

51. The defendants shall pay to plaintiffs reasonable attorneys' fees, plus the costs and expenses reasonably incurred in this litigation.

52. No later than fourteen days after the Court has granted tentative approval to this Consent Decree for the purpose of providing notice to class members, and not before the Court has given such tentative approval, plaintiffs shall submit to the defendants a statement of their requested fees, costs and expenses through the most recent date feasible. The defendants shall respond to the plaintiffs no later than fourteen days thereafter, and the parties shall use their best efforts to reach an agreement on the matter. Any dispute shall be resolved by the Court.

53. The notice to class members shall state the total amount of attorneys' fees, and the total amount of costs and expenses, to be awarded to plaintiffs for services performed and expenses incurred through the latest date covered by the award. If the amount of the award is still unknown at the time notice is to be sent to class members, a statement to that effect shall be included in the notice.

54. For reasonable and necessary services performed and expenses incurred in monitoring the defendant's compliance with the Consent Decree, in handling any disputes which may arise thereunder, and in handling back pay, plaintiffs shall submit a quarterly statement to the defendants,

through their counsel of record. The provisions of paragraph 52 shall apply to the defendants' response and to the resolution of disputes.

F. Tentative Approval of the Consent Decree and Communications with Class Members

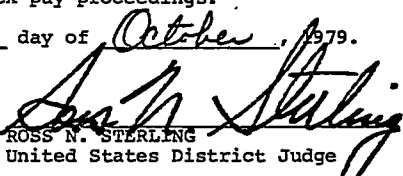
55. The Court hereby gives its tentative approval to this Consent Decree, subject to the notification of class members and the provision of an opportunity for them to file objections. The text of the notice to be mailed to class members is set forth in Attachment I. This notice shall be sent by first class mail to the last known address of each class member. The text of the announcement set forth in Attachment J shall be published on three weekdays of four consecutive weeks in the Houston Post, the Houston Chronicle, and the Forward Times, in a type size no smaller than the type size normally used for news stories in those newspapers. The blank dates in the Notice shall be filled in with the appropriate dates. The announcement shall be published three days after notice is mailed to class members. The defendants shall prepare the mailing of this notice, and shall pay all expenses associated with the mailing and publication. The parties shall notify the Clerk of the date of mailing and of the date of first publication.

56. Class members who file written objections to the Consent Decree within thirty days after the date of the initial mailing of notice or of the first publication of notice, whichever is later, shall be entitled to be heard on their objections at a hearing to be scheduled subsequently. The Clerk shall send notice of such a hearing to the objecting class members and to counsel of record, and shall make and

send copies of all written objections to lead counsel for each party. If no written objections are filed within thirty days from the aforesaid date, the Clerk shall so advise the Court and the parties, and this Consent Decree shall become final without further action by the Court.


57. Plaintiffs and their counsel may schedule a meeting with class members for the purpose of explaining the Consent Decree and their rights under the Consent Decree, may respond to class members inquiries regarding the Consent Decree, and may contact class members as necessary for handling the back pay proceedings.

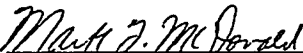
This the 18th day of October, 1979.


ROSS N. STERLING
United States District Judge

We ask for the entry of this Consent Decree:


RICHARD T. SEYMOUR


PHILIP J. PFEIFFER
Counsel for Defendants


MARK T. McDONALD
Counsel for Plaintiffs

[HOUSTON POLICE DEPARTMENT STATIONERY]

NOTICE TO UNSUCCESSFUL BLACK
APPLICANTS FOR POSITIONS WITH
THE HOUSTON POLICE DEPARTMENT

The enclosed Notice sent to you by the Clerk of the U. S. District Court describes the settlement of a lawsuit against this Department. As part of the settlement, the Department is offering you an opportunity to reapply for a position as a police officer.

To take advantage of this opportunity, you must reapply at the Police Department Recruiting Office, 401 Louisiana Street, Suite 601, and tell them that you are reapplying under the terms of the settlement in Tarver v. City of Houston. If you do this within ninety days of the date this notice was mailed to you, the age limits for applicants will not be applied to you.

If you have any questions, you should write Richard T. Seymour, one of the attorneys for the plaintiffs in the Tarver case. His address is stated in the Notice.

Sincerely,

B.R. White
Captain,
Recruiting Division

ATTACHMENT A

<u>Processing Stage</u>	<u>Total</u>	<u>WM</u>	<u>BM</u>	<u>HM</u>	<u>OM</u>	<u>WF</u>	<u>BF</u>	<u>HF</u>	<u>OF</u>
Polygraph Examination Deception Rejections									
Background Investigation Rejections									
Applicant Review Board Rejections									
Medical Examination Rejections									
Did Not Return for Processing									
Withdrew Application									
Did Not Return Paper Work									
Accepted for Training Academy									

HOUSTON FIRE DEPARTMENT
 RECRUITING DIVISION
 PRELIMINARY SCREEN AND VISION EXAMINATION REJECTIONS

19__

Preliminary Screen

<u>Reason</u>	<u>Total</u>	<u>WM</u>	<u>DM</u>	<u>HM</u>	<u>OM</u>	<u>WF</u>	<u>BF</u>	<u>HF</u>	<u>OF</u>
---------------	--------------	-----------	-----------	-----------	-----------	-----------	-----------	-----------	-----------

Underage ‡									
---------------	--	--	--	--	--	--	--	--	--

Overage ‡									
--------------	--	--	--	--	--	--	--	--	--

Driver's License ‡									
-----------------------	--	--	--	--	--	--	--	--	--

Citizenship Status ‡									
-------------------------	--	--	--	--	--	--	--	--	--

Residency Status ‡									
-----------------------	--	--	--	--	--	--	--	--	--

Vision Examination

Uncorrected Vision ‡									
-------------------------	--	--	--	--	--	--	--	--	--

Corrected Vision ‡									
-----------------------	--	--	--	--	--	--	--	--	--

Color Vision ‡									
-------------------	--	--	--	--	--	--	--	--	--

524

<u>Reason</u>	<u>Total</u>	<u>WM</u>	<u>BM</u>	<u>HM</u>	<u>OM</u>	<u>WF</u>	<u>BE</u>	<u>HF</u>	<u>OE</u>
On Probation									
Unpaid Traffic Tickets									
Arrest Warrant(s) Outstanding									
Medical Problems									
Speech Problems									

526

[HOUSTON FIRE DEPARTMENT STATIONERY]

NOTICE TO UNSUCCESSFUL BLACK
APPLICANTS FOR POSITIONS WITH
THE HOUSTON FIRE DEPARTMENT

The enclosed Notice sent to you by the Clerk of the U. S. District Court describes the settlement of a lawsuit against this Department. As part of the settlement, the Department is offering you an opportunity to reapply for a position as a firefighter.

