

POLICE PRACTICES
IN
HOUSTON, TEXAS

A staff report prepared for
the United States Commission
on Civil Rights in Houston,
Texas, September 11 and 12, 1979

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 denials 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 denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

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This report was prepared by Eliot Stanley, consultant to the Commission's study in Houston, under the direction of Gail Gerebenics, project director of the Commission's Police Practices Study.

The Houston field investigation was conducted by the following attorneys from the Commission's Office of the General Counsel: Patricia Dunn, Sylvia Eastman, Donald Inniss, Emily Marwell and Louis Wilmot. Marc Kranson directed the preliminary phases of the investigation.

Eileen M. Stein, General Counsel, retains overall responsibility for direction of the study and hearing.

Support in the preparation of the report and for this project was provided by Ana Beitia, Lorraine Jackson DeBorah Marks and Gwen Morris.

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I. INTRODUCTION

A. Purpose of Houston Study

Consistent with its mandate to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution...in the administration of justice," ^{1/} the U.S. Commission on Civil Rights determined in the Spring of 1978 to conduct a national study of police practices.

This decision arose from the increasing volume of complaints to the Commission alleging police misconduct ranging from verbal abuse to the use of inappropriate physical force to incidents involving the unwarranted use of deadly force. ^{2/} The crux of many of the complaints received is that there exists, for the individual, no effective avenue of relief from police misconduct. ^{3/}

Accordingly, two basic assumptions guided the formulation of the national project. The first was that police officers will be careful not to abuse the rights of citizens if they believe that they will be subject to administrative sanctions for violating

^{1/} Civil Rights Act of 1957 as amended, 42 U.S.C. § 1975c(a)(2).

^{2/} Memorandum, "Administration of Justice Proposal: Police Study," Office of the General Counsel, USCCR, April 5, 1978, p. 1.

^{3/} Ibid.

departmental policies and to prosecution for violations of State or Federal laws. The second was that local governmental and police officials will institute and enforce departmental policies which protect the rights of citizens if they can be held legally accountable for the actions of their subordinates. ^{4/}

The first phase of the police practices study was completed December 12 and 13, 1978, in a consultation in Washington, D.C., at which noted authorities and spokespersons appeared and discussed significant issues involving police conduct and accountability. ^{5/} The second phase was the Philadelphia field study, which consisted of a field investigation followed by two public hearings. The first hearing was held on February 6, 1979 pursuant to the Commission's statutory authority to compel production of information by subpoena ^{6/} and the second was held on April 16-17, 1979 to receive testimony under oath from public officials and community spokespersons. ^{7/}

^{4/} Statement by Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, September 29, 1978, p. 3.

^{5/} Proceedings, Police Practices and the Preservation of Civil Rights, U.S. Commission on Civil Rights consultation, Washington, D.C., December 12-13, 1978, seriatim.

^{6/} 42 U.S.C. § 1975(f) and (g).

^{7/} See Police Practices in Philadelphia, Pennsylvania, a staff report prepared for the U.S. Commission on Civil Rights in Philadelphia, April 16-17, 1979.

The third and current phase of the police practices study is the Houston field investigation and hearing. The fourth and final phase will entail the development of a report of the Commission's findings and recommendations to be submitted to the Congress and the President.

The Houston investigation and hearing were prompted by several factors. At the time this Commission decided to undertake a national study of police practices in April, 1978, several highly publicized instances of police misconduct in Houston were receiving national attention. These included the Torres, Webster, and Joyvies cases, all based on events occurring in previous years but brought to light or under prosecution in early 1978. ^{8/} The handling of these and less publicized instances of police misconduct by both the Houston Police Department, internally, and by the criminal justice process external to the Department appeared timely and worthwhile for study as part of a national inquiry.

^{8/} See United States v. Denson, 588 F.2d 1112 (5th Cir. 1979), involving the drowning death of Jose Campos Torres in a Houston bayou, in which three Houston police officers were convicted for violation of Federal civil rights February 8, 1978 and sentenced on March 28, 1978. See also United States v. Mays, et. al., Cr. No. H-78-91 (S.D. Tex., filed June 2, 1978), involving an indictment returned June 2, 1978 in connection with the shooting death of Randall Alan Webster in Houston; convicted on April 4, 1979 and sentenced on May 14, 1979. See also United States v. Plaster, et. al., Cr. No. H-78-178 (S.D. Tex., filed Dec. 14, 1978), involving the shooting death of Billy Keith Joyvies. Officers involved in this case were fired from the Houston Police Department on April 26, 1978.

In addition, the administration of justice in the southwest, including the State of Texas, has been a matter of continuing concern to this Commission. As early as 1967, the Texas State Advisory Committee to the Commission issued a report on the administration of justice in Starr County, Texas; ^{9/} in 1970 a report entitled Mexican Americans and the Administration of Justice in the Southwest was issued by the Commission which treated such areas as complaints of excessive and discriminatory use of force, inadequacy of local remedies (including internal and external complaint procedures), problems in grand jury composition, and the need for more intensive Federal investigations of police abuse. ^{10/} While these earlier reports did not deal with police practices in the City of Houston, subsequent reports of police problems in Houston, such as the Torres case, ^{11/} called for renewed Commission concern.

^{9/} The Administration of Justice in Starr County, Texas, a Report of the Texas State Advisory Committee to the U.S. Commission on Civil Rights, 1967.

^{10/} Mexican Americans and the Administration of Justice in the Southwest, a Report of the U.S. Commission on Civil Rights, Washington, D.C., 1970.

^{11/} Federal Bureau of Investigation statistics cited by Houston Police Chief Caldwell in his appearance at a Commission meeting, November 13, 1978, provided additional reason for concern: The Houston Office of the F.B.I., which covers south and east Texas including the City of Houston, reported that it received 316 complaints of police brutality from July, 1977 to June, 1978, the largest number of any office in the nation. Chief Caldwell further reported that from July, 1974 to June, 1977, the Houston F.B.I. office had received 182 complaints of police brutality from Houston, about 31% of the total from the region served by the office (Southern and Eastern Judicial District. Attachment D).

At the same time as adverse national publicity was occurring over instances of police abuse in Houston in early 1978, it also came to the attention of this Commission that a new police administration in Houston was attempting through changes of internal policy and procedure to bring about more effective police discipline and accountability. The fact that such efforts were being made underscored the importance of studying the Houston situation closely to determine whether the attempted reforms were responsive to identifiable problems of police misconduct and to test the capability of police administrators to effectuate reforms internally. ^{12/}

During the period when the Commission was formulating its national police practices study in the Spring of 1978, Houston experienced an outbreak of public violence which appeared related to community dissatisfaction with the sentences imposed on officers convicted in the Torres case, occurring in the Moody Park area, a predominantly Mexican-American neighborhood in near northside Houston. ^{13/} The possibility that police-community relations could become

^{12/} Houston Police Chief Caldwell, in his November 13, 1978, appearance before the Commission in Washington, pointed to changes in departmental policies in such areas as firearms use, pursuit in automobiles, and entry of premises to apprehend suspected burglars, as illustrative of efforts to bring about constructive change. He stated that one result of these changes had been a decrease of 26% in discharge of firearms incidents from 1977 to 1978 in the Houston police force.

^{13/} Recounts of this incident are contained in The Houston Post, April 19, April 27, and May 15, 1979.

a source of wider public violence in Houston required careful consideration in light of the documented relation of police abuse to the urban violence of the 1960's. ^{14/}

In addition to the above, other activities which have their origins in the Houston community point to a degree of local concern about police practices here. Among these are the formation in May, 1977 of the Coalition for Responsible Law Enforcement, in which such organizations as the Houston Council on Human Relations and the Community Relations Service of the U.S. Department of Justice were involved. ^{15/} In recent weeks, this Coalition has succeeded in securing agreement by the Mayor and Chief of Police to meet with a newly constituted "Police Advisory Committee for Continued Improvement," comprised of representatives of fifteen community organizations and additional mayoral appointees, to establish a regular dialogue on the subject of police-community relations in Houston. ^{16/} Another project in police-community relations, which includes a police misconduct monitoring function, is the Public Interest Advocacy Center (PIAC) of Houston. ^{17/}

^{14/} Report of the National Advisory Commission on Civil Disorders (Kerner Commission), Washington, D.C., 1968.

^{15/} Interview, Lawrence Spencer, Executive Director, Houston Council on Human Relations, April 5, 1979.

^{16/} Ibid., follow-up, May 25, 1979.

^{17/} Funded by the Federal Law Enforcement Assistance Administration, the PIAC began police abuse monitoring January 15, 1979. A similar monitoring effort in Philadelphia, that of the Public Interest Law Center of Philadelphia (PILCOP) is now in its tenth year of operation.

Several other public or quasi-public entities have manifested interest in one or more aspects of law enforcement in Texas. The Texas Advisory Commission on Intergovernmental Relations conducted hearings in Houston, Dallas and San Antonio in 1978 which developed information for professional standards for local law enforcement officers published the following year; ^{18/} the Steering Committee on Texas Law Enforcement and Community Relations conducted a symposium on contemporary issues in police-community relations in March, 1979 in San Antonio, with participants from Houston attending; ^{19/} the Texas Commission on Law Enforcement Officer Standards and Education has also been active in the general effort to upgrade professional standards and improve police-community relations throughout the state and has provided resources to assist the work of the Steering Committee on Texas Law Enforcement and Community Relations, among other projects. ^{20/} Hearings were also conducted on May 4, 1979 at an ad hoc meeting of the

^{18/} Professional Standards for Local Law Enforcement Officers, Report of the Texas Advisory Commission on Intergovernmental Relations, Austin, Texas, 1978.

^{19/} The Steering Committee is coordinated by the Community Relations Service, U.S. Department of Justice; it is co-chaired by Ruben Bonilla, Jr., State Director, League of United Latin American Citizens (LULAC) and by Chief Frank Dyson of the Austin Police Department; Chief Harry Caldwell of the Houston Police Department is a member of the Steering Committee.

^{20/} Interview, Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), March 14, 1979.

Subcommittee on Crime and Law Enforcement, Committee on the Judiciary, U.S. House of Representatives, at Texas Southern University in Houston, chaired by Representative ^{21/} John Conyers, Jr., of Michigan.

The objectives of the Commission's project are necessarily influenced by the current state of the law, both in this state and nationally. In our study, the conduct of local governmental and police officials is being scrutinized in the context of institutional mechanisms which encourage or discourage misconduct and complaint reconciliation. While the conduct of individual officers in individual cases is being investigated, it is not for the purpose of establishing either the guilt of the officer or of those who may have failed to properly supervise or discipline that officer. This Commission is interested in determining how the system under which the officer operates can be modified to minimize the potential for abuse, while still protecting the due process rights to which police officers are entitled.

^{21/} Testimony was received by the Subcommittee from representatives of the Mexican American Legal Defense and Educational Fund (MALDEF) on police brutality cases involving Mexican Americans nationally, from the Public Interest Advocacy Center of Houston on its activities and from other organizations and individuals.

B. Description of Houston.

Founded in 1836 by two land speculators from New York, the City of Houston had, by 1970, become the largest city in the southern United States, and the largest city in Texas, and the sixth largest city in the United States. ^{22/} By 1979, its population had increased to 1,710,000, and Houston was, in 1978, ranked fifth largest city by the Houston Chamber of Commerce. ^{23/} Having served briefly as the capital of Texas shortly after its creation, Houston is now the county seat of Harris County. ^{24/}

As the fastest growing major city in the United States, Houston is experiencing dramatic economic activity which parallels the population shift to the American sunbelt. The city is the ninth largest manufacturing center in the nation; it is a center for space science, technology, and medical advances and 29 of the 30 largest U.S. oil companies have management activities here. ^{25/} Two hundred companies have relocated their headquarters, subsidiaries, or divisions

^{22/} The Handbook of Texas, A Supplement, Volume III, Eldon S. Banda, Editor, The Texas State Historical Association, Austin, 1976, p.407.

^{23/} Houston Data Sketch, Houston Chamber of Commerce, July, 1978.

^{24/} The Handbook of Texas, op. cit., 407.

^{25/} Houston Data Sketch, op. cit.

in Houston since 1970.^{26/} Nearly one-fourth of the nation's refining capacity and one-fourth of the nation's oil and gas transmission companies are in the Houston area; further, at least 50% of all petrochemicals produced in the United States are made in the Houston-Galveston metroplex.^{27/} With the surge of economic activity, which has been strong since World War II but has accelerated since 1965, Houston has an unemployment figure which averaged 4.4% in 1977.^{28/}

While Houston may justifiably be considered the Energy Capital of the United States, if not the world, as asserted by its Chamber of Commerce, its personality and character are inevitably influenced by its location in southeast coastal Texas. Houston sits as the magnetic center of three quite different cultural zones--East Texas, the Gulf Coast, and Central Texas.

The first of these, East Texas, is described by one author as a "biracial society with many dual social and economic institutions...a social and cultural extension of the Old South."^{29/} The Gulf Coast, due to its

^{26/} Ibid.

^{27/} Ibid. The petrochemical industry is connected by a maze of pipelines known as the "Spaghetti Bowl," among 140 chemical plants, refineries, salt domes, and gasoline processing plants, providing great economies in transmission.

^{28/} Ibid.

^{29/} Understanding Texas Politics, Richard H. Kraemer, Ernest Crain, and William Earl Maxwell, West Publishing Company, rev. ed., 1975, p.12. Similar dual towns for Mexican-Americans are found in South Texas.

economic growth in both shipping and natural resources, is characterized by the same author as having a social and economic elite made up of newly rich, often well-educated people, many from the northern and eastern United States. It is an "area (which) is cosmopolitan, has a modern outlook, and is less bound by tradition than other parts of the state."^{30/} Central Texas, which includes the triangle formed roughly by Dallas in the north, San Antonio in the west, and Houston in the east, is described as having "...cultural traits from all the other areas of Texas, although no single one dominates enough to stamp its distinctiveness on the entire section... a microcosm of Texas culture, it is diversified in terms of agriculture, industry, and population."^{31/}

Dominant patterns of settlement into the Houston area have included black and white Protestant fundamentalists from the Lower South (Louisiana, Alabama, Mississippi), white Europeans, Catholic and Protestant, from ports of entry at New Orleans or Galveston, and Mexican-Americans, largely Catholic, from Mexico and the Southwest.^{32/}

^{30/} Ibid., 12.

^{31/} Ibid., 15.

^{32/} Ibid., 10. Based on D.W. Meinig, Imperial Texas: An Interpretive Essay in Cultural Geography, Austin and London, University of Texas Press, 1969.

The largest minority group in Houston is the black population, which comprised 22.9% of the city population in 1960 and now comprises 24.8% of the city population in 1979. Mexican-American population for the city of Houston is estimated at 13.5% for 1979, with other non-white or non-black minorities making up less than one percent of the city population. ^{33/} A political scientist in Houston estimates that the general high employment of the area has resulted in a black population with about 50% in the working class and about 20% under or unemployed. He also states that the Hispanic population, which he estimates to have about one-fifth undocumented alien composition, is generally less well established in the working force, competing with blacks in non-union construction jobs particularly. The size of the black middle class he places as about 30% of the black population of Harris County; the Hispanic middle class amounts to about 15-20%. ^{34/} The white population of Houston, according to the same analyst, is largely managerial and technical, relatively

^{33/} U.S. Commission on Civil Rights, Southwest Regional Office, Police Project, memorandum, June 28, 1979. (For 1977, the profile reports that Blacks made up 5.6% of the total police officers; Mexican-Americans, 5.7%.)

^{34/} Interview, Richard Murray, Associate Professor, University of Houston, April 5, 1979. Based on a 13-year study of voting patterns.

uninvolved in "blue-collar" occupations. One effect of what this political scientist describes as "the giant money machine" which makes Houston prosperous is the lack of group organization or cohesion to express support for strong governmental policy, despite polls conducted which show that transit, crime and police behavior are among the leading concerns of all segments of the Houston population. ^{35/}

The history of intergroup relations in Houston has only sporadically attracted national attention, despite the opinion of some community leaders that certain events in that history have contributed to police-community relations problems in the present. ^{36/} Houston experienced a riot on August 23, 1917 in which about 150 black troops stationed at a temporary army training center near the city retaliated to the arrest of a black woman by going on a rampage which left seventeen persons dead, among them five police officers. ^{37/} Thirteen of the troops were subsequently executed for the killings. A second and more recent incident involving the death of a police officer was the May, 1967 riot among

^{35/} Ibid.

^{36/} Interview, Moses LeRoy, Board Member, Houston Chapter, NAACP, March 9, 1979.

^{37/} Handbook of Texas, op.cit., p.800. The 5 police casualties head the list of honored dead in the Department's annual reports.

black students at Texas Southern University in Houston, in which two students and two additional police officers were wounded in a night of violence; 488 persons were arrested with the cause of the riot apparently being the arrest of a student by police. ^{38/} The Moody Park incident of May 7, 1978 occurred following festivities celebrating Cinco de Mayo, the national holiday of Mexico, in a predominantly Mexican-American neighborhood of Houston. Those subsequently convicted of inciting the violence were members of a group called the Revolutionary Communist Party who exhorted members of a crowd at the park to vent their anger at police for the murder of Jose Campos Torres, for which several officers had received light sentences in March, 1978 following Federal civil rights convictions. ^{39/} Although there were no fatalities in the disturbance, 83 ^{40/} police were reported injured and persons were arrested.

Aside from these sporadic outbreaks of public violence, there are many examples of positive intergroup cooperation in Houston.

^{38/} Ibid., 800 and 413.

^{39/} "Moody Park Violence Described," The Houston Post, April 27, 1979.

^{40/} Memorandum, Office of the General Counsel, USCCR, re "Meeting with Mayor McConn," April 3, 1979.

Many of these areas of positive intergroup cooperation have revolved around the work of the Houston Council on Human Relations, founded in 1958; at present the Council has 1,600 members and an annual budget of \$173,000. ^{41/}

A joint project of the Council and the Houston Police Department in 1968 resulted in a 70% reduction in the number of alleged brutality complaints the following year. ^{42/} Other constructive work has occurred in minority employment in Harris County government, aspects of school desegregation and housing; and corporate/community involvement in equal employment opportunity conferences. ^{43/}

Government Structure ^{44/}

The structure of government in the City of Houston is based on the provisions of the Charter of the City of Houston which was adopted by the Texas state legislature

^{41/} Interview, Lawrence D. Spencer, Executive Director, Houston Council on Human Relations, April 5, 1979.

^{42/} Ibid.

^{43/} Interview, Milt Feiner, Deputy Director, HCHR, May 29, 1979.

^{44/} Information in this section excerpted from Memorandum, Houston Government Structure, Donald Inniss, Attorney-Advisor, Office of the General Counsel, USCCR.

on March 18, 1905. ^{45/} The 1905 Houston City Charter evolved from a series of charters that had preceeded it and a movement for a general reform in the structure of government which began in 1902. ^{46/} The Charter provides for a mayor-council governing body which is composed of the mayor and eight councilmen, each elected to two year terms. ^{47/} Of the eight councilmen, five are required to reside in representative districts designated A through E but all are elected at-large. ^{48/}

All administrative and executive powers are vested in the mayor. ^{49/} As the chief executive officer of the city the mayor is responsible for the conduct of the executive and administrative functions of the city, for ensuring that all laws and ordinances are enforced within

^{45/} Charter of the City of Houston, Article II, Section 1.

^{46/} Houston The Bayou City, David G. McComb. University of Texas Press (1969), pp. 71-72.

^{47/} Charter of the City of Houston, Art. V, Sec. 1.

^{48/} Charter of the City of Houston, Art. V, Sec. 4.

^{49/} Ibid., Art. VI, Sec. 7 and 7a.

the city limits and is empowered to appoint and remove any officer of the city except the councilmen and the controller. ^{50/}

Article II, Section 16 of the Charter authorizes the establishment and maintenance of a police department by ordinance to enforce all laws and ordinances and to maintain "peace and good order." The police department may also prescribe the duties of policemen and regulate their conduct. ^{51/} The police department of the city of Houston and the office of the chief of police were created by Sections 34-1 and 34-2 of Chapter 34 of the Houston Code.

The chief of police, who is appointed by the mayor and confirmed by the city council, is the executive head of the police department but is subject to the orders of the city council and mayor. The chief of police is responsible for the management of the department and is authorized to promulgate administrative rules and regulations, with the approval of the mayor, governing assignments, conduct, equipment, duties and responsibilities. ^{52/} The police chief may also discipline employees of the department,

^{50/} Ibid., Art. VI, Sec. 7a.

^{51/} Ibid., Art. II, Sec. 16.

^{52/} Ibid., Sec. 34-3.

subject to the City Charter, ordinances, rules and regulations of Civil Service Commission, for violation of the rules and regulations promulgated by him. ^{53/}

The police chief does not have the authority to appoint his assistants and deputies. The positions of assistant chief and deputy chief are filled by permanent appointment from eligibility lists maintained by the Civil Service Commission. ^{54/} The chain of authority for the police department runs from the assistant chiefs to the police chief to the city council and mayor. ^{55/}

The city council is vested with all legislative powers and councilmen are expressly prohibited from exercising any administrative powers or from being a head of any city department. ^{56/} The city council has subpoena power and the authority to conduct inquiries and investigations pursuant to its legislative powers. The city council must defer to the mayor, except for the purpose of inquiry, when dealing with administrative matters for which the mayor is responsible. ^{57/} In actual practice, for the purpose

^{53/} Ibid., Sec. 34-3.

