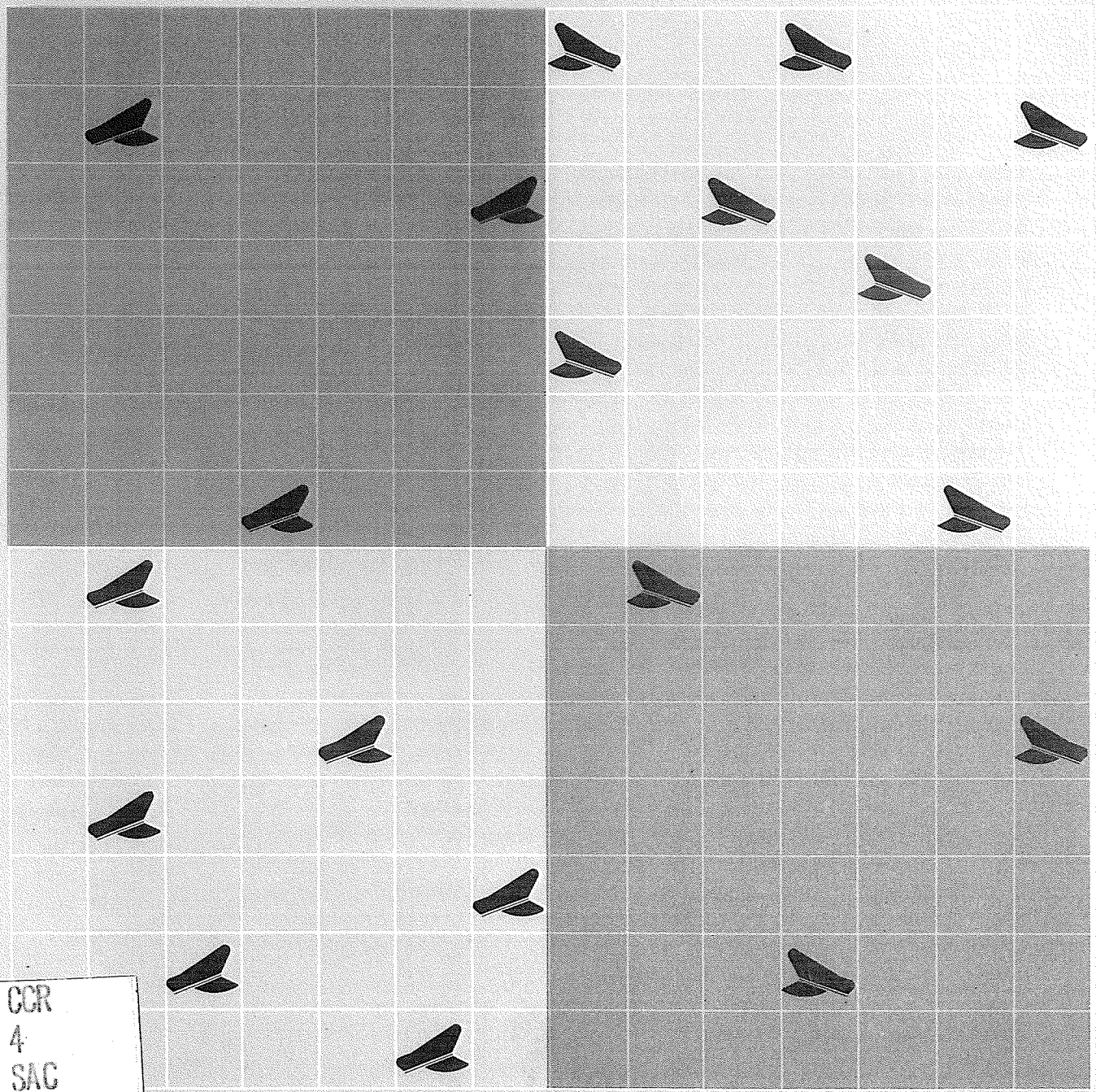
Police Practices in the Twin Cities



Minnesota Advisory Committee to the United States Commission on Civil Rights. Prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its action in the meantime, the findings and recommendations of this report should not be attributed to the Commission, but only to the Minnesota Advisory Committee.

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The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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Police Practices in the Twin Cities

—A report prepared by the Minnesota Advisory Committee to the United States Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Minnesota Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the Minnesota Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE:

Prior to the publication of this report and consistent with Commission policy, the Minnesota Advisory Committee afforded to all individuals or organizations that may have been defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in this publication.

LETTER OF TRANSMITTAL

Minnesota Advisory Committee to
The U.S. Commission on Civil Rights
July 1981

MEMBERS OF THE COMMISSION
Arthur S. Flemming, *Chairman*
Mary F. Berry, *Vice Chairman*
Stephen Horn
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Jill S. Ruckelshaus
Murray Saltzman

Louis Nuñez, *Staff Director*

Dear Commissioners:

The Minnesota Advisory Committee to the U.S. Commission on Civil Rights submits this report, POLICE PRACTICES IN THE TWIN CITIES, as part of its responsibility to advise the Commission about civil rights problems within this State.

The investigation of the Minneapolis and St. Paul police departments was initiated by the Minnesota Advisory Committee after it received several complaints about police practices in the Twin Cities. These complaints originated principally from residents of minority and poor neighborhoods. The complaints alleged that some officers were using excessive force against civilians and that these abuses, when reported to the respective police departments, were tacitly condoned by lack of official action.

Specifically, the Committee evaluated the Twin Cities police departments' use of force practices, delivery of services, training, and employment of minorities and females. In addition, involvement of the State and Federal Government is reviewed along with selected issues in policing and proposed solutions to current problems.

The Committee held a two-day, factfinding meeting in both Minneapolis and St. Paul at which knowledgeable persons presented facts and opinions concerning problems in the operation of the two departments and ideas for solving those problems. The Committee reviewed official policymaking and training procedures as well as the experiences and perceptions of community residents, police personnel, administrators, supervisors and patrol officers. Also, the Committee analyzed relevant data submitted by the Twin Cities police departments and other local, State and Federal agencies.

Based on the findings of this investigation, the recommendations are made for improving communication between citizens and the police, eliminating unnecessary use as force by police officers in effecting an arrest, increasing employment opportunities for minorities and women, and for increasing civilian participation in the operation of the departments. The recommendations are directed to local officials, police departments, and to State and Federal officials.

The Committee is particularly concerned with the present mechanism in place for resolving citizen complaints. It recommends that the city councils of Minneapolis and St. Paul establish an office of ombudsman to investigate complaints alleging violations of established policies and practices and to publish

recommendations for appropriate action. Another primary concern of the Committee is the underutilization of minorities and women in the Minneapolis Police Department and with the miniscule number of minorities in both departments. The Committee recommends that both departments develop a plan that would expeditiously correct these situations.

The Minnesota Advisory Committee requests that you contribute to the resolution of these problems by supporting these recommendations and by taking appropriate action to ensure the equitable administration of justice in both Minneapolis and St. Paul.

Sincerely,

Lupe Lopez
Chairperson

MEMBERSHIP
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ACKNOWLEDGMENTS

The Minnesota Advisory Committee wishes to thank the staff of the Commission's Midwestern Regional Office in Chicago, Illinois, for coordinating the study and preparing this report on the problems of policing in the Twin Cities. The study was the principal staff assignment of Carmelo Melendez, equal opportunity specialist. The report was written by Carmelo Melendez and Ruthanne DeWolfe, regional attorney, who also provided legal counsel throughout the project. Melendez and DeWolfe also served as principal investigators. Editorial assistance was provided by Gregory D. Squires, research writer. Valuable assistance was also provided throughout the study by Delores Miller, Ada L. Williams and Mary K. Davis, support staff. This project was carried out under the supervision of Clark G. Roberts, regional director.

The staff of the Publications Support Center, Office of Management, was responsible for final preparation of the document for publication

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Chapter 1

Introduction

'A charge that two St. Paul policemen used unnecessary brutality in dealing with a 19-year old black youth is under investigation by the city attorney's office,' Mayor Lawrence Cohen said Friday. —Pioneer Press, 1972

A hearing Monday night on alleged police brutality in St. Paul drew testimony from eight persons, most of whom claimed they or relatives were beaten and abused by police during arrest. —Pioneer Press, 1973

Minneapolis Mayor Albert Hofstede is a man caught in the middle. He is in the position—some think—the untenable position of trying to allay the feelings of belief of some citizens in black neighborhoods that police are harassing and brutalizing blacks. —Pioneer Press, 1975

Minneapolis and St. Paul have a long history of police community conflicts with the minority community. In its 1965 study, "Report on Police Community Relations in Minneapolis and St. Paul," the Minnesota Advisory Committee to the U.S. Commission on Civil Rights found that, "no antidote is provided to dispel the lack of confidence with which minority groups regard the police departments of Minneapolis and St. Paul and that this leads to hostility and provokes tensions on both sides which in many cases could be avoided." Months after the Committee's report, many cases of alledged police brutality were reported by the newspapers in both cities. Investigations and public hearings were conducted on police brutality by the local and state Human Rights Commissions, as well as the Mayor and County Prosecutors. In most instances the loud outcries of minority community discontent with the police administration precipitated these actions.

The police are an essential part of our social order. Their power to connect law enforcement networks across boundary lines have made them both efficient and awesome. Nonetheless, the hostilities toward police officers continue to exist. In many communities, particularly minority neighborhoods, the police are considered adversaries by residents. Some claim this problem results from having a predominately white police force operating in minority communities.

On June 29, 1979, members of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights and the Commission's Midwest Regional Office met with community members from the Twin Cities to hear their concerns regarding police-community relations in their cities. At this meeting the Committee decided to conduct a police-community relations study.

Initially, the Committee had decided to focus the study on the westside of St. Paul, which has a high concentration of Hispanics. A substantial number of complaints had been made to the Committee with respect to the westside area. Most of these complaints were allegations that police and community confrontations were on the upswing primarily because of the way the police were conducting themselves in that neighborhood. Previous history of several incidents that had occurred in that

neighborhood had left community leaders fearful further conflict.

Subsequent staff and Committee field interviews revealed police-community relations problems in Minneapolis as well so the study expanded to encompass the Twin Cities area. The Committee also decided to focus on three critical areas of concern:

1. Alleged misuse of force by the police officers in effecting the arrest of a citizen, particularly in minority communities;
2. Alleged unequal distribution of services among white and non-white communities; and
3. Alleged underemployment of minorities and women in the police force.

Demographic Background

Minnesota

Minnesota has a substantial minority population concentrated in two major areas of the state. One of those areas, northwestern Minnesota, has the highest concentration of American Indians in the state. The Twin Cities along with the immediate surrounding counties account for the second largest minority population. These two areas of the state have nearly all of Minnesota's black, Hispanic, American Indians, and Asian populations. Most minorities and Euro-ethinics that migrated to this 12th largest state in the union did so because of economic reasons.[1]

The state of Minnesota is sparsely populated with an average of 48 people per square mile, compared to a national average of 58 per square mile. The total population in 1970 was slightly less than 3.9 million, 98 percent (3,822,000) were white while the remaining population include .9 percent (35,000) black, .6 percent (23,000) American Indian, and .3 percent (11,000) others.[2]

Population in the state increased 11.5 percent between 1960 and 1970, with the minority population increasing 57 percent and the white population 11 percent. The white population inside central cities followed a national pattern in declining by 6 percent during this 10-year period while the minority population within cities grew 50 percent.[3]

In the nineteenth century, as the nation was dra together by railroads, many cities sprung up i relatively short time. Minneapolis and St. Paul w two such cities. These two cities became the ce of a great agricultural empire reaching ac through the Dakotas in Montana and beyc Immigrants in search of a new and hopef prosperous life came in three waves. It is interes to note that the Germans were the largest sir nationality to settle in the state and not the Scar navians as many think.[4]

Most of the blacks that migrated to the state Minnesota worked in the railroad as waiters porter. The majority of them had little or education.[5] For the most part, Minnesota's bl population ended up in the Twin Cities area beca of the industrial growth spawned by railroads the packing houses.

According to the 1950 census, there were Mexicans living in Minnesota, with most of th residing in St. Paul and Minneapolis. A rep submitted to Gov. C. Elmer Anderson from Governor's Interracial Commission in 1953 sta that, at that time, just under a third of the 950 w scattered throughout 26 counties other than Ram and Hennepin. According to the report, it was r believed to be about 4,800 permanent Mexi residents in Minnesota. Most Mexicans who mig ed to the state of Minnesota were employed agricultural labor.[6]

The predominant Indian tribe in Minnesota is Chippewa, formerly known as the Ojibway nomadic timber people who traveled in small ba Today a federally recognized tribe, the Chipp have a confederation of six-member reservation northern Minnesota.[7] The 1920 census repo 8,761 American Indians, however, they quali that figure by stating that it was unlikely the Inc population was accurately counted. For some y now, a growing number of American Indians leaving the reservation in search of a better qua of life, though most have little or no employ skill. A large number of them end up in the T Cities.

[1] "Minnesota in the 1800's: Settlement and Growth," *Minneapolis Tribune*, Dec. 7, 1975 (hereafter cited as *Minneapolis Tribune Article).*

[2] U.S., Commission on Civil Rights, *The Unfinished Business: Twenty Years Later*, September 6, 1977.

[3] Ibid.

[4] Michael Barone, Grant Ujifusa, Douglas Matthews, *The Almanac of American Politics* (New York: E.P. Dutton, 1976) (hereafter cited as *Almanac of American Politics)*, p.446.

[5] James Griffin, *Blacks in the St. Paul Police and Fire Departments* (St. E & J Inc., 1976) (hereafter cited as Griffin, *Blacks in St. Paul)*, p. 1.

[6] The Governor's Interracial Commission, *The Mexican in Minnesota* Francisco: R and E Research Associates, 1953), p. 5.

[7] U.S., Department of Housing & Urban Development, *The Min Chippewa Tribe: Housing Needs and Programs*, Minnesota Chippewa 701 Planning Program, August 1976.

Minneapolis

Industry grew quickly in this booming metropolis. Settlers from all over the nation came with their sleeves rolled up ready for work. It was an Illini who began the settlement on the west shore of St. Antony Falls in the winter of 1849–50, building the first permanent home. Many names were suggested for this new and growing community but it was Charles Hoag who creatively combined the Sioux word for laughing waters, Minnehaha, and the Greek word for city, polis, and the name Minneapolis caught on. Minneapolis was incorporated in 1856.[8] A historical article by the *Minneapolis Tribune* depicted the beginnings of Minneapolis as follows:

> Early on, Minneapolis endured and embraced the adventurers who sought fortune and opportunity, and the city became successively the headquarters for the lumber barons, the dealers in grain, the millers and merchants and railroad men. . .[9]

Today, Minneapolis is known for its sizeable production of grain and highly sophisticated industry. Minneapolis has strong tradition of liberal politics handed down from the Scandanavians who were the first immigrants to the city, arriving in the 1880s. Minneapolis, however, is no different than any other major city in this country in that it has many of the same types of problems. With the established residents moving to the suburbs, and the inner city left to the young, the poor, and the minorities, Minneapolis has followed the pattern of most major American cities.

The 1970 census indicates that Minneapolis has a population of 434,400. Of this number, 18,861 (or .04 percent) are black, and 6,000 (or 1.5 percent) are Hispanic. In addition, about 5,763 (or .01 percent) are American Indians, and 3,152 (or .01 percent) are Asian and Pacific Islanders.[10]

St. Paul

St. Paul, former known as Pigs Eye, is the smaller of Minnesota's Twin cities.[11] It was founded 2 years before Minneapolis on November 1, 1854. Its origins as an old river town has a history similar to that of St. Louis.[12] Unlike Minneapolis, St. Paul was a railroad transportation hub which attracted Irish and German Catholics, and for sometime was the largest of the two cities in addition to being the state capital.[13]

Blacks began to appear in the census documents as early as 1890, with a total of 1,524 living in the city. Most blacks who migrated to Minnesota were brought in by railroad to work in the packing houses. They were actually brought in as strike breakers which later had an adverse affect on those blacks that planted roots in St. Paul.[14]

According to the 1970 census, the total pupulation of St. Paul was 309,900, with 10,735 (or .03 percent) black, 7,200 (or .02 percent) Hispanic, 1,857 (or .01 percent) American Indian, and 1,403 (or .01 percent) Asian and Pacific Islander. St. Paul has consistently had the highest concentration of Hispanics of any community in the state, containing 97 percent of the state's Hispancis.[15]

Governmental Structure

Minneapolis

It was a Congressman named Robert Smith from Illionis who bought the army mills located on the west bank of the Mississippi for $750, and John H. Stevens, a bookkeeper, who started a ferry service that attracted in the influx of settlers into the area which later became Minneapolis.[16] It did not become Minneapolis until the settlement on the east bank of the river known as St. Anthony and the one on the west bank merged in 1872.[17] Later in 1858, the citizens of that area decided to form a municipal government.[18] The citizens of Minneapolis elected a board of supervisors annually and had town meetings to conduct their business. The chairperson of this board became the town chief.[19]

Today the city of Minneapolis is in the county of Hennepin and consists of 13 wards. All the wards are required to have, as nearly as possible, equal population.[20] The voters elect a mayor, comptroller-

[8] Minneapolis Police Department, *Special Bicentennial Issue Annual Report*, 1976 (hereafter cited as *Minneapolis Police Special Bicentennial Report).*
[9] *Minneapalis Tribune* Article.
[10] U.S. Bureau of the Census, Department of Commerce, *Census of Population: 1970 Subject Reports: Final Report P.C. (2–1C) Persons of Spanish Origin*, and U.S., Bureau of Census, Department of Commerce, *Census of Population: 1970 Vol. 1 Characteristics of Population Part 25*, 1972 (hereafter cited as Census Reports).
[11] Griffin, *Blacks in St. Paul*, p. 1.
[12] *Almanac of American Politics*, p. 444.
[13] Ibid.
[14] Griffin, *Blacks in St. Paul*, p. 1.
[15] Census Reports.
[16] *Minneapolis Police Special Bicentennial Report.*
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Minneapolis City Charter, Chapter I Section (1, 3).

treasurer and city council, most commonly called aldermen.[21] The city charter was amended on June 11, 1950, the number of aldermen were reduced from 26 to 13 and the term of office from 4 years to 2.[22]

The mayor is the chief executive of the city and as the charter states: "[He]. . .shall take care that the laws of the State and the Ordinances of the city are duly observed and enforced." The mayor has complete power over the police department. He has the power to select the chief of police, either from within the ranks, or from the outside; contrary to the city of St. Paul, where the mayor is forced by civil service regualtion to select someone from the ranks on a promotional basis.

St. Paul

The city of St. Paul is in Ramsey County and it has a strong mayor-form of goverment. The mayor is the chief executive of the city with administrative and executive powers. He has the power to enforce the laws and ordinances outlined in the city charter, he has the authority to appoint, and or remove with the advice and consent of the council, any officer of the city with the exception of the councilmen. Both the mayor and the councilmen are elected for a 2 year term of office.[23]

The city council has the authority to legislate laws for the city as well as to conduct investigations. Those investigations may be on affairs of the city and the conduct of any department, office or agency, and as part of its authority, the council has the power to issue subpoenas.[24]

Even though the mayor has the power to appoint a police chief with the consent of the city council, there are several steps that must be followed before the mayor can make a final selection. The Civil Service Commission determines which three candidates are best qualified and submits the list to the mayor. The mayor then selects one of the three for approval of the council. If the council fails to approve any of the three candidates tested and recommended by the mayor, the person who has received the highest rating by the Civil Service Commission is made chief of police.[25] Besides having the power to appoint all heads of departments, such as city clerk and fire chief, the mayor also appoints the city attorney. The city attorney represents the city in all cases and has full authority to appoint two deputies and such other assistants needed to carry out the legal business of the city.[26]

Minneapolis Police Department

Minneapolis in the beginning had a simple and uncomplicatd form of government. Like many small towns in this country today, it had town meetings with a board of supervisors in charge of the city's business. R. P. Russell was the first chief executive chosen in 1858.[27] One of the first official acts of the board of superviors was to appoint its first town marshall, C. C. Berkman. Mr. Berkman's salary was initially to be $300 a year, in addition, he was assigned an assistant with the title of "constable."[28] For some reason, the board of supervisors reduced the salary to $150 a year. This was not accepted by Mr. Berkman who resigned almost immediately and vacated the position to Amos Clark.[29]

In 1867, Mayor Darilus Morrison said, "a mayor without a police force to appoint and regulate would hardly feel that he was a mayor."[30] And so it was that the Minneapolis police force began its operation with the police chief making $1,000 a year and the rest of him men making $65 a month.[31]

A pattern began to develop with each election that still exists today. Every election brought in a new mayor, and each mayor brought forth and implemented new programs and policies. For example, it was during chief John H. Noble's administration that police officers were required to wear uniforms for the first time, and a detective service became a permanent department of the force.[32] It was Mayor Orlando Merriman's administration that successfully passed a rule forbidding members of the police force to enter any saloon while on duty.[33] The affairs fo the police were taken out of the hands of the mayor in 1886 with the passing of the Police Commission Act. The Police Commission's first action was to reorganize the department, taking out the politics and instituting a merit system.[34] This trend did not last very long because in 1889 the Act

[21] Ibid.
[22] Ibid.
[23] St. Paul, Minnesota City Charter, Section 12, 12.2, p. 38.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] *Minneapolis Police Special Bicentennial Report.*
[28] Ibid.
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ibid.

was amended to make the mayor ex-officio president of the commission. The final blow to the Commission came in 1890 when the legislature repealed the already diluted Police commission Act. So after 4 years, the mayor of Minneapolis once again gained full control of the affairs of the police department.[35] Although the department today cannot be compared in terms of structure and manpower, one can readily see that the mayor is a key political influence in the operation of the department. Chapter 6, Section 1 of the city charter states:

> The mayor shall be vested with all powers of said city connected with and incident to establishment, maintenance, appointment, removal, discipline and supervison of its police force. . .He shall, by and with the consent of the city council, appoint some suitable person as chief of police, subject to removal at the pleasure of the mayor, or for cause by a two-thirds (2/3) vote of the city council.[36]

During field interviews, Commission staff spoke to five former chiefs of police who are now holding management positions in the department. This is no surprise since the mayor is elected for a term of 2 years and each mayor selects his chief.

The chief of police, under the supervision of the mayor, has responsibility to: promulgate rules and regulate the operations of the department; make the proper assignment of watches and place of duty, and to make personal ascertainments of the departmemt personnel's discharge of their duty.[37]

The Minneapolis Police Department, like many other departments in this country, operates on a quasi-military system and officers are identifiable by their insignias of rank. With the approval fo the mayor, the police chief has the right to select and appoint the following positions: 3 deputy chiefs, 5 inspectors, and the morals squad supervisor. The rest of the department personnel fall under the Civil Service Commission rules and regulations, which we will discuss later in this report.

There are six precincts in the Minneapolis Police Department. Their boundaries coincide with specific census tracts, and each precinct patrols its own designated areas as prescribed by the department. It is interesting to note that many police departments in this country use census tract boundaries because it allows them to compare their own crime data with that of the census socio-economic statistics. In doing this, the police department can also obtain an overall picture of what is happening in the districts.[38]

The Minneapolis Police Department today has eight officials or top ranking administrators, including the chief; 137 professionals (highest rank is a captain, mostly heads and supervisors of personnel departments); 168 technicians (mostly sergeants): 441 protective service (patrol officers), for a total of 754 sworn officers, and 3 community service officers. An additional 87 are in the nonsworn category, working in clerical, maintenance and skilled crafts.[39] Of the 754 sworn officers working in thepolice department only 10 are black (1 female), 7 American Indian (no females), 1 Hispanic (no females), and a total of 7 white females.

St. Paul Police Department

Looking back in history St. Paul community developed at a strategic point of the Mississippi River, where all the boats ended their journey loaded with assorted merchandise for trade. St. Paul, with its growing logging industry, was wild and unruly. The city's early days provide good material for the making of a frontier movie today, including all the violence, recklessness, and disorder indicative of a growing unsettled frontier town. Alexander Marshall was appointed to enforce the law in this ruthless uncivilized territory in 1851, only to resign in frustration 3 years later. It was soon after his resignation in 1854 that St. Paul was incorporated as a city, and William Miller was appointed chief of police (then called city marshall) of the new department. It was Miller and exactly four patrolmen that waged the first courageous fight against crime in St. Paul.[40]

As a result of economic depression and the Civil War, the city of St. Paul came to a standstill and the police department was disbannded. A force of 200 volunteers was organized and they carried the city law enforcement efforts until 1863 when the city fathers reorganized the force.

It wasn't until 1886 that the police department, out of necessity, established the first substations (dis-

[35] Ibid.
[36] Minneapolis City Charter, Chapter 6, Section 1.
[37] Department Manual, Minneapolis Police Department, 1978, Vol. 1, Section 1-102.
[38] Harold K. Becker, *Issues in Police Administration* (New Jersey: The Scarecrow Pres Inc., 1970), p. 12.
[39] City of Minneapolis, *Affirmative Action Plan for the Minneapolis Police Department*, September 1979.
[40] St. Paul Heritage Patrol, "The Early History of Your Police Department," September 1979.

tricts) which were strategically placed in the city as follows:

Ducas Station —at Robert and Delos Streets. It was demolished just a few years ago.

Margaret Station —at what is today 745–747 E. Margaret Street, near Hope. This building still stands—is now white stuccoed and contains apartments.

Rondo Station —at Rondo and Western Streets, where I–94 now runs. Closed in 1927.

Union Park Station —at 480 N. Prior. Fortunately this building still stands with only minor remodeling on its exterior. Today, you can still see above the front doorway the inscription 'Union Park Police Sub-Station.'

Source: St. Paul Heritage Patrol

Many things have changed since 1863, and one of several significant changes has been the implementation of Team Policing, which will be discussed further in Chapter 6. Team Policing exists when all police work, both patrol and investigation, in a given area is unified under one command. A commander (supervisor) has a number of officers working in a team during a tour of duty and all would receive briefing of their particular neighborhood problems and crimes.[41] It started as an experiment in 1973 on the west side of St. Paul, and it was on July 17, 1977 that the entire department was placed under the team concept.

As indicated earlier, the St. Paul police chief is appointed by the mayor with the consent of the city council, after the Civil Service Commission has followed selection procedures as prescribed in the city charter (Section 12.12). The chief of police serves for a term of six years, beginning with the preceding term until his successor is qualified and appointed.[42]

The chief of police has the responsibility of administering the affairs of the department, subject to the supervision and control of the mayor. The chief can be removed by the mayor with the approval of the council after a hearing is held before the council.[43]

The St. Paul Personnel Department reported to the Advisory Committee that of the total 535 sworn personnel there were presently 442 white officers (1 chief of police, 2 deputy chiefs, 131 sergeants and, and 308 police officers), 18 black officers (1 deputy chief, 1 sergeant, 16 police officers), 10 Hispanic officers (1 lieutenant, 2 sergeants, 7 police officers), 4 American Indian officers (1 deputy chief, 2 sergeants, 1 police officer), 2 Asian police officers and 10 female officers (2 white sergeants, 6 white patrol officers, 2 black patrol officers).[44]

The following chapters examine the structure of the police departments in Minneapolis and St. Paul, conflicts which have arisen between the police and segments of the community, and what is being done to resolve those conflicts.

[41] Ibid.
[42] St. Paul, Minnesota City Charter, Section 12.12.3.
[43] Ibid.
[44] Mark Robertson, St. Paul Civil Service Commission, testimony before the Minnesota Advisory committee to the U.S., Commission on Civil Rights fact-finding meeting in St. Paul, Aug. 10, 1979, p. 335.

Chapter 2

Problem: Police vs the Community

Acts of police misconduct and abuse of citizens in the Twin Cities have been recorded by newspapers and civil rights organizations, including the NAACPT and Urban League, for many years. During the '60s, attempts were made to deal with outcries of police brutality by the minority community. And although it is usually minority groups who are affected most by police abuses, the problem is not limited to them.

For the most part there are two kinds of police misconduct. The first occurs during mass demonstrations, riots, or large gatherings of people where emotions are heightened by some perceived injustice. The second kind occurs systematically and represents a recurring pattern of abuse.[1]

The latter situation, which generally involves just the police officer and the individual alleging abuse, is more difficult to evaluate in terms of whether or not any wrongdoing actually occurred because there are few, if any, witnesses. Yet it is the recurrence, or alleged recurrence, of such isolated incidents which is largely responsible for the controversy over police policy and practice pertaining to use of force. Frequently, a citizen will feel he or she has been mistreated by an arresting officer when that officer was acting within proper authority. No doubt incidents do occur where an arresting officer has gone beyond his or her authority and has applied more force than necessary to effect an arrest. Part of the problem is the fact that many citizens and perhaps a few police officers do not know what behavior constitutes police abuse or misconduct. Police abuse or misconduct has been defined as "the unauthorized exercise of police discretion where the policeman acts without the capacity to impose legal sanction."[2] Yet this definition does not resolve the ambiguities which arise when efforts are made to determine the acts which actually occurred in a given situation.

Minneapolis

A number of incidents occurring over the past few years have heightened fears of the police in the black community. A survey, conducted by the *Minneapolis Tribune,* of 362 residents who live on the northside and in South Minneapolis found that blacks had a greater tendency to criticize the police than their white neighbors. "The survey [said] nothing about whether blacks are right or wrong in their views of police. But it did indicate that the black perception of how they are treated by the criminal justice system—the police in particular—is a serious problem in Minneapolis."[3]

The Committee examined Uniform Crime reports which include the number of arrests by type of crime, age, sex, and race, for the city of Minneapolis for the years 1977 to 1979. The Committee examined the statistics for the first eight categories (referred to

[1] Leonard Ruchelman, ed., *Who Rules the Police* (New York: New York University Press, 1973), p. 133.
[2] Ibid.
[3] "Incidents heighten blacks' fear of police," *Minneapolis Tribune,* Dec. 19, 1976.

as index crimes) in the reports which are the most serious crimes.[4] The data include those that were arrested and released without having been formally charged. During these three years, a total ot 6,732 arrests were made for index crimes. Of that total, 2,182 or 32 percent were black, under the age of 18. In the adult category, there were 7,190 arrests of which 2,198 or 31 percent were black.[5]

These data do not indicate whether the persons arrested were guilty or innocent. They only enumerate the number of people arrested for various crimes and the age, sex, and race of the individuals (see Table 2.1). These data do indicate, however, that minorities constitute a much higher proportion of those who are arrested than of the population in general. For example, while blacks represent just 4 percent of the Minneapolis population, they represent 32 percent of those who were arrested. Similarly, Indians represent 1 percent of the population compared to 15 percent of those arrested.

Coupled with the large number of police-arrest contacts of blacks and American Indians is the number of police-community conflicts that have taken place for several years in their communities. Complaints of police brutality, harassment by the police, and slow response to calls in minority neighborhoods, have been alleged by minority citizens.

Eric Benford was a young black man who was shot to death by a white police officer from Egan, a small suburb of Minneapolis. The officer thought that the young man was reaching for a gun at the time of confrontation. Organizations like the Urban League, NAACP, as well as the family and friends of this young man expected the grand jury to indict the officer. To their dismay, he was not indicted. Although this incident occurred in 1975, people today talk aboout it as though it happened yesterday. They still get very upset.[6] Hobert Mitchell, President of the Minneapolis branch of the NAACP, stated that in only four cases have Minneapolis police been found liable for misconduct. "Now this is not to say that the police department is not called into court time and time again. This is just saying that only two have been won and basically you've got to understand [that] it goes into a jury system in the city of Minneapolis, especially the county jury, which you will find no blacks whatsoever."[7]

Distrust of the criminal justice system did not happen overnight. It has come about gradually, primarily because of the number of cases where the community has questioned the actions of the police and courts. The Committee received many accounts of conflicts between citizens and the police department from testimony before the Committee, field interviews, and from newspaper stories. The following paragraphs contain brief narratives of some of the allegations:

> A southside Legal Aid attorney testified that she got a call from a 16-year old boy in a hospital. She went to see him at the hospital and found that the boy and a friend had been involved in a high speed chase the previous day with the police. Several squad cars cornered the van in which the youths had been driving. They were pulled out on separate sides of the van by police. Her client said that he was thrown down on the ground on his face and stomach. While in that position, a police officer leaned his knee into the back of the boy, pulled the boy's arm around behind him, twisted it, and gave him a karate chop, breaking the arm in the process.[8]

> Donna Folstad of the Minnesota Chippewa Tribe has had a case of police brutality in the courts for several years now. It is presently being considered by the Minnesota Supreme Court. She has had favorable findings up to this point but has not received any compensation yet. The case involves two police officers who apparently were taking information regarding an accident which involved Folstad and her friend. After pleading with the officers to accurately record the facts of the accident, in frustration she cursed at one of the policement who became angered and proceeded to punch Ms. Folstad on the head and in the breast. She was handcuffed and shoved into the squad car with most of her upper chest exposed. To date, the Civil Rights Commission and District Court have ruled in her favor.[9]

[4] Data from Minneapolis Police Department files, from Capt. Jack L. McCarthy, Commander, Administrative Services, Minneapolis Police Department, to Carmelo Melendez, Equal Opportunity Specialist, MWRO, U.S., Commission on Civil Rights, Nov. 30, 1979.