To take advantage of this opportunity, you must reapply at the Fire Department Recruiting Office, 401 Louisiana Street, Suite 602, and tell them that you are reapplying under the terms of the settlement in Tarver v. City of Houston. If you do this within ninety days of the date this notice was mailed to you, the age limits for applicants will not be applied to you.

If you have any questions, you should write Richard T. Seymour, one of the attorneys for the plaintiffs in the Tarver case. His address is stated in the Notice.

Sincerely,

E. B. Reeves
District Chief,
Recruiting Division

ATTACHMENT C

[HOUSTON FIRE DEPARTMENT STATIONERY]

NOTICE TO BLACK FORMER FIRE CADETS
WHO LEFT THE FIRE ACADEMY, OR WHO
WITHDREW FROM THE FIRE ACADEMY,
PRIMARILY FOR ACADEMIC REASONS

The enclosed Notice sent to you by the Clerk of the U.S. District Court describes the settlement of a lawsuit against this Department. As part of the settlement, the Department is offering you an opportunity to reapply for a position as a firefighter, and to go through the Fire Academy again. A new program of remedial training is available for persons who need the training in order to complete the Academy successfully.

To take advantage of this opportunity, you must reapply at the Fire Department Recruiting Office, 401 Louisiana Street, Suite 602, and tell them that you are reapplying under the terms of the settlement in Tarver v. City of Houston. If you do this within ninety days of the date this notice was mailed to you, the age limits for applicants will not be applied to you.

If you have any questions, you should write Richard T. Seymour, one of the attorneys for the plaintiffs in the Tarver case. His address is stated in the Notice.

Sincerely,

David H. Fuller
Deputy Chief,
Fire Training Academy

ATTACHMENT D

Michael Ray Ferguson	9914 Gibbons	1-17-78
Earnest Earle Mimms	6905 Carothers	1-18-78
Robert Wayne Thomas	5901 Selinsky	4-12-78
Wayne Timothy Aurby	7040 Conley	4-12-78
Leroy Andrew Addison	41 Susan Ann Cts. B	4-10-78
Whyrlin Keith Hooks	6634 Reed	3-7-78
Terry Cornell Kirksey	1815 Pleasantville	1-6-79
Bobby Ray Lee	11110 Safordway	3-15-79
Stanley Earl Phillips	3314 Royal Avenue	4-10-78
David Earl Scott	7600 E. Houston Rd.	2-10-78
Bryon Shannon	2700 Ella Blvd. #23	2-17-78
Carlton Ray Stewart	9410 Cathedral	3-13-78
John Edward Vann	2111 Holly Hall Rd.	2-21-78

ATTACHMENT E

NOTICE TO BLACK PRESENT AND FORMER
FIREFIGHTERS WHO ARE ENTITLED TO
BACK PAY BECAUSE OF PAST PROMOTIONAL
EXAMINATIONS FOR CHAUFFEUR OR
JUNIOR CAPTAIN

To: _____

The enclosed Notice describes the settlement of a lawsuit against the Houston Fire Department. As part of the settlement, some money has been set aside for black present and former firefighters who have taken the promotional examinations for Chauffeur or Junior Captain from 1971 through 1978, who scored high enough on any one of these examinations to have been promoted if there had been no racial differences in scoring patterns, but who were not promoted as a result of that examination.

Under the settlement, you will receive \$ _____ from the money set aside for these promotional problems.

If you have any questions, you should write Richard T. Seymour, one of the attorneys for the plaintiffs in the Tarver case. His address is stated in the Notice.

Mary Gage
Deputy Clerk
U. S. District Court

ATTACHMENT F

TEXT OF POSTCARD:

Dear Sir:

I want to receive whatever money I am entitled to in the Tarver case. I will cooperate in providing any necessary information.

(PRINT NAME): _____

(SIGN NAME): _____

ADDRESS: _____ Apt. _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

ATTACHMENT G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION .

REGINALD TARVER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
CITY OF HOUSTON, et al.,)	73-H-1487
)	
Defendants.)	

CLAIM FORM

I believe that I was discriminated against to an extent greater than happened to other black applicants, in hiring for:
_____ the Houston Police Department

_____ the Houston Fire Department

and that this should entitle me to consideration for more back pay, as part of a higher-priority group. The facts which lead me to this belief are:

I ask that the lawyers for the plaintiffs investigate this claim, and inform me of the results of their investigation. I will cooperate in providing any necessary information.

PRINT NAME: _____

SIGN NAME: _____

ADDRESS: _____ Apt. _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

Send to:

Mary Gage, Deputy Clerk
U.S. District Court
515 Rusk Street, Room 9009
Houston, Texas 77208

ATTACHMENT H

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

REGINALD TARVER, et al.,	Y	
	I	
Plaintiffs,	I	
	Y	CIVIL ACTION NO.
v.	Y	73-H-1487
	I	
CITY OF HOUSTON, et al.,	I	
	I	
Defendants.	I	
	I	

NOTICE TO PAST AND PRESENT BLACK
 APPLICANTS FOR THE HOUSTON POLICE
 AND FIRE DEPARTMENTS, PAST AND
 PRESENT BLACK FIRE CADETS, AND PAST
 AND PRESENT BLACK FIREFIGHTERS

A. Introduction

This Notice is to inform you that this lawsuit has been settled, and to inform you of your rights under the settlement and of the opportunity for you to file objections to the settlement. This Notice, and any letters from the Houston Police or Fire Departments which are included with this Notice, are also to inform you of the steps you must take in order to protect your rights under the settlement.

This lawsuit was filed by unsuccessful black applicants for the Houston Police and Fire Departments in October, 1973, to challenge alleged racial discrimination in hiring by the Police and Fire Departments, and Fire Department testing and transfer practices. The Court has ordered that this lawsuit will be handled as a class action. In other words, this lawsuit is not just on behalf of the original plaintiffs, but is also on behalf of the following groups of persons:

(a) All past, present and future black applicants for fireman or police officer positions with the Houston Fire and Police Departments; and

(b) All black firemen and fire officials who have been, are being, or may in the future be, harmed by any of the following practices which

are challenged as unlawful in this action:
 the Fire Academy examinations, the Fire
 Department promotional examinations which have
 a disproportionately adverse effect on blacks,
 and the Fire Department's pattern of assigning
 black firemen and fire officials to fire stations
 in predominantly black areas of the city.