^{54/} Title 28, Cities, Towns and Villages, Chapter 22, Art. 1269m, Sec. 12.

^{55/} Houston Code, Chapter 34, Art. 1, Sec. 34-2.

^{56/} Charter of the City of Houston, Art. VII, Sec. 10.

^{57/} Ibid., Sec. 7a.

of requesting an investigation from the police department into acts of police brutality and misconduct, city council normally works through the mayor. ^{58/} The city council shares with the mayor, the authority to prescribe rules and regulations governing the operation of each administrative department, ^{59/} but, again, usually allows the mayor to exercise this authority. ^{60/}

Civil Service

The majority of city employees are subject to the Civil Service Regulations and Laws. The Civil Service Commission was established by Charter ^{61/} to provide, among other things a system for classifying all positions of employment in the city government (except positions specifically exempted from civil service under the Charter) and determining through examinations those applicants who are best qualified to fill those positions. ^{62/}

^{58/} Interview, Judson Robinson, City Councilman, April 3, 1979.

^{59/} Charter of the City of Houston, Art. VI, Sec. 7a.

^{60/} Interview, Judson Robinson, City Councilman, April 3, 1979.

^{61/} Charter of the City of Houston, Art. Va, Sec. 1.

^{62/} Ibid., Sec. 2.

With the exception of all department heads and a limited number of assistants, all city employees are appointed to their respective positions from eligibility lists maintained by the Director of the Department of Civil Service. All department heads (except the city controller who is elected) are appointed by the mayor and serve at his pleasure. ^{63/}

The Civil Service Commission is composed of three persons appointed by the mayor and confirmed by the city council. ^{64/} The members of the Civil Service Commission elect one of its members as chairperson who presides at the meetings of the Commission. Two Commissioners present at scheduled meetings constitute a quorum.

The Office of Director of the Department of Civil Service is created by ordinance and the director is appointed by the mayor. ^{65/} The director is responsible for keeping all "the minutes of the meetings and proceedings and all the books, records, etc., of the Civil Service Commission." The director also serves as the secretary and the chief examiner of the Civil Service Commission. ^{66/}

^{63/} Ibid., Sec. 7a(2).

^{64/} Ibid., Sec. 1, Article Va.

^{65/} Houston Code of Ordinances, Chapter 12, Art. II, Sec. 12-2(a).

^{66/} Houston Code of Ordinances, Chapter 12, Art. II, Sec. 12~~1~~2(b).

The Police and Fire Departments are subject to the State's Firemen and Policemen's Civil Service Law adopted specifically for those departments by the City of Houston in 1948. ^{67/} The Charter requires all department heads to report all suspensions of employees to the Civil Service Commission. ^{68/} All department heads may suspend any Civil Service employee for violations of the Civil Service rules and regulations without the mayor's approval for a period not to exceed fifteen (15) calendar days. ^{69/} The chiefs of the Fire and Police Departments may suspend indefinitely any employee provided they file a written statement with the Commission giving the reasons for the suspension and furnish a copy of the statement to the suspended employee. Employees of these two departments may not be suspended indefinitely for an offense which occurred more than six months prior to the date of suspension. ^{70/}

^{67/} Title 28, Cities, Towns and Villages, Chapter 22, Art. 1269m.

^{68/} Charter of the City of Houston, Art. Va., Sec. 3.

^{69/} Houston Code of Ordinances, Chapter 12, Art. II, Sec. 12-182(b).

^{70/} Title 29, Cities, Towns and Villages, Chapter 22, Art. 1269m, Sec. 16.

The Legal Department

The Legal Department of the City of Houston is one of twenty-four city departments. Section 2-140 of the Houston Code of Ordinances provides the statutory authority for its creation. The City Attorney, appointed by the mayor and confirmed by the city council, heads the department and serves as the chief legal officer of the city. ^{71/} The Department serves as legal counsel to the police department, as it does to all of the other Houston City departments and represents the city in all legal matters. ^{72/}

The Legal Department plays an important role in the police chief's decision to indefinitely suspend an officer for violation of the department's rules in that the Department's internal investigation is done under the general supervision of the Administrative Law Section of the Legal Department. ^{73/}

71/ Houston Code of Ordinances, Chapter 2, Sec. 2-141.

72/ Houston Code of Ordinances, Sec. 2-142.

73/ Interview, Dennis C. Gardner, Senior Assistant City Attorney, April 3, 1979.

District Attorney

The Office of District Attorney was first created in Texas by the Texas Constitution of 1836. The Texas Constitution of 1845 as amended in 1851 made the office elective. ^{74/} The present Texas Constitution, Article 5, Section 21, refers incidentally to the District Attorney, appearing to assume rather than require his existence.

("The Legislature may provide for the election of District Attorneys in such districts, as may be deemed necessary....") ^{75/}

Section 1 of Article 326K-26 of Vernon's Annotated Revised Civil Statutes of The State of Texas provides for a District Attorney for the Criminal District Court of Harris County who is elected to a term of office every four years. ^{76/} The District Attorney and his assistants are empowered to represent the State of Texas in criminal cases brought before the district and inferior courts of Harris County. ^{77/}

^{74/} Vernon's Constitution of the State of Texas Annotated, Article 5, Section 21.

^{75/} Ibid; Interpretative Comments.

^{76/} Vernon's Annotated Revised Civil Statutes of the State of Texas, Title 15, Article 326K-26, Sections 1 and 2.

^{77/} Ibid., Section 3.

The Grand Jury

The constitutional and legislative basis for the establishment of grand juries arises out of the rights of an accused: "...No person shall be held to answer for a felony unless on indictment of a grand jury." ^{78/} The grand jury, composed of members of the community, is the only citizen participatory group available to hold police officers accountable for acts of abuse and misconduct.

Grand jurors in Texas are selected by the commissioner method or the "key-man" method as it is commonly called. In this method of selection, the state district judges select and appoint three to five persons from different parts of the county to serve as jury commissioners. ^{79/} The commissioners secure from the district clerk a list of those who are either exempt or disqualified from grand jury service and the last tax assessment role of the county. With this information, the commissioners are free to select not less than 15 nor more than 20 prospective grand jurors. ⁸⁰

78/ Vernon's Texas Statutes Annotated Code of Criminal Procedure, Chapter 20, Article 20.02.

79/ Vernon's Texas Statutes Annotated Code of Criminal Procedure, Chapter 19, Article 19.01.

80/ Ibid., Article 19.06.

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. ^{81/} The judge upon receiving the list conducts an inquiry as to the prospective jurors qualifications, and the first twelve who are qualified are impaneled as the grand jury for a basic term of three months. ^{82/}

Evidence obtained from a study of the grand jury system in Harris County seems to indicate 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 their appointment. ^{83/}

The main criticism of the grand jury system, as it functions in Harris County, is that grand juries are not representative of the community as a whole. ^{84/} Based on a study of the composition of grand juries in Harris County between 1969 and 1972, the author of the study concluded that "the typical Harris County grand juror is an Anglo-

^{81/} Ibid., Article 19.09.

^{82/} Ibid., Article 19.28.

^{83/} The Commissioner Method Of Selecting Grand Jurors: A Case of a Closed and Unconstitutional System, by Robert A. Carp and Claude K. Rowland, 14 Houston L.R. 386 (1977).

^{84/} The Commissioner Method of Selecting Grand Jurors: A Case of a Closed and Unconstitutional System, by Robert A. Carp and Claude K. Rowland, 14 Houston L.R. 371 (1977).

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." ^{85/}

The grand jury is empowered to conduct inquiries or investigations into all offenses that may be indictable which are known to any grand juror, or of which it is informed by the District Attorney or any other credible person. ^{86/} After hearing all evidence in a case, the grand jury may indict if nine jurors concur. ^{87/} The deliberations of the grand jury are secret and any juror, witness or court official who divulges any information brought before the grand jury is subject to being held in contempt of court and may be fined not more than \$500 and imprisoned not more than 30 days. ^{88/} The District Court Judges alone have the power to call grand juries into existence. ^{89/}

^{85/} The Harris County Grand Jury - A Case Study, by Robert A. Carp, 12 Houston L.R. 90 (1974).

^{86/} Vernon's Texas Statutes Annotated Code of Criminal Procedure, Chapter 20, Article 20.09, p. 451.

^{87/} Ibid., Article 20.19.

^{88/} Ibid., Article 20.02.

^{89/} Robinson v. State, 274 S.W. 137 (1925).

D. Profile of the Houston Police Department

As of January 1, 1979 the Houston Police Department consisted of 2,906 uniformed personnel (Class A Houston Civil Service). ^{90/} The average age of all officers, including probationary new entrants, was 33.4 years; average longevity in the Department excluding the probationary group was 9.9 years. ^{91/} A total of 408 officers had 20 or more years of service (14%); 572 had 11-19 years of service (19.7%) and 1,926 had 10 years or less of service. ^{92/} At the time Harry D. Caldwell was appointed Chief of Police in mid-1977, force strength was roughly 2,800, ^{93/} meaning that about 100 new officers have joined the force in the last two years and that about 97% of the officers were on the force when Caldwell took over.

A brief history of police department leadership in recent years is required for a full understanding of the department's present situation. From 1964 to 1974, the Chief was Herman Short, who ran a "tight ship" and became, as one person has described it, "a symbol of law and order." ^{94/} Members of the

^{90/} Figures provided by Houston Police Department as an addendum to 1978 Equal Employment Opportunity Plan.

^{91/} Ibid.

^{92/} Ibid.

^{93/} Houston Police Department, Classification Chart, December 31, 1977 (Part of EEOP). Shows total force of 2,817.

^{94/} Interview, George Strong, formerly Executive Assistant to Mayor Fred Hofheinz, April 6, 1979.

present police force having between 5 and 15 years of service (1,227 or 42.2%) were brought in during the Herman Short years. Following Short's ten-year administration, the Department had five succeeding Chiefs from 1974 to 1977 prior to Caldwell's appointment in June, 1977. Of the five, two were made permanent chief by mayoral appointment. There were three periods of "acting" chiefs held by two persons, one of whom served two acting periods interrupted by another's brief tenure.^{95/} Inasmuch as the Houston City Charter provides that a Chief of Police serves at the pleasure of the Mayor, and Mayors stand for election every two years, politics has repeatedly become involved in police department leadership.^{96/} Chief Caldwell was appointed permanent Chief by former Mayor Fred Hofheinz.^{97/}

^{95/} One of the briefly tenured permanent chiefs, Carrol Lynn, was convicted of Federal obstruction of justice in connection with a scheme to influence a Federal prosecution in return for money.

^{96/} Interview, George Strong, op.cit. Caldwell's immediate predecessor, B.G. "Pappy" Bond, considered a race for mayor; and Herman Short's tenure was an issue in the mayoralty races of that period.

^{97/} Caldwell has served on the Houston Police Force for 25 years. He was an Assistant Chief under B.G. Bond, in charge of the Inspections Command, which included recruiting, personnel, training planning and research, and other special projects. Under the preceding acting Chief, R.J. Clark (1975), Caldwell was Deputy Chief in charge of special services--communications, dispatchers, garage, jail, and supply divisions. Under Chief Herman Short, Caldwell, by 1973, was an Inspector in charge of Staff Services, which then included the police academy, community relations, training, personnel and juvenile divisions. Source: Houston Police Department Annual Reports 1973-1977.

Coinciding with the seven changes of leadership since 1974, the Annual Reports reveal almost yearly redrafting of the departmental organizational chart. Under Chief Caldwell the Department is divided into three Commands each headed by an Assistant Chief: the Field Operations, Investigations, and Support Commands.^{98/} Each Bureau consists of several divisions headed by Captains, with minor exceptions.^{99/}

The Internal Affairs Division, which receives complaints of police misconduct and conducts investigations (treated at greater length in Section III--Discipline and Complaint Process) first appears in the departmental organization chart in the 1976 Annual Report issued under Chief B.G. Bond. At that time, Internal Affairs was designated as a temporary activity under the Inspections Command headed by Assistant Chief H.D. Caldwell. On becoming permanent Chief, Caldwell instituted the Internal Affairs Division as a "full time" division within the Office of the Chief of Police.^{100/}

The reasons for creation of an Internal Affairs Division were explained as follows:

Perceiving that it has become impossible for the Police Department to maintain adequate accountability of officer conduct by investigations through the Legal Department (of the City) and through the Division where

^{98/} Houston Police Department Organizational Chart, H.D. Caldwell, Chief, undated.

^{99/} Ibid.

^{100/} Materials presented by Chief Caldwell to the U.S. Commission on Civil Rights, November 13, 1978, p.1 of presentation.

an officer is assigned, Chief Bond, on June 2, 1977, set up the Internal Affairs Division. Staffed with six (6) of the Department's finest officers, the I.A.D. now serves as the 'conscience' of the Houston Police Department. Thorough investigations are now done on every complaint received whether from citizens or from other officers. The Department remains in close contact with the Legal Department and often works together with the Legal Department on particular investigations... 101/

On May 4, 1976, Chief Bond had also established an "Administrative Personnel Review Committee," the function of which was subsequently described:

...the principal reason for the committee is to isolate officers who have demonstrated a pattern of irregular behavior over a prolonged period of time can be given specialized attention or who can be sent for psychiatric assistance. As a result of the Committee, several officers have been 'weeded out' for special help. Chief Caldwell, recognizing that all human beings have a threshold level after which they no longer have the tolerance or endurance to withstand the day-to-day pressures of police work, has continued the effective functions of the Administrative Personnel Review Committee. 102/

Tables presented in the Police Department's 1978 Equal Employment Opportunity Plan show that of the 2,383 total officers at the end of 1977, 133 were black males (5.5%) and 27 were black females (1.1%); 148 were Hispanic

101/ Letter from Alan F. Levin, Senior Assistant City Attorney, City of Houston Legal Department, to Charles Thompson, Supervisor, Civil Rights Branch, U.S. Office of Revenue Sharing, Washington, D.C., November 2, 1977, p. 9.

102/ Ibid.

males (6.2%) and 13 were Hispanic females (0.5%). A total of 150 women officers were then employed (6.3%).

Goals and timetables incorporated in the 1978 EEOP were formulated and set forth in a memorandum dated August 29, 1975. That section of the EEOP noted that all vertical movement within the Police Department was controlled by state law and civil service rules for fire and police officers of Houston, so that only entry level jobs could be subject to affirmative action. The memorandum noted that the base population figures to be used were for the Houston-Galveston area, which set the black percentage at 19.6% and the Spanish surname at 12.0%. In 1975, the Houston Police Department had 3.9% black and 5.1% Spanish surname employees; 5.4% were female.^{103/}

The goals and timetables recommended that in order to "correct" the obvious lack of Black, Spanish Surname, and Female Officers,^{104/} future cadet classes should be 15% minority, 85% non-minority and 5% female covering the racial spectrum. This was stated to be a "minimum desirable composition."^{105/} The goals projected that if this target were met for five training classes a year, there would be an increase of 30 black officers, 20 Spanish surnamed, and

^{103/} EEOP, Houston Police Department, Section VI. There were 2,589 officers in 1975, so 101 were black, 132 were Spanish surname, and 140 were female.

^{104/} Ibid.

^{105/} Ibid.

15 female officers in its first year, with "the long range goal" to reach, if possible, a racial and sex distribution approximate to that of the population. Thus, after two and a half years from August 1975 to December 1977, operating under this affirmative action program, the Department had a net increase of 59 black officers of both sexes, 29 Hispanic officers of both sexes, and 10 women of all races. ^{106/} The following two tables show the pay scales of the Houston Police Department for the two separate calendar years 1976 and 1977, with distribution by race/ethnicity:

HOUSTON POLICE DEPARTMENT
JOB CLASSIFICATION CHART
DECEMBER 31, 1976 ^{107/}

CLASSIFICATION	BI WEEKLY SALARY	MALE					FEMALE				
		C	O	I	N	S	C	O	I	N	S
Police Officer Probationary	504.00	57			6	7	1				
Police Officer First Year	519.50	192	1		16	17	4			1	
Second Year	537.40	160	1	1	16	14	58			11	7
Third Year	589.90	270			11	21	8			1	1
Fifth Year	602.00	1017			44	54	18			7	3
Detention Officer	602.00						3				1
Sergeant	675.20	211			2	5					
Detective	675.20	280			5	7	14				1
Lieutenant	773.60	72				5					
Captain	896.50	28									
Deputy Chief	1119.70	9									
Assistant Chief	1343.30	4									
Chief of Police	1578.60	1									
TOTAL		2301	2	1	100	130	106			20	13

^{106/} Chief Caldwell has stated since becoming Chief that he hopes to see the Department grow to 4500 officers within five years from the time he became chief in June, 1977. In order to meet even the 1975 affirmative action goals, he would have to hire an additional 722 black officers (to reach 19.6%); 379 additional Hispanic officers (to reach 12%); and 2145 women of all races (to reach 51%).

^{107/} Source: EEOP, Houston Police Department, 1978, Section I.

HOUSTON POLICE DEPARTMENT
 CLASSIFICATION CHART
 DECEMBER 31, 1977 108/

CLASSIFICATION	BI WEEKLY SALARY	MALE					FEMALE				
		C	O	I	N	S	C	O	I	N	S
Police Officer, Probationary	549.40	42			11	6	3	1		1	
Police Officer First Year	566.30	187			29	23	3			6	
Second Year	585.80	183	1		16	17	4			1	
Third Year	643.00	273	1	1	20	25	63			11	7
Fifth Year	656.20	1062			48	55	19			8	4
Detention Officer	656.20						2				1
Sergeant	736.00	226			3	10					
Detective	736.00	288			6	8	15				1
Lieutenant	843.30	81				4					
Captain	977.20	28									
Deputy Chief	1220.50	8									
Assistant Chief	1464.20	4									
Chief of Police	1578.60	1									
TOTAL		2383	2	1	133	148	109	1		27	13

Upon becoming Chief, Harry Caldwell consolidated what had been four major commands under his immediate predecessor into three, as noted above, and expanded the office of the Chief. In the Caldwell reorganization, the Field Operations Command was left virtually the same as it had been. ^{109/} That Command is comprised of three major Bureaus--Patrol North, Patrol South, and Traffic. The Buffalo Bayou, which meanders through Houston from east to west, separates the North from South Patrol Bureaus. Traffic has general geographic jurisdiction within

108/ Ibid.

109/ I.E., in terms of the organization chart currently in use. Special Weapons & Tactics (S.W.A.T.) and details are in Patrol South.

the City.^{110/} A 1976 study which included demographic surveys and projections for Houston showed that areas of black and Mexican-American concentration existed to the east, both north and south of the Buffalo Bayou.^{111/}

Within the Field Operations Command, two-person teams in automobiles constitute the primary enforcement tool, aided by 16 helicopters, of which 5 are jets.^{112/} In the Traffic Bureau of Field Operations, use of solo officers in 113 Gremlin automobiles and three-wheel motorcycle units is made, along with twenty foot patrol and 12 meter checkers. Traffic enforcement utilizes 20 radar units, five traffic cars, and forty-four solo motorcycles.^{113/} Officers in the North and South Patrol Bureaus work in three overlapping shifts, morning (6-2,7-3) evening (2-10,3-11) and night (10-6,11-7); officers assigned to

110/ A 1977 analysis of utilization of female officers within the Houston Police Department by the Federal Office of Revenue Sharing found that "significant underutilization" of females existed in the Field Operations Command, where 1.9% of 1,720 officers were women. In the North Patrol Bureau, no women were then utilized; in the South Patrol Bureau, 8 women. Twenty-five of the 33 women in the Field Operations Command were assigned to Traffic Bureau. Similar work assignment breakdowns by race are not contained in the Department's 1978 EEOP.

111/ Houston Community Study, James E. Stafford and Robert G. Lehnen, The University of Houston, August, 1976, p. 41. The study maps show that little concentration of either black or Mexican-Americans exists or is projected to exist by 1990 west of a north-south line formed by Shepherd Drive in near westside Houston.

112/ Annual Report, HPD, 1977, p. 8.

113/ Ibid.

night shift, which begins at 11:00 p.m. tend to be the younger, less experienced "rookies" of the force.^{114/}

A breakdown of officers assaulted in Houston during 1977 showed that peak hours for such physical interaction between police and suspects were from about 9:00 p.m. to 4:00 a.m., with the most incidents occurring between midnight and 4:00 a.m.^{115/} Of 1,080 such assaults, 419 or 38.8%--the largest single category--were involved in the handling, transporting or custody of prisoners.^{116/} Of the 419 assaults in that category, 382 were inflicted by "hands, fists, feet, etc.," but were included in the designation "assault by weapon."^{117/} Of the 1,080 total assaults, 1,043 were cleared by police, meaning that the cases were referred for prosecution to the District Attorney's office.^{118/}

The second major Command under the Caldwell reorganization is the Investigations Command, consisting of the Criminal Investigations Bureau, Special Investigations Bureau and

^{114/} Interview, Assistant Chiefs B.K. Johnson and R.G. McKeehan, May 10, 1979. Assignment of officers with less than 2 years out of training academy to night shift and jail is routine.