[5] Ibid.

[6] "Levi asked to probe Benford grand juries," *Minneapolis Tribune,* Aug. 7, 1976.

[7] Testimony presented at the open meeting of the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, Sept. 27–28, 1979, in Minneapolis (hereafter cited as Minneapolis Transcript), p. 16.

[8] Ibid, p. 708.

[9] Ibid., p. 38.

TABLE 2.1

Minneapolis
Offenses—Number of Arrests

	Juveniles Under 18				Adults				% of Total Pop.		
Year	Number Index Crimes*	Total Black and %	Total Am. Ind. and %	Total White and %	Number Index Crimes	Total Black and %	Total Am. Ind. and %	Total White and %	Black	Am. Ind.	White
1977	2,490	766	380	1,243	1,378	431	151	778			
		31	15	50		30	11	56	4	1	92
1978	2,620	899	397	1,203	3,624	1,091	500	1,974			
		34	15	46		30	14	54			
1979	1,622	517	229	799	2,188	676	259	1,220			
		32	14	49		31	12	56			
Total	6,732	2,182	1,006	3,245	7,190	2,198	910	3,972			
		32	75	48		31	13	55			

*Total Index Crime columns reflect "Others" which are not broken out in the columns.

Source: Minneapolis Police Department and Census Bureau Reports.

About a year ago, two off-duty police officer came into a bar which is patronized primarily by the gay community. The officers allegedly picked a fight with a gay person and began to beat him badly. When squad cars came to the scene, they assisted the officers by keeping away anyone wanting to defend the man. Reports and charges were filed against the officers with the internal affairs unit, no official action was taken against the officers.[10]

On October 1977 an incident occurred at the Valdeen American Legion Post. There was a dance being given by Chicanos for Muscular Dystrophy to honor a local hero who had died while saving another person from drowning. The police entered the premises before midnight on a complaint of stolen beer. The police shoved and beat several persons in this gathering. Although no criminal prosections resulted from this incident, several affadavits were filed with private attorneys charging harassment by the police. When the case came before the judge, he ruled there was not interference by the police.[11]

Four years ago, two young men from South Minneapolis were carrying their own stereo to their automobile. The police, who happened to be across the street from them, assumed the stereo had been stolen. The police would not allow the youths to go into their apartment to get some identification. They were taken to a garage and beaten badly. A civil suit against the officers involved ended in a hung jury.[12]

Donna Folstad said she received several calls from people complaining that the police had not responded to calls, especially on domestic issues, while working for the Mayor's office. Areas frequently avoided by police included the near northside and the Little Earth Housing Project.[13]

A civilian worker in the Youth Division of the Minneapolis Police Department saw a 15-year old youth being held by the feet over a bridge by two police officers to teach the youth a lesson. While the youth was held over the bridge he vomited, and defecated in his pants. The youth had to be driven home after the incident because of his mental and physical condition.[14]

Three of four years ago a black youngster was told to get away from the scene of a fight. The police officer called the youngster a nigger and beat him up. There was a suit filed against the city of Minneapolis and a settlement was made to the tune of $35,000.[15]

These brief excerpts are some examples of the complaints the Committtee heard. These are by no means the only ones gathered by the Committee; they are only a representative sample of events as perceived by individuals of different groups. The *Minneapolis Tribune,* in an article regarding attitudes of citizens toward the police, wrote, "The villain for some is the Minneapolis Police Department. And, exaggerated or real, the black perception could have potential dangerous implications." In his testimony before the Committee, Ron Edwards, President of the Urban League, said, "The police department, I think seriously feels that it is beholden to no one in how it deals with people of color, that it has in fact an almost clandestine mandate from the silent majority to conduct themselves in any manner they see fit. . ."[16]

The complaints of police brutality have in some respects not fallen on totally deaf ears. There are some in the community who have agreed with the minority leaders that police community relations need improvement and that police misconduct does exist. One of those was a businessman named James Summers, a retiring vice-chairperson and financial officer of General Mills, who suggested that private funds be collected for the creation of a nonpartisan agency to oversee police performance. That agency would also receive complaints of police brutality and investigate the incidents. For the most part, other businessmen were favorable to the idea. The proposal, however, never got off the ground.[17]

Black leaders from time to time, in response to various conflicts with the police, have met with the Mayor of Minneapolis to see if something from the

[10] Ibid., p. 66.
[11] Larry Leventhal, Attorney, interview in Minneapolis, April 6, 1979.
[12] Ibid.
[13] Minneapolis Transcript, p. 47.
[14] Marilyn Wilson, Legal Aid worker, interview in Minneapolis, August, 1979.
[15] Sam Verdeja, Attorney, Criminal Justice Center, interview in Minneapolis, Apr. 17, 1979.
[16] Minneapolis Transcript, p. 128.
[17] "Review system for policemen has advocates in the city," *Minneapolis Tribune,* Dec. 30, 1976.

political side could be done about police misconduct. For the most part, these meetings have provided the minority leadership an opportunity to vent their anger, but very seldom has any new policy been established as a result of the meetings. A tacit admission on the part of city officials that a problem existed in the area of police-communuity relations is represented by the study committee established in 1975 by Mayor Hofstede. That committee, headed by Dr. David Ward, Professor of Sociology at the University of Minnesota, was charged with the task of identifying different mechanisms for controlling police misconduct. This committee included experts in law and police practices, but was not representative of the total community. After considerable amount of research, this committee offered some well thought out recommendations, some of which will be discussed in greater detail later in this report. In response to the Minnesota Advisory Committees' query regarding the outcome of the recommendations, Dr. Ward responded, "Lots of statements of good intentions [were made], but I would say that by and large our recommendations at the Gallos Committee and other committees that have looked at Minneapolis Police Department [are] gathering dust on the shelves."[18]

St. Paul

Similar problems of police-community tensions, though perhaps not as extensive, were found in St. Paul. As in Minneapolis, minorities represent a much higher proportion of those arrested than they represent of the total population. During 1976, 1977, and 1978, there were 9,056 arrests for serious crimes made by the St. Paul Police Department (see Table 2.2). Of the total arrested, 2,184 (24 percent) were black and 310 (4 percent) were American Indian.[19] As indicated earlier, blacks constitute just 3 percent of the total population and American Indians constitute just 1 percent. No comparable crime data are available for Hispanics. As in Minneapolis, arrest records reflect conflicts between the police and St. Paul's minority community.

One of the Committee's original concerns was with polic-community conflicts occuring in Westside St. Paul involving Hispanics. Several incidents had occurred on the Westside and Hispanics were disappointed that in spite of efforts by leaders of that community to sensitize the political structure and the police department to the continuous problems, nothing had come of those efforts. A report on one of those incidents, written by Donald Lewis, Director of the St. Paul Department of Human Rights, clearly expressed the concerns the Hispanic community had, and in some respects coincided with complaints presented to the Committee.[20]

For example, some of the persons interviewed by Mr. Lewis in 1975 said that they were disillusioned with the city's willingness to deal with their complaints. They maintained that there was no effective or credible complaint processing system for complaints against officers. In addition, they claimed that there were no Hispanic police officers assigned to their area.

The 1974 Fran McDonough Bar incident was one of the first which has led to tensions between the police and the Hispanic community. This disturbance occurred at the Fran McDonough Bar when a small group of officers, in response to a stabbing, were confronted by an angry crowd. Hispanic leaders at that time felt the police handling of the situation escalated the confrontation between the police and the patrons at the bar. The Human Rights Department report to Mayor Cohen concurred and indicated that the incident could have been avoided if the police officers who initially arrived on the scene had handled the situation with more sensitivity.[21] It was noted in the report that most police officers involved in the confrontation also refused to cooperate with the investigation of the incident.[22]

A second clash between the Hispanic community and police occurred in 1974 at the Blue Moon Bar. Apparently, the disturbance occurred when a patron of the bar refused to buy another patron a hamburger.[23] According to many who witnessed the incident, the police overreacted to the situation. As a result, several persons were hurt and jailed. Meetings with the mayor brought no great change in the number of Hispanic officers or the relationship between the police department and the Hispanic community. Today the St. Paul Police Department still believes that human relations training which involves learning and respecting the lifestyles and culture of an ever growing Hispanic community is not needed. On

[18] Minneapolis Transcript, p. 304.
[19] Data from St. Paul Police Department files, sent by Robert F. LaBathe, Acting Chief of Police, to Carmelo Melendez, Equal Opportunity Specialist, MWRO, U.S., Commission on Civil Rights, Jan. 4, 1980.
[20] Donald Lewis, Director, St. Paul Department of Human Rights, investigation report on disturbances which occurred at Fran McDonough's Bar in St. Paul, to Mayor Lawrence D. Cohen, Mar. 26, 1975.
[21] Ibid.
[22] Ibid.
[23] "5 held in jail after disturbance," *St. Paul Pioneer Press*, 1974.

TABLE 2.2

St. Paul
Offenses—Number of Arrests

Year	Number Index Crimes	Juveniles Under 18 and Adults: Total Black and %	Total Am. Ind. and %	Total White and %	Juveniles: Total and %	% of Total Pop.: Black	Am. Ind.	White
1976	2,963	684	106	2,079	1,871			
		23	4	70	63	3	1	93
1977	2,921	682	111	2,025	1,903			
		23	4	69	65			
1978	3,172	818	93	2,126	2,014			
		26	3	67	63			
Total	9,056	2,184	310	6,230	5,788			
		24	3	69	64			

Note: The St. Paul Police Department did not break out the ethnic background of those persons arrested who were classified under the age of 18.
Source: St. Paul Police Department Annual Report for the years 1976, 1977, and 1979.

the other hand, Hispanic leaders maintain that unfamiliarity with or contempt for Hispanic culture on the part of the police is a major factor contributing to continuing Hispanic-police tensions.[24]

Problems have also arisen between the police and St. Paul's black community. On November 18, 1972, the *Pioneer Press* displayed the following headline, "City Attorney is Investigating Charge of Police Brutality." The article discussed the charges made against two officers for allegedly beating a young black man named William Earl McGee. According to the newspaper accounts, the young man had been pulled to the side by the two officers because his car had a taillight broken. In the process, they mistook McGee for a holdup man.[25] For several years the case was the topic of conversation in the black community. Many blacks were indignant not only with the police officers' brutal treatment of the youth, but also with the court's decision to sentence McGee to 15 days in the workhouse for disorderly conduct and to acquit the two officers on all charges.[26]

Several aspects of this case led to the black community's discontent and disbelief of the way justice was served. Questions were raised such as, "If the police had determined that the youth was not the suspect of the robbery, why did they have to search his car? If all that was wrong involved a taillight, why did the police beat the youth so badly? Was the youth so strong that two officers had to punch both of his eyes until they became swollen shut?"[27] It should be noted that William McGee was a National Merit Scholarship semi-finalist. The black community interpreted McGee's conviction as a concerted effort on the part of the judge and the police to weaken the youth's brutality suit against the two officers. An editorial written after the final outcome of the McGee case stated, "A miscarriage of justice was perpetuated last Friday which added another particle of anguish to those of us in the black community who seek equity under the law."[28]

The complaint of police brutality was the topic of a hearing held in 1973 by the St. Paul Department of Human Rights. At that hearing, eight people described incidents which allegedly involved police brutality.[29] Incidents of police abuse have been described almost every year by the newspapers. A recent example was a July 10, 1979 article in the *Minneapolis Tribune* with the headline "Police brutality claims sour interest in review board." The article described a number of cases of alleged police brutality. The following are some of those cases along with others reported to the Committee involving the St. Paul police:

Robert Brustle, a white male, received numerous cuts. scrapes, and bruises during a scuffle with St. Paul police officers on March 14, 1979 in what started out as an arrest for an expired license plate. Accounts of the case show the police reports say one thing and the person arrested another.[30]

Ms. Eloise Adams, in response to a call from the St. Paul police regarding the arrest of her son, proceeded to the Public Safety Building where she encountered an officer. He told her to go to the Woodview Detention Center. When Ms. Adams refused to leave, the officer grabbed her arm, twisted it behind her back, and pushed her into the squad car. She filed a complaint against the department.[31]

A State Representative named James Ulland was stopped in the Selby-Dale neighborhood by two St. Paul police officers who treated him arrogantly and in a belligerent manner. The two officers stopped his car and searched it without probable cause.[32]

A man testified at a Department of Human Rights hearing that he was pushed down a flight of stairs and was beaten while handcuffed. He claimed the charges that were placed against him by the police were trumped up by the department. He was treated at the Central Medical Center and released.[33]

A businessman of St. Paul named J.D. Brigham was reported to have been beaten and dragged to a police car while taking groceries out of his car. The police officers beat him so badly that instead

[24] St. Paul Transcript, p. 75.
[25] "City Attorney is Investigating Charges of Police Brutality," *St. Paul Pioneer Press*, Nov. 18, 1972.
[26] Jeanne Cooper, "Another Mockery of Justice," *St. Paul Sun*, Jan. 3, 1973.
[27] Ibid.
[28] Ibid.
[29] "8 Testify to Police Brutality," *St. Paul Pioneer Press*, Mar. 13, 1973.
[30] "Police brutality claims sour interest in review board," *Minneapolis Tribune*, July 10, 1979.
[31] "Were questionable procedures used by St. Paul police in Adams case?" *Twin City Courier*, Mar. 12, 1973.
[32] "Cop Frisk lawmaker in Selby area," *St. Paul Pioneer Press*, Mar. 15, 1973.
[33] "Police brutality charges aired at Commission hearing," *Twin City Courier*, Mar. 16, 1973.

of taking him to the police station to charge him they took him to the hospital for treatment. A complaint was filed by Mr. Brigham with the Department of Human Rights.[34]

During 1976–1978, approximately 65 complaints of police brutality were filed by civilians against St. Paul officers. Most of those complaints were dismissed. Seven complaints were upheld.[35]

While some of the complaints may be exaggerated and in some cases unfounded, the Committee believes that the numbers were significant enough to warrant the concern of black, white, and American Indian citizens alike. Mr. Charles Brady, a St. Paul attorney, stated that while he is well aware that some civilians engage in obnoxious behavior such as spitting in a police officer's hat, or using threatening words or obscenities, nonetheless his experience has led him to believe that some officers overreact to provocation by, for example, physically assaulting civilians.[36]

[34] "Former St. Paul businessman is allegedly beaten by police," *Twin City Courier*, June 7, 1979.

[35] *Minneapolis Tribune*, July 10, 1979.

Reactions by the community of alleged police brutality have been spontaneous as each incident occurs. The McDonough and Blue Moon Bar incidents, involving mostly members of the Hispanic community are examples of cases in which the community has moved against actions of the St. Paul police. A hearing by the St. Paul Department of Human Rights and an investigation of the McDonough Bar incident, produced good recommendations which for the most part were never implemented by the Mayor or the City Council.

A number of incidents have occurred and complaints have been filed involving police-community conflicts in Minneapolis and St. Paul. At least in the minds of many minority citizens in these communities, the specific incidents and the ocerriding issues have not, in general, been adequately resolved. The following pages describe alternative mechanisms available for improving the process of filing complaints and resolving prevailing controversies regarding excessive use of force in the Twin Cities.

[36] Charles Brady, Attorney, statement before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, factfinding meeting, St. Paul, Aug. 9, 1979 (hereafter cited as St. Paul Transcript), p. 136.

Chapter 3

Use of Force

Use of Force Policy

Minneapolis Police Department

In 1978, the Minneapolis Police Department adopted a comprehensive manual of rules and regulations "to govern the actions and discretion of police officers."[1] Impetus for the manual came originally from the 1975 "Ward Report," a study conducted by a special committee appointed by Mayor Albert Hofstede and City ouncil President Louis DeMars and chaired by Professor David Ward of the University of Minnesota.[2]

Section 2–304 of the Minneapolis Police Department Manual sets forth the standard for use of force by police personnel:

> In a complex urban society, officers are daily confronted with situations where control must be exercised to effect arrests and to protect the public safety. Control may often be achieved through advice, warnings, and persuasion. The use of reasonable physical force may be necessary in situations which cannot be otherwise controlled. Officers are permitted to use whatever force is reasonable and necessary to protect others or themselves from bodily harm in accordance with state law.

The Minneapolis use of force standard is taken directly from the 1972 Policy Manual of the Department of Police, Los Angeles, California.[3] While some modifications have been made, most of the changes are insignificant. One change, however, is of considerable importance in its potential impact on police officers. In the Los Angeles version, force is not to be "resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances".[4] That is, force may be used by Los Angeles officers only as a last resort.

Minneapolis in modifying the Los Angeles standards eliminated this provision. Thus, Minneapolis police officers are not required to use means other than physical force i.e., "advice, warnings, and persuasion" at any point to accomplish their goals.[5] The shift is subtle but significant in permitting officers, unguided by objective standards, to determine whether and when force is necessary because a situation "cannot be otherwise controlled".[6] The Minneapolis use of force policy does not require officers to try other means, such as talking with the person or calling for assistance, or even to consider such alternatives before resorting to force.

The Minneapolis version thus unwittingly permits an officer to use the results of his own incompetence in escalating a tense encounter with a civilian to become the basis for that officers decision that physical force is necessary to control the civilian.

The Minneapolis standard for use of force is consistent with the 20 year old Model Penal Code

[1] City of Minneapolis, Minneapolis Police, *Department Manual* Dec. 1978 (hereafter cited as *Minneapolis Police Manual*), "Preface."

[2] Ibid., Minneapolis, Minn., *Mechanisms of Controlling Police Conduct*, prepared by the Special Committed on Police Issues, David A. Ward, Chair (1975).

[3] City of Los Angeles, Los Angeles Police Department, *Policy Manual* (March 1972) (hereafter cited as *Los Angeles Police Manual*), "Use of Force," §225.

[4] Ibid.

[5] Ibid.

[6] *Minneapolis Police Manual*, §2–304.

which also vested discretion unguided by objective standards in the individual officer to determine when force is needed.[7] Those standards permit the use of physical force whenever the individual officer believes such force is necessary to accomplish legitimate law enforcement goals. Neither requires officers to try persuasion first with coercive techniques to be utilized only as a last resort. On the other hand, British use of force policy uniformly requires police officers to rely first on persuasive techniques with force clearly a disfavored last resort.[8] The Los Angeles use of force policy appears to be quite similar to the British position, placing heavy emphasis on persuasion with force to be utilized only after persuasive techniques have been attempted and have failed or would clearly be futile.[9]

It is difficult to evaluate the extent to which the implicit ratification of force in the Minneapolis standard reflects existing practices and to what extent it shapes future police conduct. At the very least, the existing policy seems to encourage the use of physical force albeit unwittingly. According to Gerald Bridgeman, president, Police Officers Federation of Minneapolis most United States police departments including the Minneappolis Police Department put too great an emphasis on physical force and spend too much time teaching coercive techniques and too little time teaching officers to achieve their goals "in ways other than using force."[10] Bridgeman believes that the importance of persuasive techniques to achieve civilian cooperation is not generally recognized by police personnel.[11]

Bridgeman has also stated that a ready resort to coercive techniques is to a large extent a function of immaturity and inexperience. Younger officers, he has stated, are more likely to behave toward civilians in an authoritarian manner. As officers mature in their work, they learn to lead without resorting to physical force or other authoritarian tactics. Bridgeman has recommended that techniques of persuasive leadership should be taught to police officers by experts in human behavior in order to accelerate the process of professional maturity.[12]

There are some individuals according to Bridgeman who cannot learn to handle authority without becoming destructively authoritarian and others who cannot learn to avoid unnecessary and destructive power struggles.[13] By implication, Bridgeman recommends neither hiring nor retain such individuals or a police force.[14] But the majority of individuals, he believes are capable of learning a more cooperative approach toward police work.[15] The Minneapolis Police Department does not offer formal skill courses either as entry level or continuing education in persuasive techniques.[16] Thus, Minneapolis officers are not formally educated in techniques such as negotiation and arbitration, which require great skill and considerable formal training. These skills, however, are especially effective for dispute resolution, an integral part of police work.[17] As a result, through official use of force police and deficiencies in formal training, emphasis placed on force and the artifacts of force, the process professional matruity is apparently impeded, and civilians continue to bear the brunt of unnecessarily heavy-handed police conduct such as that reported to the Minnesota Advisory Committee.[18]

St. Paul Police Department

St. Paul has also adopted the Los Angeles Police Department standard on use of force.[19] However, unlike Minneapolis, St. Paul adopted the Los Angeles version *in toto* and added a further restriction on the use of force. Section 150.04 of the St. Paul Police Department Manual which is identical to the Los Angeles provision except for the italicized amendment states:

> In a complex urban society, officers are daily confronted with situations where control must

[7] *Model Penal Code,* §3.07 (Philadelphia Pa: American Law Institute, 1962) (hereafter cited as *Model Penal Code).*

[8] Edward M. Davis *Staff, One: A Perspective on Effective Police Management* (Englewood Cliffs, N.J.: Prentice-Hall, 1978) (hereafter cited as *Staff One),* pp. 17, 30; Great Britain; British Information Services, *Fact Sheet on Britain* (July 1979), p.1.

[9] Ibid., *Los Angeles Police Manual,* General Provisions, §225.

[10] Gerald Bridgeman, President, Police Officers Federation of Minneapolis, testimony before the Minnesota State Advisory Committee to the U.S., Commission on Civil Rights, fact-finding meeting, Sept. 27, 28, 1979, transcript (hereafter cited as Minneapolis Transcript), p. 231.

[11] Ibid. *See also* Stanley L. Brodsky, *Psychologists in the Criminal Justice System* (Chicago: Univ. of Illinois Press, 1972), 0.106.

[12] Minneapolis Transcript, p, 232.

[13] Ibid., p. 232.

[14] Ibid., p. 235.

[15] Ibid., pp 231-232.

[16] Minneapolis, Minn., "Administration of Justice: City Police Department," responses to questionnaire submitted to the Minneapolis Police Department by the MWRO of the U.S., Commission on Civil Rights (1979) (hereafter cited as Minneapolis Survey), Appendices.

[17] Staff One, pp. 30-31; Anthony v Bouza; "Women in Policing," *Law Enforcement Bulletin,* Sept. 1975.

[18] Robert T. Mitchell, President, Minneapolis NAACP;Ronald Lee Edwards, President, Minnepolis Urban League; Donna Folstad,Minnesota Chippewa Tribes Housing Corporation; Bruce Brochway, Editor, *Positively Gay,* Rev. Clyston O. Holman, Jr., Street Minister, Greater Minneapolis Council of Churches, Minneapolis Transcript, pp. 13-14, 98-99, 58, 64, 139.

[19] City of St. Paul, St. Paul Police Department, Department Manual (March 1978) (hereafter cited as St. Paul Police Manual), §150.04.

be exercised to effect arrests and to protect the public safety. Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary *to protect others or themselves from bodily harm.* (emphasis added)

The official St. Paul use of force policy is quite restrictive. The policy permits officers to use force only as a last resort after other methods have been attempted without success or would when viewed objectively be futile. Nonetheless, several civilians and community groups along with a consultant to the St. Paul Police Department have indiciated that civilians, particularly members of minority groups,are being subjected to unnecessary force.[20] The apparent discrepancy between official St. Paul policy limiting force to a last resort and these complaints of unnecessary force and heavy-handed law enforcement may be in part a function of the universal policy of promoting experienced officers from street patrol to special assignments leaving the implementation of law enforcement policy in the hands of less experienced officers.[21]

Sergeant Thomas Reding, a 10 year veteran of the St. Paul Police Department has told the Minnesota Advisory Committee that younger officers, less experienced in working with people, tend to take forceful action without fully reflecting on the need for such action or its consequences.[22] In addition, he has suggested that less professionally experienced officers have not yet developed the verbal skills necessary to keep communications with civilians open in potentially explosive situations.[23] His recommendation is to place younger officers with older, more professionally mature officers to assist them develop the persuasive skills necessary to maintain the genuine communication and cooperation between police and civilians which is necessary to prevent violent confrontations.[24] Reding is implying, of course, that officers through inexperience or otherwise may through their own conduct create the very situations which officers subsequently determine required force. Reding is also implying that afficers can and should be taught how to avoid creating violent confrontations by developing a repetoire of persuasive techniques to accomplish their goals.

Consistent with Reding's reviews, Sargeant Perry Trooien,[25] a 5 year veteran of the St. Paul Police Department agrees that any unwillingness or inability of police officers to use persuasive rather than authoritarian tactics successfully is largely a function of professional maturity. In part, Trooien believes officers develop confidence in persuasive techniques as a function of developing a genuine understanding of the stresses and strains others endure along with self-confidence in their own leadership abilities.[26] Thats the capacity for persuasive leadership develops a function of compassion, and self-confidence, acquired through maturity and experience.

Both Reding and Trooien as well as others who have analyzed the process of officer maturity and its concomitant shift to persuasion from coercion have identified a perculiar irony of police work. Younger officers least able to respond to situations camly an persuasively are the very officers who are assigned to patrol duty in which they have maximun contact with civilians in potentially adverse situations.[27] As officers mature personally and professionally, they tend to move up the ranks and away from day-to-day interactions with civilians. Thus, officers with the best developed leadership skills, those who rely least often on force, are not the officers who most often interact with civilians. The consequence of promoting officers out of patrol duty is that civilians most frequently interact with younger, inexperienced officers, i.e., entry level patrol persons. Civilians thus form their attitudes about the police from the conduct of the very officers who Reding and Trooien assert are the least able to muster the calm dignity and self-assurance needed to achieve

[20] *See e.g.,* Charles Brady, Attorney, Jose Trejo, Executive Director, spanish Speaking Affairs Council, Dr. David Koenig, Team Police Evaluation Unit, testimony before the Minnesota Advisory Committee to the U.S., Commissionon Civil Rights, fact-finding meeting Aug. 9-10, 1979, transcript (hereafter cited as St. Paul Transcript), pp. 126-137, 43-45, 491.

[21] Kenneth Culp David, *Police Discretion* (St. Paul, Minn.: West Publishing Co., 1975) (hereafter cited as *Police Discretion),* p. 38; American Bar Association, *The Urban Police Function* (Chicago: ABA, 1972), p. 163.

[22] Sgt. Thomas Reding, St.Paul Transcript, pp. 555, 558.

[23] Ibid., pp. 558-59.

[24] Ibid.

[25] Sgt. Terry Trooien, interview in St. Paul, Minn., July 12, 1979.

[26] Ibid.

[27] *See e.g., Police Discretion,* p. 38; National Advisory Committee on Criminal Justice Standards and goals, *Criminal Justice Research and Developmet: Report of the Task Force on Criminal Justice Research and Development* (Washington, D.C., 1976), p. 128

civilian compliance and cooperation through persuasion.

St. Paul has attempted to remedy this problem through its field officer training program which requires new officers to partner with a variety of more experienced patrol officers.[28] However, the department does not offer formal training in negotiation and arbitration techniques nor in other techniques of verbal persuasion and conflict resolution.[29] As a result, officers must take the official restrictive use of force policy and essentially self-teach the skills which are necessary to make that policy a reality.

Use of Deadly Force

Minnesota State Law

Common law which was imported from England, permitted police officers to use deadly force to effect the arrest of any felony suspect.[30] Since in 15th century England and 17th century America all felonies were punishable by death, permitting law enforcement officers to use deadly force against escaping felons was perceived merely as a resonable acceleration of the penal process.[31]

Today, few felonies are punishable by death. Minnesota does not impose the death penalty for any offense: life imprisonment is the severest punishment improved for violation of the State's criminal laws.[32] Nonetheless, prior to 1978, Minnesota followed the common law in regard to the use of deadly force by police officers. That is, Minnesota police officers were permitted (although, of course, not required) to use deadly force to effect the arrest of any felony suspect.[33] The Minnesota policy accorded with the policy of approximately 25 other states.[34]

In 1976, however, a suit was decided by the Eighth Circuit Federal Court of Appeals which has binding impact on Minnesota as a "member" of that Circuit. In the case, *Mattis v Schnarr,* [35] the appellate court determined that the Fourteenth Amendment prohibits peace officers from using deadly force against civilians unless the officer has a warrant or probable cause to arrest the civilian for commission of a felony, no other way to effect the arrest exists, and the felon has used deadly force himself in the commission of the felony or the officer reasonable believes that the felon would use deadly force against himself or another if apprehension were delayed.[36] While *Mattis v Schnarr* was reversed on the grounds of mootness by the Supreme Court,[37] Minnesota nonetheless acted to revise its peace officer use of deadly force statute consistent with the opinion of the Eight Circuit. Thus, in 1978, Minnesota enacted a statue which prohibits peace officers from using deadly force except in limited circumstances which are: 1) to protect self or others, 2) to effect the arrest of a person the officer reasonable believes to be a felon who used or threatened to use deadly force in the commission of the felony, or the effect the arrest of a person the officer reasonable believes to be a felon and who the officer believes will cause death or great bodily harm if his apprenhension is delayed.[38]

Except for adding requirement of reasonableness underlying the officer's belief that the suspected felon used or threatened deadly force or will cause death or great bodily harm if not speedily arrested, the Minnesota position agrees in essence with the Model Penal Code use of deadly force standard[39] and with the President's Commissionon Law Enforcement and Administration of Justice.[40] The Minnesota enactment, however, is not as restrictive as that of the Federal Bureau of Investigation (FBI).[41] Since 1972 the FBI has limited such use only to occasions where the agent reasonable believes that he or another in danger of death or great bodily harm.[42] Unlike Minnesota police, FBI Agents are not permitted to use firearms merely to effect the arrest of a felon even where such felon used or threatened deadly force in the commission of the felony. No State has enacted legislation as restrictive as the FBI policy.

Minnesota is now one of eight States which has limited the use of deadly force by peace officers for

[28] St. Thomas Reding, St. Paul Transcript, pp. 554-555.
[29] St. Paul, Minn, "United States Commission Civil Rights, Administration of Justice; City Police Department, Questionnaire Responses," (1979) (hereafter cited as "St. Paul Survey"), Exhibit E.
[30] Mattis v Schnarr, 547 F.2d 1007, 1011 (1976).
[31] Mattis v Schnarr, 547 F.2d 1007, 1011-12 n. 7 (1976).
[32] Minn. Stat §609.10 (1980).
[33] Minn. Stat. §609.065 (1976).
[34] Mattis v Schnarr, 547 F. 2d 1007, 1012, (1976).
[35] 547 F. 2d 1007 (1076).
[36] Id., at 1020.
[37] Ashscroft v Mattis, 431 U.S. 171 (1977).
[38] Minn. Stat. §609.066 (1980).
[39] Model Penal Code §3.07(2)(b).
[40] U.S., President's Commission on law Enforcement and Administration of Justice, *Task Force Report: The Police* (1967), pp. 189-90.
[41] Kenneth E. Joseph, Assistant Director, Federal Bureau of Investigation, FBI Academy, letter to Clark Roberts, Regional Director, MWRO, U.S. Commission on Civil Rights, Nov. 14, 1979 with attachment "Re: Use of Firearms By FBI Agents".
[42] Ibid.

purposes of arrest to felonies which involved the use of deadly force.[43] An additional seven States authorize deadly force where the felony involved the use or threatened use of force less than deadly force.[44] Fifteen States have thus moved to modify significantly the common law. The trend clearly is in the direction of granting of police officers less authority to use deadly force against civilians, a trend consistent with recent judicial interpretations of constitutional law. These interpretations have been grounded in the Fourteenth Amendment recognition that life is a fundamental interest, which may be invaded by the state only to the extent necessary to insure the public safety.[45]

The Minnesota statute limiting the use of deadly force by police officers is binding on all local police departments in the State. As a result, all departments were required to modify their policies following the 1978 State modification of use of deadly force policy. Both Minneapolis and St. Paul have modified their policies. Those policies are briefly reviewed here.