The settlement covers the described practices from October 30,
 1971 to date. It does not cover any kind of practice which
 is not described above.

UNDER THE SETTLEMENT, THE CITY DOES NOT ADMIT THAT
 IT EVER DISCRIMINATED AGAINST BLACKS IN EMPLOYMENT.

B. Summary of This Notice

The settlement involves a number of changes in
 the hiring practices of both the Police and Fire Departments,
 in the Fire Academy, in some Fire Department promotional
 tests, and in transfers within the Fire Department. The
 changes are discussed below.

The settlement also involves a back pay fund of
 \$320,000, of which \$235,000 is for applicants for employment
 with the Police Department, and \$85,000 is for applicants
 and employees of the Fire Department. This Notice discusses
 how this money will be paid, and who will be eligible to
 receive payments. IF YOU WANT TO RECEIVE ANY MONEY IN THIS
 CASE, YOU MUST MAIL A STATEMENT OF YOUR NAME, CURRENT ADDRESS,
 TELEPHONE NUMBER, AND SOCIAL SECURITY NUMBER TO:

Mr. Richard T. Seymour
 Lawyers' Committee for Civil
 Rights Under Law
 520 Woodward Building
 733 - 15th Street, N.W.
 Washington, D.C. 20005

IF HE DOES NOT RECEIVE THIS STATEMENT FROM YOU BY _____,
 1979, YOU WILL LOSE ANY RIGHT TO BACK PAY YOU MIGHT HAVE HAD.

You can make the required statement by filling out and mailing the enclosed government postcard. Additional postcards are available at the City offices described below.

YOU MAY ALSO HAVE THE RIGHT TO REAPPLY WITH THE POLICE OR FIRE DEPARTMENTS, WITHOUT REGARD TO THE AGE LIMITS, IF YOU FILE A NEW APPLICATION BY _____. IF YOU REAPPLY, ARE ACCEPTED, AND COMPLETE THE POLICE ACADEMY OR FIRE ACADEMY SUCCESSFULLY, THIS WILL INCREASE THE AMOUNT OF BACK PAY TO WHICH YOU MAY BE ENTITLED.

C. How to Find Out More Information About the Settlement

This Notice includes a summary of the terms of the settlement. If you would like to see a copy of the complete terms of the settlement, copies are available for you to examine at the following places:

The Police Department Recruiting Office
401 Louisiana Street, Suite 601

The Fire Department Recruiting Office
401 Louisiana Street, Suite 602

The Civil Service Department Office
702 Preston, First Floor

Clerk of the U. S. District Court
515 Rusk Street, Room 9009

You may also get a copy of the complete settlement for yourself by writing to Mr. Seymour at the above address. You may also write him with any questions you may have about the settlement.

There will also be a meeting at _____ on _____, 1979, to discuss the terms of the settlement. The lawyers for the plaintiffs in the case will be there, and will answer any questions you may have.

D. Summary of Police Department's Hiring Practices As Affected by the Settlement

1. Separation from Spouse, Common-Law Relationships, Illegitimate Children, and Abortions

The Police Department has agreed that applicants will not be disqualified automatically because they are

separated from their spouses, or because they are living in common-law relationship, or because they have had an illegitimate child, or because they have had an abortion.

2. Credit and Financial Responsibility

The Police Department has agreed that applicants will not be disqualified for credit problems, even on a temporary basis, unless they (a) have a total of at least \$500 in debts overdue by at least 90 days other than for medical or hospital services; or (b) have had at least two collection actions within the two years preceding the application; or (c) have engaged in activity showing either extreme financial irresponsibility or an attempt to defraud creditors. Nevertheless, applicants who are behind on their bills will not be accepted into the Police Academy unless they can make satisfactory arrangements with their creditors.

3. Extramarital Affairs and Consensual Sexual Activity

The Police Department has agreed that it will not automatically disqualify applicants for having engaged in extramarital affairs or for engaging in non-deviant, private sexual activity between adults of the opposite sex, or between juveniles if the applicant was then also a juvenile of about the same age. Applicants who have engaged in recent extramarital affairs may, however, be disqualified if there is evidence that the affair has affected the applicant's past work performance, will cause a breakup of the applicant's marriage during the period of Academy training, or will adversely affect Academy training.

4. Criminal Activity

The Police Department has agreed to standardize its policies on the rejection of applicants for having committed various crimes. Generally, applicants who have committed felonies, who have committed serious crimes involving serious injury to another person, the threat of such injury, a sexual assault, or the use of a dangerous weapon, will be rejected. Four thefts during the three years preceding the application, or one theft involving

an amount of \$25 or more in the twelve months preceding the application, will disqualify an applicant. Other disqualifying offenses will be listed by the Police Department.

5. Criminal Behavior by the Applicant's Family, Relatives or Friends

The Police Department has agreed to limit its consideration of this factor to cases in which the applicant is living with, or is substantially under the influence of, the criminal. If such an applicant moves out or terminates the influence, he or she will still be considered. Unless the applicant has had the power to prevent or control such illegal behavior, his or her statement of unwillingness to arrest friends or relatives for non-serious, non-public violations of the law will not result in disqualification.

6. Employment References

The Police Department has agreed to limit its consideration of employment references in most cases to the two-year period preceding the application, and has agreed not to reject applicants because of various kinds of subjective judgments.

7. Appearance and Bearing

The Police Department has agreed not to reject applicants for their appearance and bearing at the final interview if they are not informed in advance that appearance and bearing will be considered. Applicants rejected for this reason will be able to go before the Civil Service Department or, at their choice, before a different panel of police officers, for an independent opinion on this factor.

8. Marijuana

The Police Department has agreed that an applicant's views on the adequacy or liberalization of existing marijuana legislation will not be considered. Marijuana use will be governed by a written policy.

9. Involvement with Various Organizations

The Police Department has agreed that applicants will not be rejected because of sympathy or involvement with the NAACP, with non-radical civil rights organizations, or with other organizations the Police Department considers radical, unless the applicant has participated in unlawful activities of the group, or believes in the superiority of one race over another, or unless the applicant's sympathy or involvement would interfere with his or her ability to enforce the law against the group or its members. Applicants will be informed of the groups the Police Department considers radical, before any response to a question whether he or she is in sympathy, or involved, with a radical group can be considered as a ground for disqualification.

10. Demonstrations

The Police Department has agreed that an applicant will not be disqualified for having engaged in a demonstration unless he or she violated the law during the course of the demonstration.