^{115/} Annual Report, HPD, 1977, p. 39. Between midnight and 4:00 a.m., 379 assaults; between 9:00 p.m. and midnight, 306. Together, 63.4% of total.

^{116/} Ibid.

^{117/} Ibid.

^{118/} Ibid.

Staff Services Bureau. ^{119/} Within Criminal and Special Investigations bureaus are lodged the various detective units for major crimes--robbery, auto theft, burglary, homicide, narcotics, juveniles and vice. Under Caldwell's immediate predecessor Bond, these detective bureaus were housed under a single command known as Administration; Caldwell has added the staff services section (which he once headed), consisting of recruiting, personnel, planning and research, training, and psychological services, to the Investigations Command. ^{120/} Under Bond, a Community Relations Division, which has existed for over a decade in the Houston Police Department, was attached to the Administration Command. ^{121/} Caldwell removed this function from that area and has lodged it in the third major Command, Support. ^{122/}

Within the Support Command are two bureaus, Special Services and Technical Services. In the first is housed the jail, garage, communications, dispatchers, and supply; in the second, records, crime lab, crime information center, identification, and property division. ^{123/} The Community

^{119/} Organizational Chart, HPD, op. cit.

^{120/} Ibid.

^{121/} Annual Report, HPD, 1976.

^{122/} Organization Chart, HPD, op, cit. As noted previously, when Caldwell became chief, he elevated into the Office of the Chief the Internal Affairs Division from its lower organizational positions in the Inspections Command, which he had directed under Chief Bond's tenure.

^{123/} Organizational Chart, HPD, op. cit.

Relations Division is shown as reporting directly to the Assistant Chief in charge of the Support Command. ^{124/}

The Community Relations program of the Houston Police Department has been recognized as innovative and effective. In 1968, a program was developed which came to be called the "Houston Modification" which featured face-to-face confrontation sessions between many trainees and members of the police force and black citizens in small neighborhood meetings. ^{125/} The "Houston Approach" was described in a series of articles from the FBI Law Enforcement Bulletin by then Inspector Harry Caldwell, who supervised the division of which the program was a part. ^{126/} Annual Reports from 1970 forward do not mention this program specifically. Annual Reports for the years 1973, 1974 and 1975 give only passing mention of the community relations program of those years. However, beginning in the 1976 Annual Report under Chief B.G. Bond, the listing of detailed community relations activities is carried in the Annual Reports; no mention is made of the continuation of the "Houston Approach".

^{124/} Ibid.

^{125/} This program was mentioned in a Houston study funded by the Law Enforcement Assistance Administration, U.S. Department of Justice, designed to demonstrate how urban violence could be prevented by better police-community communications. See Detection of Potential Community Violence, Blair Justice, Discrimination Document, Grant 207 (S.044), 1968.

^{126/} Caldwell, H.D. "The Challenge of Police-Community Relations Training," FBI Law Enforcement Bulletin, August and September, 1974.

During 1976, Chief Bond made 100 speeches and several radio and television appearances. In addition, a total of 353,498 contacts were made with the public during that year as part of the community relations effort. ^{127/} The following year, Chief Caldwell's first, the Chief made 92 speeches, six television and fourteen radio programs; a total of 344,810 contacts were made with the public by the departmental community relations program. ^{128/}

During 1978, the Department established "Community Service Centers" (neighborhood storefronts) in predominantly Mexican-American neighborhoods to serve as a direct contact point between the Police Department and those communities. ^{129/} Officers assigned to those centers often act as a referral source for local people, directing them to the proper service agency. Officers also fill out accident or other forms for persons who need assistance because of language or literacy problems. The rent for the office space for the centers is paid by the Houston Police Officers' Association. ^{130/}

^{127/} Annual Report, HPD, 1976, p. 32.

^{128/} Annual Report, HPD, 1977, p. 33.

^{129/} Houston Police Department, Positive Accomplishments, 1978, H.D. Caldwell, Chief of Police, p. 9, submitted as part of the Chief's presentation to the USCCR on November 13, 1978.

^{130/} Interview with Sergeant Leggio, Houston Police Department, December 20, 1978.

II. POLICE ADMINISTRATION: RECRUITMENT, SELECTION & TRAINING

A. Overview

But problems, such as civil rights violations are deep-rooted. A propensity for civil rights violations in the South and Southwest regions of this country did not occur over night nor will it be eradicated over night. The measures presented so far, are short range in nature. These changes were implemented to fight the immediate problems. However, this is not the primary answer for today or for the future. Rather, these long developing attitudes both in officers and citizens, can only be corrected and changed through an intricate and complex managerial process over a long period of time. Such a systematic management process is underway in the Houston Police Department. The benefit to be derived is a change in attitudes on the part of officers presently employed and those to be hired in the future. Problems regarding civil rights violations will be identified and corrected before they occur. 1/

With an estimated strength of 2,906 uniformed personnel to police a population of 1,623,000 in 1978, the Houston Police Department had 2/ roughly one officer for every 558 persons in the city population. Geographically, this force of 2900 had responsibility for more than 540 square miles, providing fewer than 6 officers per square mile. By contrast, the Philadelphia Police Department, which this Commission recently examined, has a few more than 8000 uniformed personnel to police a population of 1.8 million (1: 225) in a much more compact and densely populated area. 3/ The implications of these gross statistics were

1/ H.D. Caldwell, Chief, Houston Police Department, Statement to the U.S. Commission on Civil Rights, November 13, 1978, p.2.

2/ Population estimate: Houston Data Sketch, Houston Chamber of Commerce, op.cit.; police strength estimate: addendum to 1978 EEOP, Houston Police Department, op.cit.

3/ Police Practices in Philadelphia, Staff Report to the U.S. Commission on Civil Rights, April, 1979, p.18, 34.

addressed in the Police Department's 1978 Equal Employment Opportunity Plan:

1. Business economic indicators, conservatively interpreted, provide a statistical projection of unprecedented growth well past the turn of the century; ^{4/}

2. The Houston Police Department is faced with the problem of providing professional, efficient, and effective police services in a city where "the most optimistic plans regularly are proven too conservative"; ^{5/}

3. Concurrent with the city's growth, the crime problems associated with it are increasing; ^{6/}

4. Comparing the actual gain in police officers with the increase in the city's population, the Department's strength is "slowly eroding." The obvious conclusion is that the city grew faster than the Department during 1977. All indications point toward the trend's continuation unless the Department is able to recruit and train a greater number of persons during each calendar year. ^{7/}

5. Recruiting efforts in recent years have been vigorous in an attempt to attract as many qualified applicants as possible, with special emphasis on "various protected minority categories." The Department began the year

^{4/} EEOP, HPD, Introduction, p.1.

^{5/} Ibid.

^{6/} Ibid. Comparing total major criminal offenses reported to police (homicide, rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft), the figures were 115,912 for 1976; 129,733 for 1977, roughly an 11% increase. Clearances of these same categories of offense by police arrest, showed 16.6% in 1976, 16.4% in 1977. Total force strength in 1976 was 2730; in 1977 (end) it was 2817--about 4% increase. Source, Annual Reports, HPD, 1976 and 1977.

^{7/} EEOP, HPD, op.cit., Introduction, p.3.

1977 with force composition of 90% white, 4.5% black, 5.4% Spanish surnamed, and .1% other, with 5.2% female; at the close of 1977 it was 88.5% white, 5.7% black, 5.7% Spanish surnamed, .1% other, and 5.3% female. Net increase in personnel, after deducting attrition, reveals an increase of 152 officers for calendar 1977.^{8/}

6. Minority representation at the entrance and police officer levels increased by 16.2% during a calendar year 1977. At the close of the same year, the Department had experienced a 20.5% increase in the number of minorities holding positions over the beginning of the calendar year.^{9/}

7. During 1977, the Recruiting Division of the Houston Police Department contacted 25,122 persons, of whom 4,228 (16.8% of contacts) applied for employment. Of those who applied, 783 black males (18.5%), 311 were black females (7.4%), 463 were Hispanic males (10.9%), 78 were Hispanic females (1.8%), 9 were Oriental males (.1%), 1 was an Oriental female (.01%), and 372 were White females (8.8%).^{10/} Of these, 207 (4.9%) of the 4228 original applicants were approved by the Department for entry into the police training academy.^{11/} Thus 3.4% of all white applicants, of which .4% were approved for entry; .8% of all black applicants, .8% of all Hispanic applicants, and .1% of other minority applicants, were finally approved.^{12/} The

^{8/} Ibid.

^{9/} Ibid., p.4.

^{10/} Ibid., Section III, Employment Practices, unpaginated. Same statistics appear in the 1977 Annual Report, p.41.

^{11/} Annual Report, HPD, 1977, p.42. The number approved for hiring amounted to 0.82% of the original "contacts" made by the recruiting division.

^{12/} Ibid., p.42.

various stages of the recruitment and selection process are discussed in the following subsections.

B. Recruitment

The ability to attract qualified trainees is one of the most critical factors in improving standards in any profession. As standards for entry into the profession rise, the number of potential recruits who are qualified to meet these criteria declines.... The public image of law enforcement or of a particular department also has an impact on recruitment efforts. Unfortunately, incidents involving misconduct have tended to reinforce negative images and fears held by many citizens, and recruiting efforts have suffered accordingly. ^{13/}

According to the most recent recruiting brochure of the Houston Police Department, starting monthly pay for cadets (training academy entrants) was \$1180.84; probationary police officers, \$1240.20; 5th year and over, ^{14/} \$1536.82. These monthly salaries amount to a considerable increase over average Houston starting salaries in 1977, when a state-wide survey was conducted which showed that law enforcement agencies in the Houston area were paying about \$736 a month starting pay. ^{15/} The President of the Houston Police Officers Association (HPOA) stated that although the Houston Police Department is probably the highest paid in the state, the salaries are not competitive ^{16/} with rapidly expanding private industry wages and salaries in the area.

^{13/} Professional Standards for Local Law Enforcement Officers, Texas Advisory Commission on Intergovernmental Relations, Austin, December, 1978, p.52. The findings of this Report were based on public hearings held in Houston, San Antonio and Dallas in 1978.

^{14/} "Would you like to wear the badge that means you care?" Recruitment Brochure, Houston Police Department, received from HPD, May 1979. The brochure states that the Department is undertaking to double its size "in the coming years."

^{15/} Professional Standards for Local Law Enforcement Officers, op.cit., Appendix C-2, p.62. The average for all Texas Law enforcement agencies that year was \$733 starting pay.

^{16/} Interview, Captain James Albright, President, Houston Police Officers Association, March 30, 1979.

He also stated that firefighters in Houston receive the same pay as both are civil service classifications, and that for the same money people would prefer to avoid the hazards, both physical and legal, of being a police officer.^{17/} Another view of the pay scale for police comes from a community leader who stated that in past years, when many of the present force first joined, the salaries were so low that the Department was only able to attract persons of low educational background, many from small, poor conservative towns in east Texas and Louisiana.^{18/}

Under the new administration of Chief Caldwell, several noteworthy efforts have been made to step-up and improve recruitment efforts, particularly among minorities.^{19/} During 1978, the Recruiting Division contacted more than 25,000 potential recruits.^{20/} 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; and, the geographical area in which recruiting was conducted was expanded to include several additional states.^{21/}

The Deputy Chief in charge of staff services, which includes the recruiting function, stated that the majority of applicants still come from the Houston area as of late 1978.^{22/} In 1975 and 1976, the Department received grants from the Federal Law Enforcement Assistance Administration to assist

^{17/} Ibid.

^{18/} Interview, Rev. Bill Lawson, Pastor, Wheeler Avenue Baptist Church, Houston, April 5, 1979.

^{19/} Caldwell, Statement, USCCR, op. cit.

^{20/} Positive Accomplishments, 1978, op. cit., p. 7.

^{21/} Ibid.

^{22/} Interview, John Bales, Deputy Chief, Staff Services Bureau, HPD, December 19, 1978.

with both the recruiting and selection processes. Part of that money went to purchase a new travelling recruiting office which visits colleges, military bases, and community centers in an eight state area--Texas, Louisiana, ^{23/} Arkansas, Oklahoma, Georgia, Florida, Mississippi and Alabama.

While the population of Houston was increasing by about 150,000 in 1977 (about 2,800 a week), ^{24/} the Police Department was intensifying various efforts to recruit in the immediate Houston area, efforts which have continued into 1978. Among these were the Ripley House Project, in which a police officer was stationed in a minority community full-time to effectuate both recruit-^{25/}ment and general community relations objectives of the Department. A budget of \$135,000 was used for recruitment advertising, of which \$100,000 was spent in the Houston area during 1978. ^{26/} In this regard, television advertising has proved to be the most effective medium. ^{27/} In addition to the advertising campaign, the recruitment division attempted an "officer hometown" program, in which present members of the Department would return to their hometowns

^{23/} Ibid., and Interview, Lt. S.M. Nuchia, Recruiting Section, May 8, 1979. Previously, a 500-mile recruiting radius was used. During 1977, the recruiting team, which consists of men and women, and is multi-ethnic, visited '78' college campuses in 5 states, including 25 predominantly black and 16 predominantly Hispanic institutions; total black and Hispanic hires, however, for 1977 were 64 individuals.

^{24/} EEOP, HPD, 1978, op.cit, Introduction, p.2.

^{25/} H.D. Caldwell, Statement to USCCR, op.cit. However, a member of the recruiting division staff stated that the Riply House Project and 5 other neighborhood efforts have been unsuccessful. Interview, Capt. Bill White, Recruiting Division, HPD, May 7, 1979.

^{26/} Interview, Capt. Bill White, op.cit.

^{27/} Ibid.

and do radio or television "spots" to attract applicants.^{28/} A similar effort to use personal relationships of present members of the force is the "officer referral" recruitment approach, in which potential applicants are identified by current police officers.^{29/} One indication of the importance being placed on the inside referral system is that the recruitment office, which has been housed away from the Department's central headquarters, will be shortly returning there to facilitate communications with members of the present force.^{30/}

To the credit of present officials of the Department, from Chief Caldwell to officers in the recruiting division, open acknowledgment is made of the "image" problem of the Department and how this affects minority and female recruitment.^{31/} Most of these image problems are reflections of the past.^{32/} As recently as 1977, however, prominent elected leaders in Houston refused publicly to endorse black recruitment efforts by the Police Department until police brutality was ended.^{33/}

^{28/} Ibid.

^{29/} Ibid. Capt. White cited a study in which the HPD found that 55% of applicants were already coming via this route; they have found that people who know police officers often are interested in police work. As the percentage of minority officers increases, this could yield benefits in their recruitment as well.

^{30/} Interview, Ruby Allums, Police Officer, Recruiting Division, May 8, 1979. She is the only female, black recruiter and handles most of Houston recruiting of blacks and women.

^{31/} e.g., Chief Caldwell's statement to the USCCR, quoted at the head of this chapter.

^{32/} Interview, Ruby Allums, op.cit. She notes that not much success is found in recruiting efforts at predominantly black Texas Southern University in Houston, the site of police-student violence in 1967.

^{33/} "Two Solons refuse to help Bond recruit black officers," Houston Chronicle, May 11, 1977. The leaders were black state representatives Mickey Leland and Craig Washington, who called upon then Chief Bond to establish a police review commission with public members and officers. Leland is now a Member of the U.S. Congress from Houston; Washington remains a State Representative.

Another kind of internal problem affecting external image is an equal employment suit brought by 12 members of the Afro-American Police Officers League of the Houston Police Department, alleging discriminatory practices by police officials in hiring, recruitment, placement and promotion. ^{34/} According to officials of that organization, to which 145 of an estimated 180 black officers belong, Chief Caldwell has refused to meet with the League's officers and has refused recognition of their organization. ^{35/} Further, a complaint alleging discriminatory treatment of female applicants and officers in Houston's Police Department was filed with the Federal Office of Revenue Sharing, Department of the Treasury, in 1976 by members of the Houston Chapter of the National Organization for Women. ^{36/} Among other allegations, the complaint charged that the Department had raised its height requirement on January 20, 1975 from 5'0" to 5'6" and had instituted a physical agility test; the height requirement was subsequently dropped by the Department. ^{37/}

^{34/} Interview, Sgt. Richard Humphrey, Board Chair, and Officer Alvin V. Young, Sr., President, Afro-American Police Officers League of Houston and The Houston Chapter of the Texas Peace Officer's Association (oldest black police organization in the nation, founded in 1935 in San Antonio), March 1979.

^{35/} Ibid. The League also filed a complaint with the Office of Revenue Sharing in Washington, D.C., alleging discrimination, in 1977.

^{36/} Letter, Malaku J. Steen, Chief, Civil Rights Branch, Office of Revenue Sharing, Washington, D.C., to Mayor Fred Hofheinz, City of Houston, August 2, 1976.

^{37/} The height requirement was dropped when validation consultants to the Police Department in March 1977 found an adverse impact of the standard on women and Hispanic applicants and no supportable occupational qualification for it. See, A Validity Study of Police Officer Selection, Training and Promotion, City of Houston Police Department, Lifson, Wilson, Ferguson and Winick, Inc., Houston, March, 1977. Volume V, p. 42ff.

C. Selection

Every police agency should employ a formal process for the selection of qualified police applicants. This process should include a written test of mental ability or aptitude, an oral interview, a physical examination, a psychological examination, and an in-depth background investigation. ^{38/}

Of the 4,228 persons who applied to the Houston Police Department in 1977 the most recent year for which complete information is available, a total of 3,629 or 85% were rejected by the formal selection process of the Department. ^{39/} Approximately half of these unsuccessful applicants were weeded out after an initial preliminary interview with a recruitment officer--1,913 or 45.3% of the total applicant pool. ^{40/} On the basis of this preliminary interview, ^{41/} slightly less than half of all black applicants were rejected (249 of 541); 58% of all white female applicants were turned down; and, 38% of all white male applicants (848 of 2,211) were rejected. ^{42/}

^{38/} Texas Criminal Justice Standards and Goals, Governor's Executive Committee on Criminal Justice Standards and Goals, 1973, Standard 13.5 -- "The Selection Process," p.54. The Committee was formed to consider and apply the standards developed by the National Advisory Commission on Criminal Justice Standards and Goals to Texas' criminal justice system.

^{39/} Annual Report, HPD, 1977, p.42. This includes 728 applicants who simply failed to return about 20 pages of written forms and questionnaires involved.

^{40/} Rejection at this stage is appealable to the Civil Service Commission of Houston, but no data is available on the number who did appeal in 1977.

^{41/} Two other steps precede the preliminary interview: a requirement for a valid driver's license and a visual acuity test. Visual acuity test appears to affect all classes equally; driver's permits barred black males more frequently than other applicant subgroups. Source: "Information on Applicants Rejected in the Preliminary Interview, 5/76-5/77," EEOP, HPD, 1978.

^{42/} Annual Report, HPD, 1977, op. cit., p.41.

The preliminary interview, along with other steps in the formal selection process, was subjected to an extensive validation study in 1976-^{43/} 1977. That study found most elements of the overall selection process including preliminary interview valid as job-related within applicable legal and professional standards.^{44/} Those elements which were deemed "absolute minimum requirements" were: residency requirement (within 500 mile radius); age requirements (not younger than 19 nor older than 35 at time training is completed); at least a high school diploma; no felony convictions (or unapprehended felonious or violent conduct); valid driver's license (prior to beginning of training); no driving while intoxicated convictions; no drug or alcohol addiction ever; no recent use of hallucinogens; no sale of drugs for profit ever; no history of mental illness requiring hospitalization (borderline cases to be assessed by a psychologist); to falsifications of a material nature during selection process (this validates use of polygraph); good physical health and no history of certain conditions or diseases; visual acuity correctable to 20/20 and no progressive eye disease; and the ability to perform certain physical work samples based on content of common physical demands on police officers.^{45/}

One other recommendation of the validity study was that the preliminary interview be standardized. This resulted in having the questions asked by the interviewing officer reduced to writing in the form of an "Applicant Screening Checklist" now in use. Despite the validity study's separation of

43/ A Validity Study of Police Officer Selection, Training and Promotion, op.cit., March, 1977. The study, which was performed by a Houston consulting firm, cost \$350,000, financed by the Law Enforcement Assistance Administration (LEAA).

44/ Ibid., Vol. V. p.189ff.

45/ Ibid., 190-195. The validators stated that applicants not satisfying the minimal requirements as listed should be "rejected automatically."

essential from secondary areas of applicant information, the preliminary interview and later stages of the selection process continue to probe into areas, some of which the validators found difficult to scientifically justify. Among these are the use of marijuana, living arrangements, and sexual preference. ^{46/}

Noting that the commission of homosexual activities is a misdemeanor under the Texas Penal Code, punishable by up to a \$200 fine, the validators stated that the hiring of homosexual officers "would be contrary to public expectations and could harm the Department's image in the community." ^{47/} However, under a later heading entitled "Requirements with Inconclusive Research Findings," the study said that homosexual behavior, other sexual abnormalities, marital status, unwed parenthood, abortions, military draft code, height and weight were all "particularly affected by research limitations and resulted in inconclusive findings..." ^{48/} Regarding homosexuality, the validators stated:

Although data relating to homosexuality and abnormal sexual practices did not attain statistical significance, the findings were ambiguous due to applicant response falsification and restriction in range problems. While disqualification for personal sexual preferences cannot be justified by the current

^{46/} "Applicant Screening Checklist," HPD, 1979. The "Guidelines for Application of Employment Qualifications," state under the heading of consensual sexual activity: "An applicant will not be disqualified for and no weight will 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.: Item 4(d).