Minneapolis Police Department

The official Minneapolis Police Department (MPD) use of deadly force policy was revised in 1978 to conform with the new State law enactment.[46] Basically, it represents a modification of policy on use of deadly force enacted by the Los Angeles Police Department in 1972.[47] The Minneapolis policy provides that deadly provides that deadly force (firearms) may be used only as a last resort after "all other reasonable means of apprehension and control" have been exhausted.[48] Warning shots are prohibited altogether.[49] The discharge of firearms in other circumstances is also prohibited except: 1) to protect the officer himself or another from death or great bodily harm, 2) to effect the arrest of a felon involving the use or threatened use of a deadly weapon, or 3) to effect the officer reasonable believes will cause death or great bodily harm if his apprehension is delayed.[50]

The 1978 enactments of restrictive State law and local regulations governing use of deadly force by police officers have been ineffective in reducing the number of shots fired by Minneapolis police officer's. In 1977, there were 15 shooting incidient.[51] In 1978, there were 10 shooting incidents and in 1979, the number of such incidents rose to 19.[52] The number of civilians who were actually struck by those shots has remained low. In 1976, one civilian was shot.[53] During the next 2 years, no shots took effect and in 1979, one civilian was shot.[54] In both cases, the officers shot the civilians after being shot themselves.[55]

In contrast to lesser forms of physical force,[56] the use of deadly force by Minneapolis police officers does not appear to be an endemic problem. However, the sudden and unexplained upsurge in shooting incidents during 1979 is cause for serious concern.

St. Paul Police Department

St. Paul has also modified its use of deadly force policy. The impetus for official modification come from *Mattis v Schnarr* discussed above.[57] The St. Paul use of deadly force policy is more restrictive than would be required under State law and was enacted prior to the Minnesota deadly force statute.[58] For example, St. Paul officers are expressly required to use only the minimum amount of force necessary to accomplish their law enforcement responsibilites even where the use of deadly force is otherwise justifiable.[59] St. Paul officers may use deadly force to defend themselves or others from death or great bodily harm.[60] 1) Deadly force may be used to arrest a fleeing felon only when such an officer knows through the words or actions of the

[43] Mattis v Schnarr, 547 F. 2d 1007, 1012 (1976).
[44] Mattis v Schnarr, 547 F. 2d 1007, 1013 (1976).
[45] *See e.g.*, Mattis v Schnarr, 547 F.2d 1007 (1976) *rev'd. on other grounds sub nom.* Ashcroft v Mattis, 431 U.S. 171 (1977); Ohio v Foster, No 78-CR-07-1621 (C.P. Franklin County, Ohio Feb. 1, 1979).
[46] *Minneapolis Police Manual*, §2-815.3.
[47] *Los Angeles Police Manual*, §§556, 10-556.90.
[48] *Minneapolis Police Manual*, §2-815.2.
[49] *Minneapolis Police Manual*, §3-815.4.
[50] *Minneapolis Police Manual*, §2-815.3.
[51] Lt. H.C. Anderson, Personnel Director, Minneapolis Police Department, telephone interview, April 22, 1980. According to Anderson, no statistics on shooting incidients were kept prior to 1977.
[52] Ibid.
[53] Data supplied by the Administrative Services Division and the Personnel Division,Minneapolis Police Department, to the MWRO, U.S. Commisson on Civil Right, Nov. 30, 1979 and Apr. 22, 1980, respectively.
[54] Ibid.
[55] Ibid.
[56] The former Supervisor of the Minneapolis Internal Affairs Unit, St. Barbara Beaty, reported several cases of excessive police force to the Minnesota Advisory Committee including putting handcuffs on suspects too tightly, throwing them to the gound, and kicking or hitting them unnecessarily. Minneapolis Transcript, p. 532-533.
[57] Robert F. LaBathe, Acting Chief of Police, Minneapolis Police Department, letter to Carmelo Melendez, MWRO, U.S., Commission on Civil Rights, Jan. 4, 1980 (hereafter cited as LaBathe letter).
[58] Ibid.
[59] St. Paul Police Manual, §246.00, "Reason for the Use of Deadly Force."
[60] Ibid.

felon that he has used deadly force in the commission of the felony or another if apprehension were delayed, or 2) the officer has a warrant or probable cause to arrest a felon, other means have failed, and the felon has used or threatened deadly force in the commission of the felony.[61] Officers are forbidden to fire warning shots unless the shots will not endanger any person and the officer believes it will obtain the fleeing felon's arrest without injuring him.[62] The policy on warning shots is in accord with that the Los Angeles Police Department and is based upon the St. Paul Police Department's review of efficacy of warning shots in achieving lawful arrests without injury.[63] As mentioned above, Minneapolis forbids warning shots altogether.

The restrictive 1978 St. Paul Police Department and State use of deadly force policy has caused a substantial decrease in the number of shots fired although The trend has been generally downward for at least 10 years.[64] Thus, in 1971 there were 64 incidents involving police shootings by St. Paul officers and 40 in 1977. There were 27 shots fired in 1978 when the policy went into effect and all police officers had received training in implementation of the policy.[65]

Between 1977 and 1979, four civilians were struck by shots fired by St. Paul police officers and one of those civilians (1977) died as a result of the shooting.[66] In 1979 no civilians were wounded or died as a result of shots fired by St. Paul officers.[67] According to Reding, the restrained use of deadly force by St. Paul police officers has been the unofficial policy which the official 1978 modifications merely codified.[68] Nonetheless, by setting forth the policy in the form of rules and regulations and providing specific training and education on the use of deadly force, the St. Paul Police Department has been successful in decreasing the number of shots fired and thereby the likelihood that a civilian will be unnecessarily killed.

[61] Ibid.
[62] Ibid.
[63] Sgt. Thomas Reding, Commander, Research and Development Unit, St. Paul Police Department, telephone interview, Apr. 18, 1980 (hereafter cited as Reding telephone interview).
[64] LaBathe letter; Sgt. Thomas Reding, letter to Ruthanne DeWolfe, Regional Attorney, MWRO, U.S., Commission on Civil Rights, Apr. 25, 1980. (hereafter cited as Reding letter).
[65] Reding letter.
[66] Ibid.
[67] Ibid.
[68] Reding telephone interview.

Chapter 4

Accountability

> No department can be expected to operate without some misconduct at times by some personnel. Every department can, however, be expected to attempt to discover its faults, correct them where possible, and learn from them.[1]

Policing the police has been the topic of much discussion and debate by citizens, city officials, academicians and civil rights workers not just in the Twin Cities but all across this country. This discussion is generated in part by a lack of public understanding, distrust of the police, and defensive attitudes of some police administrators.

Most police departments in this country now have formal procedures and personnel to conduct investigations of complaints against the police and to determine whether police policy has been followed as prescribed in their manuals. Since no department is faultless, a fair and equitable machinery for handling internal problems is regarded as essential in disciplining officers as well as deterring others from misbehaving. The problem is that the machinery for conducting investigations is often inadequate.[2] A National Advisory Commission on Criminal Justice Standards and Goals commentary said:

> Discipline and accountability are essential to the agency. The integrity of the police agency can be maintained by an effective and responsive discipline system. Certainly public support will be strengthened by protecting them from the police misconduct and corruption through the changing of inadequate police policies and procedures, and the correction or removal of employees guilty of misconduct.[3]

The President's Commission on Law Enforcement and Administration of Justice endorsed the idea of internal investigation procedures in this way:

> Internal discipline can be swifter and, becuase imposed by the Officer's own superiors, more effective. If properly carried out, internal discipline can assure the public that the department's policies concerning community relations are fully meant and enforced.[4]

Nationally, internal investigative procedures vary widely from department to department. Many police departments have created a separate internal affairs unit to conduct investigations of police misconduct. Some departments are very aggressive in their investigation while others are considered "whitewash" operations.[5] No system of police investigation can be effective if it does not have the cooperation of the other units within the department and the rank and file. Frequently, police officers are unwilling to complain about or testify to the misconduct of another fellow officer.[6]

As described earlier, the Minnesota Advisory Committee has collected many complaints of police

[1] *Task Force Report: The Police,* The President's Commission on Law Enforcement and Administration of Justice, 1967 (hereafter cited as *Task Force Report),* p. 194.
[2] Ibid.
[3] *Task Force on the Police,* "Internal Discipline," National Advisory Commission on Criminal Justice Standards and Goals (hereafter cited as National Advisory Commission Report), p. 469.
[4] *Task Force Report,* p. 194.
[5] Katherine Skiba, "Other cities also have problems in policing police," *Minneapolis Star,* Sept. 3, 1979.
[6] Ibid.

misconduct in the Twin Cities. The Committee is concerned with these allegations of police misconduct and with the mechanism which has been established to investigate citizens' complaints. Thomas L. Johnson, Hennepin County Attorney, said the following of the Minneapolis Internal Affairs Unit:

> In nine months as County Attorney, I have seen:
>
> 1. a serious allegation of police misconduct go uninvestigated because of a technical requirement that a written complaint must be filed;
>
> 2. an allegation of a direct instruction from police administration to the Internal Affairs Unit (IAU) *not* to investigate a case in which serious potential criminal charges were leveled;
>
> 3. a failure of police officers to voluntarily come forth or to disclose all information known to them in an incident involving police vs. private citizens;
>
> 4. inadequate investigation due to a failure to provide sufficient investigative and support staff to IAU, and
>
> 5. police officers, through frustration with the inadequacies of existing review mechanisms, reporting to the press, others often providing only limited perspectives of an alleged incident.[7]

Statements made to the Committee regarding the St. Paul Police Department's internal investigation mechanism were consistent with Johnson's observations.

Minneapolis Internal Affairs Unit (IAU)

Citizen distrust of police internal investigative mechanisms have been documented as far back as September 1965, when the Minnesota Advisory Committee conducted a study of police-community relations in the Twin Cities. At that time, citizens complaints were filed with one of the police inspectors in the department. Community persons told the Committee they had very little faith that their complaints would be given unbiased consideration.[8] The Committee recommended that "it would be advisable to institute an impatial police review program with full citizen participartion either by appointing a new body to monitor it or to utilize the services of an appropriate existing body such as the Mayor's Commission on Human Relations."[9]

Complaints of police abuse were filed with police inspectors until 1974 when a Internal Affairs Unit (IAU) was created.[10] The unit was staffed by a lieutenant and a sergeant. In the first 8 months of operation, the unit received 96 complaints of which only 11 percent were sustained.[11] Statistics reflecting the race of the complainants were not available. In addition, all records of complaints filed with the department were regularly removed by the retiring police chief.[12]

During the first few years of the Internal Affairs Unit, the Deputy Chief had the power to decide whether a hearing was warranted or not. If a hearing was deemed warranted, regulations required an internal reviewing board or hearing panel to be composed of three members; a police federation representative, an officer from the accused officer's rank, and a Deputy Chief.[13] In 1974, Jack McCarthy, then Minneapolis Police Chief, indicated to the Committee that the composition of this Review Board was bias in favor of the accused officer.[14] He suggested that a fourth member, a captain, be appointed from the administration to provide better balance and greater objectivity.[15] This fourth member was never added by the administration.[16]

Even with a seemingly favorable composition of the Review Board officers were apprehensive with the internal disciplinary process becuase of partisan politics. Many were concerned, for example, that if they opposed the winning mayoral candidate, they might not receive fair treatment at a disciplinary hearing.[17]

In 1978, Chief Elmer Nordlund established a new hearing procedure which was endorsed by the

[7] Thomas L. Johnson, Hennepin County Attorney, memorandum to the Minnesota Advisory Committee to the U.S. Commission on Civil Rights Subject: *Police,* Sept. 27, 1979.
[8] Minnesota Advisory Committee to the U.S., Commission on Civil Rights, Report on *Police-Community Relations in Minneapolis and St. Paul,* September 1965 (hereafter cited as Minnesota SAC Police-Community Relations Report), p. 3.
[9] Ibid.
[10] Minnesota Advisory Committee to the U.S. Commission on Civil Rights, *Bridging the Gap: The Twin Cities Native American Community,* January 1975, p. 68.
[11] Ibid.
[12] Ibid.
[13] Ibid., p. 69.
[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Steven Johnson, "Ugly Mood in Police Department," *Mineeapolis Star,* Aug. 11, 1978 (hereafter cited as "Mood of Police").

Police Federation. This procedure had been recommended by a committee of citizens and police officials after study of the existing disciplinary process. The new procedure which is still in effect requires that a complaint filed against an officer be screened by a board composed of a captain, a lieutenant, a sergeant and two police officers who are selected monthly by lot.[18] After the complaint is screened, it is given to a hearing board composed of only members of the accused officer's rank. This process is intended to increase credibility and remove the possibility of political influence.[19] The final decision in regard to discipline coutinues to rest in the hands of the police chief.

Complaint investigation procedures have been opened up as well. Today, complaints may be submitted by telephone, by walk-in, and by mail.[20] In addition, the city attorney and the mayor's office may refer complaints. If the complainant cannot come to the office of the internal affairs unit, the investigator will go to the person. All formal complaints must be signed by the aggrieved civilian and all known witnesses and relevant facts identified. Once the complaint has been thoroughly investigated, it is forwarded to the police administration for a decision(i.e., sustained, not sustained, exonorated, unfounded). The administration then sends the complaint and decision back to the office where it was orginally registered. This is done so that a local record can be kept of how long it takes the administration to resolve individual complaints. Both criminal and noncriminal complaints are also forwarded to the city attorney who determines whether actionable criminal conduct is involved.[21] After the complaint has been reviewed by the city attorney, it is returned. IAU then advises the complainant of the disposition of the case. According to the supervisor of IAU, all persons who have filed formal complaints receive notice at the completion of the investigation.[22]

Table 4.1 indicates the number of complaints filed 1976–1979. The table shows that there is a particularly high number of complaints in the categories of assault, procedure violations, rules and regulations, and attitude. The percentage of complaints sustained has ranged between 6 and 13 percent.

The largest number of complaints (between 35 and 49 percent) is in the assault category. A roughly equivalent number of complaints has also been filed in a group of categories which reflects abusive behavior though not physical assault by police.

Over 40 percent of the complaints regularly concern attitude, procedure, and rules and regulations. These complaints include rudeness, refusal to write a report, and slowness in responding to a call. No data are available, however, on the disposition of complaints in specific categories.

Between 1976 and 1979, the highest numbers of complaints against officers were filed in the fourth and sixth precincts. While it was reported that some sixth precinct officers believe that many complaints are made merely because patrol officers are reasonably aggressive at making necessary arrests.[23] The fourth precinct, located on the North Side and having the largest concentration of blacks, had the second highest. The sixth precinct, which has a sizable minority population had the highest number.[24] On the other hand, an administration official was quoted in the same report as saying that some police officers are poorly supervised, adding that some first line supervisors consider themselves "'Kings' who feel they don't have to answer to anyone."[25] A former police officer with the Minneapolis Police Department said: "Some of the policemen you have today aren't secure in their own minds. They can't handle themselves so they overreact."[26]

As indicated in Table 4.1, there has been a 35 percent decrease in the number of complaints filed between 1976 and 1979. One explanation for this decline was offered by Urban League Director Gleason Glover. He claimed that while the incidence of brutaility has increased, blacks do not file complaints because they believe the department will not do anything with their complaints.[27]

Michael J. Davis who is with the Public Defenders Office responded to the question, "Why do you not recommend that your clients file complaints with Internal Affairs Unit?" with:

> Its been the policy of the Internal Affairs Department not to let the clients know what's happening on the investigation. They may or

[18] Steve Johnson, "City police to try new system of handling officer discipline," *Minneapolis Tribune*, Dec. 14, 1978.
[19] Ibid.
[20] *Department Manual*, Minneapolis Police Department, 1978, Vol. 4, pp. 400-410.
[21] Ibid.
[22] Ibid.
[23] "Mood of Police," p. 7A.
[24] Ibid., p. 1A.
[25] Ibid.
[26] Ibid.
[27] Ibid.

TABLE 4.1

Total Number Complaints Received and Disposition Minneapolis Police Department Internal Affairs Unit 1976-1979

Types of Complaints	1976	1977	1978	1979
Assault	104 (35%)	87 (37%)	78 (49%)	50 (49%)
Excessive Force				6 (6%)
Theft	13 (4%)	5 (2%)	3 (2%)	3 (3%)
Robbery		1		
Perjury			3 (2%)	
Bribery			1	
Att. Burglary				1
Sex	6 (2%)		4 (3%)	
Attitude	44 (15%)	23 (10%)	10 (6%)	
Harassment	13 (4%)	9 (4%)	4 (3%)	
Procedure	76 (26%)	79 (33%)	28 (18%)	
Rules & Regulations	35 (12%)	31 (13%)	26 (16%)	41 (40%)
Civil Service				
Traffic Offense	2	1		
Other			1	
Total Complaints	293	236	158	102
Findings				
Sustained	23 (8%)	18 (8%)	10 (6%)	13 (13%)
Not Sustained	115 (39%)	88 (37%)	89 (56%)	73 (72%)
Exonerated	43 (15%)	39 (17%)	15 (9%)	6 (6%)
Unfounded	80 (27%)	83 (35%)	39 (25%)	5 (5%)
Pending Investigation	32 (11%)	7 (3%)		5 (5%)
Closed by the Chief			6 (4%)	
Referred to Park Police		1		

Source: Minneapolis Police Department

> may not receive any results of what the investigation has done by the police department. That, to my client's way of thinking, it totally inadequate. They wanted some action taken. They want to hear what the police are doing, and they receive no response. . . . And so they are left giving a complaint, and maybe two or three or four months later they may receive a piece of paper from the Internal Affairs saying, 'We have investigated this case and have found that there is no probable cause that the police officer. . .used excessive force,' and some of the clients have complained that they have not even been interviewed by the police officers, so how could they make that determination? . . . .So its been my general policy; I tell them that the procedure is there if they want to use it. The results may not be to their liking. There are other routes, and if they pursue it, they pursue it.[28]

Another possible reason for the drop in complaints is IAU's policy of prosecuting citizens who it believes have made false accusations. An attorney with the Public Defenders Office related to the Committee the following incident:

> After the interview by the Internal Affairs officers and their investigation, they later charged the lady with two additional crimes: one, a false report to the police; and secondly, making a false report to the newspaper. . . .The lady was taken to court. She was not represented by me on the new charges. The attorney handling the case tried to receive the Internal Affairs investigation. . . .The City Attorney's Office did not want to turn [the papers] over. The Court ordered that they turn it over, and then the City Attorney's Office dimissed the charges.[29]

Evaluations of the review system of the Minneapolis Internal Affairs Unit have generally been highly critical. In addition, newspaper accounts of police officers' "ugly moods," internal struggles within the department, politics, and accusations of corruption have virtually destroyed the credibility of the system in the minds of many community groups.[30]

County Attorney Tom Johnson, one of several public officials who have criticized the system, said, "Minneapolis Police Department's self-policing is inadequate and has been repeatedly abused by the police."[31] David Ward, professor of criminal justice and sociology at the University of Minnesota, headed a special committee in 1975–76 that studied the Minneapolis Police Department. He and another member of the committee are the only persons other than police officials who have been allowed to look at police internal affairs investigation records.[32] The committee's work culminated in the "Ward Report." That report recommended that a civilian ombudsman be appointed to review IAU investigations and report the results annually to the public, deleting only the names of accused officers and witnesses.[33]

In an article published by the *Minneapolis Star* on September 3, 1979, Barbara Beaty, the head of IAU, accused Police Chief Elmer Nordlund of interfering with internal investigations of police misconduct.[34] The Chief was accused of holding completed investigative files for months after they were submitted to him for action.[35] Norlund denied Beaty's accusations and said, "I didn't want to come down with snap decisions."[36] He added that the Internal Affairs Unit was created to protect the city against lawsuits and that the present system had to be changed.[37] The newspaper article also stated that:

> The division [had] come under intense scrutiny. . . because of the seriousness of recent charges against the Minneapolis police. They included allegations of offficers having sex with prostitutes, beating suspects with shotguns, harassment of gay bathhouse customers, provoking bar fights, forcing their way into homes without warrants, and firing weapons while off duty.[38]

In describing an incident when the police allegedly beat several civilians in a bar, Bruce Brockway, Editor of the *Postively Gay* newspaper, told the Committee, "In spite of the fact that they [IAU] had names, addresses, telephone numbers of the gay people in the bar who were willing to act as witnesses to this incident, none of them were called. . . ." Norlund's administration has been

[28] Michael J. Davis, Public Defenders Office, statement to the Minnesota Advisory Committee to the U.S., Commission on Civil Rights in Minneapolis, Sept. 27, 1979 (hereafter cited as Minneapolis Transcript), pp. 280–281.
[29] Ibid.
[30] "Mood of Police," p. 7A.
[31] "Self-policing by police criticized," *Minneapolis Tribune,* Sept. 28, 1979 (hereafter cited as "Police criticized," *Minneapolis Tribune).*
[32] Minneapolis Transcript, p. 298.
[33] Ibid., p. 302.
[34] Katherine Skiba, "Did Nordlund interfere with police probe," *Minneapolis Star,* September 1979 (hereafter cited as *Minneapolis Star* Nordlund Article).
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.

accused of slowing down the investigation of many cases involving alleged police misconduct.[39] According to Beaty, "I don't know where to lay the blame except at the administration as a whole"[40]

St. Paul Internal Affairs Unit (IAU)

During its 1965 study on Police Community Relations in the Twin Cities, the Minnesota Advisory Committee learned that complaints filed by citizens against the police were processed by the personnel officer of the St. Paul Police Department. The police chief of the St. Paul Police Department said that this personnel officer was the least biased person in his department and thus the best person to deal with complaints of police misconduct. However, minority citizens told the Committee that they had very little faith their complaints were going to be dealt with fairly.[41]

As early as 1973, the business sector of St. Paul considered the wisdom of establishing a civilian review unit. During its study, it received much opposition from the police department and its efforts to collect information from other police departments in the country were either ignored or solicited a negative response.[42]

The subject of internal review of police misconduct has been raised by minorities in St. Paul for several years. Conflicts between the black community and police reached a peak in the early 1970s and by 1975, the Hispanic community was voicing concerns about the same issue. The consistent complaint on the part of minorities was, and is, that police officers are not responsive to community differences in culture and lifestyles. The most common complaint expressed by minority communities from 1965 through 1978 has been that the police are racially prejudiced and use unnecessary force to make arrests. The question of whether "prejudice and excessive use of force" exist in St. Paul was raised in the Committee's fact-finding meeting held August 10, 1979. Dr. David Koenig, head of the Team Police Evaluation Unit, explained to the Committee that according to a survey he conducted, minorities tend to perceive more prejudice and excessive use of force on the part of police. Koenig also added, that although the data were not conclusive it was possible to assume from the data that minority perceptions were right.[43]

These feelings of distrust and powerlessness are compounded by the consistent results of complaints filed with the courts, local civil rights organization, and the St. Paul Internal Affairs Unit (IAU). As one observer concluded:

> In most complaints against the police, it is the plaintiff's word against the officer. The courts, the St. Paul Human Rights Department, and the St. Paul Police Internal Affairs Unit, which investigates allegations made against officers, generally are reluctant to sustain such complaints.[44]

Today, the St. Paul Police Department does not use the personnel officer for citizens' complaints. It has established the IAU with a captain at the head and two sergeants to carry out the investigations.[45] The department has established procedures for handling complaints against members of the police department whether they are sworn or nonsworn personnel. According to police officials, "These procedures will assure the prompt and thorough investigation of incidents to clear the innocent, establish the guilty, and facilitate suitable disciplinary action."[46] A complaint can be filed with the IAU when it is alleged that a member of the department (sworn, civilian, or temporary personnel) has violated a statute, ordinance, or department rule of order.[47] These incidents may be reported to supervising or commanding officers by members of the department or by citizens, orally, in writing, by telephone, or by letter. In addition, they can be filed annonymously. It should be noted though that complaints can be taken over the phone with respect to excessive use of force although the complainant must come to the IAU office for photos and to sign medical release forms.[48]

[39] Ibid.
[40] Ibid.
[41] Minnesota SAC Police-Community Relations Report, p. 3.
[42] Jose Trejo, Executive Director, Spanish Speaking Affairs Council, State of Minnesota, statement before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, St. Paul, August 1979 (hereafter cited as St. Paul Transcript), p. 48.
[43] St. Paul Transcript, pp. 488–491.
[44] David Henry, "Police brutality claims spur interest in review board," *Minneapolis Tribune*, July 10, 1979.
[45] St. Paul Transcript, pp. 426, 428.
[46] St. Paul, Minnesota, "United States Commission on Civil Rights, Administration of Justice, City Police Department Questionnaire Response," (1979) (hereafter cited as St. Paul Survey).
[47] Ibid.
[48] Capt. W.E. Dugas, Head of Internal Affairs, Interview in St. Paul, Minnesota, Jan. 2, 1979 (hereafter cited as Dugas Internview).

Capt. Edward Fitzgerald, head of the IAU, described the complaint investigative procedure in the following manner:

> . . . .When we get the initial complaint, we investigate it. We talk to all witnesses, all the officers that were there, and we determine if there's anyone else who isn't noted in the initial report so we can cover all the loose ends, so to speak. We gather that information and it's put together in the form of a file. This file then is referred to the proper Deputy Chief, whoever this man works for, the file is given to that Deputy Chief for his consideration and recommendation. What we do is merely gather the facts and present it to the Duputy Chief. he determines at that time if the charge is sustained, if it's not sustained, or if the officer should be exonerated or fired.[49]

Fitzgerald added that it is possible forthe Deputy Chief reviewing the complaint to refer the entire matter to a Hearing Board. The Hearing Board is made up of representatives of four divisions (North, South, Detective and Administration) from within the department. The chairperson of the Hearing Board is appointed by the Chief of Police. The head of the IAU serves as the prosecutor.[50] Each constituted board operates for a period of 6 months. A total of six members including the chairperson and prosecutor, serve on the board. It is important to note that complaints as well as accused officers are allowed to bring witnesses on their behalf. The officer is questioned by the board without the complainant present. This Hearing Board, which has convened at least 10 times in the last 1 1/2 years, reviews all of the facts by itself and recommends to the Chief of Police the sanctions, if any, that should be applied.

In the event that a charge is sustained against an accused officer, the Hearing Board will make one of the recommendations in table 4.2 to the deputy chief in charge of the accused officer's division. After the Deputy Chief has reviewed the Hearing Board's recommendation, he then forwards it to the Chief of police with his own recommendation for final disposition by the Chief.[51] If the accused officer is found guilty by the Chief, he may appeal this decision to the Civil Service Commission.[52]

Most of the categories in which complaints of police misconduct are categorized are self-explanatory. For example, if an officer uses bad language, uses a racial epithet against a citizen, or refuses to follow orders from his superiors, the complaints are placed in the category called "Improper Conduct or violation of orders." (Table 4.3).

Of the 1,803 complaints filed with the IAU between 1975 and 1979, 416 or 23 percent were sustained. Of the 416 sustained, 262 or 63 percent were in the category of "Improper conduct or violation of orders." Only 14 (3 percent of the sustained complaints were in the category of "Used of excessive force." "Excessive force" has been defined by Capt. Fitzgerald as "anything over the necessary amount of force. Our men are trained to use enough force to effect an arrest and no more."[53] Of the 245 "Use of Excessive Force" complaints filed during these years, 6 percent were sustained compared to 23 pecent of all complaints. Clearly the more serious the alleged offense, the less likely the complaint will be sustained. In light of the low percentage of all complaints which are sustained, these statistics lend support to the observation noted earlier that where it is the word of a complainant against the word of the officer, IAU is reluctant to rule against the officer.

The Committee received considerable evidence that a substantial number of citizens, including some members of the City Council, have questioned the effectiveness of the Internal Affairs Unit. One of these citizens is Jose Trejo, Executive Director of the Spanish Speaking Affairs Council, who said:

> . . .the investigation procedures, in my opinion leave a lot to be desired. If a person brings a charge of police harassment against a particular officer, most of the time, that is handled internally. We seldom hear what, if anything happens as part of the disciplinary action against the police officer, if any, or what takes place, you know behind the scenes.[54]

As in Minneapolis, the number of complaints filed has decreased 39 percent between 1975 and 1979. It has been suggested that this decline may reflect a

[49] St. Paul Transcript, p. 420.
[50] Dugas Interview.
[51] St. Paul Survey.
[52] Ibid.
[53] St. Paul Transcript, p. 417.
[54] Ibid., 47.

TABLE 4.2

DECISION	ACTION
1. ORAL REPRIMAND:	A letter noting the facts of the incident will be inserted in the member's personnel file by the personnel officer upon receipt from the deputy chief.
2. WRITTEN REPRIMAND:	Copy to the member's personnel file signed by the chief of police.
3. RETRAINING:	A recommendation that the member be retrained in an area that precipitated or contributed to the cause for complaint against the member. A recommendation for retraining will supplement the other actions available to the board and cannot be a singular disposition. A letter from the chief of police or the deputy chief of the accused will be forwarded to the training section commander directing him to undertake the retraining measure, with recommendations as to the length and content of the retraining period. The training section commander will advise the deputy chief at the conclusion of the recommended period whether additional training is necessary and the reasons therefor. Upon completion of the retraining, the training section commander will forward a letter to the deputy chief of the member describing what action was taken and render an opinion as to the effect on the member's future performance in this area. A copy of this letter will also be forwarded to the personnel officer for insertion into the member's personnel file for a matter of record.
4. SUSPENSION:	By the chief of police—not to exceed thirty days.

TABLE 4.3

St. Paul Police Department Internal Affairs Complaints 1975-1979

1979	Total Received	Exonerated	Unfounded	Not Sustained	Sustained
Improper conduct or violation of orders	128	31 (24/41)	11 (9/55)	36 (28/49)	38 (30/70)*
Poor Public Relations	40	12 (30/16)	1 (2.5/5)	16 (40/22)	5 (13/9)
Use of Excessive Force	41	15 (37/20)	4 (10/20)	10 (24/14)	2 (6/4)
Discrimination or Harassment	17	6 (35/8)	0	5 (29/7)	0
Inaction/Slow Response	33	12 (36/16)	4 (12/20)	7 (21/9)	9 (27/17)
TOTAL Employee Investigations	259	76 (29)	20 (7.7)	74 (29)	54 (21)
1978					
Improper conduct or violation of orders	191	78 (41/53)	15 (8/42)	35 (18/54)	59 (31/87)
Poor Public Relations	24	11 (46/7)	1 (4/8)	11 (46/17)	1 (4/1)
Use of Excessive Force	58	85 (60/24)	7 (12/20)	15 (26/23)	1 (2/1)
Discrimination or Harassment	12	9 (75/6)	1 (8/3)	2 (17/3)	0
Inaction/Slow Response	34	14 (40/10)	11 (23/34)	2 (6/3)	7 (21/10)
TOTAL Employee Investigations	319	147 (46)	35 (11)	65 (20)	68 (21)
1977					
Improper conduct or violation of orders	220	70 (32/51)	21 (10/10)	58 (26/53)	70 (32/76)
Poor Public Relations	43	20 (47/15)	2 (5/6)	15 (35/14)	6 (14/7)
Use of Excessive Force	48	21 (44/15)	4 (8/11)	18 (38/16)	3 (6/3)
Discrimination or Harassment	13	8 (62/6)	0	4 (31/4)	1 (8/1)
Inaction/Slow Response	54	17 (31/13)	8 (15/23)	15 (28/14)	12 (22/13)
TOTAL Employee Investigations	374	136 (36)	35 (9)	110 (29)	92 (24)
1976					
Improper conduct or violation of orders	237	66 (28/61)	50 (21/52)	45 (19/45)	68 (29/62)
Poor Public Relations	40	15 (38/14)	6 (15/6)	14 (35/14)	4 (10/4)
Use of Excessive Force	48	10 (21/9)	8 (17/8)	24 (50/24)	5 (14/5)
Discrimination or Harassment	13	6 (46/6)	2 (15/2)	4 (31/4)	1 (8/1)
Inaction/Slow Response	86	12 (14/13)	30 (35/31)	12 (14/12)	32 (37/29)
TOTAL Employee Investigations	424	109 (26)	96 (23)	99 (23)	110 (26)
1975					
Improper conduct or violation of orders	193	20 (10/49)	55 (29/42)	56 (29/38)	57 (30/62)
Poor Public Relations	81	6 (7/15)	23 (28/18)	38 (47/26)	12 (15/13)
Use of Excessive Force	50	9 (18/22)	14 (28/11)	23 (46/16)	3 (6/3)
Discrimination or Harassment	18	5 (28/12)	10 (56/8)	3 (17/2)	0
Inaction/Slow Response	81	1 (1/2)	29 (36/22)	27 (33/18)	20 (26/22)
TOTAL Employee Investigations	423	41 (10)	131 (31)	147 (35)	92 (22)

*(%/%)—Percent of Total Received/Percent of Total Investigations (i.e., Exonerated, Unfounded, etc.).
Source: St. Paul Police Annual Reports.

growing lack of confidence by civilians in the internal affairs procedures utilized by the Twin Cities' police departments.[55]

[55] "Police Criticized," Minneapolis Tribune Article.