11. Academic Potential

The Police Department has agreed to limit its consideration of high school grades, college performance, I.Q. scores, and class rank to situations in which there are no other good indications whether the applicant will be able to learn the materials taught at the Police Academy and in which the applicant fails a proper reading comprehension test. Alternatively, such grades, scores and performance may be considered if they are standardized in writing and applied uniformly to all applicants.

12. Contradictory Information

The Police Department has agreed not to reject applicants because of asserted contradictions in the information provided, unless the applicant is informed, as specifically as possible, of the area of asserted contradiction and given a fair opportunity to explain the matter.

13. Deceptive Polygraph Reactions

The Police Department has agreed that "deception" reactions on the polygraph will not disqualify an applicant unless the question leading to the reaction has been repeated at least once, and unless the question involves an area in which the applicant would have been disqualified if he or she had made an admission on the subject.

14. Other Matters

The Police Department has agreed not to reject applicants who have had venereal disease (other than syphilis) in the past but do not have it at the time of application, and has agreed not to reject applicants based on their military re-enlistment codes. Applicants who were rejected in the past, based on a standard which has been changed in the settlement, will not be disqualified in the future because of that past rejection.

The settlement also provides for waiving the above rules, either way, in exceptional cases. New standards can be imposed in the future, but for the next four years the plaintiffs and the Court will have to be given advance notice of the changes. There will be a "test period" of three full Police Academy classes during which the changes described above will be in full force; if serious problems arise, the parties have agreed to negotiate any appropriate changes. The Court will resolve any issue the parties cannot resolve. The Police Department has agreed to continue its efforts to recruit members of minority groups.

It is the opinion of the lawyers for the plaintiffs that the above changes will eliminate or substantially reduce any significant racial differences in the effects of the Police Department hiring process.

Applicants for the Police Department who have been rejected on or after October 30, 1971, in whole or in part because of any standard changed by the settlement, can reapply within the ninety-day period after this notice is mailed. If they reapply during that period, the age limits will be waived.

E. Summary of Changes in the Fire Department's Hiring Practices

On July 5, 1978, the Fire Department put into effect a number of changes in its hiring practices which had been recommended by a group of experts the City had hired after this lawsuit was filed. Generally, the changes made the Fire Department's hiring practices more objective, and less subject to the individual judgment of Fire Department officials. Statistics which have been compiled by the City and examined by the lawyers for plaintiffs show that the changes have eliminated any significant racial differences in the effects of the hiring process.

The changes which are most important to this case are as follows: the requirement of a high school degree or twelfth-grade Texas G.E.D. equivalency certificate has been dropped, and replaced with a reading comprehension test; rejections because of past criminal activity have been limited to the most serious crimes; court-martial convictions will be treated in the same manner as civilian convictions; the background investigation has been standardized and made objective. For cause either party may petition the court for future modifications to these selection criteria.

F. Summary of Other Changes in the Fire Department's Practices

1. Fire Academy

The Fire Academy will establish a remedial education program for Fire Cadets whose test scores or grades show that they may have trouble completing the Academy. Such Cadets will be required to attend a one-hour tutoring session each weeknight and a four-hour session each weekend. Black Fire Cadets who withdrew from the Academy, or were terminated from the Academy, primarily for academic reasons from October 30, 1971 to date will be invited in writing to reapply. If the former Cadet reapplies within 90 days after receiving notice, the age limits will be waived.

2. Transfers

The Fire Department's present transfer procedures will be continued, with the following changes: In those instances in which a black firefighter requests a transfer to a predominantly-white station or facility -- defined as a station or facility in which black firefighters represent less than 20% of the total number of firefighters regularly assigned to that station or facility -- and thereafter an opening at that station for a firefighter within the black firefighter's classification is awarded to a white or Mexican-American firefighter, the black firefighter shall be advised of the reason he or she did not receive the requested transfer and shall be advised of the identity of the white or Mexican-American firefighter who did receive the transfer. If dissatisfied, the affected black firefighter may utilize the existing grievance procedure to challenge the transfer decision, without prejudice to his or her right to challenge the decision in court, in the event he or she believes the transfer decision to have been discriminatory. All of the black firefighters for whom the plaintiffs sought specific transfers have been transferred.

3. Promotional Examinations

The only promotional tests which had a substantial racial difference in scores were the Chauffeur and Junior Captain tests. As to these tests, the Fire Department has agreed that all answers will be subjected to an "item analysis" before the tests are used to determine who passed and to determine the ranking of test-takers. An "item analysis" is a tool by which testing experts can determine whether particular test questions effectively distinguish between people who generally knew the test materials and people who did not. Questions which do not pass this analysis will not be considered in grading the examinations. This should reduce or eliminate the racial differences in test scores, while also improving the reliability of the tests.

G. Awards of Money

Under the settlement it is proposed that plaintiff Reginald Tarver receive \$10,000, that class member Clifford Thompson receive \$1,000, and that class member Carroll Madison receive \$1,000, from the \$85,000 back pay fund for the Fire Department. It is also proposed that plaintiff Raymond Thomas receive \$10,000 from the back pay fund for the Police Department. The remainder of the back pay amounts are based upon the individual payments as proposed, and such back pay will be handled as described below.

1. Except for present police officers or firefighters, NO CLASS MEMBER WILL RECEIVE ANY MONEY UNLESS HE OR SHE SENDS TO MR. SEYMOUR (address shown on page 2 of this Notice), A STATEMENT OF HIS OR HER NAME, CURRENT ADDRESS, TELEPHONE NUMBER AND SOCIAL SECURITY NUMBER SO THAT HE RECEIVES THIS STATEMENT ON OR BEFORE _____, 1979. Even if this Notice is mailed to you at your present address, you must submit the statement on time or you will lose any right you may have had to back pay.

2. Police Department: Generally, black applicants who were rejected after having been investigated, from October 30, 1971 through December 31, 1973, will receive the most money. This is because the facts are strongest with respect to this group. Applicants who either reapplied and were hired, or who reapply under the terms of the settlement and are hired, will receive more money than people who do not reapply. The tentative breakdown is as follows:

(a) \$125,000 has been set aside for black applicants who were rejected after investigation from October 30, 1971 through December 31, 1973, because of one of the factors which has been changed by the settlement, and who reapplied and were hired later, or who reapply now and are hired. There is a limit of \$5,000 a person.

(b) \$25,000 has been set aside for black applicants who were rejected during the same period for the same reasons, but who were never hired and are not hired now. There is a limit of \$2,500 a person.