^{47/} A Validity Study op.cit., p.170 (Vol. 5).

^{48/} Ibid., 199.

research findings, there is reason to suspect that many types of sexual abnormalities are related to basic personality defects. Furthermore, since there was no adverse impact for items related to sexual preferences, such topics may be used in the selection process. Therefore, when applicants display tendencies toward non-harmful sexually deviant behaviors, it is recommended that the Department consult with a certified clinical psychologist or psychiatrist as to the applicant's suitability for a position with the Houston Police Department. Obviously, any sexually deviant behaviors involving harm to others (i.e., sex with minors, rape, etc.) should automatically disqualify the applicant. ^{49/}

The largest single category of exclusion in the preliminary interview deals with prior use of drugs by applicants. About 30% of all applicants who were rejected at the preliminary interview stage in 1977 had acknowledged some prior use of "intoxicating drugs."^{50/} The Department's employment guidelines state that marijuana usage and disqualification shall be governed by another part of the guidelines which provides that "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."^{51/} The wording of the provision would appear to give the recruitment and selection sections a technical means to overlook applicants' usage of marijuana. The preliminary interview makes inquiry regarding use of marijuana and frequency of such use, and the validators of the selection process raised the question regarding any "drug" use of what is the potential

^{49/} Ibid., 200.

^{50/} Information on Applicants, op. cit.

^{51/} Guidelines for Application of Employment Qualifications, op. cit., (f)4.

risk to the public if a police officer uses drugs while on duty, and what is the potential harm to the Department's image if such behavior becomes public knowledge.^{52/} The President of the Houston Police Officers Association stated that applicants should not be disqualified for marijuana use alone, but he was critical of what he viewed to be "relaxation" of other standards to recruit minorities and to graduate them from the police training academy.^{53/}

It should also be noted that the Houston Police Department's selection process omits both a written test of mental ability or aptitude and a general psychological examination of all applicants. Both of these selection mechanisms were recommended for Texas law enforcement agencies by the Governor's Executive Committee on Criminal Justice Standards and Goals as early as 1973.^{54/} The Department does use a physical agility test consisting of several tasks which have been content-validated to routine and emergency physical demands placed on police officers.^{55/}

^{52/} A Validity Study, op.cit., 148.

^{53/} Interview, Capt. James Albright, op.cit.

^{54/} Texas Criminal Justice Standards and Goals, op.cit., p.54. Standard 13.d states:

1. Every police agency should measure applicants' mental ability through the use of job-related ability or aptitude tests rather than general aptitude tests...
2. Every police agency, by 1975, should retain the services of a qualified psychiatrist or psychologist to conduct psychological testing of police applicants in order to screen out those who have mental disorders or are emotionally unfit for work.

^{55/} A Validity Study, op.cit. 25ff. The validators did not include the physical agility test as an absolute minimum essential in the selection process. They did recommend that the Department develop a program to keep officers physically fit and trained in self-defense methods.

Regarding the need for a full-time psychologist, Chief Caldwell acknowledged its importance in November when he said:

In the near future, this Department will have a full time psychologist to screen applicants for suitability as police officers (stress tolerance) and to continually observe and test cadets in the academy. 56/

Less than two months later, Chief Caldwell hired Dr. Gregory Riede as Director of Psychological Services for the Houston Police Department. Dr. Riede has since received authorization to hire additional full-time staff psychologists.

D. Training

Do you understand that the Police Academy training lasts for eighteen weeks, full time; that this school is a period of selection; that you must complete it successfully; that you may be discharged from this school at any time; that you must submit yourself to strict military discipline; and that you may not have any other employment or attend any other school while a cadet in the Houston Police Academy?
YES ___ NO ___. 57/

Of the 4,228 persons who applied in 1977 to become Houston Police officers, 207 (4.9%) were successfully processed through the selection system and approved for entry into training at the Police Academy. 58/ Final composi-

56/ H.D. Caldwell, Statement to USCCR, November 13, 1978

57/ Additional Information Questionnaire, Police Department, City of Houston, Question #53, final question on 11-page form. It has been noted elsewhere that in 1977, 728 of all applicants (17.2%) were rejected for not completing paper-work forms and questionnaires.

58/ Annual Report, 1977, p.42. Of the 207 approved, 192 reported to the Academy.

tion of training academy classes for 1977 shows 133 white, 28 black, 29 Mexican American, and 2 Oriental; of these, 26 were women of whom 15 were ^{59/} white. Of the three academy classes which were trained during the period from November, 1976 through September, 1977, 86% of the trainees completed the Academy successfully. ^{60/} Attrition rate among Mexican-American males was greatest. Twenty-nine percent of the total who entered did not graduate; black males had the next highest attrition rate at 25%. ^{61/} Of those who dropped out, "voluntary withdrawal" was cited as the principal reason. ^{62/} Validators who reviewed the Academy curriculum in 1976-77 found that graduation rates were highest for Hispanics among the minority groups and women. Females tended to resign for "personal reason" and blacks tended to fail the written examinations. ^{63/}

Instruction in the Police Academy is provided by a combination of uniformed and civilian employees of the Houston Police Department. In the 1977 classes for which cadet breakdowns are shown above, instructors from the uniformed personnel were white with but three exceptions out of 103 instances. ^{64/}

^{59/} Ibid. In percentages, blacks made up 14.5%, as did Mexican-Americans; women, total, 13.5%; white women, 7.3%.

^{60/} Houston Police Academy, Race/Sex Breakdown, Classes 76-78, contained in 1978 EEOP.

^{61/} Ibid. The breakdown also shows that white women comprised 5 of 218 entrants; black women, 7; Hispanic women, none; Oriental women, 1.

^{62/} Ibid. "Reasons for Non-Completion."

^{63/} A Validity Study, op.cit., "Evaluation of Police Training Academy." In the Department's breakdown for non-completion in 1977 classes, only 2 of 41 black male cadets are shown to have dropped out for "academic reasons." These, however, were the only academic withdrawals shown for that year.

^{64/} Instructors by Rank, Sex and Race, EEOP, HPD, 1978. Validators who reviewed the Academy in 1976-77 recommended that trainers be more carefully selected.

Training in the Academy is organized around a core curriculum consisting of 604 hours of classroom work and 116 hours of field work.^{65/} At 720 hours of basic training, the Houston program exceeds the Texas state requirement by three times the minimum of 240 hours.^{66/} Course titles cover a wide range of areas, including the following:

<u>Subject</u>	<u>Classroom Hours</u>	<u>Field Hours</u>
Authority of Police	2	
Baton Stick Training	20	
Civil Liability of Police	2	
Civil Rights Investigation	2	
Crisis Intervention	6	
Crowd & Riot Control	6	
Cultural Awareness	6	
Firearms Training	3	
Human Relations	8	
Human Sexuality & Police	8	
Internal Affairs	1	
Law: Search & Seizure	12	
Moral Responsibility	1	
Multi-Cultural Stress	6	
Patrol Tactics & Techniques	22	4
Pistol Information	1	
Pistol Issuing	2	
Pistol Range		40
Police-Citizen Interaction	4	
Police Community Relations	6	
Police Psychology	8	
Police Weapons	10 ^{67/}	4
Sociology for Police	10	

^{65/} Based on most recent curriculum for Cadet Class No.85, Houston Police Academy, "Distribution of Hours."

^{66/} Professional Standards, op.cit., 7. The standards note that Texas' minimum is low nation-wide; 10 states require 400 hours. Texas also requires a minimum of 6 months basic training, again low nation-wide; 23 states require 12 months; 2 require 15; 2 require 18; and 2 require 24 months. Three states require a shorter basic training period and three have the same 6-month basic as Texas. Appendix A, 2.

^{67/} There are approximately 105 course titles listed, of which 23 are presented here.

During 1978, improvements made to the Police Academy included selection of a site and beginning of construction of a new physical plant. This facility will be used for both basic and in-service training programs. ^{68/} During the same year, a cadet counseling program was established, using volunteer members of the regular force to assist cadets experiencing academic difficulties. ^{69/}

The Academy had sufficient budget in 1978 to operate six classes but could fill only five. The Department is in the process of developing a pre-hiring reading comprehension test due to perceived reading difficulties of cadets. ^{70/}

Upon graduation from the Academy, cadets become Probationary Officers for an additional 24 weeks, making a total of about 42 weeks from the time of beginning basic training until certification as a regular Houston Police Officer. During the first 10 weeks of post-academy probation, the trainees are assigned to the Field Operations Command for a Field Training and Evaluation Program, in which close and constant instruction and evaluation occurs at the hands of a Field Training Officer. ^{71/} This field training (which is separate from Field Hours in academy courses) is divided into three phases. If the trainee fails to complete any phase satisfactorily, he/she may repeat that phase once in order to

^{68/} Positive Accomplishments, 1978, op. cit., p. 6-7.

^{69/} Ibid.

^{70/} Interview, Capt. L.C. Michna, Police Academy Head, Houston Police Department, December 19, 1978.

^{71/} H.D. Caldwell, Statement to USCCR, op. cit., Attachment I. Chief Caldwell initiated this Field Training Program and described it as a period in which the new officer can "bridge the gap between the Academy and the 'street' without losing sight of citizens' civil rights."

proceed to the next phase; failure to satisfactorily complete a phase the second time leads to automatic termination from the Department. ^{72/}

In addition to basic and probationary training programs, the Houston Police Department also provides in-service and management training for uniformed personnel. During 1978, the in-service training section conducted 137 courses, attended by 3,655 officers, totalling 102,918 hours of instruction. ^{73/} Special aspects of in-service training initiated under Chief Caldwell include the "Riesner Report" (based on the street location of central headquarters), a roll-call film which provides detailed information on departmental issues and activities to all members of the Department; ^{74/} specialized driving training programs, both to remedy problem drivers among the force and to teach new pursuit techniques; ^{75/} "Combat Firearms Training" which "enables officers to receive firearms training under simulated on-duty conditions;" ^{76/}

^{72/} Ibid.

^{73/} Positive Accomplishments, 1978, op. cit., p. 6. There is no mandatory in-service training of law enforcement personnel in Texas (Minnesota, for example, requires 3-year recertification); departmental discretion and management policy determine the level of in-service training. (Interview, Jay Stanford, Executive Director, Texas Advisory Commission on Intergovernmental Relations, March 14, 1979.

^{74/} Ibid. The film is produced at the Police Academy; it provides both training and command-control communications functions.

^{75/} Ibid.

^{76/} Ibid.

a departmental sports and fitness program; ^{77/} and a program to analyze shooting incidents involving police officers "to determine whether training can be improved or revised." ^{78/}

The amount of training in the use of deadly force by the Houston Police Department, either in basic or in-service categories, is unknown. A deposition taken of one officer in a death by shooting incident indicated that deadly force training was incorporated in training "problems" or "situations" which cadets face in simulated "crime scenes," but not treated separately from these simulations. ^{79/} Chief Caldwell, deposed in the same case, explained training in deadly force:

QUESTION: Going into another subject, when you assumed your duties as chief of police, could you state the training program that the officers received on use of deadly force?

ANSWER: The police curriculum is a viable curriculum. It is not fixed; it changes continuously. At the moment that I took office, much greater problems than the recruit training curriculum presented themselves, and I don't believe that I could state of my own knowledge exactly what the number of hours available were. However, I do believe that such information is available.

^{77/} Ibid. Such a fitness program is consistent with recommendations made by the 1977 validation study. In theory, a higher level of physical fitness by rank-and-file officers may reduce their perceived need to use weapons of deadly force.

^{78/} Ibid.

^{79/} Deposition of R.L. Watson, in Glover et al. v. Watson, et al., (S.D. Texas) Civil Action No. 76-H-1961, November 3, 1977, p. 21ff.

QUESTION: During your tenure as chief of police now, have changes been made in the curriculum in the training given to officers in use of force?

ANSWER: Again, I would have to refer to the records, because the curriculum again changes almost with every recruit class in terms of being a viable instrument which tries to reflect contemporary needs. Again, I am sure that the records are available on this, but I could not specify the number of hours of my own knowledge that are being given to this subject. Regarding whether it has been increased, I would simply have to check the records. I have issued no mandate that the hours be increased.

Now, in recruit training, there have been some additional in-service type of things that have happened. Shortly after I became chief of police, I instituted the field training officer program which, when a recruit comes out of the police academy, puts him into another training mode, puts him into a field training mode where every policy of that department and every procedure of that department must be taught him in the field by his field training officer. And the policies are applied from the abstracts of the classroom to the concrete circumstances that the office faces daily. So to this extent, the field training program constitutes, since my tenure as chief, an additional block of training in this area.

QUESTION: Now, the field training does deal with this area, which is use of force?

ANSWER: Not exclusively, Counsel. It deals with the mastery of some 245 tasks, and among them is a demonstrated understanding and knowledge of all the policies of the department, particularly those in relation to the use of force.

QUESTION: Other than the field training program, have you personally instituted any new training programs? I understand that you have said that it varies and that there are some that you wouldn't have knowledge of, but of your own personal knowledge have you issued any other mandates besides the field training officers program in areas dealing with training officer recruits, and regular police officers in use of force?

ANSWER: I am certainly not trying to be difficult, but would you please read it back to me, ma'am, the question.

(The testimony was read back by the court reporter as follows:

QUESTION: Other than the field training program, have you personally instituted any new training programs? I understand that you have said that it varies and that there are some that you wouldn't have knowledge of, but of your own personal knowledge have you issued any other mandates besides the field training officers program in areas dealing with training officers, recruits, and regular police officers in use of force?

ANSWER: I think the answer to that, Counsel, is no, I have mandated no additional training. Now, I must say that, again, the policies regarding the use of deadly force and many other policies of the department have been restated, I think, in a fashion that I feel more comfortable with I think they have been simplified. We have instituted "burglar in the building" policies which certainly relate to force which require a different tactical procedure, mandates the officer to a different tactical procedure in terms of dealing with burglars in buildings. Essentially what it says is the officer may not enter the building to go after burglars, but must wait until his supervisor arrives, and that we will not use deadly force in removing burglars from buildings because we will not go in the buildings after them unless

somebody else's life is in danger. But we will wait as long as necessary to negotiate the surrender of the burglar.

QUESTION: Chief, you just stated that the mandates have been restated with the primary restating being the clarification on drawing of firearms and this regulation which you referred to which is the internal policy.

ANSWER: I think this is the primary restatement. It pretty much tracks the old policy in the use of deadly force, self-defense, and things like that. I think it is more succinctly stated.

QUESTION: Was the police force adequately trained in the use of force and the use of deadly force in contact with citizens when you took office?

ANSWER: I am of the opinion that they were. I do not think that ignorance was a factor, ignorance of policy, was a factor in the department when I became chief. I think that the officers fully understood the policies at the time I became chief. I felt more comfortable with the restatement of the policy because I felt my restatement was simpler and more succinct. 80/

The effectiveness of training programs, in general, was questioned by one leading law enforcement expert in the state. The Executive Director of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) stated that peer pressure in police organizations is a very powerful force. In his view, problems of police misconduct stem from conduct made not only acceptable, but encouraged and made excessive by peer pressure. Such pressure, he thinks, tends to nullify most training. 81/

80/ Deposition and Answers of Harry Caldwell, Glover et al. v. Watson, et al., (S.D. Texas), Civil Action No. 76-H-1961, pp. 21-26.

81/ Interview, Fred Toler, Executive Director, TCLEOSE, March 14, 1979.

III. POLICE ADMINISTRATION: COMPLAINT PROCESS AND DISCIPLINE 1/

The goal of internal discipline is internal order and individual employee accountability. As in law, the administration of internal discipline must be based on a solid, formal written foundation. It must provide sanctions for proven misconduct and protection from false accusations. The discovery of truth is of paramount importance in these proceedings; the administration of internal discipline should instill confidence in all parties involved. 2/

A. Background

The Internal Affairs Division of the Houston Police Department was formalized in June of 1977 as one of the first official acts of the newly-appointed Chief of Police, Harry D. Caldwell. Prior to its official inception, however, the division had been planned and proposed under former Chief Bond and it had been in operation on an ad hoc basis to investigate the Torres incident. 3/

Until the Internal Affairs Division was instituted, any complaint of officer misconduct was investigated by the officer's division and allegations of serious misconduct were investigated by the most appropriate division such as Homicide, burglary, etc. However, former Chief Bond said, "we needed to have a more objective

1/ This chapter based on Memorandum, Internal Affairs, Sylvia Eastman, Attorney-Advisor, Office of the General Counsel, USCCR.

2/ National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C., 1973. Standard 19.1, Foundation for Internal Discipline, Commentary, p. 474.

3/ Interview, Chief Harry Caldwell, May 10, 1979.

procedure - people can't investigate themselves." ^{4/} However, many resisted the new division because it took away responsibilities they had formerly had and so implied they could not perform those duties satisfactorily. There was apprehension among the rank and file and much effort was needed to gain acceptance of and credibility for the division, among both police officers and the public. ^{5/}

There is an indication from the more than fifty interviews which staff conducted with current members of the Houston Police Department, that even though the Internal Affairs Division was met with considerable resistance at the outset, it has begun to gain wider acceptance, and a recognition that, wanted or not, it performs a necessary function.

The present staff of Internal Affairs consists of one captain, two lieutenants, eight detectives and one police officer. This is an increase in staff of two detectives and one police officer over the original staff. The lieutenants have both been with the division since its inception and are assigned to handle the administrative and investigative responsibilities. The detectives may be used interchangeably for administrative or investigative tasks, as required, and the one police officer, a relatively new position, is assigned primarily the task of

4 / Interview, Chief B.G. Bond, April 5, 1979.

5 / Interview, Deputy Chief Wunsche, May 10, 1979. Chief Wunsche was Captain of the Internal Affairs Division during the first six months of its existence.

tabulating and reporting statistics for the division. The detectives and officer are intended to be rotated on a staggered basis, with assignments of approximately twelve to eighteen months in IAD. The present staff consists of detectives who have been in the division no fewer than six months and most have at least ten years of experience on the police force.^{6/}

B. Complaint Procedure

At the inception of the Internal Affairs Division there was considerable media coverage of the new division. However, there does not appear to have been any other attempt to inform citizens of the complaint process available to them. In response to a question about how citizens learn of the procedures, Captain Thaler of Internal Affairs said, "If they have a complaint, they're going to find someone to complain to."^{7/}

Complaint forms or informative brochures do not exist at public locations to assure the broadest public awareness of the procedures. However, police officers are instructed in the operation of Internal Affairs and how to assist citizens who wish to make complaints. When the division was first established,

^{6/} Interviews, Captain Thaler, May 7, 1979, Deputy Chief Wunsche, May 10, 1979, and Officer Kaup, May 21, 1979.

^{7/} Interview, Captain Thaler, May 7, 1979.

a bulletin was issued which has since been incorporated into the Rules Manual which every officer is required to read. An Internal Affairs detective instructs at the academy and gives in-service training on the procedures.^{8/}

The complaints process is both simple and complex. It is simple in that it is possible to make a complaint by phone, by letter, or in person, at any substation or at the division headquarters, at any time of day. The process is difficult in that complaints, in order to be investigated, usually have to be made to a supervisor, have to be reduced to writing and notarized.

There actually are no complaint forms for citizens' use. There are only Record of Complaint forms which are completed and kept by supervisors to whom the citizens make their complaints. Assistance is provided to complainants who are illiterate or who speak only Spanish. The supervisors either fill out the forms which must then be signed by the complainant and notarized or an affidavit may be mailed to Internal Affairs.^{9/}

Instructions to the supervisors completing Record of Complaint forms, include:

F. Only information provided by the complainant will be noted on the Record of Complaint form, even though the unknown information may be available to the supervisor taking the report.

8 / Interviews, Lieutenant Gamino and Detective Campa, May 7, 1979.

9 / Manual of the Houston Police Department, Section 22.02a; Recommended Organization & Standard Operating Procedure for Houston Police Department Internal Affairs Division, Sections VII H. and IX B.1.; Interview, Lieutenant Gamino, May 7, 1979.

G. The supervisor taking the report shall note his observations regarding the condition of the complainant, attitude of the complainant, etc.,.... 10/

In addition, the supervisor must ascertain the complainant's date of birth, driver's license number, social security number and if the complainant was charged with an offense in the incident. 11/

While anonymous or phoned complaints may be made, they are categorized as "informal" and will probably not be investigated unless formalized through a written, signed and sworn statement.