Chapter 5

Employment in the Twin Cities Police Departments

Sir Robert Peel, founder of the London Metropolitan Police, believed that one of the qualities indispensable to a policeman was a perfect command of temper.[1] Later, an English writer concurred with Peel by describing tact (the ability to deal with all types of people and classes without upsetting them) and quiet nerves as two very important qualities which a police officer needs.[2] The word "quality" has been used and reused to refer to many characteristics of policing. A report by the President's Commission on Law Enforcement and Administration of Justice used the word "quality" in reference to high educational standards. Such standards, the Commission believed, must be established because they had found that many current police officers were ill-equipped to handle their jobs involving everyday encounters with social problems and with people whose outlook on law differs from theirs.[3] In addition, the report emphasized that a major and most urgent step in the direction of improving police-community relations was to recruit more minorities as police.[4]

George E. Berkley, in his book *The Democratic Policeman,* said that in order for a police department to be more democratized it had to draw recruits from all sectors of the population. "The more the police force mirrors the population and the more diversity of groups within the police ranks, the more cross-pressures it will have."[5] Cross pressure, argued Berkley, provides for more groups to be represented and prevents one group from controlling the others. Most importantly, he argued that members of the force could learn from exposure of other groups.[6] Police departments in this country are not generally representative of their communities and many suits have been filed to remedy this problem.

Minneapolis

According to the Minneapolis Police Department in 1980, 96.4 percent of the 729 sworn positions are held by white.[7] Of the total sworn personnel, 1.5 percent were black, 0.2 percent were Hispanic, and 0.8 percent were American Indian. At the level of administrative officials, whites occupied 99.7 percent of these positions. There is one black (.3 percent) in a supervisory position. Females occupied 8 sworn positions, none above the rank of patrol person. According the the City of Minneapolis Planning Department, Minneapolis is 88 percent white, 8 per cent black, 1 percent Hispanic, 3 percent American Indian, and 1 percent Asian.[8] According to the Director of the Minneapolis Affirmative Action Program, Larry Blackwell, the above figures represent serious underutilization of women and minorities in the Minneapolis Police Department.[9]

[1] George E. Berkley, *The Democratic Policeman* (Boston: Beacon Press, 1969) (hereafter cited as Berkley, *The Democratic Policeman),* p. 53.
[2] Ibid.
[3] A report by the President's Commission Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S., Government Printing Office, 1967) (hereafter cited as Law Enforcement and Administration of Justice Report), p. 107
[4] Ibid.
[5] Berkley, *The Democratic Policeman,* p. 58.
[6] Ibid.
[7] City of Minneapolis, *Affirmative Action Plan for the Minneapolis Police Department,* 1979-1982 (hereafter cited as *Minneapolis Police Affirmative Action Plan).*
[8] *See State of the City,* 1979, City of Minneapolis Office of Mayor and City Planning Department, p. 20. Totals add up to 101 percent due to rounding, submitted by Larry J. Blackwell, Director of Affirmative Action Management Programs, Jan. 22, 1981.
[9] Larry Blackwell, Minneapolis Affirmative Action Officer, testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights in Minneapolis, Sept. 28, 1979 (hereafter cited as Minneapolis Transcript), p. 455.

The city of Minneapolis has a workforce of more than 8,500 and is the largest employer in the metropolitan area.[10] All persons searching for employment in the city must apply Through the Civil Service Commission. The Commission has the power to promulgate rules and regulations as well as to maintain a merit system.[11]

The Civil Service Commission is directed by a three-member board who are appointed by the mayor and the city council. The Commission has a staff of 42 employees who at various levels within the agency conduct the recruitment, selection, and certification of prospective employees of the city.[12]

All positions designated by the title "Classified Service" fall under the civil service provisions. Those designated "Unclassified" do not. Applicants applying for "Classified" positions may take a written examination specific to each job, and/or, a performance and oral examination and/or an evaluation of training and experience.[13]

Most job classifications in the police department are considered classified positions. In the Civil Service Commission's provisions, Rule VII, Section 7.01 states:

> Vacancies in the classified service shall be filled by re-employment, promotion, original appointment, transfer or demotion as provided in these rules.

According to Minnesota Sessions Laws of 1978, Chapter 511, upon receiving a requisition prepared by the department, the Civil Service Commission is authorized to certify the top three individuals from the appropriate list. The police department will interview the three individuals and select from these the best qualified candidate.[14] This process is referred to as the "Rule of Three" procedure.

The Minneapolis Department did not establish a personnel office to manage departmental personnel matters until 1974.[15] In 1975, the Minneapolis Police Department's last recruitment was initiated.[16] Police Chief John R. Jensen established the Recruitment Task Force in that same year.[17] Lt. Raymond Presley, the only black administrator today in the Minneapolis Police Department, was named Recruitment Director of the Task Force for the department's Recruitment Division.[18]

The 1975 Minneapolis police recruitment effort proved to be very successful. A total of 2,693 persons applied. Of that number, 2,571 were eligible to take the police written examination. Of the applicants, 978 successfully passed the examination and of that number, 407 were invited to take the agility test. Of the 254 who passed the agility test, only 128 were residents of Minneapolis, and only those persons were invited to take the oral examination. Of the 128, 106 actually took the oral examination. Thirty-two passed. Two of those individuals were rejected by the police department because they had prior felony convictions, leaving 30 of the original applicants to begin police training.[19] Table 5.1 presents the number and percent of applicants by race and sex who reached each step.

of the 30 new hires from the 1975 recruitment effort, 8 were from the minority community. Many have alleged that the written test was discriminatory because it had an adverse affect on minorities. However, these data indicate that the proportion of minority applicants and new hires exceeded their representation in the community.[20]

Betweek 1975 and 1979, no further recruitment and hiring procedures took place—there were no funded vacancies.[21] In 1979 a proposal to recruit minorities into the police department using comprehensive Employment and Training Act (CETA) funds was proposed. The Minneapolis Police Department, Civil Service Commission, and the City Council approved the proposal and moved toward its implementation.[22] A selection committee was appointed composed of individuals from the Minneapolis Police Department, the Civil Service Commission, and the Minneapolis Employment and Training Program whose primary responsibility was to recruit individuals from the protected classes. The participants of this program were designated "Public Safety Trainees."[23]

The recruitment class attracted a total of 61 applicants. The following table, Table 5.2, shows the

[10] Minneapolis Civil Service Commission, "Getting a Job With the City," brochure (undated).
[11] Minneapolis Transcript, p. 438.
[12] Ibid.
[13] Ibid.
[14] Minneapolis Police Affirmative Action Plan.
[15] Minnesota Advisory Committee to the U.S., Commission on Civil Rights, *Bridging the Gap: The Twin Cities Native American Community*, January 1975, p. 64.
[16] Minneapolis Transcript, p. 439
[17] Minneapolis Police Affirmative Action Plan.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Minneapolis Transcript, p. 438.
[22] Ibid., 443.
[23] Ibid.

TABLE 5.1

1975 Application Flow Percentages and Ethnicity

Procedure Flow	Totals	% Female	% Minority	% White
Applicants	2,693	34	15	73
Eligible for Exam.	2,571	33	14	74
Failed Written Exam.	889	34	17	81
Eligible for Agility Test	407	29	13	85
Failed Agility Test	90	83	11	85
Eligible for Oral Exam.	128	6	18	82
Failed Oral Exam.	14	7	14	86
NEW HIRES	30	13	27	73

Minorities include Blacks, Native Americans, Spanish Surnamed, and Orientals. Those used as "others" or "unknowns" are not included so the first five rows of columns five and six do not sum to 100.

race and sex composition of that first class. According to John Welton, CETA representative, only 13 of the 61 applicants originally approved have remained in the program. A second class went through the same selection process and an additional 25 participants were added to the CETA program. However, 9 have dropped out leaving a total of 29 students. Of the 29 students, 22 are from the minority community.[24]

One issue that has been raised regarding the Commission's selection procedures is test validation. Brian Isaacson, Personnel Director of the Civil Service Commission, told the Committee that the written examination administered in 1975 was validated in conjunction with a consulting firm, Personnel Decisions, Inc.[25] He also stated:

> The Civil Service Commission here in Minneapolis has a research and evaluation unit. [We] probably allocate a larger percentage of our total department resources to research and development activities than most jurisdictions.[26]

Larry Blackwell, Affirmative Action Officer of Minneapolis, said that he was not allowed to see any of the validation documents. The Civil Service Commission denied him access to the documents because it asserted validation studies are not public information due to the limitations mandated by the Minnesota Government Data Privacy Act.[27] According to Mr. Blackwell, the documentation that he was interested in was not restricted by the act.[28]

Steve Mussio is described in the Affirmative Plan as the contact person in the Minneapolis Civil Service Commission with respect to test validation. Midwestern Regional Office staff called Mussio to request information regarding the procedure used to validate the test. According to Mussio, the consulting firm, Personnel Decisions, Inc., had originally projected 2 years for completing the validation

[24] John Welton, Minneapolis CETA Representative, telephone interview, Aug. 8, 1980.
[25] Minneapolis Transcript, p. 449.
[26] Ibid.
[27] Larry Blackwell, telephone interview, Aug. 26, 1980.
[28] Ibid. However in reviewing a draft of this report Brian Isaacson, Personnel Director, indicated that the validation report was not released to anyone because doing so would violate the confidentiality of the exam. Letter from Brian Isaacson, Director of Personnel, Minneapolis Civil Service Commission to Clark G. Robert, Regional Director, Midwestern Regional Office, Feb. 2, 1981.

TABLE 5.2

Police Training Program
First Recruitment

	WHITE				BLACK				HISPANIC				NATIVE AMERICAN				TOTAL	
	male		female		male		female		male		female		male		female			
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
Total Applicants	6	100.0	10	100.0	17	100.0	10	100.0	2	100.0	1	100.0	6	100.0	9	100.0	61	100.0
Didn't Complete Assessment	2	33.3	1	10.0	3	17.6	1	10.0					1	16.7	5	55.6	13	21.3
No Show—Initial Interview	2	33.3	1	10.0	5	29.4	4	40.0					1	16.7	1	11.1	14	23.0
Ineligible					3	17.6	1	10.0					1	16.7			5	8.2
Rejected by Selection Committee			1	10.0													1	1.6
Potential Candidates.	2	33.3	7	70.0	6	35.3	4	40.0	2	100.0	1	100.0	3	50.0	3	33.3	28	45.9
Completed Assessment—																		
Other Plans			1	10.0			1	10.0									2	3.3
Failed Physical	1	16.7	4	40.0	2	11.8	1	10.0			1	100.0	1	16.7			10	16.4
Accepted Candidates	1	16.7	2	20.0	4	23.5	2	20.0	2	100.0	0	0.0	2	33.3	3	33.3	*16	26.2

Note: columns may not equal 100% due to independent rounding
*a total of 13 applicants actually started the classes September, 1979

study and did begin the process by sending out an initial survey of job descriptions to police officers. The Civil Service Commission quickly realized that the test would not be validated in time for the 1975 examinations if it followed the consulting firm's time schedule. The Commission thus decided to take over the validation process and complete it with Civil Service staff.[29]

Recently the State has assumed greater authority over the hiring of Minneapolis police officers. The Minnesota Peace Officers Standard and Training Board (POST Board) now has the authority to decide whether an aspiring law enforcement candidate has the right to work in the State of Minnesota. The Board has the responsibility to certify training programs and issue Licenses to Minnesota peace officers. Isaacson has said the Board certification process will have a significant impact on the selection of future law enforcement officers.[30] Blackwell stated that "The POST BOARD will be requested to review their standards in light of the actual impact on the employment of minorities and women."[31] Blackwell stated that the POST Board licensing examinations had not been validated, and had been told by Mark Shields, Director of the Board, that he did not intend to validate them.[32] However, Shields has stated that the tests have been validated and that the test items were originally derived from job analyses.[33] Shields said that the Board does not fall under Federal Uniform Guidelines governing personnel selection. Therefore, the Board is not required to validate any of their tests.[34] He emphasized that their licensing examinations only contained questions on curriculum.[35] The issue of whether or not authorities of this type fall under the Uniform Guidelines has been raised in several court cases. The constant argument by licensing authorities has been that because they are not the employer their examinations do not fall under the guidelines.[36] However, such arguments have been rejected because licensing examinations do in fact affect the employment status of a prospective police officer. According to Neil McPhie, Office of General Counsel, Equal Employment Opportunity Commission (EEOC), licensing authorities do in fact control the means for employment and, consequently, they fall under the requirements of the Uniform Guidelines.[37] These guidelines require that tests including licensing examinations which are failed by a significantly disproportionate number of minorities must be validated to insure that they are job related.[38] No one has taken the Board examination yet.[39]

Another issue which has been raised regards the educational requirements of prospective police officers. During the early 1970's the only requirement for a beginning patrol officer in the city of Minneapolis was that of a high school education.[40] As early as 1972, the police department and the Civil Service Commission tried to institute a two-year college requirement for every prospective applicant. However, that did not pass official approval and, as a result, the 1975 applicants were not required to possess a college education.[41] In 1977, however, the Minnesota State Legislature passed a law requiring beginning police officers to have completed a 2-year program in an approved vocational technical college or an approved program in a college or university.[42]

The Minneapolis Civil Service Commission has promulgated certain education and experience requirements for eligibility for promotional examination. The rule states that "Promotion to any position in the classified service shall be based upon competitive examination and upon records of efficiency, character, conduct and seniority."[43] Candidates for the sergeant's examination, for example, must be certified police officers in the Minneapolis Police Department with a minimum of 5 years continuous experience. Eligibility for pormotion is contingent on a written examination (60%) an oral interview (20%), a departmental efficiency review (10%), and seniority (10%). A score of 70 percent on each of the written and the oral examinations is required for an applicant's name to be placed on the eligibility list.[44]

Table 5.3 indicates the race and sex of eligible candidates for promotional examination between September 1979 and May 1981. The Affirmative

[29] Steve Mussio, telephone interview, Aug. 12, 1980.
[30] Minneapolis Transcript, p. 442.
[31] Minneapolis Affirmative Action Plan, Section I: Introduction, p. 16.
[32] Larry Blackwell, Director, Affirmative Action Management Program, telephone interview Jan. 28, 1981.
[33] Mark Shields, Director, POST Board, letter to Clark Roberts, Regional Director, MWRO, U.S., Commission on Civil Rights, Jan. 16, 1981.
[34] Mark Shields, telephone interview Aug. 26, 1980.
[35] Ibid.
[36] Neil McPhie, General Council, EEOC, telephone interview August 28, 1980.
[37] Ibid.
[38] Ibid.
[39] Mark Shields, Director, POST Board, telephone interview Aug. 26, 1980.
[40] Minneapolis Affirmative Action Plan, Section III, p. 12.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.

TABLE 5.3

Patrol Officers Eligible to Take Sergeant Exam

	Eligible as of 9/25/79		Additional Number	Eligible as of 8/01/80 Resulting Total	%	Additional Number	Eligible as of 5/1/81 Resulting Total	%
	#	%						
Male	384	99.2	33	417	98.6	16	433	98.2
White	378	97.7	28	406	96.0	11	417	94.6
Black	5	1.3	3	8	1.9	1	9	2.0
Hispanic	0	0.0	1	1	0.2	0	1	0.2
Native American	1	0.3	1	2	0.5	4	6	1.4
Female	3	0.8	3	6	1.4	2	8	1.8
White	3	0.8	2	5	1.2	2	7	1.6
Black	0	0.0	1	1	0.2	0	1	0.2
Hispanic	0	0.0	0	0	0.0	0	0	0.0
Native American	0	0.0	0	0	0.0	0	0	0.0
Total Minority	6	1.6	6	12	2.8	5	17	3.9
Grand Total	387	100.0	36	423	100.0	18	441	100.0

Source: Minneapolis Affirmative Action Plan

Action Officer Larry Blackwell had suggedted that 1979 exam be delayed until July 1980 to increase the pool eligible minorities and women. This recommendation was not accepted, however, and the exam was given as scheduled in 1979. Blackwell also recommended that the 5-year experience requirement be reduced to 3 years thereby doubling the number of minorities and women eligible to take the promotion examination. This recommendation was implemented by the Civil Service Commission.[45]

On December 1979 the Civil Service Commission gave the sergeant's examination to 164 patrol officers. Of these, 16 were minorities and women; 8 black males, 1 black female, 2 American Indians, and 5 white females. The test for captain was given early in 1979 although the applications were closed on July 21, 1978.[46] There were 45 white males and 1 black male who took this examination. None has been promoted although seven passed and are currently on the eligible list.

According to Connie Kintop from the Minneapolis Civil Service Commission, more officers would probably have taken the test if they felt that the administration was likely to promote anyone. Kintop said that the department is top-heavy with administrators and that it was trying to cut back through attrition. Therefore, it was not likely that anyone would be promoted for at least the next 3 years.[47]

Some have said that the department is top-heavy with high ranking administrators because of the past patronage system.[48] Considering the concentration of minorities and women at the officer's level and the present number of ranking white administrators, it will be a long time before any minority or woman becomes a lieutenant, sergeant, or captain because of attrition.

This problem with minorities and women locked into low-level positions, however, is not unique to the Minneapolis Police Department. One solution to a similar problem was approved in 1979 by the Supreme Court. In that case, *United Steel Workers of America v. Weber,* the Court approved an employer's voluntary affirmative action including the establishment of a temporary two-track seniority system for promotion.[49] To date, Minneapolis has not implemented any system to ensure that women and minorities will be promoted to supervisory and policy-making positions in the immediate future.

A newly appointed peace officer can be removed from service without a hearing during his or first first 12 months of employment following training. However, once a peace officer has worked 12 continuous months, the officer cannot be removed even for just cause unless a formal written charge is first submitted ot the Civil Service Commission and the officer is given 10 days to respond and request a hearing. A hearing must be conducted by the Civil Service Commission or designated hering examiner or panel that make recommendations to the Commission after it has investigated the charges. A superior officer or the city may file charges of incompetence or misconduct against a peace officer with the Civil Service Commission at which time the commission, if proper request is received, will conduct a hearing after not less than 10 days notice to employee on day of hearing. The hearings are open to the public and the commissioners have the power to subpoena all documents, witnesses, and papers relevant to the investigation. It then prepares a written report of its findings and conclusions. If the Commission upholds the charges, the officer may be discharged or the Civil Service Commission can modify discipline to a suspension without pay for a resonable period but not to exceed 90 days. If an officer is found culpable of the charges, he/she may appeal the decision in district court by notifying the Commission within 10 days of the written notice.[50]

The Police Officers Federation of Minneapolis is the bargaining agent for all Minneapolis police officers with the exception of the chief and his deputies.[51] All members join voluntarily and there is no dues check-off.[52] The Federation is an independent body and has no affiliation with any national or state organization.[53]

The Police Federation provides some social activities for its members, but more importantly, it has the reputation of being a very strong lobbying arm of the police officers in Minneapolis. Sgt. Gerald Bridgeman, President of the Federation, told the Advisory Committee the Police Federation is a

[45] Ibid.
[46] Connie Kintop, Civil Service Commission Personnel Office, telephone interview, Aug. 26, 1980.
[47] Ibid.
[48] Larry Blackwell, telephone interview Aug. 12, 1980.
[49] United Steel Workers of America v. Weber, 443 U.S. 193 (1979).
[50] State of Minnesota, Police Civil Service Commission, Section 419.07.
[51] Minneapolis Transcript, pp.224-225.
[52] Ibid.
[53] Ibid.

lobbying agency at the state, Federal, City council, and Civil Service Commission levels.[54]

The Federation provides its membership with a variety of service. According to Bridgeman, the Federation provides officers with representation during Internal Affairs investigations to assure that the officers' rights are protected. In the area of employment, it may hire an expert attorney to conduct contract negotiations, and it may hire a private attorney when an individual disciplinary case may have class implications.[55] The Federation represents officers in binding arbitration when necessary to resolve labor disputes with thecity since state law prohibits officers from striking.[56] The Federation frequently represents police officers in appeals before the Civil Service Commission although police officers are free to obtain their own counsel.[57]

During the field interviews conducted by Midwestern Regional Office staff, many police officer complained about the politics in the department. Some went as far as to say that politics was cause of much of the stress experienced by officers in the department today.[58] According to psychologist Peter Maynard in his study of Minneapolis police officers, "Police politics frustrate more than 90 percent of the wives. The women believe their husbands' abilities have little to do with their chances of promotion; what counts most is whose mayoral campaign the policemen backed, the feel."[59] The *Minneapolis Star* interviewed more than 50 persons, most of them police officers, about the problem of politics. Most of them agreed that "every new mayor appoints a new police chief, rewards his friends and punishes his political enemies." It is interesting to note that former Mayor Albert Hofstede lost a 1975 bid for the mayoral office after trying to keep the police out of the campaign. Learning that lesson, as he said later, he encouraged police officers to help in 1977 and he won.[60]

Bridgeman told the Midwestern Regional Office that he was not against politics in the department, and that in fact the Federation lobbied heavily against legislation limiting the political activism of police officers. The legislation failed to pass. Bridgeman maintained there are significant differences between police officers being involved in politics and politicians being involved in the Minneapolis Police Department.[61] Psychologist Peter Maynard noted during the period of time he was conducting his study of the Minneapolis Police Department, one-third of the dapartment's sworn personnel received transfers as political rewards or punishments, depending on whether the officer supported or opposed Mayor Albert Hofstede in 1977.[62] There are many issues involved in depoliticizing the Minneapolis Police Department, Bridgeman said. One possible approach to that problem, he suggested, it to limit the chief's powers to transfer police officers.[63]

Some have said that the Federation runs the police department and indeed it has been clearly indicated in several mayors elections that the Federation can be a deciding factor.[64] For years police officers have complained of being victims of political transfers and some have alledgedly reaped benefits by supporting the right candidate.

St. Paul

The St. Paul Police Department consists of 546 sworn personnel. Of that number, 92.7 percent are white, 3.7 percent are black, 2.4 are Hispanic, 0.9 percent are American Indian, and 0.4 percent are Asian and others. Above the entry rank of police officer, 95 percent are white, 1.1 percent are black, 1.6 percent are Hispanic, and 2.2 percent are American Indian. Of the 10 sworn females, 8 are entry rank police officers and 2 are sergeants. For purposes of comparison, the population of St. Paul is 93 percent white, 3 percent black, 2 percent Hispanic, 1 percent American Indian, and less than 1 percent Asian.[65]

The employment figures of minority sworn personnel in the St. Paul Police Department today do not indicate a serious underrepresentation problem. However, St. Paul's employment of minorities in the police department has not occurred by chance or without clear opposition from the majority group. For example, when the St. Paul Police Department hired its first black police officer, Louis W. Thomas,

[54] Ibid., p. 189.
[55] Ibid., p. 192.
[56] Ibid., p. 221.
[57] Ibid., p. 192.
[58] Capt. Jack McCarthy and Sgt. Edward Zentsis, Personnel Training and Affirmative Action, interview in Minneapolis, Apr. 17, 1979.
[59] Steve Johnson, "Stress gets a drop on City policemen," *Minneapolis Star*, June 15, 1979 (hereafter cited *Minneapolis Star* Stress Study).
[60] Tom Davies, "Candidates agree; Police, politics don't mix," *Minneapolis Tribune*, Aug. 26, 1979.
[61] Minneapolis Transcript, pp. 222–223.
[62] *Minneapolis Star* Stress Study.
[63] Minneapolis Transcript, p. 227.
[64] Minneapolis Transcript, p. 17.
[65] Census Report.

back in 1881, the city politicians and citizens were incensed.[66] No doubt many have asked themselves, how did he react to the article which appeared in the Pioneer Press referring to him as "The Colored Copper," or that "dumb naygur"? Officer Thomas apparently was hired because he was a Democrat and his appointment would give the "colored people" recognition.[67] Later, from 1918 to 1921, a number of black officers were hired into the force without serious problems. However, for the most part, black officers were assigned to the most undesirable and dangerous beats in the city.[68] By 1925, records indicate that there were 8 black officers in the St. Paul Police Department. However, there were no more black officers appointed during the 16 years between 1921 to 1937. One black officer was appointed in 1937.

According to James S. Griffin, currently Deputy Chief and author of a history of blacks employed by the St. Paul Police and Fire Departments, "After 1928, the fortunes of Black officers made an about face as the administration began to systematically eliminate them."[69] As black officers retire or died the department would not replace them with new recruits.

In 1939 when a civil service examination was posted, the administration took a formal stand against using the Civil Service procedures unfairly and decided that no one would be given preferential treatment for political or other reasons. The Urban League and community leaders held a recruitment drive which produced over thirty black candidates who received special training for the test. Seven of those 30 passed and were placed on the eligibility list.

In 1971 a Community Services Officers Program was established with a grant from the Federal government to train officers and improve their chances for passing the examination. The test was given 18 months after the program was instituted. Only one black officer passed. Shortly after, the Community Services Program was cancelled.

Some of the individuals who took the examination charged that it was administered improperly and that they had been given erroneous instructions. On March 1, 1972, a suit was filed in Federal District Court, charging the St. Paul Police Department with discriminatory hiring practices.[70] The suit was initiated by most of the men who had been employed in the community Services Officers Program. According to these men, they had been told that the program would last 2 to 3 years and that during those years they would be able to take the Civil Service Commisson examination as often as necessary until they pass. However, on December 18, 1971, a test was given and the individuals were told that if they failed the test given on that date they would be terminated. The suit challenged the validity of the civil service test, charging that "Many questions demand skills and knowledge which are foreign to members of the Black community."[71] The Federal court ultimately ruled that the examination was not job related and ordered the city to design an examination for the court to review.[72] Both parties and the court agreed to a plan which would allow 12 out of the 50 recruits to be from the black community. At the time the suit was filed, the minority representation in the St. Paul Police Department was 1.4 percent, and the total minority population was 6 percent.

Griffin who has over 30 years experience with the St. Paul Police Department was appointed to take charge of the Police Minority Recruitment Program, which was created in the agreement. A firm called Personnel Decision, Inc., was hired to validate the civil service test for the next examination. However, the final validated examination was stolen from the office of the plaintiffs' attorney. An examination which had been validated in Chicago was secured for the 1974 examination.[73] Table 5.4 reports the number of applicants for the 1974 Civil Service Commission test and the number of new recruits for that year. On September 8, 1975, the new recruit class included 9 black males, 1 black female, and 1 Hispanic male out of a total of 43 recruits. Though blacks and Hispanics fared well on the 1974 test, only 2 percent of the recruits were women though they constituted 24 percent of the original applicants.

[66] "The Colored Copper," *St. Paul Pioneer Press*, June 24, 1881, p. 7 (cited in James S. Griffin, "Appointment of Patrolman in 1800's creates stir," *Twin Cities Courier" Feb. 14, 1980).*

[67] Ibid.

[68] Unless otherwise noted the following discussion of recruitment history was taken from James S. Griffin, *Blacks in the St. Paul Police and Fire Departments, 1885–1976* (St. Paul: E & J Inc., 1973) (hereafter cited as *Blacks in St. Paul).*

[69] *Blacks in St. Paul*, p. 12.

[70] Ibid., p. 25.

[71] Ibid.

[72] Ibid.

[73] Ibid., pp. 28, 29.

TABLE 5.4

Race and Sex of Applicants for Civil Service Test and of New Recruits: St. Paul Police Department 1974

	Totals	White	Black	Hispanic	Other	Female*
Applicants	1126**	1010 (90%)	78 (7%)	31 (3%)	7 (—)	274 (24%)
Recruits	43	32 74%/3%***	10 23%/13%	1 2%/3%	0	1 2%/—

* Includes females of all races, thus partially overlapping previous four columns. Total column is sum of subsequent four columns.
** Thomas D. Gleason, Chief Examiner and Director of Personnel for St. Paul has stated that his records indicate 1136 individuals applied for the examination rather than 1126.
*** Total recruits in each race or sex category/applicants in each category who became recruits.
Source: James S. Griffin, *Blacks in the St. Paul Police and Fire Departments.*

According to Mark Robertson, a Personnel Assistant with the city of St. Paul Personnel Office, a full-time person has been assigned to work closely with the Civil Service Commission staff to recruit minorities and women for the police department.[74] The last recruiter was a police sergeant who worked for several months specifically to attract members of minority communities.[75] The test which is now administered approximately every 2 years produces a list of eligible persons to enter recruit training at the police trainee level. The list is maintained by the Personnel Office for a period of one year though it may be extended for an additional year. The last recruit examination was given in February 1979. An interim report on the results of that examination are presented in Table 5.5. According to these data, minorities represent just 5 percent of those on the eligibility list compared to 10 percent of the original applicants. Comparable figures for women are 12 percent and 19 percent.

The St. Paul Civil Service Commission is almost identical to the Minneapolis Commission. The commission consists of three members appointed by the mayor with consent of the council. Much like Minneapolis, St. Paul has established a merit system including "classified" and "unclassified" service categories.[76] The personnel director of the Civil Service Commission is selected in accordance with civil service rules and approved by the city council. Bernard Wright, Assistant Director of the Personnel Office told the committee that the Personnel Office shares and coordinates recruiting efforts for police positions.

In addition, the Personnel Office is responsible for preparing and scoring examinations, conducting validation studies, and preparing the eligibility list.[77]

The St. Paul Civil Service rules provide that the cuty use the "Rule of Three" to select a potential employee for the police department. That is, the Personnel Office prepares the eligibility list and provides the police department with a list of the top three candidates, from which the department selects one.[78] The police department itself does the final appointing.

As previously mentioned, the St. Paul Personnel Office has validated its written entrance examination twice, once in 1974 and secondly in 1979.[79] Most would agree that the move to validate the examinations have been prompted by *Warren v. Schleck,* a suit filed aginst the St. Paul Police Department

[74] Mark Robertson, Personnel Officer, testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights in St. Paul, Aug. 10, 1979 (hereafter cited as St. Paul Transcript), p. 332.
[75] St. Paul Transcript, p. 333.
[76] St. Paul Minnesota City Charter, Chapter 12 Sec. 12.02, 12.03 (hereafter cited as St. Paul Charter).
[77] St. Paul Transcript, p. 324.
[78] Ibid., 325.
[79] Ibid., 327.

TABLE 5.5

St. Paul Police Application Flow: Interim Report February 24, 1979

		WHITE				MINORITY			
	TOTAL	MALE	%	FEMALE	%	MALE	%	FEMALE	%
Total Applicants	748	545	73%	131	17%	57	8%	15	2%
Total passed Written Exam.	452	342	76%	83	18%	21	5%	5	1%
Choose 250 with highest score (several ties)	262	202	77%	83	18%	10	4%	3	1%
Total appeared for the physical exam.	225	175	78%	37	16%	10	4%	3	1%
Total passed physical Exam.	200	175	87%	16	8%	9	5%		
Total appeared for oral Exam.	191	168	88%	14	7%	9	5%		
Total passed oral Exam.	111	98	88%	8	7%	5*	5%		

* Of these five, two are black, two are American Indian, and one is Asian.