(c) \$25,000 has been set aside for black applicants who were rejected before investigation from October 30, 1971 through December 31, 1973 or who were rejected on or after January 1, 1974 -- whether before or after investigation -- because of one of the factors which has been changed by the settlement, and who later reapplied and were hired, or reapply now and are hired, or who file a claim now and establish (with the help of Police Department records) that there are reasonable grounds for believing that they were discriminated against to a greater extent than happened to other class members. There is a limit of \$2,500 a person.

(d) the remainder of \$50,000 has been set aside for black applicants who were rejected before investigation from October 30, 1971 to December 31, 1973 or who were rejected on or after January 1, 1974 -- whether before or after investigation -- because of one of the factors which has been changed by the settlement, and who were never hired and are not hired now. There is a limit of \$1,000 a person.

No person can be a member of more than one group. Each person will be treated as a member of the highest group for which he or she qualifies. As you can see, no class member can lose any benefit from reapplying, and class members who reapply and are hired will receive substantially more back pay. To receive the increased amount for being hired, however, it is necessary to complete the Police Academy successfully.

2. Fire Department Hiring Claims: A total of \$62,000 has been set aside for Fire Department hiring claims. Generally, black applicants who were rejected from October 30, 1971 through December 31, 1973 will receive the most money. This is because the facts are strongest with respect to this group. Applicants who either reapplied and were hired, or who reapply under the terms of the settlement and are hired, will receive more money than people who do not reapply. The tentative breakdown is as follows:

(a) \$40,000 has been set aside for black applicants who were rejected from October 30, 1971 to December 31, 1973 (where Fire Department records do not show that the rejection was based entirely on objective standards currently used by the Fire Department and who reapplied and were hired later, or who reapply now and are hired. There is a limit of \$5,000 a person.

(b) \$12,000 has been set aside for black applicants who were rejected during the same period for the same reasons, but who were never hired and are not hired now. There is a limit of \$2,500 a person.

(c) \$7,500 has been set aside for black applicants who do not fit within either of the first two groups, who applied and were rejected between January 1, 1974 and January 1, 1978 for the same reasons (or who applied and were rejected between January 1, 1978 and July 5, 1978 because they did not have a high school degree or G.E.D. equivalency certificate or because of the type of background investigation then in effect) and who reapplied and were hired later, or who reapply now and are hired, or who file a claim now and establish (with the help of Fire Department records) that there are reasonable grounds for

believing that they were discriminated against to a greater extent than happened to other class members. There is a limit of \$1,000 a person.

(d) the remainder of \$2,500 has been set aside for black applicants who applied and were rejected between January 1, 1978 and July 5, 1978 because they did not have a high school degree or G.E.D. equivalency certificate or because of the type of background investigation then in effect) but who were never hired and are not hired now. There is a limit of \$500 a person.

No person can be a member of more than one group. Each person will be treated as a member of the highest group for which he or she qualifies. As you can see, no class member can lose any benefit from reapplying, and class members who reapply and are hired will receive substantially more back pay. To receive the increased amount for being hired, however, it is necessary to complete the Fire Academy successfully.

3. Fire Academy Claims: A total of \$3,000 has been set aside for black former Fire Cadets who withdrew from the Academy, or were terminated from the Academy, primarily for academic reasons, from October 30, 1971 to date. The money will be paid only to those former Fire Cadets who reapply, are hired, and complete the Academy successfully.

4. Fire Department Promotional Tests: A total of \$8,000 has been set aside for present and former black firefighters who took tests for Chauffeur or for Junior Captain resulting in rankings which were in use at any time from October 30, 1971 to date and who were not promoted as a result of that examination, but would have been promoted if the black promotion rate had been as high as the white promotion rate. Each person entitled to receive back pay under this paragraph will be notified by mail.

5. Particular Exclusions from Back Pay: Both plaintiffs and defendants have reserved the right to challenge the ability of any class member to receive back pay, or to challenge the amount of back pay which that person should receive. If there is such a challenge, the class member shall be notified in writing of the challenge. The dispute will be decided by the Court if the plaintiffs and defendants are unable to reach agreement on the challenge, or if the plaintiffs and the defendants reach an agreement and the class member files an objection to the agreement.

H. The Costs of This Lawsuit and Attorneys' Fees

The defendants have agreed to pay the out-of-pocket costs of the attorneys for plaintiffs in the amount of \$_____ through May _____, 1979 and the fees of the attorneys for plaintiffs in the amount of \$_____ through May _____, 1979. This covers expenses incurred and services performed during the six years this case has been in court. The defendant will also pay the future costs and fees of the attorneys for plaintiffs for reasonable and necessary services in handling the back pay proceedings and for monitoring the defendants' compliance with the Consent Decree. There is no charge to any plaintiff or class member for the expenses or services of the attorneys for plaintiffs.

I. Procedure for Making Objections

If you have any objections to the settlement, they must be filed in writing with the Clerk of the U.S. District Court, 515 Rusk Street, Room 9009, Houston, Texas, by the close of business; _____, 1979. Objections received after that date will not be considered.

If no objections are filed, the Consent Decree will automatically go into effect in thirty days. If there

are objections, the Court will schedule a hearing, and will give a written notice of the date and time of the hearing to each person who files an objection.

REMEMBER THAT ALL STATEMENTS, CLAIMS, AND OBJECTIONS MUST BE FILED ON TIME, OR THEY WILL NOT BE CONSIDERED. REMEMBER THAT THERE WILL BE A MEETING TO DISCUSS THE SETTLEMENT, AND ANY QUESTIONS ABOUT THE SETTLEMENT YOU MAY HAVE, AT _____
ON _____, 1979 at _____ P.M.

Mary Gage
Deputy Clerk, U.S. District Court

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

REGINALD TARVER, ET AL.,	I	
	I	
Plaintiffs,	I	
	I	
v.	I	CIVIL ACTION
	I	NO. 73-H-1487
CITY OF HOUSTON, ET AL.,	I	
	I	
Defendants.	I	

ANNOUNCEMENT TO PAST AND PRESENT BLACK APPLICANTS
 FOR THE HOUSTON POLICE AND FIRE DEPARTMENTS,
 PAST AND PRESENT BLACK FIRE CADETS,
 AND PAST AND PRESENT BLACK FIRE FIGHTERS

This announcement is to inform you that this law suit has been settled and to tell you how to obtain a copy of the complete notice.