The Manual of the Houston Police Department indicates that

"The decision as to whether informal complaints will be investigated depends on the nature and seriousness of the complaint. This decision will be made by the Internal Affairs Division." 12/

Interviews with Internal Affairs personnel and statistics provided by the Department, indicate, however, that informal complaints are not investigated. 13/ In fact, at the time an informal complaint is received, the supervisor receiving the complaint is required to inform the complainant that no investigation will proceed until the complaint has been formalized. 14/ A form letter

10/ Recommended Organization & Standard Operating Procedure for Houston Police Department Internal Affairs Division, Sections VII, F. and G.

11/ Houston Police Department Record of Complaint form.

12/ Manual of the Houston Police Department, Section 3/22.02 a. 2. The Recommended Organization & Standard Operating Procedures for the Houston Police Department Internal Affairs Division also states at I.B.2.c.: "Informal complaints are not investigated unless directed by the commander of the Internal Affairs Division."

13/ Internal Affairs Division statistical data, June, 1977 through March, 1979.

14/ Houston Police Department Record of Complaint form.

is also supposed to be sent from Internal Affairs to the complainant, informing that no investigation will occur unless an affidavit is received by the division within 30 days of the incident alleged in the complaint.^{15/}

The complaint form is an internal document and is not available to the complainant either before or after its completion. A form letter is mailed to each complainant after Internal Affairs receives and assigns a control number to the complaint, informing the complainant of the receipt of his complaint and the control number, but giving no information regarding the classification of the complaint, whether it will be investigated by the Internal Affairs Division, or any time limit to expect some additional information regarding either the progress or the completion of the investigation. Nor does this form letter name the officer complained against, provide any explanation of the complainant's rights, the process of investigation, or possible appeal or alternative remedies which might be pursued by the complainant.^{16/} By contrast, notification to the officer indicates the complainant's name, the class of the complaint, whether the complaint is formal and what division will be investigating.^{17/}

15/ "Notification to Complainant of Informal Complaint."

16/ "Notification to Complainant of Receipt of Formal Complaint."

17/ "Notification to Employee of Receipt of Complaint."

The Record of Complaint forms are not numbered until the complaint is forwarded to and logged in at Internal Affairs. These numbers are in consecutive order and are chronologically recorded.^{18/} This process assists in maintaining control over and accounting for all complaints once they have reached Internal Affairs, but allows for possible loss of some before they ever reach that division.

Some complaints, according to Lieutenant McWilliams, never reach the log book or control number system. These may include complaints taken over the phone and never formalized or anonymous complaints. These complaints sometimes go into an "information file" which also may hold "inquiries" which are not really complaints. Inquiries could consist of a need for clarification of an officer's duties to a citizen who mistakenly believes that the officer conducted himself improperly.^{19/}

Once complaints are logged in Internal Affairs and assigned control numbers, the process of their investigations, reporting and final filing are monitored and accounted for by the Internal Affairs Division. All complaints are finally stored at the division and records are maintained and statistical summaries reported on the receipt, classification, investigation and disposition of them.^{20/}

^{18/} Interviews, Lieutenant Gamino, May 7, 1979 and Lieutenant McWilliams, May 21, 1979.

^{19/} Interview, Lieutenant McWilliams, May 21, 1979.

^{20/} Interviews, Captain Thaler and Lieutenant Gamino, May 7, 1979.

C. Investigative Responsibility

All complaints of whatever nature should be forwarded promptly to the Internal Affairs Division where they are classified by the administrative lieutenant and the classification is approved by the captain. Any complaint which alleges unnecessary or excessive force used by an officer, criminal conduct by an officer, or serious misconduct or officer abuse of authority are classified as "Class I" complaints. All Class I complaints, once formalized, are to be investigated by the Internal Affairs Division because of the serious nature of the allegations contained therein.

Class II complaints consist of all other types of allegations not included in the Class I categories. The administrative lieutenant of Internal Affairs customarily designates these less serious complaints for investigation by the division to which the officer complained against is assigned.

Once complaints are classified, they are given control numbers, logged in a complaint control book, and sent either to the investigative lieutenant of Internal Affairs or to the Assistant Chief in charge of the command and division to which the complaints will be assigned for investigation. In the case of the Class I complaints, the investigative lieutenant will assign them to Internal Affairs detectives for investigation. In the case of Class II complaints, the complaint will be passed down through the chain of command from the Assistant Chief to the supervisor within the division who will conduct the investigation. A copy of all complaints which are sent

to the divisions for investigation is kept in a file by Internal Affairs, called the "suspense file," and Internal Affairs has the responsibility of seeing that those investigations are expeditiously completed and reported to the Chief.^{21/}

The number of citizen complaints averages around forty-five per month. Approximately sixty percent of these are Class I complaints, with the remaining forty percent falling into the Class II category. The greatest numbers of complaints are ones alleging excessive or unnecessary force (Class I) and/or rude or verbally abusive attitude or demeanor (Class II).^{22/}

In addition to the handling of citizen complaints, there are two other aspects of internal investigations which it is the responsibility of the Internal Affairs Division to investigate or to monitor, these being internally-generated allegations of officer misconduct and firearms discharges. Internally-generated complaints are those in which a member of the department reports the alleged misconduct, rather than someone external to the Department. These complaints are broken into the same Class I and Class II categories as citizen complaints. However, it is more likely that some of the Class II complaints of this type will be investigated by Internal

^{21/} Information on the classification and logging of complaints, Section 3/22.02 and their assignment for investigation comes from the Houston Police Manual, the Recommended Organization and Standard Operating Procedure for Houston Police Department Internal Affairs Division Sections I.c., II and III and from interviews, Captain Thaler, Lieutenant Gamino and Lieutenant McWilliams of IAD, May 7 and May 21, 1979.

^{22/} Internal Affairs Division Statistical Data, June, 1977 through March, 1977; interview, Lieutenant Gamino, May 7, 1979.

Affairs if, for instance, the complainant is the officer's supervisor who would otherwise be the likely person asked to conduct the investigation into the matter.^{23/}

Houston Police Department firearms policy requires that any time an officer discharges a weapon in the line of duty a Discharge of Firearms Report be made to Internal Affairs within twenty-four hours. If no injury results, the officer's division will investigate the incident, but whenever there is an injury the shooting incident's investigation is to be conducted both by the Homicide Division and the Internal Affairs Division, with Internal Affairs having the responsibility of monitoring the investigation. In either case, Internal Affairs has the final responsibility for reviewing all firearms discharge investigations for sufficiency and for determining whether any violations of departmental policies occurred in the incident.^{24/}

In general, Class II complaints which are investigated by the divisions are reported up through the chain of command to the Chief, who reviews every complaint investigation report. However, as just noted, firearms discharge investigations must first be reported to Internal Affairs, where they are first reviewed for sufficiency before being reported to the Chief of Police. Originally this was the procedure with all investigations conducted by the

^{23/} Phone interview, Lieutenant Gamino, June 1, 1979 to clarify Internal Affairs Statistical Data, June, 1977 through March, 1979.

^{24/} Manual of the Houston Police Department, Section 3/22.04.

divisions, but it was found to be a time-consuming procedure which detracted from the division's primary responsibility for investigation of Class I complaints and the procedure was changed. ^{25/}

While the Internal Affairs Division clearly has responsibility for monitoring investigations into shootings by police officers, the division of investigative responsibilities between the Homicide Division and the Internal Affairs Division is unclear. Interviews with Internal Affairs personnel and with Captain Adams of the Homicide Division indicate some internal confusion regarding the respective roles of these two divisions in the investigations. ^{26/}

Like most parts of the department, the Internal Affairs Division complains that it is understaffed. The investigative lieutenant assigns investigative responsibility to the detectives and normally only one detective will work on a given case, though the more serious cases may require additional persons. The hours when investigative work must occur may also require more than one person working on a case, for instance if interviews must be conducted at a time when the detective assigned to the case is not on duty. At least one detective from the unit is on call twenty-four hours a day, seven days a week. ^{27/}

^{25/} Recommended Organization & Standard Operating Procedures for the Houston Police Department Internal Affairs Division; interview, Lieutenant Gamino, May 7, 1979.

^{26/} Interview, Captain Adams of the Homicide Division, May 22, 1979.

^{27/} Interviews, Captain Thaler, Lieutenant Gamino and Detective Campa, May 7, 1979 and Lieutenant McWilliams, May 21, 1979.

There is no time limit for the completion of investigations. Lieutenant Gamino said they try to complete investigations within ^{28/} six months, but that it depends on how many other cases are pending, which ones are most important, and how much is involved in a given case. Serious matters, such as shootings, will take priority. Detective Campa stated that his current case load was ^{29/} ten cases.

Internal Affairs has no special training for its investigators but relies on selection of the best investigators from other divisions within the department. All detectives have had training and experience in investigative techniques as police officers and as detectives in other sections, but not specifically to deal with internal matters. Lieutenant McWilliams acknowledged that investigations of Internal Affairs may be different from ordinary ^{30/} crimes and have some unique elements.

Detective Campa estimated that it probably takes about a ^{31/} year to really develop expertise in internal investigations, which raises the issue of rotation of assignment. It is felt by some that rotation of internal investigative personnel should

^{28/} Civil Service requires that any disciplinary action be taken within six months of the occurrence of the infraction being disciplined. §1269m.16. See discussion, Chapter IV, infra.

^{29/} Interviews, Lieutenant Gamino and Detective Campa, May 7, 1979.

^{30/} Interviews, Captain Thaler, Detective Campa, May 7, 1979 and Lieutenant McWilliams, May 21, 1979.

^{31/} Interview, Detective Campa, May 7, 1979.

be required at least every eighteen months. ^{32/} In Houston, there is an attempt to rotate assignments even more frequently. Rotation may help increase understanding and acceptance of a new division by broadening the exposure and experience of more persons within the department. Rotation also limits the hardship of performing what is admittedly an unpleasant task and it probably diminishes the likelihood of corruption within the division. On the other hand, rotation, without special training, probably reduces the effectiveness of investigation which might be increased by development of specialized expertise. It may also make personnel more vulnerable to the pressures of investigating fellow officers with whom one worked six months ago or with whom one may be assigned to work in another six months. Lieutenant McWilliams favors rotation for most of the reasons noted above, but especially because of the tremendous pressures of the job. All Internal Affairs personnel interviewed remarked about the emotional strain of this assignment and said the job "takes its toll" and that no one should be required to remain permanently in Internal Affairs. ^{33/}

At any stage in the course of an investigation that it appears criminal conduct may have occurred, the Internal Affairs Division may contact the District Attorney's Office for advice and assistance

^{32/} National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C., 1973. Standard 19.3. See, pp. 480, 482.

^{33/} Interview, Lieutenant McWilliams, May 21, 1979; interview, Detective Campa, May 7, 1979.

from that agency. So far as can be determined, however, there is no requirement for reporting complaints to the District Attorney routinely. The relations between Internal Affairs and the District Attorney's office are described as very cooperative. ^{34/}

D. Investigative Procedure

Due to the apparent lack of any written procedures for internal investigations, it appears that each detective decides how he will investigate the complaints which are assigned to him.

Detective Campa described some of the steps in his investigations. He reviews the complaint to see what the allegation is and to consider the likelihood of it occurring or not occurring and under what circumstances. He then reviews all other documents which accompany the complaint, such as an arrest record of the complainant, an offense report related to the occurrence, or other documentation pertaining to the alleged officer misconduct. He interviews the officer involved, the complainant and any witnesses, either police or civilian. Detective Campa described his investigation as being just as thorough as an investigation of criminal activity external to the department. ^{35/} Captain Thaler said that every means is exhausted in their investigations to be sure that they have "covered everything that could be covered." ^{36/}

^{34/} Interview, Lieutenant McWilliams, May 21, 1979.

^{35/} Interview, Detective Campa, May 7, 1979.

^{36/} Interview, Captain Thaler, May 7, 1979.

Investigations conducted by the Internal Affairs Division are reviewed, when completed, by the investigative lieutenant, they by the captain before final reporting to the chief. In every case, a report is made to the Chief of Police which carries a recommendation for a classification (findings) based on the results of the investigation. ^{37/}

The possible classifications are: Unfounded - the investigation found no factual basis for the complaint; Exonerated - the incident occurred as reported in the complaint, but it was neither illegal nor a violation of department policies; Not Sustained - the investigation produced insufficient evidence on which to base a finding that the allegation was either proven or disproven; Sustained -- the allegation was found to be both factual and proven; Misconduct Not Alleged in Complaint - Misconduct was discovered during the course of the investigation, although it had not appeared in the allegations made in the complaint. ^{38/}

E. Disciplinary Action

No adjudicative or fact-finding board exists within the Houston Police Department for the purpose of conducting hearings into the complaints of officer wrongdoing. Once the investigation is complete, whether conducted by Internal Affairs or by the officer's own division, a report with recommended findings is sent to the Chief of Police. The Chief reviews the investigative file and the report made and determines whether to adopt the recommended disposition. ^{39/}

^{37/} Ibid.

^{38/} Manual of the Houston Police Department, Section 3/22.02 j.

^{39/} Manual of the Houston Police Department, Sections 3/22.02 h. - k.

The Internal Affairs Division makes no recommendation regarding possible disciplinary action to be taken; it merely reports the findings of its investigation. The Chief of Police makes the final determination of discipline. The Chief may, in his discretion, request recommended sanctions from the Administrative Discipline Board but he need not ask for or accept their recommendations. ^{40/}

The Administrative Discipline Board is a committee consisting of the three assistant chiefs of police, initiated after the formalization of the Internal Affairs Division by Chief Caldwell. The primary responsibility of this committee is to assure uniformity of discipline throughout the department. When assigned a case by the Chief, the Board reviews the investigative file and the "cover sheet" from the officer's personnel file, and makes a recommendation to the Chief of what it considers to be appropriate discipline. It is not the responsibility of this committee to determine "guilt," as that will already have been determined before it receives a case. Only complaints which have been sustained are given to the Board for its recommendation on disciplinary action to be taken. When asked about the average case load per month, Assistant Chief Johnson replied that one month they might have four cases, other months none at all. Neither

^{40/} Recommended Organization and Standard Operating Procedures for Houston Police Department Internal Affairs Division, Section X.A.7.c; interviews, Assistant Chiefs B.K. Johnson and R.G. McKeehan, May 10, 1979.

of the Assistant Chiefs interviewed could estimate how often the Chief accepts, rejects, or modifies their recommendations. ^{41/}

Once the Chief adopts a disposition for the case and determines what disciplinary measures should be taken in the cases which are sustained, the complete file is returned to the Internal Affairs Division, and it then has the responsibility of informing both the complainant and the officer of the final disposition. The form letters sent to complainants do not describe the investigation or discipline but merely report the finding of whether the allegation in the complaint was sustained, unfounded, not sustained, exonerated, or that misconduct not alleged in the complaint was determined. In the case of a complaint the letter which was sustained, indicates that "appropriate disciplinary action has been administered." ^{42/}

The Internal Affairs Division is also required to notify the officer of the disposition of the complaint. In the event that a complaint is sustained and disciplinary action has been ordered, a copy of the investigative file is transferred to the Personnel Division so that the sanctions can be applied. When the disciplinary action to be administered is an oral reprimand, the commanding officer of the employee will be notified. When the discipline consists of a

^{41/} Interviews, Assistant Chiefs B.K. Johnson and R.G. McKeehan, May 10, 1979.

^{42/} "Notification to Complainant of Results of Investigation: Sustained Employee Misconduct."

written reprimand, the investigation serves as the official reprimand. A copy of the report is sent to the employee and another copy becomes a part of the employee's permanent Departmental personnel file. ^{43/}

The Chief may also order suspension of the employee for any number of days up to fifteen, or indefinite suspension. ^{44/} In the period between July, 1977 and April, 1979 a total of 24 officers were suspended for a collective sum of 203 days for misuse of firearms, 10 officers were suspended 46 days for "misconduct" (not otherwise defined), and 8 were suspended a total of 35 days for use of unnecessary force. A total of 139 officers were suspended 353 days for all other reasons. During the same period a total of 18 officers were indefinitely suspended from the department, for reasons of misconduct, violation of department rules, or criminal acts. ^{45/} An officer's only right of appeal is to the Civil Service Commission ^{46/}

^{43/} Recommended Organization & Standard Operating Procedure for Houston Police Department Internal Affairs Division, Sections XI F. and G., XII.

^{44/} Title 28, Firemen's and Policemen's Civil Service in Cities over 10,000, Art. 1269m, Sec. 16 and Sec. 20.

^{45/} Houston Police Department Disciplinary Action records from January, 1978 through April, 1979, which also reflect data from the entire year 1977.

^{46/} See Chapter IV, infra.

For every officer against whom a complaint is made or an investigation conducted a "History File" is maintained by Internal Affairs. This file reflects the previous complaints against an officer, the nature of the allegations, whether they were sustained or other disposition, and the disciplinary action taken, if any. This file accompanies the investigative report if it goes to the Administrative Discipline Board, to aid in the determination of appropriate sanctions.^{47/}

The Administrative Personnel Review Committee is made up of three of the Deputy Chiefs, appointed by the Chief of Police. The committee was originated under Chief Bond and has since been continued under Chief Caldwell. The committee's existence was on an ad hoc basis, called at the will of the Chief of Police, until it was formalized by General Order in February of 1979.^{48/}

The stated purpose of the Administrative Personnel Review Committee is "to objectively evaluate patterns of conduct by specific officers and to recommend appropriate courses of action to the Chief of Police."^{49/}

The committee receives cases assigned to it by the Chief of Police which have been referred to him by supervisors. If any supervisor feels an officer under his supervision is demonstrating a pattern of behavior

^{47/} Recommended Organization & Standard Operating Procedure for Houston Police Department Internal Affairs Division, Sections XI.B.1. and XII.F.

^{48/} Interview, Chief B.G. Bond, April 5, 1979; General Orders No. 300-5, dated December 7, 1977 and February 1, 1979 from the Office of the Chief of Police.

^{49/} General Orders No. 300-5 of December 7, 1977 and February 1, 1979.

which may interfere with his effectiveness or ability to perform his job, the supervisor may bring this to the attention of the Chief and request, by letter, that the officer be evaluated by the committee.

The Chief then reviews the information sent to him by the supervisor, and, if he feels the case should be reviewed by the committee, he sends it to them. The committee meets only when a case is assigned to it by the Chief. ^{50/}

Deputy Chief Wunsche estimated the committee receives approximately one case every three months or so. Deputy Chief Daigle believed there had been a total of 18 cases reviewed by the committee since he became a member in October, 1976. Deputy Chief Sherman has been on the committee for more than two years and estimated having about 10 cases in that time. ^{51/}

The committee reviews all available information on the patterns of conduct and other relevant information about the officer concerned and then conducts an informal hearing, not open to the public, at which it questions the supervisor, fellow officers, or other persons able to supply additional information. The officer may be present, but is not represented by counsel. The committee will sometimes recommend psychological evaluation prior to reaching its final decision on action which could include counseling, transfer, demotion or even termination. ^{52/}

^{50/} Interviews with the three current members of the committee, Deputy Chiefs Wunsche, Sherman and Daigle, May 10, 1979.

^{51/} Ibid.

^{52/} Ibid.

The types of problem behavior which the committee has considered seem to be mostly drinking problems and one or two other cases of inability to perform satisfactorily because of domestic or other pressures. Chief Wunsche did not recall any instance of the committee reviewing patterns of excessive force or misuse of firearms in the time he has been a member (about 1½ years). Chief Sherman thought he might have reviewed a firearms case, but was not sure (over 2 years). Chief Daigle recalled one instance of misuse of firearms, but none of excessive force (2½ years). ^{53/}

The General Orders establishing the committee refer to the need to "strengthen professional adherence to the Police Code of Ethics" and to "take overt action to correct deviant professional behavior patterns." ^{54/} Deputy Chief Daigle, the senior member of the committee, seemed unsure what was meant by "Police Code of Ethics" and did not recall ever having a case which could have fit that category. ^{55/}

^{53/} Ibid.

^{54/} General Orders No. 300-5 of December 7, 1977 and February 1, 1977.

^{55/} Interview with Deputy Chief Daigle on May 10, 1979.

IV. Police Accountability: External Review

The more effective and open a job the police do in managing their internal investigations, the less likely it is that there will be need for external review.

When police conduct is reviewed from outside the police agency, the focus should be on the agency rather than the individual officer. Admittedly the question involved in a given case may revolve around a specific officer's use of authority. But if the agency has had the opportunity to review the case and chooses to support (and perhaps even defend) the officer's actions, then, quite appropriately, the agency's policies and judgments are at issue rather than just those of the officer.

If primary dependence is placed upon the administrator and the agency for achieving conformity, it follows that any system for citizen review and redress must cope with two distinct situations: (1) the public must have the opportunity to appeal from a decision reached by the internal investigative processes of a police agency on conclusion of its investigation of a complaint filed against a specific officer or group of officer; and (2) the public must have the opportunity to deal with the more difficult situation when an agency tolerates widespread abuse, fails to establish effective internal investigation procedures, and fails to establish sufficiently specific rules governing police conduct. 1/

A. City of Houston Oversight

1. Role of Civil Service Commission

The Firemen's and Policemen's Civil Service Commission of the City of Houston, a legislatively created body, 2/ regulates hiring, promotion, disciplining and termination of all uniformed and nonuniformed police personnel except the chief of police. Three persons who are residents

1/ Goldstein, Herman, Policing a Free Society, Ballinger, Cambridge, Mass., 1977, p. 175.