Source: St. Paul Civil Service Commission.

alleging that the tests discriminated unfairly against minorities. As a result of that suit, the court ordered the department to validate its tests. As a result, slight modifications in items pertaining to vocabulary and aptitude were made.[80]

On May 19, 1974, 274 women applied to take the test and only 1 ended as a recruit. Another test was given on February 24, 1979 where 40 women took the test and 16 passed, all of them white.[81] Mark Robertson, St. Paul Personnel Assistant, said that the 1979 test had been validated, unlike the 1974 test. This test includes scaling a smooth 5-foot high wooden fence and a 42-inch chain link fence and going up a flight of stairs and a 300-yard run.[82] The test is now being used by the surrounding counties.[83]

Promotional procedures and requirements in St. Paul today are similar to those utilized in Minneapolis and involve a certain number of years of experience (depending on the position), a written test, and a service rating which is given by the immediate supervisor every six months to a year. The positions of chief of police, captain, and lieutenant are the only promotional examinations requiring an oral interview. Police officers are not required to be residents of the city of St. Paul and substitution for experience is accepted.[84]

According to Deputy Chief Griffin, black officers historically have a difficult time getting an above average rating from their supervisors, a critical part of the promotion requirements. As Griffin has written:

> William Gaston was discriminated against by being refused an appointment of Sergeant by the administration. He was passed over on the Civil Service examination list on the grounds it would not be in the best interest of the department to have a Negro Sergeant. . . .[85]

In 1954, 13 years after he joined the force,Griffin was allowed to take his first promotional examination for the position of detective. His writted test score was above average but because of a low rating given by his supervisors he was not high on the

[80] Ibid., 329.
[81] Ibid., 339.
[82] Ibid., pp. 340-341.
[83] Ibid.

[84] St. Paul, Minnesota, U.S., Commission Civil Rights, "Administration of Justice, City Police Department Questionnaire Response," (1979) (hereafter cited as "St. Paul Survey").
[85] *Blacks in St. Paul,* p. 12.

eligibility list. However, in 1955, Griffin applied for the sergeants's promotional examination and received a good service rating.[86] As a result of his score and his Veteran's preference, he was fifth on the list and was subsequently promoted to sergeant. Only after 11 years was an examination given for the position of lieutenant. In 1969, Griffin was 1 of the 13 to take the captain's examination and in 1970 he was promoted to captain. this was significant because at that time there were three blacks in the entire St. Paul Police Department.

In 1972, Griffin received the highest score on the Civil Service examination for the position of deputy chief. William McCutcheon, a white applicant, received the second highest score. The Civil Service Commission, under its "Rule of Three," gave Chief R.H. Rowan the names of the top three candidates who qualified for the position. Chief Rowan selected the second on the list, William McCutcheon, breaking a 30-year department practice of always choosing the highest ranked candidate. Griffin appealed the decision to the Civil Service Commission and threatened to take legal action. The matter was resolved when the St. Paul Police Department reorganized the department and created a fourth deputy position allowing both Griffin and McCutcheon to be promoted.

Regulations governing involuntary separation from the St. Paul Police Department require that the officer be allowed a hearing. The officer may be represented by his or her own attorney while the department is represented by the city attorney's office.

The procedures established by the St. Paul Civil Service Commission are virtually the same as those of its counterpart in Minneapolis. Both Commissions are subject to State Civil Service law.[87]

Chapter 12, Section 12.09 of the St. Paul City Charter states that the city council recognizes bargaining agents for appropriate employee units in accordance with State law and may, by ordinance, enter into collective bargaining agreement to the extent not prohibited by law.[88] The city of St. Paul has a contract with the St. Paul Police Federation covering wages, hours, fringe benefits, working conditions, grievances, and binding arbitration of disputes.[89]) The contract is subject to civil service rules and regulations and cannot be ratified until the Commission has approved it.[90]

As indicated in the charter, the St. Paul Police Department and the Federation must themselves resolve all disputes or abide by the decision of an arbitrator brought in to resolve the issue. Federation President William Gillespie indicated that he was not too happy with this binding arbitration requirement, but that there is no alternative because police officers are not allowed under State law to strike.[91] The basic role of the Federationis to negotiate a contract for the membership and make sure all provisions in the contract are followed.[92] Almost all of the officers on the force are represented by the Federation, with the exception of the chief and his four deputies.[93]

To date, there are no women or minorities in the upper echelon of the Federation. The Federation's executive body consists of the president, treasurer, secretary, vice-president, and a master-at-arms. According to Gillespie, the president is the only elected officer and the rest including the stewards are appointed by him.[94] When asked if the Federation surrounding the policy of affirmative action, Gillespie said "no." He elaborated that "the selection and the direction process is basically one of management and the terms and working conditions are basically those of labor. It's best if they remain separate."[95]

Gillespie has emphasized that the role of the Federation was mainly to represent the members in employment matters and that anything else was outside his purview. He also said that the Federation was the political arm of the St. Paul police officers and that "we actively represent the interest and the concerns of the men."[96]

The following chapter will discuss community concerns over the equitable distribution of police services.

[86] According to Thomas D. Gleason, a good service rating is no longer part to the promotional examination score. Letter to Clark G. Roberts, Jan. 26, 1981.
[87] Minn. Stat. §419.01 (1979).
[88] St. Paul Charter, Sec. 12.09.
[89] Ibid.
[90] Ibid.
[91] St. Paul Transcript, pp. 221–222.
[92] Ibid., 216.
[93] Ibid., 229.
[94] Ibid., 246.
[95] Ibid., 227.
[96] Ibid., 223.

Chapter 6

Distribution of Police Services in the Twin Cities

The distribution of police services is not a problem peculiar to any particular city in this country. Most police departments in this country have had to deal with the issue of utilization of manpower at one time or another. Practically all departments have at some time determined their police manpower to be insufficient, requiring the development of a system permitting a more efficient allocation of services.[1]

A variety of methods are utilized to determine the number of personnel to be assigned by shift and precinct. One of those methods utilizes a formula which weights the number of crimes and radio calls for service in the previous year, and the population of each precinct. Patrols are then assigned according to the precinct weighted scores.[2] Perhaps the easiest method is to assign the same number of officers to each precinct. However, this is generally thought to be a poor method for proper utilization of manpower.[3] Another widely used system tabulates the number of service calls received in each precinct and then assigns officers to precincts according to the number of calls. However, as the *Chicago Reporter* found in a study of the Chicago Police Department, this system tends to shift manpower from the most dangerous precincts where the crime rates are declining to the safest where the incidents of the crime have increased.

Regardless of the method adopted by the police departments, it was recommended by the President's Commission on Law Enforcement and Administration of Justice, that police departments collect data, conduct studies, and develop programs leading to a more equitable and proficient procedure for allocation of services.[4] Clearly, continuing evaluation of current practices is essential to improved policing.

Most police departments in this country believe that if the proper number of patrols are assigned to patrol their beats day and night, and if they are ready for action, the apprehension of criminals will rise. Related to this philosophy is the belief that the omnipresence of patrol forces is the greatest deterrent of crime. Such patrols are often labelled crime preventive patrols.[5] While in the process of preventive patrol the police officer is expected to respond to calls for service. A call for service could range from a complaint of a barking dog, or a request to find a lost child, to a command to stop a robbery in progress. A substantial number of calls for service are noncriminal in nature.[6]

A major concern of police administrators regarding calls for services has been centererd around the issue of "Response Time," i.e., the time it takes from the moment the police are called to the time a squad arrives on the scene of the incident. Many police officials have examined various ways to reduce response time. Most officials desire rapid response to create the impression of effective police presence.[7] It has been argued that the shorter the response time, the higher the chance police patrols have for apprehension. However, studies of response time have reached divergent conclusions. For example, the Los Angeles Police Department found that short

[1] A report by the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (U.S., Government Printing Office: Washington, D.C.) (hereafter cited as Law Enforcement and Administration of Justice Report), p. 257.
[2] Ibid.
[3] Ibid.
[4] Douglas Longhini, "Chicago Police Department Adds Police Officers in White Districts: Black Districts Losing Officers Despite Much Higher Threat of Crime," *The Chicago Reporter,* Feb. 2, 1977 (hereafter cited as Longhini Report).
[5] Law Enforcement and Administration of Justice Report, p. 257.
[6] Longhini Report.
[7] Law Enforcement and Administration of Justice Report, p. 248.

response time correlates with the ability to make an arrest.[8] However, a more recent study conducted by the Kansas City Police Department indicated that:

> . . .reporting time was longer than either the time it takes to dispatch a call or time taken to travel to a call, and nearly as long as the combined time to dispatch and travel to a call. Response time was found to be unrelated to the probability of making an arrest or locating a witness for some time after the crime had occurred. For those crimes involving a victim or witness, reporting time was the strongest time determinant of arrest and witness availability.[9]

The Minnesota Advisory Committee received numerous complaints regarding the distribution of services to minority communities and the length of time it took for police to respond to calls for service. This chapter will describe the policies of the Twin Cities' police departments and the perceptions of the community concerning the allocation of services.

Minneapolis Police Department

The Minneapolis Police Department (MPD) Communication Center received 535,808 telephone calls in 1978 and of those calls, 217,000 resulted in some type of police action. The center thus received approximately one call per citizen in 1978.[10]

There are presently 729 total sworn personnel in the Minneapolis Police Department, and of those approximately 440 are patrol officers. Patrol officers in Minneapolis are assigned to one of six precincts which have their own designated boundaries. Officers can be reassigned to other precincts only after the officer has been given notice 3 days prior to the action.[11] The number of officers assigned to a district is determined by the number of calls for service and the level of crime in the district. Therefore, the precinct with the highest number of calls and thhe highest crime rate is assigned the greatest number of officers to patrol its parameters.[12] In 1978, the Minneapolis Police Department distributed its personnel as shown in Table 6.1.

According to the Minneapolis Police Manual, the dispatcher who sits in the Communication Center has the authority to assign calls to all sworn personnel including superior officers. He also has the authority to prioritize the calls according to the level of urgency using the specified codes in the police manual. Although there are specific codes for each priority level, the dispatcher has the ultimate authority to judge whether the call requires immediate response or not.[13] The dispatcher has access to two channels, one to the north half and the other to the south half of the city.[14]

The fourth precinct has the highest number of minority residents and also has the highest number of officers (87) assigned to patrol its boundaries. The first precinct has 86 officers assigned to it as well as a Canine Unit. This precinct is in the heart of the business district. The sixth precinct has the highest incidence of crime and yet is third in line with 84 officers assigned to the area.

A number of comments pertaining to the distribution of services were made to the Committee by police officials and other Minneapolis residents. For example, Capt. John B. Jensen, former Police Chief and now in charge of the fourth precinct, said that officers are on the beat about 56 percent of the time and are performing some type of service the remaining 44 percent. He stated that 65 percent of the complaints received in his precinct were directly related to slow response time.[15] In addition, Jensen stated that many of the residents in his precinct are afraid of the police. Although the fourth precinct has a higher concentration of minorities than any of the other precincts, only three of the 87 officers assigned to the area are black.[16]

Lt. Charles Wodash, Head of the Community Relations Unit, said that a large number of the complaints against the police department, particularly those regarding response time, result from a lack of information on the part of the citizen.[17] The department does not monitor response time now because it has found that response time has little to do with capture rate. One reason for this is the often

[8] Ibid.
[9] Kansas City, Missouri, Police Department, *Response Time Analysis*, a project supported by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, September 1978.
[10] Capt. A.L. Pufhall, Communication Officer, testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, Sept. 28, 1979 (hereafter cited as Minneapolis Transcript), pp. 386–387.
[11] *Department Manual: Minneapolis Police Department*, 1978.
[12] Minneapolis Transcript, p. 651.
[13] Ibid., pp. 392–393.
[14] Ibid., 393.
[15] Capt. John R. Jensen, Fourth Precinct Commander, interview in Minneapolis, Minnesota, Apr. 17, 1979.
[16] Ibid.
[17] Lt. Charles Wodash, Head of Community Relations Unit, interview in Minneapolis, Minnesota, Apr. 17, 1979.

TABLE 6.1

Distribution of Police Personnel in Minneapolis

Precinct	No. of Officers	Land Miles in Area	No. of Crimes	Population
1	86	2.9	8,019	19,648
2	73	13.25	6,020	65,418
3	71	13.9	7,323	80,835
4	87	11.75	8,982	65,320
5	76	13.75	8,225	100,334
6	84	3.25	9,007	47,984

Source: Minneapolis Police Department.

TABLE 6.2

Distribution of Police Personnel in St. Paul

TEAM/AREA	Total Calls For Service	Percent of Calls	Number Officers Assigned	Percent Assigned	Pop. of Area
Team A-1	20,497	15.02	43	15.46	46,378
Team A-2	26,798	19.6	54	19.42	52,384
Team A-3	22,484	16.48	44	15.8	62,894
Team B-4	24,175	17.7	47	16.9	82,000
Team B-5	21,006	15.4	44	16.5	49,244
Team B-6	21,422	15.7	46	16.5	17,000

Source: St. Paul Police Department.

serious lapse of time between the time of the offense and the time of the call.[18]

Donna Folstad of the Chippewa Tribes Housing Corporation, told the Committee that while working for the Mayor's office, many citizens' calls related to the type of police response as well as the time of the response. She said that when the police knew an incident was a domestic problem, they would not respond, particulatly if the incident was in the North Side in the Indian Little Earth Housing area.[19]

According to former Chief Elmer Nordlund, there are an increasing number of calls for police service and increasingly fewer officers to answer them. Recent budget cut-backs have reduced the number of sworn personnel from 772 to 758 and the nonsworn from 112 to 94.[20] Nordlund said that although the sixth precinct has a larger number of rapes than other areas, crime does not vary in Minneapolis according to the minority composition of the community. Rather, crime varies according to the economic level of the area, the number of young persons, and the number of renters.[21] He added that black areas have the same problems as white areas and there is no special treatment by the police department of particular areas.[22]

Hobert T. Mitchell, President of the Minneapolis Branch NAACP said that unlike other cities black officers in Minneapolis are not assigned to black residential areas.[23] Deputy Chief Brucciani agreed that black officers are not assigned to predominantly black areas.[24]

St. Paul Police Department

In 1979 there were 547 sworn personnel providing police services day and night to the city of St. Paul.[25] During that year, the St. Paul Police Department Communication Center handled 599,199 calls, of which 138,149 were calls for service. The Center received an average of 1,642 calls per day and 68 calls per hour.

On July 17, 1977, the St. Paul Police Department implemented team policing. Team policing can be defined as "combining all line operations of patrol, traffic, and investigation into a single group in a given number of city blocks under one unified command."[26] St. Paul has been divided into six team areas and police officers seem to prefer this structure to the previous system which broke the city into precincts.[27] Preliminary findings of a study by Dr. David Koenig, head of the evaluation unit, indicated that civilians and business persons also support the team policing program.[28] Table 6.2 indicates the number of officers, number of calls, and approximate population of each team area.

All of the calls to the police department are received by an operator in the Communication Center. While taking the call, the operator enters the nature of the call on a card and immediately gives it a priority. He then relays the call to the dispatcher who assigns a squad to respond. The dispatcher may assign a squad from an area other than the one in which the call originated, depending on its priority and the availability of personnel.[29]

Table 6.3 indicates how calls are prioritized. The department keeps a record of response time involving priority calls 2 and 3. The team lieutenants receive these reports periodically and with the approval of the deputy chief make the actual assignments of officers. Sgt. Reding, Commander, Research and Development, has said, "Team Lieutenants. . .are directly responsible through the team concept for managing the resources of their team."[30] As managers of their team, they are held accountable to the deputy chief of that sector.[31]

In her statement to the Committee, Peggy Foster, President of the Westside Citizens Organization in Area B-16, complained about responses by police to request for service in her area. Ms. Foster had recently polled some of the residents in her neighborhood. She said that to her surprise, many residents complained of the low visibility of the police in their neighborhoods. Also, ever since the Team Office had moved to its present location in the airport, responses to calls were taking longer.[32] Team B-6 has the highest concentration of Hispanics. The most outstanding problem expressed by

[18] Ibid.
[19] Minneapolis Transcript, p. 56.
[20] Elmer Nordlund, Chief of Police, interview in Minneapolis, Minnesota, Apr. 16, 1979.
[21] Ibid.
[22] Ibid.
[23] Minneapolis Transcript, p. 21.
[24] David Peterson and Joe Logan, "Racist Cops: The Norm or Bad Apple?" *Minneapolis Star*, May 18, 1979.
[25] St. Paul Police, *Annual Report 1979*, p. 20.
[26] Law Enforcement and Administration of Justice Report, p. 118.
[27] David Koenig, Head of Team Police Evaluation Unit, testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, Aug. 10, 1979 (hereafter cited as St. Paul Transcript), p. 456.
[28] St. Paul Transcript, pp. 457,458.
[29] Ibid., pp. 536-538.
[30] Ibid., p. 287.
[31] Ibid., pp. 533-534.
[32] Ibid.

TABLE 6.3

PRIORITY 1	PRIORITY 2	PRIORITY 3	PRIORITY 4	PRIORITY 5
OFFICER DOWN, INJURED, NEEDS ASSISTANCE	ANY FELONIOUS CRIME IN PROGRESS	DOMESTICS, NEIGHBOR TROUBLE, ETC. WHERE THREAT OF PERSONAL SAFETY IS NOT INDICATED	ANIMAL BITES NOT AMOUNTING TO SEVERE PERSONAL INJURY.	BARKING DOG
	ANY MATTER WHICH CALLER INDICATES IS OF AN URGENT NATURE	TRAFFIC ACCIDENTS NOT INVOLVING PERSONAL INJURY	SUSP. VEHICLES, PERSONS	LOUD RADIO, STEREO ETC.
	INTRUSION OR ROBBERY ALARM	FIGHTS WHERE THE USE OF WEAPONS IS NOT INDICATED (MUTUAL AFFRAYS)	DISORDERLY PERSONS NOT AMOUNTING TO PROPERTY DAMAGE	NOISY PARTY
	ANY MATTER INVOLVING PERSONAL INJURY OR IMMINENT THREAT OF SAME	WINDOW PEEPERS—PROWLERS—TRESPASSING	ASSIST CITIZEN IN NON-EMERGENCY MATTER.	PARKING COMP.
	ASSIST FIRE DEPT.	EXPOSERS	DRUNK DISTURBING	MOVING TRAFFIC VIOLATORS
	ROBBERY OR PURSE SNATCH WHICH OCCURED JUST PRIOR TO CALLING	PERSONS CAUSING PROPERTY DAMAGE NOT AMOUNTING TO CRIMINAL DAMAGE	SEE COMP. FOR FELONIOUS CRIME REPORT, AUTO THEFT, FRAUD, FORGERY, SEX, ASSAULT, BURGLARY, THEFT (WHEN SUCH TIME HAS ELAPSED THAT AN APPREHENSION IS NOT A PROBABILITY)	UNWANTED ANIMALS IN HOUSE, BATS, SQUIRRELS, ETC.
	ASSAULTS IN PROGRESS WHICH ARE NOT MUTUAL AFFRAYS	ASSIST POLICE, OTHER AGENCY, NOT AMOUNTING TO PRIORITY #1 or #2		UNSAFE CONDITION, ROADWAY, SIDEWALK ETC.

Source: St. Paul Police Department.

civilians was a communication problem with the police resulting primarily from language and cultural differences and the alleged indifference of the police to their community concerns.[33]

Team B–5 has the highest concentration of black citizens. Kwame J.C. McDonald, Executive Director of the Summit University Crime Prevention Council told the Committee:

> While there is much needed improvement, I would compare the relationship of the community-police in our neighborhood favorable with any other community. McDonald attributes this good relationship in large part to the fact that residents are on a first-name basis with many of the officers in the B–5 Summit area.[34] That is, officers and civilians in that area have apparently been able to overcome the "us versus them" mentality which many experts believe cripples effective police service to the community.

In the following chapter, selected issues in police training for Twin Cities' officers and supervisors are reviewed.

[33] Ibid., pp. 107, 120.
[34] Kwame J.D. McDonald, Executive Director, Summit-University Crime Prevention Council, Written Statement (Exhibit 1) Aug. 9, 1979.

Chapter 7

Training

The proverbial police officer of this country has been characterized in many ways in television series, major movie productions and best selling novels. The police officers often portrayed as a street wise, "savvy" individual who will do anything to get an arrest or, as they say, a "collar". The officer is usually portrayed as a sensitive but suspicious man who day in and day out sits in his patrol car listening to his trusty radio for reports of criminal activities in the city while he scans the streets for unsavory characters who may be breaking the law. This media glamorization of the American police officer has given us an unrealistic picture of the job.

What does it take to make a good policeman? Does he have to be a college graduate? Should he be tall and macho? Should he be concerned with social problems and cultural differences? The movies have often depicted the young police officer entering the academy and learning all about guns and self defense. Then he is teamed up with an old street wise officer who more than once will lecture him that, "you have to be tough out there kid, or the streets will eat you up." The notion of teaming a rookie with an experienced officer in hopes that police wisdom will rub off on the rookie still prevails in many police departments today. Many police officers come from the old school where training was given minimum attention. However, some experts believe that a police officer, in order to do his job intelligently and efficiently, needs to be more aware of his social environment not only through personal experience, but through academic training.[1]

The proper training of a police officer cannot be measured in terms of how many specific, formal training exercises he receives. The type and quality of the training not merely the quantity determines the making of a good officer. Too often recruits come to police work as immature young men believing they are street wise when in fact they are not. They are thrown into conflict ridden situations where by default of adequate training they rely on their physical skills rather than on persuasion or other conflict resolution tactics. The authoritarian approach is reinforced by the veteran officer from whom the rookie is supposed to learn techniques to deescalate conflicts.[2] It is no surprise then that police officers continue to make the same mistakes in dealing with civilians year after year.

In order to assess and understand the problems of police community relations, it is essential to understand the training process. Professionals in the field of law enforcement support the idea that change and training must be considered together if there is to be any achievement in the improving of police and community relations.[3] "Training has often been inadequate and unenlightening within areas of law enforcement, and many of the deficiencies in training are the results of police isolation from the community."[4]

There are three general areas of police training: attitude-change training which tries to mold the

[1] Jesse Rubin, "Police Identity and the Police Role", in Robert F. Steadmean, (Ed.) *The Police and the Community* (Baltimore: The Johns Hopkins University Press, 1972).
[2] Ibid.
[3] Harold K. Becker, *Issues in Police Administration,* (New Jersey: The Scarecrow Press, Inc., 1970) (hereafter cited as *Issues in Police Administration).*
[4] Ibid., p. 121.

attitudes of police officers in terms of making them more accepting of cultural differences; field procedure training which tries to prepare an officer to respond properly in volatile situations; and environmental training which provides the officer with an understanding of the social system.[5] Interestingly enough such training programs have been widely accepted but not always effective. Police attitudes often remain unchanged, field approaches are still the same, and officers for the most part are still insensitive to the complexities of their communities' social structure.

Minneapolis Police Department

During the 1960's, the Minneapolis Police Department was very much aware of the need for community relations training and for a time did provide some training which involved academics and other representatives of the broader community. But as in many other police departments, human relations or community relations was not a part of the total training process. It was and still is considered only as a special class, one which most officers consider a bore. Experts agree that this approach has not worked and will not work.[6] The most effective training for good community relations is one that recognizes community relations as an integral part of the total operations and not a special program that is done periodically to appease certain alienated segments of the community.[7]

During the fact-finding meeting held in Minneapolis, Police Chief Donald Dwyer was asked whether training in the Minneapolis Police Department was adequate. His response was, "No, I don't believe that police training is adequate anywhere throughout this country, especially in-service training."[8] Dwyer added, "the police officer should be back in the classroom type setting for at least 40 hours per annum."[9] If the Minneapolis Police Department were to implement such a training program for their 754 sworn officers, approximately 15 officers would be removed from duty each week of every year. This would be quite costly and cause serious manpower problems. The department has lost 130 officers in the last 2 or 3 years through attrition who have not been replaced because of budget cuts. As a result of overall departmental budget restrictions and cutbacks on personnel, the training division was ordered to develop an in-service training program which would not remove the officer from the street.[10] It was reported by Captain Jack McCarthy, Commander, Administrative Services Division, that the training division was taken out of administrative services in 1978 and another director was named at which time no training was conducted for a period of eight to nine months.[11] This year the thrust of training has focused on developing 18 video tapes that last 20-minutes covering legal developments and issues pertaining to stress. But no training programs deal with problems arising from cultural or ethnic diversity.[12]

The Minnesota State Advisory Committee raised the question of training provided by the department to junior and senior management officers. Lt. Ron Findorf who is presently in charge of training stated that all newly promoted sergeants and supervisors are sent to an intermediate command school conducted by the FBI Academy.[13] Findorf and McCarthy argued that training of superiors has been conducted for the last 5 or 6 years.[14] However, when Sergeant Gerald Bridgeman, President of the Police Federation was asked whether he had received management training or training of any kind when he was promoted to first line supervisor his response was, "I moved from the street to first line supervisor with no training at all and was put in some very precarious position."[15] Sergeant Bridgeman has been in the police department for the last 16 years. Furthermore, in 1978 officer Barbara Beaty was promoted from officer to supervisor of the Internal Affairs Unit without any supervisory experience or training whatsoever.[16] William Kennedy, Minneapolis Public Defender, has said that one of the many problems in the Minneapolis Police Department is that there is very little training provided to supervisory positions.[17]

[5] Robert Wasserman, Michael Paul Gardner, Alana S. Cohen, *Improving Police/Community Relations* for the Governors Committee on Law Enforcement and Criminal Justice Commonwealth of Massachusetts, June 1973.

[6] See e.g., *Issues in Police Administration* p. 118.

[7] Ibid.

[8] Donald Dwyer, Chief of Police, testimony before the Minnesota State Advisory Committee to the U.S., Commission on Civil Rights, fact-finding meeting Sept. 28, 1979, transcript (hereafter cited as Minneapolis transcript) p. 625.

[9] Ibid.

[10] Minneapolis transcript, p. 505.

[11] Minneapolis transcript, p. 506.

[12] Minneapolis transcript, p. 513.

[13] Minneapolis transcript, p. 515.

[14] Minneapolis transcript, p. 515.

[15] Minneapolis transcript, p. 213.

[16] Minneapolis transcript, p. 562.

[17] William Kennedy, Minneapolis Public Defender, interview in Minneapolis, Minnesota, Apr. 18, 1979.

St. Paul Police Department

The St. Paul Police Department organized its first formal training program in 1920 and in 1930 established its first police academy. The early 1960's were years of a great turmoil in St. Paul. The St. Paul Police Department responded by having different community persons to lecture on their particular communities and cultures to the officers during training. These sessions were terminated shortly after they were begun in part because the officers interpreted them as degrading experiences.[18] According to Lt. John McCabe, director of training, another reason for discontinuing these classes was that minority communities were not cohesive enough to identify spokes persons that would be accepted by most members of the groups. Lt. John McCabe has claimed the academy did not have time to develop a large initial or in-service cultural training program.[19] Further, McCabe had no faith in the success of the program.[20] Today the Academy offers a 22-week training program which includes 680 hours of classroom instruction. McCabe has a staff of two sergeants who collaborate with him in developing courses to be included in the training program.

St. Paul provides more comprehensive training for management and supervisory personnel than Minneapolis apparently does. Sergeant Timothy Erickson reported that he had received 40 hours of mandatory supervisory training.[21]

Most of the officers who were asked about training agreed that experience as a patrol officer on the beat is the best way to learn. George Hutton, Commander of Team B-6, when asked about training for supervisors, responded "Well, I spent eight years as a patrolman, which is probably the most valuable training you can get,. . ."He added that training was adequate.[22]

It was evident from testimony and interviews that the St. Paul Police Department does not consider sensitizing police officers to diverse cultures in St. Paul to be an issue of high priority and necessary for good police work. In this respect, the St. Paul and Minneapolis Police Departments have been no different.

[18] Lt. John McCabe, Training Director, testimony before the Minnesota State Advisory Committee to the U.S., Commission on Civil Rights, fact-finding meeting Aug. 9-10, 1979 transcript (hereafter cited as St. Paul transcript), p. 377.

[19] Ibid.

[20] Ibid.

[21] St. Paul Transcript, p. 264

[22] St. Paul Transcript, p. 252.

Chapter 8

External Oversight and Control of the Police

"The operations of the police like the operations of any other administrative agency that exercises governmental authority must be subject to effective legislative, executive, and judicial review and control."[1]

The subject of external control of the police whether local or national is not a new topic within the area of ciminal justice. The relationship between the police and the city government is still uncertain and not clearly defined in many areas of this country.

According to one authority, "Police accountability is critical to the democratic process. Without adequate accountability measures, the police may be used as an arm of oppression by the State, or they may behave antisocially and illegally for their own ends."[2]

Some local governments have decided that by having an elected police chief, appropriate public control can be maintained. Others have decided that by allowing the Mayor to appoint the Chief with the approval of the local legislative body policy can be better controlled. However, it is clear that neither method is a guarantee against incompetence, lax law enforcement, and improper use of authority.[3]

City Councils and Mayors

Minneapolis

Ultimate control in local government, is normally exerted through the ballot box.[4]

The Mayor of Minneapolis is generally considered the person in control of the police department because he appoints the Chief of Police. The Chief serves at the pleasure of the Mayor and is confirmed by the City Council. The Council can by two-thirds vote remove the Chief.

After the Chief is chosen, he is given total responsibility to run the department. Mayor Hofstede said, "Any chief who is a competent chief should want to make his own decisions. In addition I do not have the time to make all the decisions for the police department. . .I allow the chief to run the department."[5]

The City Council controls the Police Department budget by determining the budget levels each funding year.

According to Mayor Hofstede:

> Beginning in 1978, the office of the Mayor prepares a city budget on a line item basis. A budget analyst is assigned to the police personnel throughout the year on budget matters. General and detailed budget hearings are held with the police department during the summer months. The Mayor makes his budget recommendations by August 15. The City Council

[1] Leonard Ruchelman, ed. Who Rules the Police?, New York: New York University; 1973, p. 31 (hereafter cited as *Who Rules the Police?)*
[2] Alan Edward Bent, *The Politics of Law Enforcement,* (Massachusetts: D.C. Heath and Company 1974,) p. 63.
[3] Ibid., p. 32.
[4] *Who Rules the Police?* p. 31
[5] Mayor Albert J. Hofstede to Minnesota Advisory Committee to the Commission on Civil Rights, Sept. 28, 1979, response to the Committee delivered by Steven Ristuben at the open meeting. (hereafter cited Hofstede letter).

then conducts budget hearing in October and November to determine the funding level of each department fo the subsequent year.[6]

On occasion the Council commissions special committees for investigation on specific issues. For example, in 1882, during Mayor Ames' second administration when discipline and absenteeism in the police department became a real serious problem, the city countil appointed a committee to investigate the department.[7]

In 1975, Mayor Hofstede and the President of the Council commissioned a special committee headed by Professor David Ward of the University of Minnesota to examine police practices and problems focusing on mechanisms for controlling police misconduct. Following a number of public hearings, the city council in October of 1976 directed the police department to develop a manual of rules and regulations. An advisory committee including citizens outside the police force was appointed to review the rules and make recommendations.[8]

St. Paul

In St Paul, the Mayor appoints the Police Chief but the Mayor's choice is limited to the three candidates certified by the Civil Service Commission. The Civil Service Commission determines the qualifications and fitness of the candidates applying and selects the three best candidates. After the Mayor selects one of the three the council must approve the choice.[9]

The Chief serves for a period of 6 years which many view as a stabilizing factor for the Police Department. The fact that the Chief is in office for 6 years, despite any turnover in the city administration reportedly helps keep politics out of the department. Mayor George Latimer told the Minnesota Advisory Committee. . ."I don't believe that a good mayor is one who intervenes and starts telling the Police Chief who he should charge with a crime, which rumors or allegations should be investigated and which should not."[10]

The City Council, although a legislative body, has the power to investigate into the affairs of the city and conduct of any department, or agency.[11] The Council for this purpose may take testimony under oath and subpoena witnesses on order for the district court. One Council member had begun to investigate police problems in St. Paul in 1979. However, on her death the investigation apparently terminated. The Council does not conduct investigations into the affairs of the police department. For the most part, its involvement in police matters has been limited to approval of the budget and appointment of the Chief.[12]

Local Civil Rights Agencies

Minneapolis

There are presently two closely related civil rights agencies in the city of Minneapolis. First, the *Department* of Civil Rights is under the authority of Mayor who appoints the director with the approval of the City Council. The Department has the responsibility to investigate complaints of discrimination, and to conciliate the dispute.[13] The Department also reviews issues such as Bilingual Education, Police Community Relations, and Civil Rights Legislation.