This suit was filed by unsuccessful Black applicants for the Houston Police and Fire Departments on behalf of themselves and the following groups of persons:

- (a) All past, present and future Black applicants for Fire Fighter or Police Officer positions;
 and
- (b) All Black Fire Fighters and Fire Officials who have been, are being, or may in the future be, harmed by any of the following practices: the Fire Academy examinations, the Fire Department promotional examinations, and the Fire Department's pattern of assigning Black Fire Fighters to stations in predominantly Black areas of the City.

UNDER THE SETTLEMENT, THE CITY DOES NOT ADMIT THAT IT EVER DISCRIMINATED AGAINST BLACKS IN EMPLOYMENT.

If you come within the description of the persons affected by this case, which is set out above, you may be eligible to receive payment from a backpay fund of \$320,000.00, of which \$235,000.00 is for applicants with the Police Department, and \$85,000.00 is for applicants and employees of the Fire Department. IF YOU WANT TO RECEIVE ANY MONEY IN THIS

CASE, YOU MUST MAIL A STATEMENT OF YOUR NAME, CURRENT ADDRESS AND SOCIAL SECURITY NUMBER TO MR. RICHARD T. SEYMOUR AT Lawyers' Committee for Civil Rights Under Law, 520 Woodward Building, 753 Fifteenth Street, N. W., Washington, D. C. 20005.

YOU MAY ALSO HAVE THE RIGHT TO REAPPLY, UNDER ALTERED-ENTRANCE REQUIREMENTS, WITH THE POLICE OR FIRE DEPARTMENTS, WITHOUT REGARD TO THE AGE LIMITS, IF YOU FILE A NEW APPLICATION BY _____. IF YOU REAPPLY, ARE ACCEPTED, AND COMPLETE THE POLICE ACADEMY OR FIRE ACADEMY SUCCESSFULLY, THIS WILL INCREASE THE AMOUNT OF BACKPAY TO WHICH YOU MAY BE ENTITLED.

A procedure is available by which all persons affected by this case may file objections to the settlement.

In order to be apprised in greater detail of the terms of the settlement and the manner in which you may apply for a share in the backpay fund or file objections to the settlement, you should examine a copy of the complete terms of the settlement, which is available for your examination at the following places:

The Police Department Recruiting Office, 401 Louisiana Street, Suite 601

The Fire Department Recruiting Office, 401 Louisiana Street, Suite 602

The Civil Service Department Office, 702 Preston, First Floor

Clerk of the U. S. District Court, 515 Rusk Avenue, Room 9009

In addition, you may obtain a copy of the complete settlement as well as answers to any questions by writing Mr. Richard T. Seymour, at the address listed above.

There will also be a meeting at _____ on _____, 1979, to discuss the terms of the settlement.

MARY GAGE, DEPUTY CLERK
U. S. DISTRICT COURT

Exhibit No. 10

The following material is submitted in response to the December 5, 1979 correspondence from M. Gail Gerebenics, Assistant General Counsel for the United States Commission on Civil Rights, requesting certain documentation and information for inclusion in the formal Commission report on police practices.

You will note that some of the enclosures have been provided previously to Commission Staff members, however, I am including them here again because they are particularly pertinent.

The Houston Police Department, in the past two and one-half years, has made great strides towards true professionalism. The major accomplishments of this Department attest to the fact that we have not stood idly by while faced with the daily challenge of providing police service to one of the most rapidly growing metropolitan areas in America. The rapid rate of growth has placed a tremendous burden on our already understaffed Department. Only through technological advancements and improved management control have we managed to meet this challenge head-on. The number of changes any organization can undergo at any one given point of time is limited by the structural design and size of the organization, the fiscal limitations of the organization as well as the quality of personnel within that organization. The rate of change and modification of the Houston Police Department has been maximal based upon its organizational limitations, and the results of these efforts speak for themselves. Some of the accomplishments and improvements for which the Houston Police Department can well be proud and which deal specifically with the Department's concern for human life and dignity are listed as follows:

1977 Major Accomplishments (Implemented in last 6 months of 1977 after appointment of H. D. Caldwell as Chief of Police.)

A Field Training Officers Program was established which carefully structures the probationary period of the new officer.

Probationary Officers are closely instructed and evaluated by the Field Training Officers to insure that the new Officer can effectively apply the knowledge and training received at the Police Academy.

Spanish language courses were initiated which provided the attending Police Officers with a working knowledge of Spanish and an understanding of the culture of the Mexican/American citizen.

The Community Service Office opened December 12, 1977 in the Ripley House. This is a predominantly Mexican/American area of the City and the Center is staffed with bilingual officers and serves as a direct link between the citizen and the Houston Police Department. Police-minority relations in the Mexican/American Community have tremendously improved as a result of this Center.

An Internal Affairs Division was formally created within the Department to serve as a central complaint section for receiving citizens' complaints against individual police officers or the Department.

The Houstonians on Watch (HOW) Program was devised with the goal of combining the efforts of enforcement and education on crime in neighborhoods.

1978 Major Accomplishments

Implementation of the Baton Program was initiated at the Central

Police Station; use of baton training was provided to officers and pilot program statistics were accumulated for study. The Program has proven to be effective, in that a number of confrontations with armed citizens were recorded wherein the citizen was disarmed by use of the baton rather than deadly force. The Program was expanded in 1979.

The Hostage Negotiation Team was formed for Barricaded Actor/ Hostage situations. Basic training was provided to team members, and use of the team proved to be effective in those situations where it was needed.

A Crime Awareness Program was implemented by the Patrol Bureau. The Program consists of individual officer contacts with business and residential members of the community and information is provided to them regarding how they may contribute to the control of crime in their area. Community relations has been greatly enhanced as a result of this program.

The Field Training Program was upgraded during the year, and a full-time coordinator was assigned to the program to assure standardization throughout the Department.

Conversational Spanish classes were conducted for patrol officers to enable them to improve relations in the Spanish-speaking communities. A total of six (6) classes were conducted during the year.

A new "Burglar in the Building" search procedure was implemented which requires the presence of a supervisor prior to entering

the structure. There were no injuries to either police officers or citizens as a result of building searches during the year.

A follow-up complainant contact program was implemented by the various divisions. Complainants are contacted by the investigative division regarding their case, regardless of whether or not there are any follow-up leads. The public relations impact of this program is tremendous and it has aided in clearing many cases which would have previously gone unsolved.

The Planning & Research Division created a General Orders Manual which compiles into one document the various policies of the Department.

The Planning & Research Division researched and developed a total Equal Employment Opportunity Program for the Department.