2/ Article 1269m, V.T.C.S., known as the Firemen's and Policemen's Civil Service Act. Houston opted in 1948 for participation in the state system and established a municipal agency for that purpose.

of the City administer the state law as it affects the police department; the rules manual of the department is written by the chief, who has disciplinary power delegated by the Civil Service Commission. ^{3/} The Commission sits as an appeals panel on any suspensions or terminations ordered by the chief.

The chief may suspend an officer for up to 15 days or indefinitely suspend; other than reassignment or transfer within the department, he has no other major disciplinary powers. ^{4/} If the suspension is temporary, the affected officer is entitled to "review" by the Civil Service Commission; permanent separation carries a right to a full-scale hearing. The officer has 10 days in which to appeal an indefinite suspension (which would not defeat pension rights); if the Civil Service Commission fails to hold a hearing within 30 days from that appeal, the officer is reinstated automatically. ^{5/} The Civil Service Commission after hearing the case, can decide that the chief was wrong and order reinstatement, it can affirm the suspension or dismissal, or it can reduce an indefinite suspension to a fixed period of time. ^{6/} Appeal from an adverse decision of the Civil Service Commission, for an officer, lies to the State district court.

^{3/} Interview, Dennis Gardner, Senior Assistant City Attorney, City of Houston, April 3, 1979.

^{4/} Ibid. However, the chief may "pass-by" upon written justification, names submitted to him for promotion. With the exception of immediate office assistants, the chief has no power to name ranking commanders, although he may assign or re-assign them among command positions.

^{5/} Ibid.

^{6/} Ibid.

The employee then must show that the Commission acted without substantial evidence or may produce additional evidence not in existence at the time the Commission heard the case. If the chief loses before the Civil Service Commission, no appeal may be taken. ^{7/}

Should the chief decide to temporarily or indefinitely suspend, the personnel action must be based on violation of one or more "Causes of Dismissal and Suspension" set out in the state civil service law. ^{8/} These causes include such categories as "guilty of an immoral or criminal act," "violation...of the rules or special orders of the Fire and Police Departments," "guilty of any conduct unbecoming an officer," most of which are sufficiently broad in terminology to allow the chief latitude. ^{9/} Similarly, the General Rules of Conduct of the Police Department are sufficiently broad in their wording to permit the chief to act on instances of minor verbal abuse against citizens ("Conduct and Behavior" and "Responsibilities to Serve the Public") or assault with deadly force ("Abide by Laws," "Duty to Report all Crimes and Incidents," and "Oppressive Conduct," among others). ^{10/}

^{7/} Ibid.

^{8/} Rule 13, Section 6, Article 1269m, V.T.C.S.

^{9/} Ibid., subsections (b), (d), and (k) shown as examples. The taking of bribes or other gratuities is also cause for suspension or dismissal.

^{10/} Rules Manual of the Houston Police Department, 2/0.00--General Rules of Conduct, as cited in Memorandum to the Fireman's and Policemen's Civil Service Commission, City of Houston, from H.D. Caldwell, Chief of Police, April 28, 1978 (provided by City Attorney's office as an example of the format of a Civil Service action).

A procedural hurdle which hampers any chief's efforts to bring disciplinary actions under the Civil Service law is a provision which requires that the incident forming the basis of a violation must have occurred within 6 months of the disciplinary action taken by the chief. ^{11/} In recent months, Chief Caldwell has been successful in arguing to the Civil Service Commission that the discovery of the violation should initiate the operative 6 month statute of limitations for suspension. However, officers who have appealed to the State district court from the Civil Service Commission's affirmance of the chief, have been reinstated on the force. ^{12/} Chief Caldwell's argument on the 6 month rule before the Civil Service Commission provides a good illustration of the legal limitations on a chief's ability to deal with police misconduct as a result of the Civil Service law:

Before proceeding, since some of the facts in this case extend past the six (6) months period set out in the controlling statute, an explanation seems appropriate. As will be seen momentarily, the events which ultimately led to this indefinite suspension began in the early morning hours of....I am including all relevant facts, without regard to time, on the basis of the following alternative reasoning:

- (1) The facts occurring more than six (6) months from the date of this letter are included merely to provide a complete background for the Commission, and further, to demonstrate the continuing conspiracy

^{11/} Article 1269m, V.T.C.S., Section 16.

^{12/} "Fired Officer Ordered Reinstated, Given Back Pay," The Houston Post, May 15, 1979, p. 3A. The article says that the state judge held that the statute of limitations runs from the time of the alleged offense. The decision is being appealed by the City of Houston through the City Attorney.

among several officers, which continued as to Officer _____ until....Under this theory, all facts, other than those involving the continuing conspiracy, outside the six (6) month period are not to be considered as part of the allegations, and may in no manner be used by the Commission to sustain this indefinite suspension should there be an appeal.

(2) In the alternative, and certainly with no intention of waiving the foregoing, I am submitting all relevant facts to the Commission for full consideration on the merits of any appeal which may ensue from my decision to indefinitely suspend. My reasoning in this regard is that the Texas Legislature, in passing Article 1269m, V.T.C.S., never intended to create an inflexible and absolute Statute of Limitations so as to shield officers who have committed serious misconduct from appropriate disciplinary action. In my judgment, the six (6) months period should become operative at the point in time when the Police Chief becomes aware of the misconduct or through reasonable diligence should have become aware of such conduct. Normally this malfeasance by police officers comes to my attention through the daily operation of the chain of command. Generally, no more than a few days separates the date of the occurrence from the time the misconduct is reported to me. Under these circumstances, the six (6) month rule is eminently reasonable since it provides me sufficient opportunity to complete whatever additional investigation may be warranted, weigh the facts, and take whatever action is necessary. Additionally, the officer is entitled to know his status in the department after having an investigation hanging over his head for up to six (6) months. On the other hand, as here, where one or more officers have acted in conscious concert to not only alter the evidence at the scene, but then to create and submit an untruthful and distorted version of what occurred, and finally to enter a conspiracy of silence, the Chief cannot be held to a six (6) months limitation. Under my theory, I have six (6) months from the time I learned the truth of what occurred to take appropriate disciplinary action. To interpret the Statute otherwise

is to reward, rather than punish, an officer who is able to cover his misconduct for a minimum of six (6) months. In other words, if a policeman commits murder but is not caught for six (6) months, does the law intend to immunize him from disciplinary action? I cannot operate a department under those conditions, and I choose to believe that the legislature intended no such contorted construction. 13/

2. Role of the Mayor

The Mayor of Houston has sole authority to name the Chief of Police; under Texas law, however, the chief must have been a law enforcement officer within the state for five years prior to becoming a chief. 14/ The mayor has no disciplinary authority over any other police department personnel. 15/ The power to appoint the chief not only has meant that incoming mayors have routinely changed police chiefs, but that incumbent mayors have frequently been outspoken on matters of police department activities. Examples of this during this decade include an accusation lodged against then Mayor Louie Welch that he was "ignoring" police brutality against persons in the

13/ Memorandum, April 28, 1978, op. cit. The name of the officer involved has been deleted for purposes of this study. The subject of this memorandum did not appeal his dismissal beyond the Civil Service Commission.

14/ Article 1269m, V.T.C.S.

15/ Interview, Dennis Gardner, op. cit. One recommendation for modification of mayoral appointing authority comes from a black minister who proposes that the civil service law be changed to permit appointment of second-echelon commanders just under the chief by the mayor to enable lateral entry of minority officers at command levels in the Department. See interview, Rev. Bill Lawson, April 5, 1979.

black community, ^{16/} a subsequent order by Mayor Welch that any reports of alleged police brutality were to be given to the City Council by the Police Department, ^{17/} and a refusal by Mayor Welch about one week later to appoint a civilian review board to investigate allegations of alleged police brutality. ^{18/}

Welch's successor as Mayor of Houston, Fred Hofheinz, also refrained from using his authority as mayor to establish a reviewing authority external to the Police Department, but sought in other ways to change the accountability "climate." ^{19/} Following the revelations of police participation in the murder of Jose Campos Torres in May, 1977, Mayor Hofheinz and Police Chief B.G. Bond joined in making a public

^{16/} "Welch Accused of Ignoring Police Brutality," The Houston Chronicle, April 19, 1973. The accuser was Surrey Davis, a black attorney and head of the Political Education Forum of Harris County.

^{17/} "Welch Orders Reports of Alleged Police Brutality Given to Council," The Houston Chronicle, May 24, 1973. The article stated that a member of the City Council, James J. McConn (now Mayor of Houston), had complained that he was not receiving follow-up reports on police investigations of abuse complaints.

^{18/} "Welch Won't Name Civilians to Check on Police Brutality," The Houston Chronicle, May 30, 1973. A black City Council member, Judson Robinson, Jr., had requested that the mayor name a civilian review board. Welch is quoted in the article as saying to Robinson, "The only way you're going to get a civilian review board is to get a new mayor." The following year, Fred Hofheinz was elected mayor, with substantial black electoral support.

^{19/} "Hofheinz Defends Action of Rookie Police Officer," The Houston Chronicle, June 1, 1977. The Harris County District Attorney opposed the proposal on the grounds that the present grand jury system could "handle" criminal allegations against police officers. See discussion infra. No special grand jury was empaneled. The proposal came from former State District Judge Andrew Jefferson.

endorsement of a proposal to establish a special state investigating grand jury to probe police brutality in Houston. ^{20/}

The current Mayor, Jim McConn, while not publicly outspoken on the matter of police practices in Houston, has taken an interest in improving police services. He believes one problem to be that the police department is now at "half strength," that it has had problems recruiting because of the "negative press" and the pay scale, and that 3,000 officers must police an area of 580 square miles. ^{21/} He pointed to the fact that police had exercised restraint in handling last year's Moody Park incident, as well as a subsequent demonstration there in January, 1979; he stated that although 83 police officers were injured, ^{22/} no civilians had been.

3. Role of the Houston City Attorney

The City Attorney, who is appointed by the mayor, heads the Legal Department, one of twenty-four administrative units. ^{23/} The Legal Department represents the various units of the city government, includ-

^{20/} "Mayor, Chief Favor Special 'Brutality' Jury; DA Opposed," The Houston Chronicle, June 1, 1977. The Harris County District Attorney opposed the proposal on the grounds that the present grand jury system could "handle" criminal allegations against police officers. See discussion infra. No special grand jury was empaneled. The proposal came from former State District Judge Andrew Jefferson.

^{21/} Memorandum, "Meeting with Mayor McConn," Office of the General Counsel, USCCR, regarding meeting held with the Mayor on April 3, 1979.

^{22/} Ibid.

^{23/} Ibid.

ing the Police Department, in any legal actions to which they are a party. In any actions between the chief of police and employees of that Department, such as civil service hearings, the Legal Department represents the chief. In any actions against city employees growing out of acts performed in the conduct of city business, the Legal Department represents those employees against outside parties. ^{24/} These include "about 10-20 suits a year" filed against police under Section 1983 of the Federal Civil Rights Laws, alleging excessive use of force. ^{25/} In any cases of police misconduct which are referred to the District Attorney for Harris County (a state office with county jurisdiction), or to the United States Attorney for the Southern District of Texas, the City Attorney's Office accompanies Departmental personnel. ^{26/} Self-incriminating statements made by police officers in the course of an internal investigation under threat of discharge if they fail to make full disclosure may not be used against that officer in a criminal prosecution; other Legal Department investigative files are made available. ^{27/}

^{24/} Interview, Dennis Gardner, op. cit. He stated that no damages have been assessed against the city arising out of excessive use of force by police officers.

^{25/} Ibid.

^{26/} Interview, Dennis Gardner, op. cit. Private counsel also are permitted to meet with IAD investigators on behalf of persons subject to internal investigation.

^{27/} Ibid.

4. Role of the Houston City Council

The City Council of Houston is composed of eight councilmen and the mayor, who is a voting member. Budget submissions are made by heads of departments and the Council has power only to approve or disapprove entire departmental requests rather than line-items. ^{28/}

If a majority so votes, the Council can hold investigative hearings and issue subpoenas; there are no standing committees, although use is made of ad hoc committees as needs arise. ^{29/}

The City Council has on occasion become involved in the issue of police misconduct in Houston. The President of the Harris County Criminal Lawyers Association urged that the City Council appoint an independent fact-finding commission in 1977 to inquire into violence in the Houston Police Department; neither the Council nor the Mayor responded to that communication. ^{30/} By contrast, as illustrated in the discussion of mayoral activity regarding police practices, individual members of the City Council have either pushed for creation of civilian review boards, as Judson Robinson, Jr. (the only black councilman) did in 1973, or have publicly indicated dissatisfaction with Police Department reporting on investigations of complaints, as Jim McConn did also in 1973. ^{31/} Currently, any person can appear

^{28/} Interview, Frank O. Mancuso, Councilman, District E, City of Houston, April 5, 1979.

^{29/} Ibid.

^{30/} Interview, Dick DeGuerin, Past President, Harris County Criminal Lawyers Association, March 31, 1979. He reports that on another occasion he appeared before the City Council to announce a suit against the City in a case of alleged police brutality and was cut off after announcing the subject.

^{31/} See discussion, supra.

before the City Council and make a sworn complaint against police or any other city government activity. Such complaints are referred to the Office of the District Attorney as a rule.^{32/} The Council can also informally request a report on a complaint, but the Mayor alone can require that an agency prepare it. In exceptional cases, the Council could make a formal request for a report by motion or resolution.^{33/}

One proposal for a reform which could increase minority representation in the City Council, according to a black community leader, would be for creation of single-member districts; in his view, the present system dilutes accountability of both council members and the Mayor to the various constituencies which make up Houston.^{34/} However, a current member of the Council takes the position that at-large election is good because each member has to be concerned about the needs of the entire city.^{35/}

^{32/} Interview, Frank Mancuso, op. cit.

^{33/} Ibid.

^{34/} Interview, Rev. Bill Lawson, op. cit.

^{35/} Interview, Frank Mancuso, op. cit.

B. Harris County District Attorney & Grand Jury System

In Texas, State District Judges may initially be appointed by the Governor and must stand for election every two years thereafter. Within county jurisdiction, a state district judge selects from three to five persons to serve as grand jury Commissioners. These Commissioners in turn select not less than fifteen nor more than twenty prospective grand jurors. These names are placed in a sealed envelope and delivered to the District Judge in open court. The Judge conducts an inquiry into qualifications, and the first twelve who are qualified are empaneled to serve as a state grand jury for a basic term of three months. ^{36/}

The personal nature of the grand juror selection process, known generally as the "Key-man" system, prompted the late Justice Hugo Black of the U.S. Supreme Court to write:

The Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable. ^{37/}

^{36/} Interview, Andrew L. Jefferson, Jr., Former Judge, District Court, Harris County, April 25, 1979. A vote of 9 out of 12 is required to indict.

^{37/} Smith v. Texas, 311 U.S. 128, 130-31 (1940).

Until 1974, grand juries in Harris County turned out to be predominantly white, well-educated and upper middle class in composition as a result of the key-man system. ^{38/} Since then, representatives of minority groups have been included in greater percentages but the juries generally remain "reflective of the particular judge's philosophy and attitudes." ^{39/}

Some attorneys who have studied the grand jury system in Harris County doubt the extent of grand jury independence. They state that grand juries are often "kept in the dark" about independent investigating authority and are carefully "programmed" by the investigation made and presentation to them by the county prosecutor. ^{40/} If a grand jury refuses to indict on recommendation from the District Attorney, the D.A. has the right to take the case to another grand jury (there are usually three operating simultaneously in the County) until an indictment is obtained; similarly, the

^{38/} Interview, Andrew L. Jefferson, Jr., op. cit.

^{39/} Ibid.

^{40/} Interview, Matthew Horowitz, Joan Glantz and Dassia Porper, Attorney Houston Chapter, American Civil Liberties Union, March 26, 1979. Also, interview, Richard DeGuerin, Past President, Harris County Criminal Lawyers Association, March 31, 1979.

District Attorney can disregard an indictment if the grand jury has become a "runaway" jury. ^{41/}

The District Attorney for Harris County is the elected state prosecutor for this jurisdiction; about 150 attorneys in that office process a heavy caseload in which testimony by police is often crucial to obtaining convictions. This interdependence has been characterized as a "marriage"; ^{42/} at the minimum, it results in a serious conflict of interest in obtaining prosecutions of police in Harris County. Between 1966 and 1978, Harris County grand juries refused to indict ("no-billed") Houston Police officers in 155 deaths, of which 93 (60%) were black and 16 (10.3%) were Hispanic persons. ^{43/}

In the aftermath of the death by drowning of Joe Campos Torres in May, 1977, a Harris County grand jury indicted two

^{41/} Interview, Andrew L. Jefferson, Jr., op.cit.; also, interview, Richard DeGuerin, op.cit. The term "runaway" is used to indicate a grand jury which shows independence from the D.A.; when this happens the D.A. takes more sensitive cases before other juries.

^{42/} Interview, J.A. Canales, U.S. Attorney for the Southern District of Texas, March 9, 1979. He places emphasis on the nature of the investigation and presentation to the Grand Jury by the D.A., rather than on the composition of the jury per se.

^{43/} Glover et al v. Watson et al, op.cit. Plaintiff's Exhibit No.42. The exhibit shows that 95 of the 155 deaths occurred from 1973-1977; in 1978, only one case was ruled justifiable homicide.

Houston police officers for murder; they were subsequently convicted of criminal negligent homicide, a misdemeanor under §19.07 of the Texas Penal Code. This was the first murder case against Houston police officers in six years.^{44/} In two other cases which were widely publicized in 1978, involving "throw-down" guns planted on victims of police shootings, the Harris County grand juries no-billed.^{45/} Federal civil rights prosecutions have been subsequently brought in those two cases, as well as in the Torres drowning case.^{46/} A Federal prosecution was also instituted in January, 1979 against the former police chief of Jacinto City, Texas, an incorporated town in Harris County, for conspiring to violate the civil rights of prisoners who were allegedly tortured to compel confessions.^{47/} This case had also been no-billed by the County Grand Jury.

44/ "First Murder Case in Six Years Against Houston Policemen," The Houston Chronicle, October 6, 1977. The previous case had been in 1970, when two officers were acquitted in state court in the murder of a black prisoner; they were also acquitted the following year of Federal civil rights charges stemming from the same case.

45/ These involved the deaths of Randall Webster and Billy Joyvies.

46/ U.S. v. Mays, (Joyvies shooting), (Webster shooting); U.S. v. Plaster. In the Webster shooting evidence of the throw-down gun was never presented to the County Grand Jury.

47/ U.S. v. Jamail, et al., Cr. No. H-79-8 (filed Jan. 19. 1979).

C. State of Texas Oversight

1. Role of Law Enforcement Standards Commission

The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is responsible for establishing mandatory statewide minimum standards for appointment and training of all law enforcement officers, with the exception of county sheriffs, constables or other law enforcement officers elected under the provisions of the Constitution of the State of Texas, who are exempted by law from meeting those standards. ^{48/} There are two types of certificates issued by the Commission to qualifying Texas peace officers - Qualification Certificates and Proficiency Certificates. A Temporary Qualification Certificate is issued by the Commission to a peace officer applicant who meets the Commission prescribed standards for appointment, and a Permanent Peace Officer Qualification Certificate is issued by the Commission to a peace officer upon his completion of the Commission prescribed basic course for peace officers. This basic course must be satisfactorily completed within the six-month period from the date of original

^{48/} Interview, Fred Toler, Executive Director, TCLEOSE, March 14, 1979. Funding for this Commission is provided in part by LEAA.

appointment. The Temporary Qualification Certificate advises the employing department that the applicant is qualified to be appointed as a peace officer, and shows the time remaining for the peace officer to obtain his basic training. The Temporary Qualification Certificate automatically expires six months from original temporary certification or upon issuance of the Permanent Qualification Certificate on completion of the basic training. The Permanent Qualification Certificate expires upon termination of the officer's employment with the department to whom he was certified. Both the Temporary Qualification Certificate and the Permanent Qualification Certificate may be revoked for violation of a Commission standard and must be revoked upon the holder's conviction of a felony offense.

The Proficiency Certificates include the Basic, intermediate and Advanced Proficiency Certificates, and evidence the attainment of knowledge, skills and abilities through education, training and experience which will enable the peace officer to more adequately perform his law enforcement duties. The requirements for the issuance of these certificates are prescribed by the Commission. The Proficiency Certificates may be annulled if the individual did not meet the requirements for the issuance of the same and they were issued in

error or by reason of incorrect information furnished the Commission. These Proficiency Certificates do not expire upon termination of the officer's employment since they are certificates of proficiency and not of qualification to be appointed as a peace officer.

The Commission has the statutory authority to increase the educational standard for appointment from the present high school diploma or G.E.D. requirement to some level of college completion. ^{49/} Legislation was introduced by San Antonio state representative, Frank Tejada, and passed by the legislature which makes psychological screening by a licensed physician or licensed psychologist one requirement for certification by the Commission of an applicant as being qualified to be a peace officer. ^{50/}

The Texas Advisory Commission on Intergovernmental Relations is an independent research agency in existence since 1972. Its members are appointed by the Governor and Speaker of the House. ^{51/} During 1978, the Advisory Commission conducted hearings in Houston, San Antonio and Dallas to

^{49/} Ibid.