Second, the *Commission* on Civil Rights which was formerly called the Commission on Human Relations conducts public hearings on discrimination complaints when attempts at conciliation by the Department of Civil Rights have failed.[14] The Commission can also advise city agencies, work with organizations or groups interested in the objectives of the Commission, exchange information and records with State and Federal agencies and also conduct compliance reviews of employers and contractor. The Commission has 17 members, some of which must be attorneys, are appointed by the Mayor with Council consent. In addition, the city attorney provides legal staff to handle all legal matters for both the Commission and the Department.[15]

These two Minneapolis civil rights agencies have developed from those established in the 1940's. Hubert Humphrey, Mayor of Minneapolis from 1945 to 1949 was the force behind the establishment of the

[6] Ibid.
[7] Minneapolis Police Department: Special Bicentennial Annual, 1976, p. 5.
[8] Hofstede Letter.
[9] St. Paul, Minnesota, City Charter, Sec. 12.12.2 ((hereafter cited St. Paul City Charter).
[10] Ibid., Sec. 12.12.3.
[11] George Latimer, Mayor of St. Paul testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights on Friday, Aug. 10, 1979. (hereafter cited St. Paul Transcript.) p. 759.
[12] St. Paul Transcript, p. 783.
[13] Getting Straight in 78: The Status of the Commission and the Department, a report prepared by the Minneapolis Civil Rights commission and Minneapolis Civil Rights Department, Apr., 1978. (hereafter cited Civil Rights Report).
[14] Ibid.
[15] Ibid.

first two human rights agencies, in that city. The agencies created by Humphrey were: The Mayors Commission on Human Relations and the Fair Employment Practice Commission (FEPC). Their enforcement authority was limited to the area of employment. From 1963 to 1967, a series of events "often marked with controversy involving the City Council, the Mayor, and citizens", finally ended with the passage of the Minneapolis Civil Rights Ordinance.[16] During these 4 years of political maneuvering which created the two agencies which exist today, several incidents of racial unrest occurred which strengthened the need for such agencies in the city.[17]

In subsequent years, minorities began to file police brutality charges in increasing numbers. Even though there were no criminal charges filed against the police it was possible that some police brutality complaints could lead to criminal proceedings. Consequently, pressure to reduce the powers of the Department and the Commission was mounting. The case that may possibly have set the wheels in motion against the powers of the civil rights agencies was the case of *Wiley vs. Shanahan.* [18] The case resulted from a complaint filed with Civil Rights Department by Earthia Wiley charging that Officer Jerome W. Shanahan discriminated against him by arresting him for suspicion of burglary because he is black and because he was an active critic of the police administration. The Department found probable cause to believe that Wiley's rights had been violated. The Department requested that Shanahan appear at a hearing before the Civil Rights Commission in an effort to conciliate the matter.[19] Shanahan refused to comply with the request and the Civil Rights Commission referred the case to the enforcement section of the agency. Wiley then secured a subpoena ordering Shanahan to appear at the hearing. This led to a long legal battle between the police who had the support of the Police Federation and the Civil Rights Commission. The trail court quashed the subpoena because "the proceeding before the Commission were criminal in nature and hence Shanahan could not be subpoena to testify against himself."[20] The case was finally heard by the Supreme Court of the State of Minnesota who reversed the findings of the trail court. The court found:

> We decline to hold that because hearings before the Commission on Human Relations may result in findings which disclose violations constituting a misdemeanor the proceedings are deprived of their civil character. The primary purpose of the ordinance is education and conciliation. Only if this approach fails will the Commission decide whether or not to recommend a criminal prosecution to the city attorney. Under the authorities cited, we hold that respondent was obliged to appear before the commission in response to the subpoena and, if called to testify, take the oath and invoke his right against self-incrimination as each question is asked. It was error to quash the subpoena, and the order of the trial court is reversed.[21]

While the *Wiley v Shanahan* case was pending, political forces moved to unite the powers of the Minneapolis Department of Civil Rights and the Commission on Civil Rights by amending the governing ordinance. The language in the Minneapolis civil rights ordinance which empowered these two agencies to investigate complaints which might lead to criminal procesution was deleted. Consequently, complaints of police brutality may not now be investigated by these local agencies but rather are referred to the State Department of Human Rights for investigation and enforcement.[22]

St. Paul

The St. Paul Human Rights Department was created in 1967. Since then, the ordinance creating the Human Rights Department has been amended approximately 15 times. The Director of the Department is appointed by the Mayor with the consent of the Council.[23]

The governing ordinance prohibits discrimination in employment, housing, education, public accommodations and public service on the grounds of race, color, religion, creed, sex, national origin, ancestry, age or disability.[24]

The Human Rights Ordinance states that it is a misdemeanor for any person to knowingly participate in any prohibited act.[25] The director of the Human Rights Department has the power to investi-

[16] Ibid.
[17] Ibid.
[18] Wiley vs. Shanahan, 185 N.W. 2nd 523 (1971).
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Civil Rights Report, p. 12.
[23] St. Paul City Charter, Sec. 4.07.
[24] City of St. Paul Human Rights Ordinance, St. Paul, Minnesota, 1979.
[25] Ibid.

gate any alleged violations of this ordinance. If after investigating the alleged violation, he finds reason to believe that a violation has occurred, he may refer the matter to the city attorney for criminal prosecution. He can also initiate civil enforcement proceedings or try to get a settlement through conciliaton which when approved by the Commission has the same force as a Commission order. However, none of the evidence obtained in the investigation or through the civil enforcement procedure can be used or introduced in any subsequent criminal proceedings arising out of the same violation.[26]

From January, 1976 to May, 1980 the following complaints were filed against the St. Paul Police Department:

Excessive Use of Force	1
Intimidation	1
Harassment	3
Physical Abuse	4
Physical Assault	7
Mistreatment	8

of these 24 complaints, 3 were conciliated by the department. One of the three is in the category of harassment and two are categorized as physical assault.[27]

According to Don Lewis, former director of the St. Paul Human Rights Department, there were a lot of problems between the police and the black community in the early 70's. Within a few years, problems between the police and Hispanics rather than between police and blacks had become common. At that time, complaints were being received almost on a daily basis. In 1973 the St. Paul Human Rights Department held a public hearing around the issue of police community relations. But only 8 persons testified at the hearing and Lewis speculated that people failed to speak out because they were fearful of police retaliation and harassment.[28]

In March, 1975, Lewis was asked to investigate a disturbance which occurred at Fran McDonough's Bar. The disturbance involved an altercation between two patrons of the bar. When the police arrived, a confrontation occurred between the police and the Mexican-Americans in the bar. According to Lewis, the police were not cooperative with the Human Rights investigator when he was gathering the background on this confrontation between the police and the Hispanic citizens.[29] In his report on the incident, Lewis directed four of the recommendations to the police:

1. Implementation by the St. Paul Police Department of definite procedures for crowd control where racial tension is evident or expected.
2. Creation of cultural awareness training sessions by the St. Paul Police Department on a continuing basis.
3. Establishment of a clear and uniform procedure for resolution of complaints of police misconduct outside internal department handling of such matters.
4. Assignment of Spanish-speaking police officers to the West-side area to increase the positive contact of police and private citizens.

Some St. Paul residents believe that the city cannot fairly and objectively investigate itself, particularly on issues concerning the police. One effort to resolve this problem was the city's hiring of an attorney outside of the administration to conduct investigations of police complaints. However, this proved to be expensive. In November of 1979, city and State officials signed an agreement that authorized the Minnesota State Department of Human Rights to investigate all complaints brought against the St. Paul Police Department and all other departments of the city. In turn, the St. Paul Human Rights Department would accept complaint referrals from the State and conduct the investigations provided the complaints fell within the local agency's jurisdiction.

It was recently learned that in 1979 the St. Paul Human Rights Department received 105 complaint referrals from the State on police abuse and has had to hire additional staff to handle the work. As a result, the city is spending more money now than earlier under the old system.[30]

In summary, the St. Paul Human Rights Department has made some efforts to investigate police community problems objectively. The report pub-

[26] Ibid.

[27] John K. Huyen letter to Carmelo Melendez, MWRO, U.S., Commission on Civil Rights, June 3, 1980, (hereafter cited Huyen Letter).

[28] Don Lewis, Director of St. Paul Human Rights, interview in St. Paul, Minnesota, Jan. 3, 1979 (hereafter cited as Lewis interview). However, in reviewing a draft of this report Chief William McKutcheon of the St. Paul Police Department suggested that fear of reprisal is only one possible explanation for the low turn out at the meeting. Chief McKutcheon indicated that apathy and satisfaction with the police department were also factors. He reported that a recent survey conducted for the St. Paul Police Department (Koenig Report) showed that 78 percent of St. Paul civilians were satisfied with local police services. Letter from Chief William McKutcheon, St. Paul Police Department, to Clark G. Roberts, Regional Director, MWRO, U.S., Commission on Civil Rights, Jan. 22, 1981.

[29] Don Lewis, investigation report to Mayor Lawrence D. Cohen, Mar. 26, 1975.

[30] John K. Juyen, Acting Director of St. Paul Human Rights, telephone interview, June 1980.

lished in 1975 by Donald Lewis contained some basic recommendations that were designed to improve relations between the police and the Hispanic community. However, according to Mr. Lewis those recommendations were never implemented.[31]

City Attorneys

Minneapolis

The nature of the Minneapolis city attorney's involvement in issues of police misconduct is complex and takes its direction from the type of proceeding, i.e., administrative or judicial. For example, a police officer who is administratively disciplined internally and appeals to civil Service as is his statutory right will find the City attorney representing the Police Department against him if requested by the Department.[32] Should the Civil Service Commission sustain the administrative sanction and the officer subsequently appeals to the district court, the city attorney will represent both the Police Department and the Civil Service Commission against the officer.[33] In such cases, the police officer either retains his own counsel or is provided with legal assistance by the police union.[34] Where a police officer sues the Police Department for employment discrimination, the city attorney also represents the Police Department against the officer.[35]

On the other hand, if a police officer is sued by a civilian for the same misconduct which led to the administrative sanction and that misconduct arose in the course of the officer's employment and was not willful or wanton, the city attorney must either represent the officer or pay for his private retained counsel.[36] In addition, the city must pay the total amount of any settlement or judgment against the officer.[37] If the officer's misconduct constitutes a violation of the Minneapolis ordinances, e.g., assault, the city attorney through a special prosecutor is required to criminally prosecute the officer.[38] The officer is required in such a case to secure his own attorney. If he is found not guilty, the city will reimburse him for his attorney's fees upon recommendation of the city attorney and approval of the City Council.[39] In the last 5 years, approximately nine officers have been criminally prosecuted by the City of Minneapolis. One was found guilty of disorderly conduct and one pleaded guilty of assault.[40]

During 1976–1979, 170 civil suits alleging police misconduct were filed by civilians with the State and Federal courts.[41] Most of those complaints involved unreasonable force.[42] During those same years, 95 lawsuits were completed.[43] Of the 33 lawsuits which were completed in 1978, five were settled including a wrongful death action for $6,000 and four for approximately $1,000 each.[44] Fourteen cases went to a jury with three judgments entered against the officer and the City of Minneapolis. One of those judgments involved the shooting of a burglar coming through a window.[45] In that case, the jury returned a verdict of $45,000 against the defendant police officer. That case is now on appeal by the City.[46] According to Robert Alfton, Minneapolis city attorney, the city pays approximately $20,000 in judgments against Minneapolis police officers each year.[47] If the city determined that he officer's misconduct was willful or not within the scope of his employment responsibilities, the city would not pay the judgment against the officer.[48] However, the city has never refused to pay an adverse judgment.[49]

In the past, the Minneapolis Attorney's Office assigned one of its staff attorneys to the Police Department to provide legal opinions as needed regarding proper police action in specific situations.[50] In addition, the attorney provided regular training for police officers in such areas as constitutional standards for search and seizure, right to

[31] Lewis interview.
[32] Robert Alfton, Minneapolis city attorney, testimony before the Minnesota State Advisory Committee to the U.S. Commission on Civil Rights, fact-finding meeting, Minneapolis, Minn., Sept. 27–28, 1979, transcript (hereafter cited as Minneapolis Transcript), p. 760; Letter from Robert Alfton to Clark G. Roberts, Regional Director, MWRO, U.S., Commission on Civil Rights, Jan. 29, 1981 (hereafter cited as Alfton letter).
[33] Ibid.
[34] Ibid.
[35] Ibid., p. 762.
[36] Minn. Stat. §466.07, Subd. 1a (1980).
[37] Ibid.
[38] Robert Alfton, Minneapolis Transcript, pp. 760–61; Alfton letter.
[39] Ibid., pp. 761–62.
[40] Ibid., p. 759; Alfton letter.
[41] Ibid., p. 763.
[42] Ibid.
[43] Ibid., p. 764.
[44] Ibid.
[45] Ibid., p. 765. This case was reversed by the Minnesota Supreme Court and will be retried. Alfton letter.
[46] Ibid.
[47] Ibid.
[48] Ibid., p. 770.
[49] Ibid.
[50] Ibid., p. 755.

counsel, and line-up, as well as legal liability of officers for misconduct.[51] Due to financial constraints, the position of in-house legal counsel no longer exists and instead the functions are shared by several of the staff attorneys on an informal basis.[52]

The Minneapolis city attorney's office does not review police shootings nor otherwise evaluate police behavior on a routine basis other than as described above.[53] At the request of the police department, however, the Office does review Internal Affairs Division case files for possible criminal prosecution.[54] It is anticipated, however, that when a new police recruit class is organized the Office will participate in the initial training programs.[55]

St. Paul

The St. Paul city attorney's office also represents the city and the Police Department against officers who appeal disciplinary sanctions to the Civil Service Commission or bring charges of employment discrimination.[56] As is the case in Minneapolis, the city attorney represents officers in civil actions against them when the misconduct occurs within the scope of the officers' responsibilities.[57] On the other hand, the city of St. Paul criminally prosecutes police officers for misconduct which violates St. Paul ordinances. In criminal prosecutions, the city attorney's Office does not represent the officer but rather represents the State against the officer.[58]

Currently, there are a number of civil cases alleging excessive use of force by St. Paul police officers pending in the State and Federal courts.[59] Several cases alleging police misconduct have been settled by the city Attorney's Office.[60] Seven complaints resulted in judgments against the officers and the city for a total of $17,158.[61] An employment discrimination case filed in 1972 was resolved when the city agreed to an affirmative action hiring policy.[62] At the present time, the city is under no judicial affirmative action requirements for hiring or promotion.[63]

The St. Paul city attorney's office does not participate in routine review police conduct nor does it consult with the U.S. Attorney or the County Prosecutor's Office in regard to practices of the St. Paul Police Department nor to review national trends and recommendations in regard to improving police standards and policies.[64] According to Paul McCloskey, Assistant St. Paul city attorney, each of the foregoing legal bodies has its own area of responsibility and interests and those areas do not overlap.[65] That is, the U.S. Attorney is involved with the FBI, the county prosecutor with the Sheriff's Police, and the city attorney with the city Police department. As a result of this clear delineation of concern, there is no cooperative review, for example, of police shootings within St. Paul.[66] In fact, the St. Paul city attorney just as his counterpart in Minneapolis does not participate in any local committee to review police shootings or other uses of deadly force by city police officers. In addition, the office provides severely limited input into the training of public officers and serves as legal advisor although not as in-house counsel to the Department.[67]

County Prosecutors

Hennepin County

The Hennepin County attorney is responsible for prosecuting all felonies committed within Minneapolis.[68] That authority covers felonious misconduct of police officers directed against civilians, e.g., murder or assault in the second degree.[69] Of the six cases of police misconduct presented to the Hennepin County Grand Jury during 1979, none was returned with an indictment.[70] Five others were still under consideration by the county attorney at year's end.[71] Those 11 complaints represent charges filed orignally with

[51] Ibid.
[52] Ibid.
[53] Ibid., p. 758.
[54] Alfton letter.
[55] Ibid., p. 765.
[56] Paul McCloskey, Assistant city attorney, St. Paul, testimony before the Minnesota State Advisory Committee to the U.S., Commission on Civil Rights, fact-finding meeting, St. Paul, Minn., Aug. 9-10, 1979, transcript (hereafter cited as St. Paul Transcript), p. 673; Edward Starr, St. Paul city attorney, St. Paul Transcript, p.
[57] Paul McCloskey, St. Paul Transcript, p. 673.
[58] Ibid., p. 677.
[59] Edward Starr, St. Paul Transcript, p. 681.
[60] Ibid., pp. 680-81.
[61] Minneapolis Tribune, "Police Brutality Claims spur interest in review board," July 10, 1979.
[62] Edward Starr, St. Paul Transcript, pp. 680-81.
[63] Ibid.
[64] Ibid., p. 678.
[65] Paul McCloskey, St. Paul Transcript, p. 678.
[66] Ibid., p. 680.
[67] Edward Starr, St. Paul Transcript, p. 678; St. Paul, Minn., "United States Commission on Civil Rights, Administration of Justice, city Police Department, Questionnaire Responses" (1979).
[68] Thomas L. Johnson, Hennepin County Attorney, Minneapolis Transcript, p. 714.
[69] Ibid.; Minn. Stat. §§609.185, 609.19, 609.195, 609.221, 609.222, 609.223, (1980).
[70] Thomas L. Johnson, Minneapolis Transcript, pp. 732-33.
[71] Ibid.

the Internal Affairs Unit which were sustained and subsequently transmitted to the county attorney for consideration as gross misdemeanors and felonies.[72]

The Hennepin County Attorney, Thomas L. Johnson, told the Minnesota Advisory Committee at its September 1979 fact-finding meeting that the issue of who shall police the police is a serious one in Minneapolis as it is throughout the country.[73] Johnson stated that in return for the broad authority granted to its police, a community has the right to expect compliance with high standards of conduct and swift and certain discipline for breach of those standards.[74] According to Johnson, serious allegations to misconduct have occasionally gone uninvestigated in Minneapolis because the civilian failed to comply with the technical requirement that a written complaint be filed.[75] He also stated that he is aware of cases in which thorough investigation by the Internal Affairs Unit has been impeded by direct instruction from the police administration, through failure of police officers to disclose information essential to an adequate investigation, and through failure to provide adequate internal investigatory and support staff.[76]

Johnson also stated that he believes an external monitoring agency with full investigative powers is essential not only to keep watch over the police department but also over all other Minneapolis governmental agencies.[77] He believes that the police department along with other agencies is not capable of adequately policing itself, in part because the public lacks trust in the internal disciplinary process. Instead, he has recommended the establishment of an Office of Ombudsman which would review Internal Affairs Unit reports, and publicize its findings along with recommendations for disciplinary sanctions.[78] According to Johnson, an Ombudsman along with a strong and tenured police chief are essential ingredients of a responsible police department properly accountable to the public.[79]

Ramsey County

The Ramsey County attorney, and his 33 assistants, are responsible for prosecuting all gross misdemeanors and felonies occurring in St. Paul.[80] As with the Hennepin County attorney, the authority of the Ramsey County attorney flows from the State. Where a County-wide Grand Jury determines that there is probable cause to believe that conduct of a police officer constitutes a gross misdemeanor or felony and returns an indictment, the County Prosecutor is responsible under State Law for prosecuting that officer.[81] Investigations of police misconduct, however, are not handled by the County Prosecutor's Office but rather by a law enforcement agency such as the officer's own Internal Affairs Unit or the Bureau of Criminal Investigation.[82]

Between 1976 and 1979, two St. Paul police officers were criminally prosecuted by the County Attorney.[83] The formal charges lodged against the officers were aggravated assault.[84] Both officers, one of whom is no longer with the St. Paul Police Department, were found not guilty by the jury.[85] According to James R. Konen, Assistant County Attorney, the Grand Jury as it reviews cases of police misconduct referred to it by the Internal Affairs Unit serves as a competent citizen's review board to the extent that it evaluates whether such misconduct constitutes a criminal violation.[86]

Like his counterpart in Hennepin County, the Ramsey County Attorney does not participate in any committee to review use of deadly force by police officers nor with the city or Federal attorneys to discuss police practices in St. Paul.[87] The County Attorney's Office does provide initial and in-service training in regard to legal standards applicable to law enforcement procedures.[88] This training consists of mock courtroom experience in order to help officers prepare to testify at criminal trials and a review of issues of legal liability for peace officers.[89] The training in regard to legal liability by its nature does not stress optimum performance standards but rather the minimum standards below which officers

[72] Ibid.
[73] Ibid., p. 716.
[74] Ibid.
[75] Ibid., pp. 717–18.
[76] Ibid.
[77] Ibid., p. 719.
[78] Ibid., p. 722.
[79] Ibid., pp. 724–25.
[80] James R. Konen, Assistant Ramsey, County Attorney, St. Paul Transcript, pp. 647–48, 654.
[81] Ibid., p. 648.
[82] Ibid., p. 649.
[83] Ibid., pp. 661–62.
[84] Ibid.
[85] Ibid.
[86] Ibid., pp. 666–67.
[87] Ibid., pp. 655–56.
[88] Ibid., pp. 652–53.
[89] Ibid., pp. 654–55.

incur liability for themselves and potentially for the city which employs them. In-service training is limited to changes in the law which significantly affect officers' law enforcement activities.[90] For example, the recent change in the State law concerning use of deadly force by police officers which significantly narrowed the situations in which the use of such force is legally permissible required such updated training.[91] Other areas are covered as new statutory law and judicial interpretations dictate.

State Oversight

Peace Officers Standards and Training Board

In 1977 Minnesota embarked on a unique course of action by enacting a statute which established a State agency with the power to exercise control over the conduct of local police officers as well as to prescribe standards for the education and training of peace officer.[92] The agency was named the Peace Officers Standards and Training Board (Board). While other states had established State standards for training, Minnesota became the first State to require local police officers to be licensed at both the local and State levels. As part of its express power to license local police officers, the Board was also granted the implied power to revoke police licenses for officer misconduct.[93] Thus, Minnesota has established a mechanism for external control and review of the conduct of individual police officers.

The Board currently concists of an executive director and 11 members.[94] The current executive director, Mark Shields is a former police offier who was employed by the St. Paul Police Department.[95] The members of the Board as required by statute consist of two sheriffs, four peace officers at least two of whom are police chiefs, two persons experienced in law enforcement though not presently employed as peace officers, two members of the public, all of whom are appointed by the Governor, and the Superintendent of the Minnesota Bureau of Criminal Apprehension.[96] The Board thus includes not only persons with a law enforcement background, but also members of the general public who together prescribe basic requirements for peace officer training and oversee the compliance of individual officers with applicable State and local rules governing peace officer conduct.

In discharging its statutory responsibilities in regard to the education and training of peace officers, the Board has enacted regulations which describe the academic and skills requirements for Minnesota peace officers.[97] There are three avenues to becoming a Minnesota police officer.

First, a local police agency may hire a high school graudate who is physically and mentally fit. The agency must then bear the costs of an extensive academic and skills training course currently offered by the St. Paul and Minneapolis Police Departments and the Minnesota State Patrol. After successful completion of such a course and upon successful completion of a qualifying exam, the officer is licensed by the State.[98]

A second way of entering law enforcement in Minnesota is through a 2- or 4-year college program which has been approved by the Board and offers academic law enforcement courses. Upon completion of such a program, the applicant is permitted to take the academic portion of the licensure exam and subsequently to enroll in a skills program. After successful completion of the skills program and qualifying exam, and after serving a 1-year probationary period, the officer is licensed by the State.[99]

A third route in Minnesota law enforcement is through a vocational-technical school which offers an approved academic and skills program in law enforcement. After completing this program, passing a licensing exam, and serving the required probationary period, the officer is licensed by the State.[100]

Because the first method of becoming a peace officer requires local agencies to bear the costs of educating and training their new officers, it is anticipated that this traditional method will gradually be phased out, at least in smaller cities.[101] St. Paul,

[90] Ibid., p. 653.
[91] Minn. Stat. §609.066 (1980).
[92] Minn. Stat. §626.843, subd 1(d), (e)(1980).
[93] Mark Shields, Executive Director, Minnesota Board of Peace Officer Standards and Training, Minneapolis Transcript, p. 163.
[94] Mark Shields, Minneapolis Transcript, pp. 172–73.
[95] Mark Shields, St. Paul Transcript, pp. 609–10; Mark Shields, letter to Clark G. Roberts, Jan. 26, 1981.
[96] Minn. Stat. §626.841 (1980).
[97] 4 Minn. Code Adm. Regs. §§13.001–13.020 (eff. Aug. 1978).
[98] Mark Shields, data supplied to the Minnesota Advisory Committee to the U.S. Commission on Civil Rights at its fact-finding meeting, St. Paul, Minn., Aug. 9–10, 1979, Exhibit No. 4a and No. 4b, (hereafter cited as Exhibit No. 4a or No. 4b), p. 1. Local police agencies may, in addition, require a probationary period. Mark Shields, letter to Clark G. Roberts, Jan. 26, 1981.
[99] Exhibit 4b, pp. 1, 2.
[100] Exhibit 4b, p. 2.
[101] Exhibit 4b, p. 1.

however, has indicated that it intends to retain its police academy to provide training not only to their novice officers, but also, as needed, to other agencies throughout the State.[102] Minneapolis, on the other hand, intends to disband its recruit training academy, relying instead on the college and vocational-technical school programs.[103]

The minimum basic law enforcement course prescribed by the Board requires academic instruction in several subjects. These subjects are: 1) administration of justice, 2) Minnesota statutes, 3) criminal law, 4) human behavior, 5) juvenile justice, and 6) law enforcement operations and procedures. The skills training requirements are: 1) techniques of criminal investigation and testifying, 2) patrol functions, 3) traffic law enforcement, 4) firearms, 5) defensive tactics, 6) emergency vehicle driving, 6) criminal justice information systems, and 7) first aid.[104] In addition, licensed officers are required to complete 48 hours of continuing education and training every three years for continued licensure.[105] The Board is responsible for ensuring the adequacy of instruction and of instructors, both of the basic course and of continuing law enforcement programs.

According to Shields, the St. Paul Police Department training academy far exceeds the standards for training set by the Board both in the academic and skills sections.[106] Exceeding the minimum standards of the Board is expressly encouraged by the Board's rules.

In regard to its authority to regulate the conduct of individual local police officers, the Board has promulgated rules which prescribe minimum standards of conduct for officers.[107] Shields has stated that police agencies should have the principal responsibility for regulating their own conduct in accord with Board rules, including disciplinary sanctions for misconduct.[108] As a result, the Board attempted to enact a rule which would require all local police agencies to establish the process through which civilian complaints of police misconduct would be "promptly and thoroughly investigated."[109] The purpose of the proposed rule was to increase public confidence in the external disciplinary process.[110] In addition, the rule would have required that upon completion of the local investigation, the results would be made known to the complainant.[111] Under this rule, each agency would have been responsible for providing each of its officers with a copy of the rules, policies, and procedures.[112] However, because the Board's authority was determined by the State Hearing Examiner to exist only in relation to individual officers and not police agencies, the proposed rule was not enacted.[113]

The Board has determined what conduct constitutes a violation of its standards of conduct and thus grounds for revocation or nonrenewal of the State license. This conduct is: 1) conviction of a felony within Minnesota or elsewhere or conduct committed elsewhere which would have been a felony if committed within Minnesota; 2) the use of deadly force in violation of the State statute defining occasions in which the use of deadly force by a peace officer is justified; 3) presenting a false statement on an important matter to the Board under oath which the officer himself does not believe at the time he offers the statement; 4) making a false statement to the Board while obtaining or renewing a license; 5) failing to comply with the Board's continuing education requirements; 6) failing to pay the State licensing fee, and 7) violating Board rules.[114]

Because of limited resources, the Board has decided that when it receives a complaint of alleged misconduct against a local police officer, it will rely on the officer's local law enforcement agency to investigate the facts, rather than developing its own investigative staff.[115] Ordinarily, the Board will accept the summary and findings of the local agency in deciding whether to take further action against the officer.[116] The Board will, however, review the

[102] Lt. John McCabe, Training Director, St. Paul Police Department, St. Paul Transcript, pp. 410-12.
[103] Captain Jack McCarthy, Commander, Administrative Services Division, Minneapolis Police Department, Minneapolis Transcript, pp. 507-8.
[104] 4 Minn. Code Adm. Regs. §13.003 (eff. Aug. 1978).
[105] 4 Minn. Code Adm. Regs. §§13.008 (eff. July 1979).
[106] St. Paul Transcript, pp. 631-32. According to Shields, Minneapolis is phasing-out its training academy by requiring potential officers to follow the college and vocational-technical school avenues into law enforcement developed by the Board. Minneapolis Transcript, p. 175.
[107] 4 Minn. Code Adm. Regs. §§13.011-13.019 (eff. Oct. 1979).
[108] Mark Shields, Minneapolis Transcript, pp. 165-66.
[109] Mark Shields, St. Paul Transcript, p. 614; Exhibit 4a; 4 Minn. Code Admin. Regs. §13.012, Responsibilities of Individual Agencies (eff. Oct. 1979).
[110] Exhibit 4a; 4 Minn. Code Admin. Regs. §13.011 (C), Statement of Purpose (eff. Oct. 1979).
[111] Exhibit 4a, 4 Minn. Code Adm. Regs. §13.012 (eff. Oct. 1979).
[112] Ibid.
[113] Mark Shields, St. Paul Transcript, p. 614.
[114] 4 Minn. Code Adm. Regs. §13.013 (eff. Oct. 1979).
[115] Mark Shields, Minnesota Transcript, pp. 177-78; St. Paul Transcript, p. 621.
[116] Mark Shields, St. Paul Transcript, pp. 612, 620-622; Minneapolis Transcript, p. 177.

local investigatory process to ensure that the investigation was conducted properly, including a review of whether sufficient evidence was developed to substantiate the findings. If the investigation was not proper and thorough, the case will be returned to the local agency for further proceedings.[117] Only if the Board believes that an impartial and thorough investigation cannot be obtained at the local level will the Board conduct its own investigation.[118]

Complaints of police misconduct will be accepted by the Board whether originating with citizens, law enforcement agencies, or Board members.[119] Assuming that the Board has jurisdiction over the complaint, it will refer the matter to the Internal Affairs Unit of the local police department which employs the officer for investigation.[120] The results of the local investigation will be used by the Board for the limited purpose of deciding whether to revoke or refuse to issue a license to the individual police officer.[121] The Board has no power to impose other disciplinary sanctions. Nor does the Board have the power to require the police agency itself to impose disciplinary sanctions against individual police officers when the Board determines such officers have engaged in misconduct.[122]

The role of the Board in imposing standards of conduct for individual police officers and enforcing those standards through its licensing powers is in a developmental stage. Final rules were not enacted until October 1979.[123] According to Shields, the current Board policy in regard to using local law enforcement agencies, in particular their internal affairs units, as the Board's investigative arm is a flexible one based upon the most efficient use of manpower and financial resources.[124] However, if the current policy proves ineffective, the Board would consider expanding its investigative responsibilities. At the present time, such expansion is not being considered.[125]

[117] Mark Shields, Minneapolis Transcript, p. 178.
[118] Ibid.
[119] Ibid., pp. 164–65; St. Paul Transcript, p. 613.
[120] Mark Shields, St. Paul Transcript, pp. 621–22.
[121] Ibid.
[122] 4 Minn. Code Adm. Regs. §13.013.
[123] Mark Shields, telephone interview, Mar. 12, 1980.
[124] Mark Shields, Minneapolis Transcript, pp. 178, 183.
[125] Ibid.
[126] Discrimination based upon creed, religion, disability, or status with no regard to public assistance in employment and public services is also prohibited. In addition, employment discrimination based on age or marital status is unlawful. Minn. Stat. §363.03 Subds. 1, 4 (1980).
[127] Marilyn McClure, Commissioner, Minnesota Department of Human Rights, Minneapolis Transcript, pp. 700–701.