The Firearms Training Section developed a Combat Training course which enables officers to receive firearms training under simulated on-duty conditions.

A program was implemented which entails the detailed study of shooting incidents involving police officers to determine whether training can be improved or revised.

The Police Academy selected a building site, prepared plans and specifications and construction was started on the new Police Academy. The new physical facilities will provide modern, up-to-date training and educational facilities for the Department.

The Police Academy graduated 226 Officers from five (5) cadet classes. Of this number, 60 officers (26.5%) were minorities.

The Recruiting Division implemented many new programs which resulted in a record number of contacts of potential applicants. A paid local advertising campaign was begun; a new mobile display recruiting van was acquired; recruiters increased minority contacts by participating in various minority functions; recruiters increased emphasis on the "personal touch" concept of dealing with police applicants; the recruiting area was expanded to include several more states.

Two additional Community Service Centers (Neighborhood Storefronts) were established in minority communities. Over 15,000 citizen contacts were made in the Centers during the year, and they serve as a direct link between the Police Department and the citizens.

A "Be Aware" Program was implemented to educate citizens regarding personal crimes against women and measures which can be taken to prevent such crimes. Over 23,000 citizens were contacted through this Program.

The Houstonians on Watch (HOW) Program was implemented with the aim to reduce neighborhood crime through better home security and the reporting of suspicious activities to police. Over 3,500 citizens were contacted through the Program.

Over 1,300 prison inmates awaiting parole were contacted through the Prisoner Pre-Release Program which provides the first positive contact with a police officer to these persons.

A Jail Clinic was established in the Jail Division for the care of prisoners. Over 4,000 prisoners were treated since the clinic began operations in July of 1978.

An Emergency Jail Evacuation Plan was prepared and submitted to the Planning & Research Division for evaluation.

The Inspections Division was established to determine the extent of compliance with Departmental policies and procedures. In addition, it makes studies and evaluations of effectiveness and efficiency of police operations and makes recommendations for improvements when they are indicated.

1979 Major Accomplishments

The Baton Program, initially implemented at Central Station in 1978, was expanded to include all Patrol Substations in a continuous training program during 1979. The Program proved to be effective at all stations, in that a number of confrontations with armed citizens occurred wherein the citizen was disarmed by use of the baton rather than deadly force.

The Field Training and Evaluation Program was concentrated at three (3) Patrol Stations (North Shepherd, Beechnut and Central) to insure greater accountability and standardization within the Program.

The capability of saturating a specific area of the City with a Task Force to deal with specific criminal activities, with appropriate control and record keeping of crime statistics, was

generated in the Patrol Bureau. The Task Force is comprised of personnel complements from Patrol, Juvenile, S:W.A.T. and other special units of the Department and has been effective in areas where it has been utilized.

Conversational Spanish classes were conducted for patrol officers to enable them to improve relations in the Spanish-speaking communities. A total of five (5) classes were conducted during the year.

A Mexican/American Homicide Squad, staffed by Spanish-speaking police officers, was formed in the Homicide Division which resulted in increased clearance of cases where the victims were Mexican/American.

The Homicide Division assigned a detective to serve as liaison officer with the Homosexual Community when members of that community are victims or witnesses to criminal offenses.

The Recruiting Division implemented an intense recruiting effort directed toward minorities which resulted in an increase of approximately 20% in black cadets over 1978.

The Recruiting Division received and screened approximately 3,600 applicants and 277 applicants were accepted as cadets.

Psychological Services provided 553 hours of counseling for police officers and members of their families, 27 hours of biofeedback treatment and set up a weight loss program for

employees of the Police Department. In addition, seven (7) radio interviews, ten (10) television interviews, and three (3) newspaper interviews were conducted.

The In-Service Training Section of the Police Academy conducted instructor's courses on use of the police baton for the Field Operations Command. An adequate number of instructors were certified to provide an instructor for every duty shift for each division in the Field Operations Command.

The Police Academy graduated 170 officers from four (4) cadet classes. Of this number, 45 officers (26.5%) were minorities.

The Pistol Range provided 53 hours of basic firearms training for each of 218 cadets and 14 Class B & C police officers. These cadets, and an additional 213 police officers qualified on the Police Combat Course.

The Jail Division instituted a procedure whereby an information pamphlet is provided to each prisoner explaining jail procedures and other pertinent information.

A procedure was implemented which makes various hygiene, toiletry and personal items available for trustees and female prisoners who are serving sentences.

Approximately 9,700 prisoners were treated in the Jail Clinic by qualified medical personnel.

The Community Service Offices continued to serve as the direct link between the Police Department and the citizens in the

minority communities. Over 9,500 citizen contacts were made by these offices in 1979.

The Inspections Division conducted ten (10) inspections of various divisional operations, which resulted in positive recommendations for procedural changes to improve efficiency, accountability and increased compliance with departmental policies.

The Inspections Division completed 75 projects, which included nationwide studies and assistance to other divisions in establishing or revising procedures to improve accountability for job performance and operational efficiency.

A Black Advisory Committee was formed to serve as an advisory board to the Chief of Police on matters dealing specifically with the black community. This forum provides valuable insight into many of the problems which effect both the police and the Minority communities.

These major accomplishments listed above deal specifically with the issues presented by the Civil Rights Commission. I have included in the attachments of this correspondence all the positive accomplishments of 1978 and 1979 as well as the Annual Reports for 1977 and 1978 (See Attachments A, B, C & D). The Annual Report for 1979 has not been completed at this time. The major accomplishments are also reflective of the commitment by the staff of the Police Department to improve accountability for individual police conduct. We, as police officers and public servants, must be held strictly

accountable for our use or misuse of authority. When we are no longer required to account for our actions, then we will no longer have a democratic society. The professional attitude of the staff in demanding total accountability, and the professional attitude of the police officers in accepting these demands was demonstrated in recent events in which major cases involving this department were either brought to the attention of the authorities by the police, or the police significantly participated in the investigation and trying of the cases.

Furthermore, many steps have been taken by the Houston Police Department to specifically improve accountability for individual police conduct. Among the major steps taken were: the reduction in the ratio between subordinates and supervisors; the creation of an Internal Affairs Division; improved efforts in the area of In-Service Training; longer Police Academy attendance at the entrance level; implementation of the Field Training Officers Program; creation of an Inspections Division, implementation of the Administrative Disciplinary Committee and various policy and procedural changes which more closely guide the activities and behavior of police officers. Many of these were also included in the major accomplishments listed above but I feel that they should also be discussed here, as they directly reflect the Department's efforts to improve accountability.