^{50/} Ibid.

^{51/} Interview, Jay Stanford, Executive Director, TACIR, March 14, 1979.

determine the present standards and procedures in effect in law enforcement agencies and to make recommendations for changes. To some extent, this review consisted of examining how well the mandatory requirements set by TCLEOSE (discussed above) were serving the needs of agencies of varying size and the publics they serve. In December, 1978, the Advisory Commission issued a report entitled Professional Standards for Local Law Enforcement Officers, which contained recommendations for improvements in training, certification/decertification, civil service law, psychological testing, written policies and procedures, and "current issues" affecting law enforcement. ^{52/} The Report did not single out any particular police department in the state for criticism, but did call attention to cities which were making innovative changes in areas beyond requirements mandated by TCLEOSE. The Report identified three major areas of current issues and problems affecting law enforcement in Texas: Salaries and Careers; Mental and Emotional Hazards; and Public Image and Recruitment. Regarding the area of mental and emotional hazards, the Report stated:

^{52/} Ibid.

The effects of the stresses of modern life have become a familiar litany to most Americans and appear to differ from the effects of stress on officers only by degree. Suicide rates among police appear to be higher than average although this may be because the means are more readily available. Alcoholism is a well-documented problem among police. Many policemen develop a sense of isolation from the community and withdraw almost entirely into the company of fellow officers. This sense of isolation can extend to family members, contributing to the high divorce rate among officers. Police experience high levels of stress-related diseases such as heart disease and high blood pressure. 53/

Displaced aggression is sometimes a result of the stresses of policing. An officer is expected not to show emotion in danger and in conflict situations. Few outlets may be available to officers to relieve pent-up aggression in a constructive manner.

The cost of these problems to the department and the community is considerable. Disability benefits, early retirement, absenteeism, and the increased costs of medical insurance are measurable results. Lack of motivation, erratic performance, and unsound judgment are more difficult to measure but nevertheless constitute real costs to the community. Inappropriate behavior of an officer who has become unable to deal with these job stresses in an acceptable manner may damage the public image more difficult. Finally, and in the most extreme cases, loss of control on the job may endanger the life of the officer, his fellow officers, and citizens.

2. Role of the Texas Attorney General

Under Texas law, the Attorney General is not empowered to prosecute criminal offenses. This authority is vested in the District Attorneys, who are state officers with county jurisdictions. As a result, the Attorney General's role in

53/ Professional Standards, op.cit., p. 51.

regard to prosecution of police misconduct cases throughout the state has been largely "hortatory" in nature, consisting of secondary investigations in certain cases, followed by recommendations to the U.S. Attorney General in Washington for civil rights prosecutions if warranted.^{54/} In the aftermath of the Torres drowning in May, 1977, then Attorney General John Hill called for a joint state-Federal investigation into the death. The District Attorney for Harris County replied that he "had not asked the Attorney General for help" and wondered what the "parameters" of such an investigation would be.^{55/} There had been a joint state-Federal investigation of a previous case, the Morales death in Castroville, which led ultimately to a Federal conviction of the local police chief and his sentencing to life imprisonment.^{56/}

^{54/} "Summary of Civil Rights Investigations by the Texas Attorney General's Office of Incidents Resulting in Death," John L. Hill, Attorney General of Texas, Austin, 1978. This report followed requests to the Attorney General by individuals and organizations concerned particularly about recent incidents involving the death of Mexican-American citizens at the hands of police in Texas.

^{55/} "Attorney General Hill enters Torres," The Houston Chronicle, June 15, 1977.

^{56/} U.S. v. Hayes. In the state prosecution of Hayes, he had been convicted of aggravated assault, a felony, and sentenced to 10 years in prison.

In a review of the adequacy of state prosecutions in ten major cases involving the deaths of Mexican-Americans, the Attorney General's staff recommended that in civil rights matters, the Attorney General's staff should be allowed to "fully participate in the examination and cross-examination of witnesses in any inquests or state grand jury proceedings or investigations."^{57/} Until such power is authorized by a change of state law, the role of the Attorney General will remain limited.

3. Role of the Texas Legislature

Section 39.02 of the Texas Penal Code is the state civil rights law--the so-called "Official Oppression" statute states:

(a) A public servant acting under color of his office of employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
or

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) An offense under this section is a Class A misdemeanor.

^{57/} "Summary of Civil Rights Investigations...", op.cit., p.15.

Efforts are currently being made in the Texas Senate and House to ammend this law by upgrading its violation to a felony offense.^{58/} Under present circumstances, it is necessary to proceed against police officers under the homicide provisions of the Penal Code (Section 19) in cases where death has occurred, if commensurate punishment upon conviction is to be possible. However, murder prosecution requires a high standard of proof and showing of culpable mental state (intention), and it is ineffective in dealing with the situation where one officer is the actor and others observe but engage in a conspiracy of silence thereafter.

Representative Ben Reyes of Houston introduced a bill to upgrade the Official Oppression law from a misdemeanor to a felony offense.^{59/} This bill was co-sponsored by Representative Craig Washington who represents a predominantly

^{58/} "Correcting an Inadequacy," The Houston Chronicle, April 5, 1979. This editorial commends the Texas Senate for having passed a bill to upgrade the statute to a felony, punishable by 2 to 10 years in prison and up to a \$5,000 fine. The editorial states: "It is far better for Texas to be in a position to handle its own problems in this respect than having to fall back on federal civil rights laws. Holding law enforcement officers, and public officials in general to higher standards is certainly not unreasonable..."

^{59/} Interview, Ben Reyes, State Representative from Houston, March 16, 1979. In the Torres case, two officers were indicted and tried for murder, although several were aware of what had happened; in the Webster case, similar group silence occurred.

black constituency in south Houston. ^{60/} The Reyes-Washington bill was never reported out of committee.

The Texas legislature did, however, enact a new statute making it a criminal offense for peace officers, jailers and prison guards to violate the civil rights of persons in custody. If the violation of civil rights results in death to the prisoner, a first degree felony is committed. If serious bodily injury occurs, a second degree felony is committed. ^{61/} In addition, the new law specifically confers upon the Texas Attorney General authority to investigate violations of the state. The Attorney General will have concurrent jurisdiction with other law enforcement agencies in this regard.

^{60/} Interview, Craig Washington, State Representative from Houston, March 31, 1979. Representative Washington states that "watered-down" versions of the Oppression law reform have been offered at the request of police officers' associations. The State Attorney General supported the felony upgrade bill co-sponsored by Washington and Reyes. Representative Washington has also introduced legislation to reform the grand jury system by shortening its term (presently 90 days) and increasing pay, to make it possible for less affluent persons to sit; and he has sought legislation to provide for random selection of grand jurors. Ibid. These proposed changes in the grand jury system have not come to the floor for votes, although some have been reported out of committee.

^{61/} This bill, S.546, was introduced by State Senator Jack Ogg of Houston. It passed the Texas Senate, was subsequently amended by the House of Representatives and signed into law by the governor on June 13, 1979.

One effect of the new state law is the creation of a Civil Rights Division in the Harris County District Attorney's office. Former District Attorney, Carol Vance, has followed a policy of deferring many complaints against police to Federal investigators on the theory that he lacks a strong enough civil rights prosecution statute; he responded to upgrading the state civil rights law by setting up a special division to prosecute cases thereunder in June.

D. Federal Oversight

1. Role of the Department of Justice, General Authority

There are two Federal criminal statutes under which the U.S. Department of Justice can prosecute local police officers for misconduct which denies a person of his or her civil rights. One statute proscribes conspiracies to deny a citizen of his civil rights and the other prohibits denial of a person's civil rights under color of law.

Section 241 of Title 18 of the U.S. Code states:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;...

They shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life. (As amended by Act of April 11, 1968, P.L. 90-284, Title I, §103(a), 82 Stat. 75.)

The elements of an offense under this section are (a) a conspiracy of two or more persons; (b) who have specific intent; (c) to deprive a citizen of an established federal right secured by the laws or Constitution.

The companion section, prohibiting deprivations of civil rights under color of law, is codified at 18 U.S.C. §242, and states:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, then are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results, shall be subject to imprisonment for any term of years or for life. (As amended by the Act of October 11, 1968, P.L. 90-284, Title I, §103(b), 82 Stat. 75.)

The elements of an offense under this section are: (a) A person acting under "color of" law; (b) with the specific intent; (c) to deprive a person; (d) of an established Federal right secured by the laws or Constitution of the United States.

The most difficult element of both §241 and §242 is the requirement that a defendant must specifically intend to violate an established Federal right. The Supreme Court construed both statutes to require specific intent in order to avoid holding them unconstitutionally vague. So construed, a defendant must be found to commit an act voluntarily, with knowledge that it was prohibited by law, and with the purpose of violating the law and not by mistake, accident, or in good faith. Thus, the negligent use of excessive force in apprehending a suspect or an officer striking out in frustrated rage might not constitute chargeable offenses under either statute.

In addition, State statutes authorizing law enforcement personnel to use deadly force in the arrest or the prevention of escape of a suspect may further cloud the issue of intent in that it is questionable whether an officer, when acting in accordance with State law, has the requisite intent to violate a citizen's civil rights.

The difficulties arising from the intent requirement of the two Federal criminal civil rights statutes have been addressed by recent congressional attempts to revise Title 18 of the United States Code but the last such bill died in the House of Representatives during the last session of Congress.

Apart from the legal impediments to effective criminal prosecution of local police malefactors, the Justice Department has established policies regarding the investigation and selection for prosecution of the approximately 12,000 complaints it receives a year concerning police abuse. Of those cases, it investigates 3,500 but only prosecutes about 50 cases of the most egregious instances of police brutality. Until 1977, the Department reviewed only State court prosecutions of police abuse which resulted in acquittals, but in early 1977, Attorney General Griffin Bell announced in a memorandum to all U.S. Attorneys that every allegation of a violation of the civil rights laws would be evaluated on its own merits to determine whether Federal prosecution is warranted. In analyzing whether a Federal criminal prosecution should follow State criminal proceedings, U.S. Attorneys consider a number of factors including: indications of racial bias on the part of the jury; racial composition of the jury; alleged improprieties on the part of the judge; whether State prosecution is prompt and vigorous; indications that prosecutors have held back out of a wish not to jeopardize close working

relationships with police officers; whether the victim is pursuing civil remedies; and the nature and the extent of the alleged attack.

2. Role of the United States Attorney

In September 1977 a new U.S. Attorney for the Southern District of Texas took office, the first Mexican-American to hold a U.S. Attorney's position in history. ^{62/} Prior to that time, the U.S. Attorney's office in the Southern District had not been particularly active in prosecuting police misconduct cases under Federal civil rights laws. ^{63/}

In seven years from 1972 through 1978, the Justice Department's Civil Rights Division, acting through or in cooperation with the U.S. Attorney's office here, had investigated a total of 384 civil rights complaints involving allegations of criminal misconduct against Houston police officers; of these, 21 involved the death of a person. ^{64/} During the same period, however, there were only three cases filed in the Southern District against Houston police officers, the first of which in 1974 involved extortion in drug

^{62/} Interview, J.A. Canales, U.S. Attorney, Southern District of Texas, March 9, 1979.

^{63/} "Brutality Claims High, Most Unfounded," The Houston Chronicle, March 17, 1977. This article quotes then Assistant U.S. Attorney James Gough as stating that "the great majority of brutality complaints fall into one of two categories--either it's obvious that the case is without merit, or else there is not much chance of a successful prosecution..." He also stated that "only about a dozen (brutality complaints) in the past five years have gone as far as a grand jury investigation and of those, the majority did not result in an indictment."

^{64/} Letter to Bruce Griffiths, Attorney at Law, Houston, Texas (counsel in civil 1983 action against Houston police officer) from William L. Gardner, Chief, Criminal Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C., October 13, 1978, p. 2.

arrests. ^{65/} The other two, U.S. v. Denson, et al. (1977) and U.S. v. Mays, et al. (1978), involved the Torres and Webster deaths; another case involving Houston Police Department officers, U.S. v. Plaster, concerning the Joyvies death, was filed later in 1978. The Mays and Plaster cases were filed by the new U.S. Attorney and the Denson case was prosecuted by his office. In sum, the activity of the U.S. Attorney's office regarding alleged police violence has increased substantially since 1977.

One of the first acts of the new U.S. Attorney in 1977 was to create a Civil Rights Division in his office; in so doing, the Southern District of Texas joined the Chicago and Southern District of New York as the only U.S. Attorney's offices in the nation to have formal civil rights units. ^{66/}

The U.S. Attorney's office becomes involved in police brutality complaints when either a complainant contacts the office of the FBI, or when the U.S. Attorney learns of a case through news organs or referrals. Any case involving allegation of physical injury, shootings or death, results in a preliminary investigation by the

^{65/} U.S. v. Albert, et al. (1974).

^{66/} Interview, J.A. Canales, op. cit. Previously, the appellate section of the office conducted civil rights investigations. The Civil Rights Division here is headed by Mary Sinderson, who directs a staff of 4 attorneys out of a total of 35 assigned to the full office. The Criminal Division of Civil Rights in Washington has only 18 attorneys for the nation, by comparison.

Federal Bureau of Investigation, which works with the U.S. Attorney's office. ^{67/} Information sought from the Houston Police Department is obtained by Federal subpoena. ^{68/}

The U.S. Attorney is critical of the degree of thoroughness exercised by the District Attorney for Harris County in investigations and presentations to grand juries. No regular channel of communication in civil rights matters so far has been established between these two state and Federal prosecution offices. ^{69/}

3. Role of the Federal Bureau of Investigation

Civil Rights investigations and cases are one of four high priorities within the Department of Justice during the current administration. The Civil Rights Section of the Federal Bureau of Investigation opens investigations on referral from the Civil Rights Division of the Department. ^{70/} Police brutality cases are included

^{67/} Ibid. See discussion of FBI, *infra*. Low level physical abuse by police, e.g., slapping, is not usually investigated

^{68/} Ibid. The FBI conducts the bulk of investigation which requires cooperation with the Houston Police Department; the U.S. Attorney's Office deals at "arms-length," thus avoiding any reliance on a "spirit of cooperation" relationship.

^{69/} Ibid. Canales is quoted in a recent newspaper article as saying that he was pleased that the District Attorney was considering creation of a civil rights division if the Official Oppression law is upgraded to felony status; Canales said that such a step would set an example for other DA's across the state, and that there would be "no obstacle to cooperation" between the two offices in prosecuting civil rights cases. At present, the two offices do cooperate in bank robbery and narcotics investigations. Houston Post, April 27, 1979.

^{70/} Interview, Carl W. Hurst, Section Chief, and Hal N. Helterhoff, Assistant Section Chief, Civil Rights Section, Criminal Investigation Division, F.B.I., Department of Justice, Washington, D.C., November 9, 1978.

in these civil rights investigations; they are also opened at local offices, such as the one in Houston, upon receipt of complaints. According to FBI officials in Washington, there are two kinds of FBI investigations into police brutality cases: a preliminary investigation, in which victims are interviewed, photographs and physical evidence are gathered, medical personnel are interviewed, police officers are interviewed and the local chief of police is notified of the Bureau's investigation. A report on this is forwarded to the local U.S. Attorney who "gives a legal opinion on the strengths and weaknesses of the case."^{71/} These materials are forwarded to Washington for review by both the FBI and the Criminal Section of the Civil Rights Division. If a decision is subsequently made to prosecute the case, the FBI then may again be involved in assisting the local U.S. Attorney in preparing the case.^{72/}

Washington FBI officials stated that the Bureau sometimes conducts investigations "with" local officials. Washington officials of the FBI also stated that the Bureau has no statistics on the number of civilians killed by police officers nationwide, nor of lesser kinds of verbal or physical abuse by police officers against

^{71/} Ibid.

^{72/} Ibid.

civilians. The Bureau does publish in its Uniform Crime Reports statistics on numbers of police assaulted by civilians. ^{73/}

The Houston field office of the FBI encompasses both the Southern Judicial District (which is served by the U.S. Attorney for the Southern District), with the exception of two divisions (Brownsville and Laredo), and the southern portion of the Eastern Judicial District of Texas. This means that FBI statistics for police abuse complaints in the "Houston office" not only cover an area considerably larger than the City of Houston, but also are not reflective of investigations conducted in the U.S. Attorney's jurisdiction here. ^{74/}

The FBI becomes involved in civil rights investigations here in various ways: (1) a victim or complainant comes in or phones to register a complaint; (2) private attorney referrals; (3) the U.S. Attorney requests an investigation; or (4) another private or governmental agency makes a referral. ^{75/} Regulations of the Bureau require that the preliminary investigation be completed within 21 days. Complaints to the FBI do not have to be notarized. Ninety agents are assigned to the Houston Field Office, of whom 6.5

^{73/} Hurst interview, op. cit.

^{74/} Interview, Harold Porter, Agent in Charge, Houston Office, Federal Bureau of Investigation, March 12, 1979.

^{75/} Ibid. No referrals have ever come from the District Attorney.

work on civil rights investigations. Agents who are former police officers are not permitted to work on investigations of police abuse complaints. ^{76/}

The existence of an Internal Affairs Division in the Houston Police Department is helpful to the FBI, according to the head of its local civil rights section, as it provides a means to redress some complaints which might otherwise not meet state or Federal jurisdictional requirements. ^{77/} The IAD and FBI conduct separate investigations of police abuse complaints, but work cooperatively. ^{78/} The head of the Civil Rights Section stated that the Houston Field Office has the largest caseload of civil rights brutality complaints of any field office in the country. ^{79/} From July, 1977 to June, 1978, the Houston office received 316 police brutality complaints; this compared with 122 received by the Philadelphia Office during the same period. From July, 1974 to June, 1977, the Houston office received 1,303 civil rights complaints of all kinds,

^{76/} Ibid.

^{77/} Ibid.

^{78/} Interview; Robert Rea, Special Agent, Federal Bureau of Investigation, Houston Field Office, March 26, 1979.

^{79/} Ibid. In the Webster case, the "throw-down" gun was discovered by investigative work of Assistant U.S. Attorney Lupe Salinas, not by the FBI or IAD investigators, nor by the large investigative staff of the Harris County District Attorney. The FBI credits the U.S. Attorney's Office for this investigative work.

of which 591 alleged police brutality; of these 591 complaints, 182 (31%) named officers of the Houston Police Department. ^{80/}

4. Role of the Law Enforcement Assistance Administration

The Law Enforcement Assistance Administration of the U.S. Department of Justice has awarded the Houston Police Department 17 grants between 1974 and 1978 totalling \$5,970,412 for various activities and research. ^{81/} The Department has an Equal Employment Opportunity Plan on file with the LEAA. This plan shows, as discussed in a preceding section that the Houston Police Department as of 1978 had 6.6% black officers, 6.7% Hispanic officers, and 6.3% female officers of all races. Base population figures in the Houston-Galveston metroplex, which the Department uses as its target for percentage goals (the plan contains no specific timetables), are (as of 1975, when the goals were prepared) 19.6% black, 12.0% Hispanic, and roughly half women. ^{82/}

Title VI Civil Rights Act provisions requiring nondiscrimination in services provided under LEAA grants were the subject of correspondence between this staff and officials of the LEAA. As of April,

^{80/} H.D. Caldwell, Statement to the USCCR, November 13, 1978, Attachment D. The percentage of Houston city officers named in the 316 complaints in 1977-1978 is not shown.

^{81/} Letter from Dennis Gardner, Senior Assistant City Attorney, City of Houston, to Marc Kranson, Office of the General Counsel, USCCR, May 21, 1979.

^{82/} EEOP, Houston Police Department, Section VI.

1979, the LEAA Civil Rights Compliance section in Washington stated that it had received no complaints of police brutality involving the ^{83/} Houston Police Department.

5. Role of the Community Relations Service

The U.S. Department of Justice also operates the Community Relations Service, a section of the Department created in the Civil Rights Act of 1964 to help communities resolve "...disputes, disagreements or difficulties relating to discriminatory practices based on race, color, or national origin..." through the provision of conciliation, mediation, and technical assistance services to help people in communities settle their differences by conferring rather than litigating.

Conciliation is the act of easing tension, opening communication channels among those in disagreement, and taking other steps informally to help them to reach accord, including: 1) presenting the facts and their interpretation, 2) suggesting alternatives and solutions, and 3) serving as liaison between and among the adversaries and other relevant parties. Mediation is a formal negotiation process which, unlike conciliation is attempted only if both parties elect to pursue. A CRS mediator

83/ Letter, from Lewis Taylor, Chief, Civil Rights Compliance, Law Enforcement Assistance Administration, Department of Justice, Washington, D.C., to Patricia Dunn, Office of the General Counsel, USCCR, April 16, 1979.

brings the disputing groups to the negotiation table to work out what actions will be taken to address alleged discriminatory practices raised by racial or ethnic groups. The process usually takes place when a controversy is brewing or after it has abated. One objective of mediation is to create a self-enforcing mechanism to insure timely implementation of its provisions. Technical assistance embraces those services CRS provides directly to public and private agencies and organizations to help them to alleviate or correct problems which cause friction between and among racial and ethnic groups. Technical assistance can range from conducting training and conflict management for an organization to providing resource materials and program tools and models indicating how other agencies or community groups dealt effectively with similar problems or issues.