Minnesota Department of Human Rights

The Minnesota Department of Human Rights (Department) is mandated to investigate charges of discrimination based upon race, sex, color, and national origin, in employment and in the delivery of public services.[126] Police services which are considered public services lie within the purview of the Department's jurisdiction.[127] Therefore, complaints of harassment or brutality by police officers against civilians grounded in, for example, race, color, or national origin, are within the Department's legitimate area of concern. Complaints grounded on other than membership in a statutorily protected category may not be entertained by the Department.[128]

Of the 56 complaints filed by civilians against the Minneapolis Police Department between 1972 and the end of 1979, 11 charges remained open at the present time.[129] Five are at some stage of litigation while six are still in the investigatory stage.[130] Three of the currently open cases involved racially motivated harassment. Racially motivated brutality was alleged in six complaints.[131] One open complaint alleged the police refused to provide assistance on request.[132] One complaint involved the manner in which the Internal Affairs Unit investigates complaints of racial discrimination and was filed by former Commissioner William L. Wilson.[133]

During this latter complaint investigation, the Department attempted to subpoena records from the Minneapolis Internal Affairs Unit. The Police Federation and the city of Minneapolis obtained an injunction preventing the Department from securing those records.[134] The Department after unsuccessfully attempting to obtain an order from the Minnesota Supreme Court for release of the Internal Affairs Units files is now considering seeking relief in the district court.[135] Of the eight complaints against Minneapolis police officers filed in 1978 and 1979 alleging harassment, refusal to provide needed assis-

[128] Ibid.
[129] Marilyn McClure, Minneapolis Transcript, p. 687; Letter from Stuart L. Markoff, Human Rights Aide, Minnesota Department of Human Rights, letter to Ruthanne DeWolfe, Regional Attorney, MWRO, U.S. Commission on Civil Rights, May 1, 1980 (hereafter referred to as Markoff Letter of May 1, 1980).
[130] Ibid.
[131] Marilyn McClure, Minneapolis Transcript, p. 687, 690; Markoff Letter of May 1, 1980.
[132] Markoff Letter of May 1, 1980.
[133] Marilyn McClure, Minneapolis Transcript, p. 688.
[134] Ibid., pp. 688–89.
[135] Ibid.

tance, and brutality for reasons of race, five complaints remain open.[136] Two of these complaints involve allegations of physical brutality.[137] Under the Department's criteria for speedy investigation of complaints involving physical violence, investigation of those complaints is being handled on a high priority basis.[138] In August of 1979, a case filed with the Department in 1975 against three white Minneapolis officers for misuse of force against a black woman, Willie Mae Dennings, was settled for $3,812.35.[139]

Since 1969 the Department has received 27 charges against the St. Paul Police Department alleging discrimination in public services and 3 complaints of race and sex based employment discrimination.[140] Of the 27 complaints charging discrimination in public services, grounded in abusive police conduct, 22 were filed by blacks, 1 by an Hispanic, 2 by American Indians, and 2 by Caucasians.[141] Of that total, the Department made a finding of probable cause in only one case which involved allegations that a white police officer had struck a 15-year old American Indian male in the face and encouraged a police dog to bite the unresisting boy.[142] The case was ultimately dismissed when the Department could not locate the complainant within 6 months of the time probable cause was found, two years after the complaint was filed.[143]

The Department does not keep a record of grievances lodged by civilians which are not grounded in one of the protected categories over which the Deparment has jurisdiction.[144] Therefore, the Department cannot determine how many grievances have been lodged by civilians alleging harassment or brutality which do not allege a racial or other statutorily protected basis because the Department does not have jurisdiction over these grievances. Individuals who lodge such grievances of police misconduct are ordinarily referred to another agency such as Legal Aid or to a private attorney.[145]

When a formal charge is accepted by the Department, it first investigates and makes a determination of whether or not there is probable cause to believe that the allegations have merit.[146] The time from the filing of the complaint until the probable cause determination may require up to 2 years of investigative work.[147] After investigation, there is an attempt to conciliate the matter.[148] If conciliation fails, the Commissioner issues a complaint and a notice for public hearing.[149] The case is then referred to the Attorney General, Office for Litigation.[150] A State Hearing Examiner, who presides at a public hearing, reaches a conclusion and issues an order based upon the facts of the case.[151]

The hearing examiner has the authority to impose sanctions for violations although the examiner's decision is appealable to the district court and ultimately to the Minnesota Supreme Court.[152] Two cases in which a hearing examiner found in favor of the Minnesota Department of Human Rights and against a Minneapolis police officer are both currently on appeal to the district court.[153]

In no case filed with the Department based upon alleged misconduct by a St. Paul police officer has a formal complaint been issued and, consequently, no administrative hearing has been held.[154]

According to Commissioner Marilyn McClure, and her investigative staff, the Department's lack of access to the Internal Affairs Unit files and its lack of authority to compel testimony greatly hampers the ability of the Department to investigate complaints against police officers.[155] In addition, the recently enacted Minnesota Governmental Data Act,[156] which is being interpreted to preclude release of any information by the St. Paul Internal Affairs Unit in regard to individual cases beyond the nature of the

[136] Marilyn McClure, Minneapolis Transcript, pp. 684, 690; Markoff Letter of May 1, 1980.
[137] Marilyn McClure, Minneapolis Transcript, p. 690; Markoff Letter of May 1, 1980.
[138] Ibid.
[139] Hobert T. Mitchell, Jr., President, Minneapolis Branch NAACP, Minneapolis Transcript, p. 11; Demmings v. Minneapolis, No. PS 193-M6/LR 1-4 (Minnesota Department of Human Rights, filed June 23, 1975) (release, Aug. 16, 1979).
[140] Judith B. Langevin, Assistant Commissioner, Minnesota Department of Human Rights, St. Paul Transcript, p. 10; Stuart L. Markoff, Public Information Officer, Minnesota Department of Human Rights, letter to Ruthanne DeWolfe, MWRO, U.S., Commission on Civil Rights, June 27, 1980 (hereafter referred to as Markoff Letter of June 27, 1980).
[141] Judith B. Langevin, St. Paul Transcript, p. 12; Markoff Letter of June 27, 1980.
[142] Markoff Letter of June 27, 1980.
[143] Ibid.
[144] Marilyn McClure, Minneapolis Transcript, p. 702.
[145] Ibid.
[146] Ibid., pp. 685-86.
[147] Judith B. Langevin, St. Paul Transcript, pp. 22-23.
[148] Marilyn McClure, Minneapolis Transcript, p. 685.
[149] Ibid., p. 686.
[150] Ibid.
[151] Ibid.
[152] Ibid.
[153] Marilyn McClure, Minneapolis Transcript, p. 687.
[154] Judith B. Langevin, St. Paul Transcript, p. 21.
[155] Marilyn McClure, Minneapolis Transcript, p. 692; Markoff Letter of June 27, 1980.
[156] Minn. Stat. §§15.1611-15.1698 (1980). *See* in particular §15.1692, Personnel Data.

complaint and the final disposition and then only to the complainant,[157] is compounding the Department's investigatory problems.[158] McClure has stated that only full and fair disclosure of all the facts relevant to incidents of alleged police misconduct against civilians will permit a competent decision-making process in which the rights of civilians as well as of police officers are protected.[159] However, opposition to facilitating the work of the Department through cooperative release of essential information is not likely to diminish without judicial order.[160] The Department, as well as the Public Defender of Ramsey County, have sought judician relief from the obstructive conduct of the St. Paul Police Department resulting from that Department's narrow interpretations of confidentiality.[161] However, as discussed earlier, the St. Paul Police Department, in cooperation with the city attorney's office, has considered abolishing its Internal Affairs Unit if it is ultimately required by judicial order to release Internal Affairs information.[162]

According to the Executive Director of the Peace Officers Standards and Training Board, such action by St. Paul or any other city would not relieve the city of its statutory obligation to investigate thoroughly for the Board all complaints of police misconduct in violation of Board rules and regulations.[163] In a series of recent decisions, the municipal court of Ramsey County has determined the Minnesota Governental Data Act must be interpreted as categorizing certain items in the St. Paul Police Department Internal Affairs Unit files to be public.[164] Specifically, where a final disposition has been reached, the name of the complainant, the initial disposition by the Commander of the Internal Affairs Unit, the recommendations of any disciplinary board which is convened, the divisional commander's recommendations and findings, the letter from the Chief of Police to the officer outlining charges against the latter, any complaint filed with the Civil Service Commission and the results of Commission action, are public information.[165] Investigatory files and transmittal memos are not public information unless they contain formal action by the Department.[166] According to Police Chief McCutcheon, the St. Paul Police Department will not challenge this ruling.[167]

Federal Involvement

Funding Agencies

Both the Minneapolis and St. Paul Police Departments receive substantial sums of Federal monies through a variety of funding programs. All of these programs require that grantees provide assurances that no person will be unlawfully discriminated against nor denied the equal benefits of those Federal funds.[168] The basic prohibition against discrimination based on race, color, or, national origin, is contained in Title VI of the Civil Rights Act of 1964 and binds all recipients of Federal funds.[169] Individual funding statutes enacted subsequent to Title VI include and often expand the basic nondiscrimination requirements.[170] Federal funds flow to cities under comprehensive municipal plans rather than directly to individual agencies such as police departments. These recipient cities are responsible for providing the required assurances of city-wide nondiscrimination to Federal funding agencies after monitoring compliance of the subgrantee city departments and agencies with the Federal requirements.[171]

The Law Enforcement Assistance Administration (LEAA) which is currently being phased out[172] has been one source of Federal funds flowing to the nation's police departments.[173] Funding has been available for such programs as law enforcement

[157] Paul McCloskey, Assistant to St. Paul city attorney, telephone interview, Mar. 10, 1980.
[158] Marilyn McClure, Minneapolis Transcript, pp. 694–95.
[159] Ibid., pp. 694–998.
[160] Ibid., pp. 689–91; Paul McCloskey, telephone interview, Mar. 10, 1980.
[161] Paul McCloskey, telephone interview, Mar. 10, 1980.
[162] Ibid.
[163] Mark Shields, telephone interview, Mar. 12, 1980.
[164] Minnesota v. Johnson, No. 316061 (Municipal Court, Division 1, St. Paul, Minn., Mar. 5, 1980 and May 14, 1980) (orders for discovery).
[165] Minnesota v. Johnson, No. 316061 (Municipal Court, Division 1, St. Paul, Minn., Mar. 5, 1980) (order for discovery).
[166] Minnesota v. Johnson, No. 316061 (Municipal Court, Division 1, St. Paul, Minn., May 14, 1980) (order for discovery).
[167] The *Dispatch*, "A Judge Makes a Judicious Decision," June 2, 1980, p. 4A.
[168] Each of the Twin Cities' Police Departments receives approximately $3 million in Federal funds each year from LEAA, ORS, and CETA.
[169] 42 U.S.C. §2000d (1976).
[170] *See e.g.*, Justice System Improvement Act of 1979, Pub. L. No. 96–157, §815(c)(1), 93 Stat. 1167 which adds religion and sex as prohibited bases for discrimination in any program funded by LEAA and 31 U.S.C. §1242 (a)(1)(1976) which adds sex, religion, age, and handicap as protected categories under ORS funded programs.
[171] *See e.g.*, 31 C.F.R. §51.58(a)(1980)(ORS); 28 C.F.R. §42.204(a)(1979)(LEAA).
[172] Wilbur Brantley, Director, Office of Civil Rights Compliance, LEAA, telephone interview, Aug. 25, T 1980. During the phase-out, no new programs will be funded.
[173] Justice System Improvement Act of 1979, Pub. L. No. 96–157, 93 Stat. 1167.

techniques, rehabilitation and diversion programs for juveniles, and crime prevention.[174] LEAA has been particularly interested in funding innovative programs which seem likely to improve the criminal justice system.[175] Most funds are disbursed to local police departments through the statutorily required State criminal justice planning agency.[176] Discretionary funds for special programs are dispensed to local police departments either through the city or through the State or, in rare cases, directly to the local police department.[177] By statute, LEAA requires that funds may not be distributed to a municipality by the State planning agency unless there has been a prior opportunity for citizens and neighborhood groups to comment on program proposals.[178] In addition, local programs must meet the approval of the State planning agency.[179]

In accordance with LEAA requirements, Minnesota has established a State criminal justice planning agency entitled The Crime Control Planning Board (Board).[180] The Board performs the funcitions of the criminal justice council required under a recent LEAA reorganization.[181] the Board evaluates plans for local law enforcement activities, provides technical assistance in developing crime prevention programs, funds local criminal justice activities, and performs a number of other facilitative services for Minnesota cities including Minneapolis and St. Paul.[182]

Both of the Minnesota Twin Cities have received substantial monies from LEAA in the last few years. Minneapolis received $269,250 in 1978 and $106,393 in 1979.[183] During 1977, St. Paul received $840,907 from LEAA. In 1978, LEAA provided the city with $132,535, and in 1979 with $192,182.[184] The inflated amount received in 1977 was expended to initiate a special program, the team police project discussed above.[185]

A second source of Federal funds flowing to the Twin Cities' police departments is the Office of Revenue Sharing (ORS), Department of the Treasury, which disburses monies under the Fiscal Assistance to State and Local Governments Act.[186] As a condition to receipt of ORS funds, a municipal grantee is required to hold at least one public hearing on proposed expenditures of Federal revenue sharing funds no less than 7 days before the city budget is presented to city council for approval.[187] A second hearing on the final proposed budget included allocation of the revenue sharing funds to budgetary items is also required.[188] In addition, the Act requires that the city make available for public inspection a yearly accounting of how the revenue sharing funds have actually been expended.[189] Public participation in deciding the most appropriate uses for the revenue sharing funds is expressly encouraged in the Act.[190]

The city of Minneapolis obtains citizen input into the expenditure of monies for its programs in a number of ways. First, the Minneapolis budget director meets with representatives of each of the 11 planning districts within Minneapolis during the spring of each year.[191] These planning district representatives are elected by the neighborhood residents living within the district. Subsequently, a public meeting is held on the proposed budget each August before the mayor submits the budget to the city council.[192] The city council in turn holds a public hearing before it accepts the proposed budget.[193] In addition, the actual expenditure of revenue sharing funds is a matter of public record in accord with ORS requirements.[194]

St. Paul also complies with the statutory requirements for Federal funding by holding a series of hearings on budget proposals, and making an ac-

[174] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §401, 93 Stat. 1167; 42 U.S.C. §5631 (1976).
[175] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §401(a) 93 Stat. 1167.
[176] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §402(b)(1), 93 Stat. 1167.
[177] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §§302(c), 601, 93 Stat. 1167.
[178] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §§404(a)(2), 93 Stat. 1167.
[179] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §§402(b)(1)(C)(i), 404(1), 93 Stat. 1167.
[180] Minn. Stat. §§299A.03 (1980).
[181] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §§402(b), 93 Stat. 1167.
[182] Thomas Green, Assistant Director, Minnesota Crime Control Planning Board, telephone interview, Mar. 12, 1980.
[183] Judy Ann Plante, Grants Analyst, Minnesota Crime Control Planning Board, telephone interview, Mar. 27, 1980.
[184] Ibid.
[185] Ibid.
[186] 31 U.S.C. §§1221-1265 (1976).
[187] 31 U.S.C. §1241(b)(1)(1976).
[188] 31 U.S.C. §1241(b)(2)(1976).
[189] 31 U.S.C. §1241(a) (1976).
[190] Both written and oral comments from the community on proposed uses for ORS funds must be accepted by the municipal government. 31 U.S.C. §1241(b).
[191] Diane Loeffler, Financial Analyst, city of Minneapolis, telephone interview, Mar. 12, 1980.
[192] Ibid.
[193] Ibid.
[194] Ibid.

counting of actual expenditures available for public inspection.[195] According to the city budget director, Richard Schroeder, a citizens advisory committee appointed by the mayor reviews the tentative budget at a series of meetings.[196] After the committee approves the budget, it is submitted to the city council for a 6 week review. During those 6 weeks between August 15 and October 1 of each year, public hearings are also held. City Council then certifies the budget on October 1.[197]

Between 1976 and 1979, Minneapolis received a total of $7,600,000 in funds from ORS for its police department.[198] ORS funds flowing to Minneapolis have been a stable $1.9 million dollars each year.[199] St. Paul received a total of $11,165,184 in revenue sharing funds during the 1976–1979 period, an average of $2.8 million a year.[200]

The Twin Cities also receive funds from the Department of Labor (DOL) under the Comprehensive Employment and Training Act (CETA).[201] The purpose of CETA, which was enacted in 1973, is to provide training and to enclarge employment opportunities for economically disadvantaged individuals who are undereducated and underemployed.[202]

Minneapolis has devoted some of its CETA funds to an affirmative action educational program.[203] A special program utlizing CETA funds has been established at the Minneapolis Community College to prepare individuals for law enforcement careers.[204] The program is a 2-year course of instruction in accord with requirements of the Minnesota Peace Officer Standards and Training Board.[205] The CETA program permits individuals to receive educational assistance for a maximum of 30 months within a 5-year period, sufficient time for the 38 individuals currently enrolled in the program to complete their basic law enforcement education.[206] The current enrollees include 15 blacks, 7 Hispanics, 5 American Indians and 11 whites. Of that number, 22 are females and 16 are males.[207]

Minneapolis has received approximately $1.46 million in CETA funds between 1976 and 1979.[208] The Police Department intends to continue to seek assistance for its affirmative action educational program through CETA funding.[209]

St. Paul also receives CETA funds, a total of $247,930 since 1976.[210] All of the CETA funds flowing to St. Paul have been used for nonsworn positions such as custodians and secretaries.[211] At the present time, St. Paul does not anticipate expanding its use of CETA funds.[212]

In 1979, the Minneapolis Police Department received approximately $3 million in Federal funds in support of its $25.38 million law enforcement budget.[213] During the same period, the St. Paul Police Department also received nearly $3 million in Federal funds for its $14.57 million law enforcement budget.[214] In Minneapolis, law enforcement activities represent approximately 10 percent of the total city budget[215] while in St. Paul those activities regularly consume 22 percent of the total St. Paul budget.[216] Law enforcement represents a significant public expense for the Twin Cities.

Enforcement of Civil Rights

Misuse of Force

The Minnesota Advisory Committee originally focused its attention on the Minneapolis and St. Paul Police Departments only after receiving a number of complaints from civilians and community groups that some police officers were subjecting blacks, Native Americans, and Hispanics to unnecessary and abusive force because of their minority status.[217] The Committee also received complaints that law-

[195] Richard Schroeder, Budget Director, city of St. Paul, telephone interview, mar. 12, 1980.
[196] Ibid.
[197] Ibid.
[198] Diane Loeffler, telephone interview, Mar. 13, 1980.
[199] Ibid.
[200] Richard Schroeder, telephone interview, Mar. 13, 1980.
[201] 29 U.S.C. §801–992 (1976).
[202] 29 U.S.C. §801 (1976); Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §2, 92 Stat. 1912.
[203] Brian Isaacson, Personnel Director, city of Minneapolis, Minneapolis Transcript, p. 443.
[204] Ibid.
[205] Captain Jack McCarthy, Commander, Administrative Services, Minneapolis Police Department, Minneapolis Transcript, p. 508; Brian Isaacson, Minneapolis Transcript, p. 445.
[206] Lt. Ron Findorff, Director, Training Unit, Minneapolis Police Department, telephone interview, Mar. 13, 1980 (hereafter cited as Findorff telephone interview).
[207] Ibid.
[208] Annette Adams, Equal Employment Opportunity Specialist, Employment and Training Administration, Department of Labor, telephone interview, Mar. 14, 1980 (hereafter cited as Adams telephone interview).
[209] Findorff telephone interview.
[210] Adams telephone interview.
[211] Sgt. Thomas Reding, Commander, Research and Development Unit, St. Paul Police Department, telephone interview, Mar. 13, 1980.
[212] Ibid.
[213] Diane Loeffler, telephone interview, Mar. 13, 1980.
[214] Richard Schroeder, telephone interview, Mar. 13, 1980.
[215] Based on data supplied by Diane Loeffler, telephone interview, Mar. 13, 1980.
[216] Based on data supplied by Richard Schroeder, telephone interview, Mar. 13, 1980.
[217] *See* discussion, supra at

ful, culturally determined life-styles were also determining factors in the abuse of police power.[218]

While all Federal funding statutes prohibit discrimination in the form of physical abuse directed at civilians by police officers which is grounded in race, color, or national origin, these statutes do not protect civilians from discrimination rooted in socioeconomic status. Thus, Federal funding agencies do not have jurisdiction over complaints of police abuse against the poor as such. Those Federal statutes which criminalize excessive force by police personnel differ both as to the class of persons included within the protection of each statute and whether a racial basis for the infliction of that force is required to trigger the operation of the criminal statute.[219] These and other problems with the Federal criminal civil rights statutes are discussed below.

All Federal funding agencies are individually responsible for ensuring that recipients of such funds do not subject anyone to discrimination because of race, color, or national origin under the funded program or activity.[220] The requirement that each Federal agency must protect the civil rights of the ultimate beneficiaries of Federal funds is imposed through Title VI of the civil Rights Act of 1964,[221] by Presidential Executive Order,[222] and under guidelines enacted by the Department of Justice.[223] These several legal authorities provide that Federal funding agencies may obtain the compliance of fund recipients with the non-discrimination requirements either through voluntary action or through fund termination or denial in accord with express administrative procedures.[224] In addition, an agency may refer the case of a recalcitrant recipient to the Department of Justice (DOJ) for judicial enforcement if compliance cannot be obtained voluntarily or through administrative action.[225]

The DOJ is responsible for coordinating the enforcement efforts of Federal funding agencies under Title VI.[226] In addition, DOJ has promulgated extensive regulations setting forth standards and procedures to implement Title VI.[227] For example, every recipient of Federal funds must, as a condition of assistance, provide an express assurance that it will comply with the nondiscrimination requirements of Title VI.[228] If it appears to the funding agency that the assurances are "untrue or are not being honored," these DOJ guidelines provide for investigation and, if necessary, an administrative hearing or judicial proceeding to secure compliance or to terminate funding.[229] The regulations also provide for consolidated hearings in certain circumstances where two or more Federal agencies are funding a single recipient who is alleged to be in noncompliance with Title VI.[230]

Statutes establishing Federal funding agencies subsequent to Title VI have incorporated within their own provisions individual nondiscrimination requirements. Therefore, these agencies look not to the general obligations imposed by Title VI but rather to their own enabling legislation which often expands the protections afforded by Title VI. LEAA,[231] ORS,[232] and CETA,[233] were enacted after Title VI and thus embody and enlarge upon that earlier act. As a result, these agencies depend upon their own statutory authority in regard to nondiscrimination requirements rather than under the general provisions of Title VI and its implementing regulations and guidelines.[234]

LEAA which is currently being phased out[235] has regularly granted funds to the Twin Cities Police Departments under the Justice System Improvement Act of 1979[236] and its earlier enabling statute.[237] By statute and regulations, LEAA prohibits recipients

[218] *See e.g.*, Jose Trejo, Executive Director, Spanish Speaking Affairs Council, St. Paul Transcript, p. 49.
[219] Compare 18 U.S.C. §241, 18 U.S.C. §242, and 18 U.S.C. §245 (1976).
[220] 42 U.S.C. §2000d (1976).
[221] 42 U.S.C. §2000d-1 (1976).
[222] Exec. Order No. 11, 764, 39 F.R.2575 (1974), *reprinted in* 42 U.S.C. §2000d-1 (1976).
[223] 28 C.F.R. §224. 42.401, 50.3 (1979).
[224] 42 U.S.C. §2000d-1 (1976). 28 C.F.R. §42.411, 50.3(c)(I)(A)(1979).
[225] 28 C.F.R. §§42.412(B), 50.3(c)(I)(B)(1979).
[226] Exec. Order No. 11,764, 39 F.R.2575 (1974), *reprinted in* 42 U.S.C. §2000d-1 (1976); 28 C.F.R. §§42.401-42.415 (1979).
[227] 28 C.F.R. §§42.401-42.415, 50.3 (1979).
[228] 28 C.F.R. §42.407(b)(1979).
[229] 28 C.F.R. §50.3 (II)(1),(2)(1979).
[230] 28 C.F.R.§42.109(e)(1979).
[231] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §815(c)(I), 93 Stat. 1167.
[232] 31 U.S.C. §§1221-1265 (1976).
[233] Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, 92 Stat. 1912 (to be codified at 29 U.S.C. §801-999).
[234] Winifred Dunton, Attorney Advisory, Office of Civil Rights Compliance, Office of Justice Assistance Research and Statistics, telephone interview, Jan. 1, 1980.
[235] During the phase-out, compliance of recipients with Civil Rights requirements will continue to be monitored. Wilbur Brantley, Director, Office of Civil Rights compliance, LEAA, telephone interview, Aug. 25, 1980.
[236] Pub. L. No. 96-157, 93 Stat. 1167 (1979). LEAA has not disbursed funds under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. §§5601-5751 (1976) to either of the Twin Cities. Judy Ann Plante, telephone interview, Mar. 27, 1980.
[237] 42 U.S.C. §§53701-3796c. (1976).

from discriminating against beneficiaries on the basis of race or national origin.[238] The regulations require that recipeints file assurances of compliance with the nondiscrimination provisions as a condition of Federal funding.[239] Because the funds are ordinarily distributed to the police department through the city government, it is the city itself rather than the police department which provides the nondiscrimination assurances upon which LEAA determines compliance with Federal law.[240]

LEAA has determined that it has jurisdiction over recipients who discriminated against individuals for reasons of their race or national origin through the infliction of excessive force by police officers.[241] Problems abound, however, in imputing culpability to the entire police department for such misuse of force committed by a few "bad apples." In order to hold the police department itself liable for racially motivated abuse of force by individual police officers against civilians, it would be necessary to prove that the departmental officials knew about the misconduct, that they could have but failed to act to correct the conduct, and that the misconduct represented not merely infrequent and sporadic occurrences but rather a substantial and systemic problem.[242] Absent these strict legal requirements, injunctive or other relief against the department as a whole such as requiring particular departmental disciplinary policies and procedures or terminating funding would not be granted. As a result, LEAA has decided that complaints of excessive use of force will be referred to the Attorney General for litigation under the criminal statutes whether those complaints allege a racial basis or other motive for the misuse of force.[243]

Since the Office of Civil Rights Compliance (OCRC), LEAA, was established in 1971, that agency has received no complaints of police misconduct in either Minneapolis or St. Paul, Minnesota.[244] In addition, the Minnesota Crime Conntrol Planning Board which distributes most of the LEAA funds to the Twin Cities police departments has also received no complaints of police abuse of civilians.[245] In neither of the Twin Cities has OCRC self-initiated any investigations of these departments for the reason that limited staff resource require some prior reason to believe that a recipient is in noncompliance before such an investigation is launched.[246] OCRC reports that it has not received any such indication of noncompliance by either of the Twin Cities.[247]

Revenue sharing funds are regularly disbursed by the Office of Revenue Sharing under the Fiscal Assistance to State and Local Governments Act to the Twin Cities and their respective police departments.[248] Minneapolis and St. Paul are thus subject to the nondiscrimination requirements of ORS.[249] As with Title VI, a city which receives revenue sharing funds may not deny benefits to or subject the ultimate beneficiaries of those funds, i.e., community members, to discrimination for reasons of race of national origin under any program or activity operated by that city.[250] The Act and concomitant regulations enacted in April 1979 clearly define "program and activity" to mean "the operations of the agency or organizational unit of the government receiving or substantially benefitting from entitlement funds, e.g., a police department; department of corrections; health department."[251] This broad definition effectively closes any loophold which might otherwise allow a recipient unit of government to allocate funds in such a way that it could practice racial discrimination in violation of the intent of the Revenue Sharing Act by funneling Federal funds into local programs which were operated in a nondiscriminatory manner while discriminating with impunity in other programs funded with non-Federal monies.[252] Thus, if a recipeint city engages in racial or other prohibited discrimination in any program under its authority, the nexus between prohibited discrimination and funding is sufficiently

[238] Justice System Improvement Act of 1979, §815(c)(1), 93 Stat. 1167. discrimination on the basis of color, religion or sex is also prohibited; 28 C.F.R. §42.201-42.217 (1979).
[239] 28 C.F.R. §42.204 (1979).
[240] 28 C.F.R. §42.204(a)(1979).
[241] Lewis W. Taylor, former Director, Office of Civil Rights Compliance, LEAA, testimony before the U.S., Commission on Civil Rights, *Police Practices and the Preservation of Civil Rights,* p. 145, consultation held in Washington, D.C., Dec. 12-13, 1978 (hereafter cited as *Police Practices Consultation).*
[242] *See e.g.,* Rizzo v. Goode, 423 U.S. 362 U.S. 362 (1976); Lewis v. Hyland, 554 F. 2d 93 (3rd Cir. 1977), *cert. denied,* 434 U.S. 931 (1977).
[243] David Tevelin, Attorney Advisory, Office of General Counsel, LEAA, telephone interview, Dec. 27, 1979; Lewis W. Taylor, *Police Practices Consultation,* p. 145.
[244] Henry S. Dogin, former Administrator, LEAA, letter to Clark G. Roberts, MWRO, U.S., Commission on Civil Rights, July 6, 1979 (hereafter cited as Dogin letter).
[245] Thomas Green, ASsistant Director, Minnesota Crime Control Planning Board, telephone interview, Mar. 12, 1980.
[246] Dogin letter.
[247] Ibid.
[248] 31 U.S.C. §§1221-1265 (1976).
[249] 31 U.S.C. §1242(a)(1)(1976).
[250] 31 U.S.C. §1242(a)(1)(1976). In addition, discrimination based on color, sex, age, handicap or religion is prohibited.
[251] 44 Fed. Reg. 19,192 (1979) (codified in 31 C.F.R. §51.51 (1980)) and cases cited therein.
[252] Ibid.

close to provide ORS with jurisdiction to enforce compliance.

Police departments exist to benefit the communities which maintain them.[253] Therefore, the ultimate beneficiaries of police services and, therefore, of the ORS funds are members of the civilian community. No police department receiving ORS funds may discriminate against members of racial minorities through infliction of excessive force or otherwise and still comply with the ORS requirements.[254] However, in order for ORS to hold the police department or the city itself liable for racially motivated misuse of force by individual police officers as a basis for fund termination or ORS involvement in establishing policy and procedure for the department, it would be necessary to sustain the same heavy burden of proof discussed above under LEAA enforcement powers. Sporadic and individual acts of abuse of civilians by police officers, even against members of minorities, would seem to be beyond the enforcement powers of Federal funding agencies, including ORS.