First, the reduction in the ratio of subordinates to supervisors has improved accountability for individual conduct. The police sergeant who has too many police officers to command is ineffective to the

police officer, to the Department or to the citizens he serves. Though there is controversy over the exact number of subordinates that a supervisor can effectively manage, it was felt that the one (1) to 9.7 ratio which was present in July, 1977 was inadequate. Consequently, new positions for supervisory personnel were sought and approved and the Police Department, as of January, 1980 enjoys a more comfortable ratio of one (1) to 8.5.

SUBORDINATE/SUPERVISOR RATIO

YEAR	*POLICE OFF.	SGT.	SUB/SUP RATIO	DET. ,	LT.	CAPT.
July, 1977	2,163	222	9.7	305	81	28
Jan., 1978	2,131	239	8.9	318	85	28
Jan., 1979	2,187	258	8.5	329	93	29
Jan., 1980	2,218	261	8.5	341	92	29

*Police Officer totals do not include Class B & C Officers

Although the ratio is probably not yet ideal, it is a positive move towards professionalization.

Second, an Internal Affairs Division was created to serve as a central complaint section for receiving citizens complaints against individual police officers or the Department. They have been successful in insuring that the integrity of investigations is maintained and that complaints are handled fairly and equitably.

Third, an extensive In-Service Training Program was instituted to substantially increase the knowledge and information necessary for the Officers to perform their police duties in a more professional

manner. Every effort is made to instill in the police officers a sense of professional identification in order that they may fully understand the policies of their superiors and to make them more receptive of efforts to make law enforcement both fair and effective. In 1977, a total of 68 In-Service Training courses were completed, as compared to three (3) completed in 1976. This represents an increase of 2,166.6%. Also, in 1978, a total of 102,918 man hours were spent in In-Service Training as compared to only 4,960 in 1976. Attachment E reflects the results of efforts to improve In-Service Training from 1976-1979. Training personnel continuously evaluate course curriculum to maintain training at a contemporary level. Training courses which are judged to be non-essential are modified or removed and replaced with other instructional material which more readily fits the needs of the Department.

Fourth, the length of time a cadet spends in the Police Academy has been extended from 16 weeks to 18 weeks. This allows for additional training and instruction prior to field assignment as a sworn police officer.

Fifth, a Field Training & Evaluation Program provides an improved training atmosphere after graduation from the Police Academy. The Probationary Police Officers are closely supervised by training officers and must demonstrate their proficiency at performing the various tasks required of them by the Department. This program helps to instill in the new officers a professional attitude which they will carry with them throughout their careers as peace officers.

Sixth, an Inspections Division was created within the Police Department to serve as a quality control unit. Operations and procedures are randomly inspected or audited by this Division to determine the extent of compliance with policies, procedures, laws, rules and regulations. Efforts are made to pinpoint areas of weakness within the system, and then recommendations for improvement are submitted. The efficiency and effectiveness of operations are also examined and appropriate suggestions and recommendations for improvement are submitted to my office for consideration by the staff.

Seventh, an Administrative Disciplinary Committee was formed to insure that departmental disciplinary action against members of the department is both fair and equitable. The Disciplinary Committee reviews the investigative file to determine that a complete and adequate investigation into the incident has been conducted. This internal review of police officers' conduct when disciplinary action may be taken insures that the police officers will be held strictly accountable for their use or misuse of authority.

Last, the concern by this Department for human life is woven into the many policies and procedures which provide the guidelines and directions for the use of discretion by police officers. The policies and procedures of the Department dealing with the use of deadly force by a police officer, firearms use and control, baton use, barricaded actor and hostage situations, fresh pursuits, arrest and detention of prisoners and burglars in the building clearly reflect the Department's concern for preserving human life and concern for

protecting the safety and welfare of all citizens. A mandatory Firearms Training and Qualifications Program has been designed for members of this Department and is in the process of being implemented. The program will insure that each officer in the Department is qualified to handle his weapon in a safe and proper manner.

I have personally appeared before hundreds of groups, organizations and committees to make known the police department's position on demanding accountability from all members of this Department. You will notice that the word "accountability" is used in each of my introductory letters to the Annual Reports. The numerous quotations listed in Attachment F are just some of those which appeared in newspapers or which I made publicly and they attest to the fact that accountability and responsibility were demanded in this Department long before the Civil Rights Commission began its hearings. (See Attachment F)

True, the Houston Police Department has not been without its own faults and shortcomings, but I submit to you that our hearts are in the right place. In those instances where it has been determined that police misconduct occurred, the Police Department has acted responsibly and decisively in dealing with these situations.

In the area of improving police-minority relations, the Police Department has made significant advancements. Spanish courses for police officers and Neighborhood Community Service Centers have proven to be some of the most positive steps toward establishing good rapport and mutual understanding between the minority communities and the Police Department. The community leaders in each

of the three (3) areas of the City where the Community Service Centers have been established have applauded the creation of these centers. Therefore, the Community Relations Division will pursue the establishment of Community Service Centers in other areas of the City. Also, the recent promotion of a Mexican/American to the classification of Captain of Police to command the Community Relations Division, which will report directly to me, should do a great deal to improve the effectiveness of this critical division.

Furthermore, a Black Advisory Committee which is comprised of five (5) leaders from the Black community has been formed to serve as an advisory board to the Chief of Police on matters dealing specifically with the Black community. This forum provides valuable insight into many of the problems which affect both the police and the minority communities.

Public accusations against members of this Department and investigations by various agencies and committees have placed tremendous psychological stresses on the officers. The mental attitude which has resulted from these psychological stresses recently caused an officer of this Department to hesitate momentarily before he took proper enforcement action against an armed assailant, and, as a result, the police officer was shot five (5) times. The officer has stated that he hesitated because he felt that he would have been subjected to a great deal of persecution if he had wounded or killed the assailant, even though he would have been acting in self defense. I submit that civic-minded individuals throughout the Nation, such as those who serve on the United States

Commission on Civil Rights, must move to create the general attitude among the citizenry that law enforcement officers will be held strictly accountable for their actions, but when those actions are proper and free from discrimination, unjust persecution of the officer by any organization will not be tolerated.

Though I believe that the accomplishments of the Houston Police Department to increase individual accountability and improve police-community relations during the past two and one-half years are at least equal to those of any police agency in the Nation, you can be certain that our efforts in these areas will not diminish in the future. Members of this Department will continue to enforce the law in a manner which insures that the constitutional and personal rights of every citizen in this City are respected and protected.

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