In the law enforcement field, CRS has helped police departments to mediate disputes with minority groups and by providing departments with numerous other services, including training in conflict management, conducting assessment of recruitment and upgrading programs, establishing guidelines related to use of firearms, establishing and evaluating police/community relations programs, and identifying models for effective citizen-participation mechanisms.

An internal memorandum recently reviewed CRS minority/police cases for FY 1976 and FY 1977. The reviewer found that the cases could be broken down to three categories: (1) excessive use of force cases; (2) brutality cases; (3) harassment cases (those cases involving a wide variety of situations which do not fit in the first two categories). For

FY 1977, there were a total of 86 minority/police cases including 39 involving excessive use of force, three involving brutality and 44 involving harassment. These statistics include cases where only a CRS alert was filed whether or not CRS responded with assistance.

It is very difficult to assess the effectiveness of CRS in what it attempts to do and it is clear that with a total FY 1979 budget of \$3 million for CRS and a nation-wide work force of 125 people, including clerical staff, that the effectiveness of its efforts must be limited regardless of the theoretical soundness of the dispute resolution mechanisms it employs.

The "Houston story" of efforts by the Community Relations Service both as coordinator of and as participant in community efforts to establish an effective dialogue reveals both the frustrations of such efforts and their hopeful possibilities. In the weeks following the Torres drowning in May, 1977, the Community Relations Service in concert with a group of organizational representatives known as the Coalition for Responsible Law Enforcement, sought to gain cooperation of then Chief Bond of the Houston Police Department in setting up a formal mediation process between the Department and community spokespersons. This mediation function was turned down by Chief Bond, as well as by his successor, Chief Caldwell, on the general grounds that the Department was reluctant to "anoint" any particular group as having the exclusive right to represent the community. ^{84/} The Chief of Police,

^{84/} Interview, Robert Greenwald, Community Relations Service, U.S. Department of Justice, Dallas Regional Office, April 18, 1979.

however, did agree to continue meeting with the Coalition for Responsible Law Enforcement throughout the rest of 1977, but would not commit himself to a written agreement, a CRS prerequisite for mediation. During that period, the first issue addressed was Departmental firearms policy. These discussions centered on (1) the circumstances under which an officer is permitted to shoot; (2) standardization of weapons (number and kind permitted to be used by police); (3) standardization of ammunition; (4) whether the firearms policy should be written and if so, available to whom; and (5) training in firearms policies. ^{85/} Following these meetings, substantive changes were made in firearms policies but were not attributed to the Coalition meetings by Chief Caldwell until he appeared at a public conference on police-community relations in March, 1979 in San Antonio, at which he acknowledged the role played by the coalition in fostering changes. ^{86/} More than a year before the San Antonio conference, Caldwell had broken off meeting with the Coalition on the grounds that the members were "getting into areas of police administration which they did not understand." ^{87/}

From December, 1977 until May, 1978 the Coalition was essentially moribund. The Community Relations Service closed its file in March, 1978. ^{88/} On May 9, 1978 a group of community leaders who had been

^{85/} Ibid.

^{86/} Ibid.

^{87/} Interview, Hector Garcia, Executive Director, Community Relations, Catholic Diocese of Houston-Galveston, March 13, 1979. He chaired the Coalition for Responsible Law Enforcement.

^{88/} Interview, Robert Greenwald, op. cit.

associated with the Coalition met with the Mayor and the Chief of Police to request permanent establishment of a Police Advisory Committee under carefully drawn guidelines. The Mayor and Police Chief appeared enthusiastic about the idea, but follow-up work on details by the Mayor's executive assistants and Office of the City Attorney was not forthcoming. ^{89/} Finally, a year after the initial meeting, on May 10, 1979 the Mayor and Chief agreed to establish such a committee, to be known as the "Police Advisory Committee for Continued Improvement." Its initial meeting was in June, 1979. Fifteen Houston organizations have representatives on the Committee: Anti-Defamation League of B'Nai B'Rith, Antioch Baptist Church, Chicano Training Center, Community Relations Office of the Houston Galveston Diocese, Concerned Teens, IMAGE (Mexican-American Government Employees), Urban League, Houston Bar Association, Houston Chamber of Commerce, Houston Council on Human Relations, Houston Metropolitan Ministries, League of United Latin American Citizens, League of Women Voters

^{89/} "Summary History of Houston Police Advisory Committee Proposal," March 15, 1979, provided by the Houston Council on Human Relations, April 5, 1979.

of Houston, National Conference of Christians and Jews, and the Jewish Federation of Houston. ^{90/} The role of the Community Relations Service in the standing Police Advisory Committee, if any, has not been announced. Many community leaders interviewed by this staff, however, credited the work of the CRS in helping to develop machinery which now has been accepted by the Mayor and Chief of Police of Houston.

6. Role of the Federal Office of Revenue Sharing

Cutting Off Federal Funds Because of Police Misconduct

Cities and their police departments receive millions of Federal dollars each year. The two principal Federal enforcement agencies which channel Federal dollars into the local law enforcement agencies are the U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA), and the U.S. Department of the Treasury, Office of Revenue Sharing (ORS). Under Federal laws, no Federal funds may be used by a recipient in a racially discriminatory manner.

^{90/} Ibid. Organizations proposed for membership but vetoed by the Mayor and Chief of Police were: American Civil Liberties Union, Harris County Criminal Defense Lawyers Association, Harris County District Attorney's Office, and Martin Luther King, Jr. Community Center. Opposition to ACLU and legal units was based on concern that they may be involved in litigation against the Department; reason for opposition to the King Center not given. (The director of the Center stated in an interview with USCCR staff that her conversations with Chief Caldwell had resulted in changes in the Department's pursuit policy, as she had complained about the numbers of police cars which were speeding through black neighborhoods chasing other autos. See interview, Madgelean Bush, Executive Director, Martin Luther King, Jr. Community Center, March 27, 1979.

The principal vehicle prohibiting discriminatory activity by recipients of Federal funds is Title VI of the Civil Rights Act of 1964, as amended:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

By Executive Order of the President, the coordination of Title VI enforcement is conducted by the U.S. Attorney General through the Civil Rights Division of the U.S. Department of Justice.

In addition to Title VI, both the Omnibus Crime Control and Safe Streets Act of 1968 (administered through LEAA) and the State and Local Fiscal Assistance Act of 1972 (administered through ORS) contain nondiscrimination provisions virtually identical to those of Title VI. Pursuant to its coordination of enforcement responsibilities under Executive Order 11764, the U.S. Department of Justice has issued regulations that establish minimum compliance responsibilities for all Federal funding agencies regarding Title VI and all similar provisions in Federal grant statutes.

Pursuant to their statutory mandate under their respective enabling legislation, both LEAA and ORS have issued regulations governing their civil rights responsibilities. These regulations include provisions for suspension or termination of Federal funds as necessary to ensure civil rights guarantees under the law.

Despite the broad antidiscriminatory language of Title VI and the enabling statutes, both LEAA and ORS (with approval of the U.S. Department of Justice) have restricted their civil rights compliance activities basically to an oversight of equal employment guarantees, contract compliance, and discriminatory treatment in the provision of services.

Many legal problems must be resolved before the nondiscriminatory provisions of Title VI, the Omnibus Crime Control and Safe Streets Act of 1968, and the State and Local Fiscal Assistance Act of 1972 can be used to cut off Federal funds to and support injunctive relief against recipient units of government because of discriminatory conduct by local law enforcement agencies. Such police misconduct must be so substantial that it may reasonably be imputed to the entire law enforcement agency as opposed to being purely isolated individual acts. In order to prove institutional complicity in a pattern or practice of discriminatory misconduct against minorities, the government will likely have to prove that responsible officials could have instituted remedial administrative actions which would have reduced if not eliminated the likelihood of such misconduct. This may be a simple matter if there are four or five police officers whose misdeeds account for most of the civilian complaints, but who have not been subjected to departmental sanctions. On the other hand, if the incidence of abuse of minorities is diffused in the ranks and involves behavior which is difficult to characterize as willful, then the required nexus between police policy and police misconduct will be a more difficult one.

Additionally, the Revenue Sharing Act allows a recipient an absolute defense against a finding of discrimination if the recipient can show that the offending program or activity is not funded in whole or in part with revenue sharing funds. Thus, a municipality may shield its police department from review if it uses its revenue sharing monies in safe departments such as recreation or building and zoning thus freeing local revenues for the police departments.

Of the approximately 680 cases currently under investigation by the Civil Rights Division of ORS, only "one or two" involve police brutality and no administrative findings have ever been issued on that basis. The Civil Rights Division of ORS has an approximate budget of \$1 million and 33 investigators and four supervisors. To date, no Federal agency charged with civil rights enforcement responsibility has either suspended or terminated funds because of pervasive police misconduct in or toward minority communities.

Two complaints against the Houston Police Department have been filed with the Federal Office of Revenue Sharing. The first was in 1976, alleging discrimination in employment based on sex, filed by the Houston office of the National Organization for Women (NOW); the second was in 1977 and alleged discrimination in employment based on race and police brutality against members of the black community, filed by members of the Afro-American

Police Officer's League of the Houston Police Department. ^{91/}

These complaints have been investigated by the ORS but no "prefinding letter" has yet been issued. ^{92/} A prefinding letter is the first stage of enforcement by ORS, and sets forth facts and results of the investigation; the City of Houston would have 15 days to respond regarding its compliance intentions; if this prefinding letter is ignored, ORS issues a "finding letter," giving the City 30 days to come into compliance; if this is not done, a "determination letter" is issued which is tantamount to a determination of noncompliance and results in fund termination. However, before funds can be terminated, an administrative hearing must be held. In one city, ^{93/} Chicago, the full process has occurred.

^{91/} Interview, Susan Jackson, Chief, Central Branch, Civil Rights Division, Office of Revenue Sharing, U.S. Department of the Treasury, Washington, D.C., April 11, 1979. See also interview, Sergeant Richard Humphrey and Officer Alvin Young, AAPOL, March 7, 1979.

^{92/} Ibid., Jackson interview.

^{93/} Ibid.

E. General Problems in Legal Accountability ^{94/}

Police accountability is, in fact, a series of interconnected aspects of police administration and law. Police organizations, by virtue of their primary responsibility to enforce prohibitions against criminal activity, have to maintain a degree of secrecy and confidentiality of records, lest their records and policies become readily available to criminal elements in a community. Further, it has been noted by authorities on police science that police organizations, unlike most corporate or governmental entities, allow increasing discretion to employees at lower levels--"downward accountability"--in order to give the officer on the street maximum flexibility to deal with the unpredictable. ^{95/}

^{94/} Legal discussion of this section excerpted from Memorandum, Civil Rights Liability of Municipalities and Police Officials for Police Torts, Christopher G. Bell, Attorney-Advisor, Office of the General Counsel, U.S. Commission on Civil Rights, Washington, D.C., January 30, 1979.

^{95/} Police Practices and the Preservation of Civil Rights, Briefing Paper, U.S. Commission on Civil Rights, Washington, D.C., December 1978, p. 28. "As a result of this high degree of discretion, the officer is heavily influenced by his or her own value system, personality traits and experience of the associate officers and supervisors...The lowest ranking officers are vested with the power to make important policy decisions which directly impact on an individual's rights and freedoms. Conflicting and illegal policies may result because of the diverse approaches used by individual officers. Selective or discriminatory enforcement can be practiced without check. Whenever such broad discretionary power exists, the potential for abuse and misconduct coexist." (28-29).

The correlative of downward accountability unfortunately is upward unaccountability in police organizations.^{96/} As the level of discretion increases for the officer on the street, the officers at higher command levels must move to shield themselves from both civil and criminal liability for the actions of the personnel below them. For example, the Police Foundation notes that in a survey of recent litigation over police misconduct, a number of court decisions have held police chiefs personally liable for wrongful death when a citizen was shot by an officer who lacked proper training.^{97/}

Thus police organizations, in order to protect themselves at levels of higher command also must protect lower level employees charged with misconduct. In some cases this protectiveness is carried to extremes, in which a department will insist on its internal exoneration of an employee despite a jury finding of that employee's civil liability for misconduct.

^{96/} Ibid. 28ff.

^{97/} Police Use of Deadly Force, op. cit., at 108, citing a Survey of Misconduct Litigation, 1967-1971, published by Americans for Effective Law Enforcement, Inc., 1974. (The AELE is affiliated with the International Association of Chiefs of Police.)

The present legal unaccountability of officers of command is a critical problem facing law enforcement today. If there is an inclination toward unaccountability as a matter of self-protection, it has been reinforced by a recent ruling of the U.S. Supreme Court.

The Supreme Court in its 1976 decision in Rizzo v. Goode not only restricted Federal involvement in local police matters, but also limited available remedies to victims of police misconduct. The Rizzo case was a class action brought under §1983, originally §1 of the Ku Klux Klan Act of 1871,^{98/} by individuals and organizations against the Mayor of Philadelphia, the Police Commissioner and others, alleging a pervasive pattern of illegal and unconstitutional mistreatment by the police of minority citizens in particular and Philadelphia residents in general. The district court found evidence of departmental discouragement of complaints and a tendency to minimize the consequences of police misconduct. It also found that only a small percentage of policemen committed

^{98/} 42 U.S.C. §1983 (1970). This Act provides, in pertinent part, that "[e]very person who, under color of [law] of any State or territory, subjects, or causes to be subjected, any citizen...or other person within the jurisdiction...to the deprivation of [constitutional rights] shall be liable to the party injured in an action at law, [or] suit in equity..."

violations but that such violations could not be dismissed as rare or isolated. Accordingly, the district court directed the named officials to draft for its approval a comprehensive program for dealing adequately with civilian complaints to be formulated in accordance with the court's guidelines. The court of appeals affirmed the district court's order; the U.S. Supreme Court reversed.

The Supreme Court determined that the authorities against whom the suit was filed played no affirmative role in the deprivation of respondents' constitutional rights, and rejected the lower court's theory of liability based on the finding of a duty on the part of the officials to eliminate future police misconduct. Under Rizzo, police supervisors and officials not only have no duty to put an end to their officers' misconduct but are not subject to §1983 actions unless they directly participate in the deprivation of constitutional rights. ^{99/}

^{99/} In Monell v. Department of Social Services, 436 U.S. 658 (1978) the Supreme Court, reversing its opinion in Monroe v. Pape, 365 U.S. 167 (1961), held that municipalities themselves could be sued under §1983 where they had caused a person to be deprived of his rights. Consistent with its opinion in Rizzo, the Court refused to find the doctrine of respondeat superior a valid basis for imposing liability under that provision. It did, however, suggest that Rizzo does not preclude imposing liability for a failure to supervise where there is a duty to do so.

Two circuits have shared with Rizzo the apparent doubt that revamping police departmental disciplinary and complaint or training procedures would have any effect on what are considered to be isolated incidents of police misconduct. ^{100/} Of particular relevance to the police practices study being undertaken by the U.S. Commission on Civil Rights is the statement by the court in Jamison v. Currie, that "here there is no indication that the city or police department officials could have instituted any plan or training program which would have made its officers more willing to tackle a belligerent, irrational, ex-Golden Gloves Boxer...." (Id. at 486). It would appear that no circuit court of appeals has yet been presented with evidence that particular police departmental policies and disciplinary procedures result in a statistically significant reduction in the incidence of police misconduct. Such evidence might meet the causation requirements established by Rizzo and Monell v. Department of Social Services.

^{100/} Coalition of Black Leadership v. Cianci, 570 F.2d 12, 15 n.2 (1st Cir. 1978); Jamison v. Currie, 565 F.2d 483, 486 (7th Cir. 1977).

This argument aside, most courts agree that official liability cannot exist without evidence of a plan or policy, ^{101/} although in some cases a de facto plan may be inferred from the evidence. ^{102/} While statistical evidence of the number of incidents of police misconduct has been used to negate the inference of a departmental plan or policy, ^{103/} numbers alone may not be sufficient. ^{104/}

The "affirmative link" between the plan or policy and the constitutional deprivation has been construed to require some form of personal involvement on the part of officials, ^{105/} which is usually described as "participated

^{101/} Duchesne v. Sugarman, 566 F.2d 817, 831 (2d Cir. 1977); Lewis v. Hyland, 554 F.2d 93 (3rd Cir. 1977), cert. den. 434 U.S. 931 (1977); Butler v. Cooper, 554 F.2d 645, 647-48 (4th Cir. 1977); Jamison v. Currie, 565 F. 2d 483, 485-86 and n.1 (7th Cir. 1977).

^{102/} Turpin v. Mailet, 579 F.2d 152, 167-68 (2d Cir. 1978) en banc Contra: Lewis v. Hyland, 554 F.2d 93 (3rd Cir. 1977), cert. den. 434 U.S. 931 (1977).

^{103/} Rizzo v. Goode, 423 U.S. 362, 375 (1976); Washington Mobilization Committee v. Cullinane, 566 F.2d 101, 122-23 (D.C. Cir. 1977).

^{104/} Butler v. Cooper, 554 F.2d 645, 647-48 (4th Cir. 1977).

^{105/} Turpin v. Mailet, 579 F.2d 152, 156 n.5 (2d Cir. 1978) (en banc). Triplett v. Azordegan, 570 F.2d 819 (8th Cir. 1978); Kostka v. Hogg, 560 F.2d 37, 39 (1st Cir. 1978) Arthur v. Nyquist, 573 F.2d 134, 138-40 (2d Cir. 1978).

in," "acquiesced to," "approved," "authorized," and "directed."^{106/} The Seventh Circuit requires that an official act with either a malicious intention to cause a deprivation of constitutional rights or other injuries, or a reckless disregard of clearly established rights or a purposeful nonfeasance where there is a clear duty to act.^{107/}

While many courts have found an official's failure to act per se as insufficient to state a cause of action under §1983,^{108/} there are circumstances where a failure to act or a failure to supervise may constitute official policy which, if a constitutional deprivation results, may be actionable under §1983 official liability.

^{106/} Arthur v. Nyquist, 573 F.2d 134, 146 (2d Cir. 1978), Owens v. Oakes, 568 F.2d 353, 356 (4th Cir. 1978), Reimer v. Short, 578 F.2d 621, 624 (5th Cir. 1978), Jamison v. Currie, 565 F.2d 483, 485 n.1 (7th Cir. 1977), Kite v. Kelley, 546 F.2d 334, 337 (10th Cir. 1976) Washington Mobilization Committee v. Culliane, 566 F.2d 107, 122-23 (D.C. Cir. 1977).

^{107/} Bonner v. Coughlin, 545 F.2d 565 (7th Cir. 1976) (en banc).

^{108/} Arthur v. Nyquist, 573 F.2d 134, 146 (2d Cir. 1977); Lewis v. Hyland, 554 F.2d 93 (3rd Cir. 1977) cert. den. 434 U.S. 931 (1977). But see, Monell v. Department of Social Services, 436 U.S. 658 n. 58 (1978) (dicta).

Similarly, several courts have held supervisory officials liable if they knew, ^{109/} or should have known of subordinates' misconduct; ^{110/} or where the official is charged with such knowledge by State law; ^{111/} or is charged with a State law duty to act and the official's ^{112/} inaction results in a constitutional deprivation.

Thus, while a State law violation does not necessarily create a §1983 claim, ^{113/} official inaction in contravention of a State law imputing constructive knowledge to the official may give rise to §1983 liability where a constitutional deprivation results, according to decisions in the Second, Fifth, Seventh, ^{114/} and Eighth Circuit Courts of Appeals. ^{115/}

^{109/} Duchesne v. Sugarman, 566 F.2d 817, 832 n.31 (2d Cir. 1977) (by implication from dicta); Reimer v. Short, 578 F.2d 621, 624 (5th Cir. 1978); Sims v. Adams, 537 F.2d 829, 831-32 (5th Cir. 1976); Triplett v. Azordegan, 570 F.2d 819, 823 (8th Cir. 1978).

^{110/} Sims v. Adams, 537 F.2d 829, 831-32 (5th Cir. 1976).

^{111/} Duchesne v. Sugarman, 566 F.2d 817, 832, n.31 (2d Cir. 1977) citing U.S. ex. rel. Larkins v. Oswald. 510 F.2d 583, 588-89 (2d Cir. 1975), Wright v. McMann 460 F.2d 126, 134-35 (2d Cir. 1972). It is unclear whether some evidence of actual knowledge is a prerequisite to official liability.

^{112/} Miller v. Carson, 563 F.2d 757, 760-61 (5th Cir. 1977).

^{113/} Snowden v. Hughes, 321 U.S. 1, 11 (1944).

^{114/} See the holding in Bonner v. Coughlin, 545 F.2d 565 (7th Cir. 1976).

^{115/} Even where violation of state law is not actionable it may defeat a good faith immunity defense. Duchesne v. Sugarman, 566 F.2d 817, 833 n.32 (2d Cir. 1977). See also, Bonner v. Coughlin, 545 F.2d 565 (7th Cir. 1976) (en banc).