In regard to the Minneapolis and St. Paul Police Departments, ORS has received no complaints of racial or other prohibited discrimination based upon the misuse of force by police officers.[255] As a result, the Civil Rights Division of ORS, is not involved in any monitoring activities in regard to these departments. If complaints were received, the Manager of the Civil Rights Division, Treadwell Phillips, has indicated that his office would investigate those complaints to determine whether a "strong statistical pattern and practice of complaints against the police department by members of the minority community" existed to justify further proceedings.[256] Phillips has determined that ORS does have the jurisdiction and the responsibility at least to investigate such complaints should they arise. At the present time, however, ORS has no plans to initiate an investigation into the Minneapolis or the St. Paul Police Departments.[257]

In accord with many other Federal funding statutes enacted subsequent to the Civil Rights Act of 1964, the 1973 Comprehensive Education and Training Act (CETA)[258] enactment prohibited discrimination in any CETA funded program based on race, color, creed, national origin, or sex, and political affiliation,[259] Whenever a prime sponsor of a CETA program, e.g., a city or a subgrantee or a community-based organization, failed to comply with the nondiscrimination provisions, the Secretary of Labor (Secretary) was empowered to seek compliance.[260] If the prime sponsor or subgrantee refused to alter its practices to bring itself into compliance with CETA nondiscrimination requirements, the Secretary was authorized either to refer the matter to the DOJ for enforcement or to proceed directly under Title VI to an administrative hearing in order to terminate funding.[261]

The provisions discussed above have remained except for the addition of age, handicap, and religion, as protected categories.[262] Under the regulations enacted by DOL under its CETA responsibilities, every application for CETA funding must be accompanied by assurances that the recipient will comply with the nondiscrimination and affirmative action requirements.[263] In addition, the regulations provide for periodic compliance reviews by the DOL.[264] If a recipient is found to be engaging in unlawful discriminatory conduct and conciliation efforts do not succeed in bringing the recipient into compliance, funds may be terminated but only after the formal administrative hearing determines the recipient's culpability.[265]

The Employment and Training Administration (ETA), DOL, is responsible for monitoring compliance with CETA requirements.[266] ETA has received no complaints of discrimination under the CETA program in either Minneapolis or in St. Paul arising from the conduct of police officers.[267] In addition, regular monitoring of the Twin Cities' CETA

[253] *See* discussion, supra at
[254] 31 U.S.C. §1242(a)(1)(1976).
[255] Treadwell O. Phillips, Manager, Civil Rights Divison, ORS, letter to Clark G. Roberts, MWRO, U.S., Commission on Civil Rights, Oct. 3, 1979 (hereafter cited as Phillips letter); Treadwell O. Phillips, telephone interview, Jan. 3, 1980.
[256] Treadwell O. Phillips, *Police Practices Consultation*, p. 151.
[257] Treadwell O. Phillips, telephone interview, Jan. 3, T11980.
[258] 29 U.S.C. §§801-992 (1976).
[259] 29 U.S.C. §991(a) (1976)—Chapter 363 of Minn. Stat. Sec.
[260] 29 U.S.C. §991(b) (1076). "Secretary" means Secretary of Labor. 29 U.S.C. §981(a)(8) (1976).
[261] 29 U.S.C. §991(b) (1976).
[262] However, the protected classes have been expanded to prohibit discrimination based on religion, age, handicap, citizenship and political affiliation in addition to race, color, sex, and national origin. Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §132(a), (e), 92 Stat. 1948 (to be codified at 29 U.S.C. §834).
[263] 20 C.F.R. §676.52 (1980), incorporating 29 c.F.R. Pt. 31 (1979); 20 C.F.R. §676.53 (1980).
[264] 20 C.F.R. §676.76 (1980).
[265] 20 C.F.R. §§676.83-676.92 (1980).
[266] C. Thompson Ross, Regional Administrator, Employment and Training Administration, DOL, letter to Clark G. Roberts, MWRO, U.S., Commission on Civil Rights, Feb. 7, 1980 (hereafter cited as Ross letter).
[267] Ibid.

programs of ETA has revealed no areas of noncompliance with CETA requirements.[268] If complaints of unlawful discrimination based on excessive force or brutality were received, however, ETA has determined that it would refer the matter to DOJ for review and enforcement.[269]

The Attorney General, DOJ, is authorized to bring criminal actions against certain individuals who deprive other persons of their civil rights under a number of statutes. Under one authority, 18 U.S.C.§241 (1976), the Attorney General may institute criminal proceedings against persons who conspire to injure *any citizen* in the exercise of his or her constitutional or other federally secured legal rights. Under a second statute, 18 U.S.C.§242 (1976), the Attorney General may bring a criminal action against State and local public employees including peace officers who willfully deprive *an inhabitant of a State* of his or constitutional or otherwise federally protected rights. In addition, the Attorney General may bring a criminal action under 18 U.S.C.§245 (1976) against anyone who willfully injures or attempts to injure any person because of his or her race who is exercising a federally protected right. Of these three potential jurisdictional bases for criminal action against a police officer who brutalizes a civilian, the Attorney General ordinarily proceeds under §242.[270] According to the Criminal Section, DOJ, §245 would not be appropriate for litigating the misuse of force by police personnel.[271]

Both 18 U.S.C.§241 and §242 currently require for a finding of guilt that the defendant specifically intended to deprive the citizen or inhabitant of the State of a constitutionally or otherwise federally protected right. In *Screws v. United States* [272] which expressly established this principle, a young black man was arrested and then beaten to death by peace officers. The Supreme Court determined that only if the defendant peace officers had specifically intended to deprive the victim of a federally protected right, in this case his Sixth Amendment right to be tried by a jury rather than by ordeal, i.e., by a beating, could the officers be found guilty. The specific intent requirement has severaly hampered the ability of the Attorney General to protect the rights of civilians against the excessive use of force by police officers.[273] However, under a proposed revision of the criminal code, this specific intent requirement would be eliminated.[274]

A further impediment to the ability of the Attorney General to protect civilians against the excessive use of force by police personnel in many states is a State use of force policy based on the common law which permits peace officers to use deadly force against civilians to effect the arrest of any unarmed but escaping felon.[275] Where a peace officer's use of deadly force is justified under State law, at least one U.S. Attorney has determined that the officer appears to be immune from Federal criminal prosecution.[276]

Until recently, Minnesota peace officer use of force policy accorded with the broad grant authority under common law. In 1978, the Minnesota legislature enacted a new and restrictive use of force statute which permits peace officers to use deadly force against civilians only 1) to protect self or others, 2) to effect the arrest of an individual who either committed or attempted a felony with the actual or threatened use of force, or 3) to effect the arrest of an individual who committed or attempted a felony where the officer reasonably believes that the individual will cause death or great bodily harm if his or her apprehension is delayed.[277] By tightening up its own State peace officer use of deadly force policy, Minnesota has effectively, albeit inadvertently, expanded the jurisdiction of the Federal government over police officer's professional conduct.

The DOJ has received a number of complaints of excessive use of force by police officers in the Twin Cities over the last several years.[278] Since January 1, 1976, the DOJ has received 17 complaints of misuse of force against Minneapolis police officers and 6 against St. Paul officers.[279] Those complaints have been principally allegations of brutality.

One complaint arising from the conduct of a Minneapolis Police Officer involved the shooting of

[268] Ibid.

[269] Charles C. Kane, Executive Assistant to the Regional Administrator, Employment and Training Administration, DOL, telephone interview, Feb. 15, 1980.

[270] Bruce Berger, Staff Attorney, Criminal Section, Civil Rights Division, DOJ, telephone interview, Jan. 10, 1980.

[271] Ibid.

[272] 325 U.S. 91, 107 (1945).

[273] Drew S. Days, III, ASsistant Attorney General, Civil Rights Division, DOJ, *Police Practices Consultation,* p. 143.

[274] S.B. 1722, 96th Cong., 1st Sess. §1502 (1979).

[275] *See* discussion *supra* at

[276] *See e.g.,* Thomas P. Sullivan, United States Attorney, Northern District of Illinois, "Information Release," Oct. 17, 1978, pp. 4, 7, 8, 12.

[277] Minn. Stat. §609.066 (1980).

[278] Drew S. Days III, Assistant Attorney General, Civil Rights Division, DOJ, letters to Clark G. Roberts, MWRO, U.S., Commission on Civil Rights, Aug. 30 and Dec. 5, 1979 (hereafter cited as Days Aug. 30 or Dec. 5 letter, respectively).

[279] Theodore M. Gardner, Special Agent in Charge, Federal Bureau of Investigation, DOJ, letter to Clark G. Roberts, MWRO, U.S., Commission on Civil Rights, Sept. 12, 1979 (hereafter cited as Gardner letter).

a civilian, and was triggered by a local newspaper article.[280] Two complaints including a shooting incident arising in Minneapolis remain open at the present time, one involving a black male and one a white male civilian.[281] The others have all been closed without criminal prosecution.[282] Of the 17 complaints filed against Minneapolis police officers, one was filed by an Indian female, seven by black males and eight by white males, and two by racially unidentified males.[283] Of the six complaints lodged against St. Paul officers, two were filed by black males, two by white males, and two by racially unidentified males.[284]

The foregoing complaints against Twin Cities' police officers were originally filed with the Federal Bureau of Investigation in Minneapolis.[285] The local FBI responded in one of three ways to the complaints in accord with routine procedures.[286] Ten of the complaints including the two pending in Minneapolis were handled by the local FBI office through its "preliminary investigation" procedure. This procedure involves interviewing the complainant and/or victim, checking local FBI records on the complainant, victim, and subject, interviewing all eyewitnesses, locating and preserving physical evidence and then contacting the U.S. Attorney for his opinion on the merits of the case and the need for further investigation. The FBI handled six of the complaints through its "limited" investigation procedure. This procedure involves interviewing the complainant or victim and checking available police, court, and other institutional records. Under the third procedure, seven of the complaints were forwarded directly to the DOJ without investigation at the local level.

Since 1973, a total of 51 complaints have been filed with the FBI against police officers in the Twin Cities, 40 against Minneapolis and 11 against St. Paul officers.[287] In the last 10 years, no Twin Cities' police officer has been criminally prosecuted for his conduct at the Federal level.[288] Given the difficulty caused by the present "specific" intent requirement of the relevant Federal criminal statutes, it is unlikely that criminal prosecutions will result from the current investigations.

[280] Ibid.
[281] Ibid.
[282] Ibid.
[283] Ibid.
[284] Ibid.
[285] Ibid.
[286] Ibid.
[287] Ibid.

Discrimination in the Allocation of Police Services

The Minnesota Advisory Committee also received complaints from members of minority communities in the Twin Cities that their neighborhoods were "overcontrolled and underprotected" by their police.[289] These complaints are discussed more fully in Chapter 4.

The responsibility of various Federal funding agencies to ensure that the beneficiaries of those funds are not denied their fair share of those monies for reasons of race, color, sex, or national origin have already been discussed. Where allegations that police services and benefits are being inequitably distributed based on economic or cultural factors, however, Federal funding agencies do not have jurisdiction to require that police departments alter their policies toward even-handed service delivery.

The Department of Justice has received no complaints of racial, national origin, or sex based discrimination in the distribution of police services in violation of Title VI.[290] LEAA,[291] ORS,[292] and ETA,[293] have also received no complaints under their respective authorities. Consequently, no Federal agency is currently monitoring nor intends to monitor the equal distribution of police services throughout the geographic jurisdiction of the Minneapolis and St. Paul Police Departments.

Employment Discrimination

As indicated in Chapter 5, minorities and women are underutilized in the Minneapolis and St. Paul police departments, particularly in the higher ranking positions. For example, though the Minneapolis population is just 88 percent white, 97.6 percent of the 764 sworn positions are held by whites, and whites comprise 99.7 percent of all positions above the entry rank of patrolperson. Females occupied just 10 sworn positions, none above the rank of patrolperson. In St. Paul, whites constitute 93 percent of both the population and of the 546 sworn police personnel, but they hold 95 percent of the higher ranking positions. Of the 10 sworn females, 8 are entry rank officers and 2 are sergeants.

[288] Days Dec. 5 letter.
[289] *See e.g.*, Ronald Lee Edwards, President, Minneapolis Urban League, Minneapolis Transcript, p. 95.
[290] Gardner Letter.
[291] Dogin letter.
[292] Phillips letter.
[293] Ross letter.

The Equal Employment Opportunity Commission (EEOC) is primarily responsible for enforcing Title VII which forbids employment discrimination based upon sex or race.[294] Not only is discrimination in hiring prohibited, but also discrimination in promotion, pay, assignment, and other terms and conditions of employment.[295] The EEOC receives complaints of unlawful discrimination, investigates those complaints and, attempts to conciliate the disputes.[296] If the employer is a State or local government and conciliation fails, EEOC refers the case to DOJ for judicial enforcement.[297]

Since 1976, the EEOC has received two complaints of sex-based employment discrimination against the Minneapolis Police Department.[298] Both complaints alleged unfairly discriminatory treatment in wages and in assignment. One complaint was closed without action by the EEOC at the end of 1976.[299] The second complaint is currently active with the EEOC awaiting an analysis of relevant data by its statistical unit.[300] These are the only employment discrimination complaints which have been filed with the EEOC against the Minneapolis Police Department.

Between 1972 and 1976, three complaints of employment discrimination were filed with the EEOC against the St. Paul Police Department, two by black males and one by a white female.[301] All of those complaints were closed without enforcement action by the EEOC based on their findings of no probable cause and right-to-sue letters were issued to the complainants.[302] Since 1976, two additional charges have been filed, one by a black male challenging the reasons for his discharge and one by a white female alleging discrimination in hiring.[303] The complaint filed by the black male was closed without enforcement action by the EEOC in 1977, again based on a determination of no probable cause and a right-to-sue letter issued.[304] The second complaint remains open and is in the process of investigation.[305]

Under its statutory authority to ensure that recipients of LEAA funds do not discriminate in matters of employment against beneficiaries on the basis of race, national origin, or sex, LEAA has promulgated regulations which detail specific employment practices which are prohibited.[306] In addition, LEAA requires recipients to file an equal employment opportunity program including a job classification breakdown, disciplinary actions taken, applications for employment, employment terminations, and the available local workforce by race, sex, and national origin. LEAA also requires the filing of routine assurances of compliance with the nondiscrimination requirements.[307]

The Office of Civil Rights Complaince of LEAA has reviewed the required Equal Employment Opportunity Program (EEOP) submission from Minneapolis and has determined that it complies with LEAA civil rights requirements.[308] St. Paul has not been required to submit an EEOP for review. However, the Office of Civil Rights Compliance of LEAA reports that it has no reason to investigate the St. Paul EEOP since it has received no complaints of employment discrimination.[309]

The Office of Revenue Sharing (ORS) has enacted regulations under its authority to ensure that recipients do not discriminate against the programs' ultimate beneficiaries on the basis of race, national origin, and sex.[310] These regulations, enacted to accord with the requirements of Title VII and its implementing regualtions and guidelines, prohibit employment discrimination in hiring, promotion, benefits, training or other employment related events. Part of the ORS regulations require assurances from recipients that they will not discriminate in employment or in any other activity on the basis of race, national origin, or sex.[311] In addition, ORS is required to initiate compliance reviews "from time to time."[312] Those reviews in regard to civil rights compliance are triggered by civilian complaints in addition to the regulatory trigger of "significant

[294] 42 U.S.C. §2000e-5 (1976); President's Reorganization Plan No. 1, 3 C.F.R. §321 (1979), *reprinted in* 5 U.S.C.A. app. II at 150 (Supp. 1980). In addition to race and sex, Title VII prohibits discrimination based on color, religion, and national origin. 42 U.S.C. §U.S.C. §2000e-2 (1976).
[295] 42 U.S.C. §§2000e-2, 2000e-3 (1976).
[296] 42 U.S.C. §2000e-5(f) (1976).
[297] Wesley Harry, Compliance Manager, EEOC District Office, Milwaukee, Wisconsin, telephone interview, Mar. 11, 1980.
[298] Ibid.
[299] Ibid.
[300] Ibid.
[301] Ibid.
[302] Ibid.
[303] Ibid.
[304] Ibid.
[305] Ibid.
[306] Justice System Improvement Act of 1979, Pub. L. No. 96-157, §§815(c)(1), 1204, 1301, 93 Stat. 1167; 28 C.F.R. §42.203(a)(1979). In addition, discrimination based on color and religion is prohibited.
[307] 28 C.F.R. §42.204 (1979).
[308] Dogin letter.
[309] Ibid.
[310] 31 C.F.R. §§51.52(a), (1980). In addition, discrimination based on color, religion, age, or handicap is also prohibited.
[311] 31 C.F.R. §51.53 (1980). In addition discrimination based on color, religion, age, or handicap is also prohibited.
[312] 31 C.F.R. §51.60(a) (1980).

disparity" between the recipient's work force and the potential labor market work force.[313]

According to Treadwell O. Phillips, Manager of the Civil Rights Division, ORS, no complaints of employment discrimination have been received arising from the practices of either the Minneapolis or the St. Paul Police Department.[314] As a result, ORS has not investigated either of the Twin Cities' Police Departments beyond a cursory review of the required nondiscrimination assurances.

The CETA program is principally designed to provide job training and employment to economically disadvantaged persons.[315] The statute which mandates the CETA program forbids discrimination based on race, color, sex, or national origin and further prohibits denying an otherwise qualified applicant employment on these bases in any program or activity funded with CETA monies.[316] The accompanying regulations also prohibit such discrimination.[317] Therefore, if race or sex-based employment discrimination were alleged, the Employment and Training Administration (ETA), DOL, has the authority and the duty to require a CETA fund recipient to bring its practices into compliance with the nondiscrimination requirements of CETA.[318] If informal conciliation efforts fail, the Administration must proceed to an administrative hearing to seek compliance or fund termination.[319]

The ETA has reviewed the submissions of the cities of Minneapolis and St. Paul who, as prime sponsors, are responsible for the compliance of their departmental grantees with the CETA nondiscrimination requirements.[320] Review by ETA has revealed no areas of noncompliance by an subgrantees.[321] In addition, ETA has received no complaints arising from the practices of either the Minneapolis or St. Paul Police Departments.[322]

The present chapter has analyzed the authority of local, State, and Federal agencies to review the practices of the Minneapolis and St. Paul Police Departments in regard to use of force, distribution of police services, and employment discrimination. In addition, the monitoring and enforcement activities of these agencies has been discussed. The following chapter will compare the policies and practices of the Minneapolis and St. Paul Police Departments.

[313] 31 C.F.R. §51.53(e) (1980).
[314] Telephone interview, Jan. 3, 1980.
[315] Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §2, 92 Stat. 1912 (to be codified at 29 U.S.C. §801.
[316] Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 96-524, §132(c), 92 Stat. 1912 (to be codified at 29 U.S.C. §834. In addition, discrimination based on religion, age, handicap, political affiliation or belief, and citizenship status is also prohibited under the 1978 amendments.
[317] 20 C.F.R. §676.52 (1980).
[318] Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §132(b), 92 Stat. 1912 (to be codified at 29 U.S.C. §834 20 C.F.R. §676.88(d)(1980).
[319] Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §132(c), 92 Stat. 1912 (to be codified at 29 U.S.C. 834; 20 C.F.R. §§676.81-676.93 (1980).
[320] Ross letter.
[321] Ibid.
[322] Ibid.

Chapter 9

Current Issues In Policing: Development And Review Of Police Policies and Practices

Discretionary Policing

The extensive discretion delegated to civilian police agencies to establish and implement law enforcement policy is receiving increasing attention from scholars and concerned community members alike. All agree that police departments are public agencies which exist only to carry out public policy concerning the maintenance of social order.[1] As a result, there is consensus that police agencies must be responsive and responsible to their communities.[2]

Unlike other public agencies which exist to serve the public, police departments throughout the country have traditionally operated largely independent of effective community oversight.[3] In the United States, police agencies have developed as paramilitary organizations primarily concerned with law enforcement and preservation of social order through control of civilian behavior.[4] In Great Britain, on the other hand, where most police officers are unarmed and police forces are small, policing depends principally "upon common consent."[5] Social service work alone or in conjunction with outside agencies forms a significant part of the Britain police officer's responsibilities, particularly in urban areas.

Police personnel in the United States have tremendous power. Police are the only civilian public employees with the right, albeit a limited right, to use deadly force.[6] In addition, through the allocation of manpower and equipment resources within their communities, police departments in effect determine community priorities in law enforcement, e.g., a large narcotics or vice squad, a canine corps for riot control.[7]

To a large extent, civilians have been virtually locked out of determining police policy and community law enforcement priorities.[8] Furthermore, the ad hoc decision-making of entry-level police officers

[1] Edward M. Davis, *Staff One: A Perspective on Effective Police Management* (Englewood Cliffs, N.J.: Prentice-Hall, 1978) (hereafter cited as Staff One), p. 17; W.A. Westly, *Violence and the Police: A Sociological Study of Law, Custom and Morality* (Boston: M.I.T. Press, 1970), p. xvii; Jerome H. Skolnick, *Justice Without Trial* (New York: John Wiley and Sons, 2nd ed. 1975), p. 6. *But see* James Q. Wilson, *Varieties of Police Behavior* (Cambridge,Mass: Howard University Press, 1968, 1968), pp. 278–284, for a discussion of the extent to which police personnel view themselves as set apart from the rest of society and possessing special skills learned only by experience.

[2] *See e.g.*, U.S. Commission on Civil Rights, Police Practices and the Preservation of Civil Rights, a consultation sponsored by the Commission Dec. 12–13, 1979 (hereafter cited as *Police Practices Consultation)* ; V.A. Leonard and Harry W.More, Jr., *Police Organization and Management* (Mineola, N.Y.: Foundation Press, 5th ed. 1978) (hereafter cited as *Police Organization),* p. 68; G. Douglas Gourley "Legislative Barriers," in *Effective Police Organization and Management,* submitted to the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: 1967), p. 1242.

[3] National Advisory Commission on Criminal Justice Standards and Goals, *Police* (Washington, D.C.: 1973) (hereafter cited as *Police),* p. 22. There are over 40,000 independent, autonomous law enforcement agencies in the United States each of which develops its own policy and procedures. In other modern countries, police policy and implementing procedures are developed at the national or State level. Yong Hyo Cho, *Public Policy and Urban Crime* (Cambridge, Mass.: Bolinger Publishing Co., 1974 (hereafter cited as *Public Policy),* p. 47.

[4] National Commission on the Causes and Prevention of Violence, "The Police in Protest," in Power and Authority in Law Enforcement, eds. Terry R. Armstrong and Kenneth M. Cinnamon (Springfield, Ill.: Charles C. Thomas, 1976) (hereafter cited as "Police in Protest"), p. 168; Gerald Bridgeman, President, Police Officers Federation of Minneapolis, testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, fact-finding meeting, Sept. 27–28, 1979, transcript (hereafter cited as Minneapolis Transcript), p. 231.

[5] Great Britain, British Information Services, *Fact Sheet on Britain* (July 1979), pp. 1, 2.

[6] Arthur L. Kobler, "Police Homicide in a Democracy," *J. of Social Issues,* vol. 31 (1975), p. 163.

[7] *Police,* pp. 22, 23; David A. Ward, Professor of Sociology, University of Minnesota, Minneapolis Transcript, pp. 322–23.

[8] Bernard L. Garmire, ed., *Local Government Police Management* (Washington, D.C.: The Internal City Management Association, 1977), p. 30; Joseph Fink and Lloyd G. Sealy, *The Community and the Police - Conflict or*

during interactions with civilians is a significant source of police policy-making.[9] Thus, actual law enforcement policy is to a large extent created neither by upper echelon police personnel nor by civilians, but rather by non-supervisory police personnel. For example, an individual police officer who decides to stop and question all black juveniles riding bicycles in white residential areas is creating police policy. Such policy could receive neither official authorization by upper-level police administrators nor approval of the community-at-large. Nonetheless, police policy has been created through police actions and is thereby communicated to the public.

There is extensive research to indicate that officers no less than civilians are subject to various biases in decision-making. These biases are associated particularly with sex, race, and economic status.[10] For example, the socio-economic status and race of the victim and of the perpetrator of a crime significantly influence an officer's decision as to what action should be taken.[11] Where such factors enter into a police officer's decision, e.g., to arrest rather than merely to warn, the ultimate decision is likely to be unfairly discriminatory. Complaints received by the Minnesota Advisory Committee from both Minneapolis and, to a lesser extent, St. Paul civilians suggest that such unfair and unequal law enforcement does occur.[12] Such inequality in regard to individuals from minority and economically depressed neighborhoods as contrasted with those from other areas of the Twin Cities.

The unwitting delegation to lower level personnel of broad discretion to establish agency policy is unique to policing. In most occupations, the extent of individual discretion varies direclty with the level ofthe decision-maker in the organization.[13] This occurs because the amount of latitude granted to the decision-maker is a function of his or her power and control.[14] The unique situation in policing indicates that the greatest power and control is possessed by the entry-level police officer who routinely develops his own law enforcement policy through on-the-spot judgments. These judgments are often made in low visibility situations when both officer and civilian are under stress. Emotion-laden situations have been found to be inappropriate occasions for policy formulation. For example, studies have indicated that stressful confrontations do not lead to rational problem-solving but rather represent a principal cause of police officer misperception of provocation and threat and, consequently, a significant source of officer-civilian violence.[15]

Experts agree that police officers need firm and clear administrative rules to limit discretion and guide officers in the proper exercise of their responsibilities to "serve and protect," in an even-handed way.[16] For example, if it is determined that the congregation of individuals on connecting pedestrian skyways impedes the flow of traffic and must be prohibited, then even-handed law enforcement policy would require that all groups of individuals, be they white, female, black, Hispanic, juvenile, or other would be asked to congregate elsewhere.

Recognition of the need for limiting police discretion to achieve enven-handed law enforcement is found in the National Advisory Commission on Criminal Justice Standards and Goals. In their 1973 report, *Police,* the Commission concluded:

Cooperation, (hereafter cited as *Conflict or Cooperation),* p. 162; *Staff One,* p. 30; "Police in Protest." The quasimilitary nature of police departments has been emphasized by many writers. *See e.g.,* Arthur Niederhoffer, *A Study of Police Cynicism* (Ann Arbor, Mich.: University Microfilms, 1963) (hereafter cited as *Cyncism),* p. 314. *See also,* James Baldwin, Nobody *Knows My Name* (New York: Dell, 1962), pp. 65–67.

[9] Kenneth Culp Davis, *Police Discretion* (St. Paul: West Publishing Co., 1975 (hereafter cited as *Police Discretion),* p. 38; *Police,* p. 23; Kenneth Culp Davis, statement in *Police Practices Consultation,* p. 59.

[10] *See e.g.,* Harold E. Pepinsky, "Police Decision-Making," in *Decision-making in the Criminal Justice System: Reviews and Essays* (Washington, D.C.: Gov. Printing Office, 1975) (hereafter cited as *Decision-Making),* p. 38; David Muir Peterson, *The Police, Discretion and the Decision to Arrest* (Ann Arbor, Mich.: University Microfilms, 1968) (hereafter cited as *Decision to Arrest),* p. 320.

[11] Ibid.

[12] *See e.g.,* Hobert T. Mitchell, Jr., President, Minneapolis NAACP, Minneapolis Transcript, pp. 20–21, 29; Donna Folstad, Minnesota Chippewa Tribes Housing Corporation, Minneapolis Transcript, pp. 48, 56: Ronald Lee Edwards, President, Minneapolis Urban League, Minneapolis Transcript, pp. 95, 104; Jose Trejo, Executive Director, Spanish Speaking Affairs Council, testimony before the Minnesota Advisory Committee to the U.S., Commission on Civil Rights, fact-finding meeting, August 9–10, 1979, transcript (hereafter cited as St. Paul Transcript), pp. 87, 91–92; Peggy Foster, President, Westside Citizens Organization, St. Paul Transcript, p. 109.

[13] National Advisory Commission on Criminal Justice Standards and Goals, *Criminal Justice Research and Development: Report of the Task Force on Criminal Justice Research and Development* (Washington, D.C.: 1976) (hereafter cited as Task Force), p. 128.

[14] Ibid.

[15] Hans Toch, *Peacekeeping: Police, Prisons and Violence* (Lexington, Mass.: D.C. Heath and Co., 1975) (hereafter cited as *Peocekeeping,* p. 28; Catherine H. Milton, Jeanne Wahl Halleck, James Lardner, Gary L. Abrecht. *Police Use of Deadly Force,* (Washington, D.C.: The Police foundation, 1977) (hereafter cited as *Deadly Force),* p. 5; Anthony V. Bouza, "Women in Policing," *Law Enforcement Bulletin* (September 1975) (hereafter cited as "Women in Policing"), Stanley L. Brodsky, *Psychologists in the Criminal Justice System* (Chicago: University of Illinois Press, 1976) (hereafter cited as *Psychologists),* p. 104.

[16] City of Minneapolis, Minneapolis Police Department, *Department Manual* (hereafter cited as Minneapolis Police Manual), "Law Enforcement Code of Ethics," Standard 2-301.

> Every police agency should acknowledge the existence of the broad range of administrative and operational discretion that is exercised by all police agencies and individual officers. That acknowledgement should take the form of comprehensive policy statements that publicly establish the limits of discretion, that provide guidelines for its exercise within those limits, and that eliminate discriminatory enforcement of the law.[17]

Both Minneapolis and St. Paul have developed official policies in regard to the proper exercise of discretion by police officers. In both cases, the departmental policies represent modifications of the Los Angeles Police Department standards developed in 1972.[18] Both the Minneapolis and the Los Angeles Police Department Manuals state: "In order to respond to varying law enforcement needs in the different parts of the City, the Department must have flexibility in deployment and methods of enforcement; however, enforcement policies should be formulated on a city-wide basis and applied uniformly in all areas."[19] The Manuals do not, however, provide guidance for officers in specific situations.

St. Paul provides that law enforcement decisions must be at all times reasonable, based upon the facts of the situation, and directed toward the "objectives of preventing and deterring crime, arresting criminal offenders, and preventing traffic accident."[20] St. Paul officers are expressly encouraged to rely on their "experience, training, and judgment" in reaching appropriate decision.[21] Entry-level police personnel those with the least experience on which to form judgments, interact most frequently with civilians in stressful situations.[22] Specific guidance in the form of standards and rules to assist officers decide what action to take in specific situations is not codified in the policy manual. Nontheless, younger officers could reasonable be expected to need concrete guidelines not merely as to the lawfulness of their decisions, i.e., the outer-limits of discretion, but also in regard to the consonance of their decisions with the aim of obtaining public operation with consensual law enforcement goals. That is, express guidance through rules and regulations not merely to answer an officer's question, "What may I do?" but more importantly, at least from the community perspective, the question "What should I do?" is frequently suggested as an integral part of responsive policing.[23]

Although public participation in the formulation of police department policy is tacitly recognized in official policy, Twin cities civilians have in fact very limited input into the development of policy as codified in the Minneapolis and St. Paul departmental manuals. Rules and regulations ae developed internally and then communicated after the fact to the public although a committee appointed by former Mayor Albert Hofstede did participate in devising the Minneapolis Police Manual in 1978, the first revision since 1962.[24] In addition,those rules and regulations are not readily available to the public. They are not, for example, attached as appendices to the Muncipal Codes of either city. since Police Department rules and regulations which are designed to control police conduct impact heavily on the community through the actions of individual officers, it has been recommended that the public be involved in the development of such rules and regulations and have ready access to codifications of policy.[25] The following sections review a variety of proposals for increasing public participation in the development and review of police policy and conduct.

Civilian Participation in Policing

Administrative Rulemaking

Police departments are administrative agencies.[26] While there is an increasing trend to subject administrative agencies to public scrutiny and to provide express citizen input into the promulgation of administrative policy, police agencies have remained largely beyond the reach of direct community control. Nonetheless, Kenneth Culp David, author

[17] *Police*, p. 21.

[18] City of Los Angeles, Los Angeles Police Department, *Policy Manual* (hereafter cited as *Los Angeles Police Manual*.

[19] *Minneapolis Police Manual*, "Equality of Enforcement," §2-404; *Los Angeles Police Manual*, "Equality of Enforcement," §340.

[20] *St. Paul Police Manual*, §170.0 "Discretion."

[21] Ibid.

[22] *Police Discretion*, p. 38; Former Chief of Police, Minneapolis Police Department, Minneapolis Transcript, p. 627.

[23] Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: University of Chicago Press, 1970) (hereafter cited as *Politican's Guide)*, pp. 88-91; Jerome H. Skolnick, "The Police and the Urban Ghetto," in *Race, Crime and Justice*, eds. Charles E. Reasons and Jack L. Kuyhindal (Pacific Palisades, Calif.: Goodyear Publishing Company., 1972) (hereafter cited as "Urban Ghetto"), p. 239.

[24] *Minneapolis Police Manual*, "Preface."

[25] *See e.g., Police Discretion*, pp. 113-119.

[26] Kenneth Culp Davis, *Administrative Law* (St. Paul: West Publiching Co., 1973) (hereafter cited as *Administrative Law)*, pp. 1, 497; Herman Goldstein, *Policing a Free Society* (Cambridge, Mass.: Bollinger, 1977 (hereafter cited as *Free Society)*, p. 33.

of a number of administrative law treatises, has long advocated that police agencies adopt formal administrative rulemaking procedures which require prior notice and comment before any rule or regulation is enacted or amended.[27] Through administrative rulemaking, he envisions that the control of law enforcement policy will be returned to the community.

Administrative rulemaking procedures ensure that policy is developed "in the sunlight" and permits the continuous and systematic input of outside experts on both technical and policy issues as well as of local police personnel.[28] The community is appraised before policy changes are made, knows the nature and identity of outside experts, and has a formal opportunity to contribute its own opinions and expertise.

In 1975, the Ward Report, based on an extensive study commissioned by former Mayor Albert Hofstede and City Council President Louis DeMars, recommended that the Minneapolis City Council adopt the provisions of the Federal Administrative Procedure Act in order to permit direct citizen input into the rulemaking process.[29] That recommendation was not followed, however, and the Minneapolis Police Department manual rules and regulations was enacted without broad citizen participation.[30] St. Paul also promulgated its Police Department manual without first subjecting the proposed rules and regulations to public scrutiny.[31] Neither Twin Cities police departments currently provides notice to the public before a new rule or regulation codifying law enforcement policy is enacted nor before one is amended.[32] As a result, civilians in the Twin Cities do not participate directly in the development of a law enforcement goals and priorities, in the determination of the limits of police discretion, and in the standards for police conduct.[33]

Neighborhood Advisory Committees

Neighborhood Advisory Committes are an integral part of the decentralized team police concept.[34] These Committees consist of area residents whose function it is to advise the neighborhood police agency about local problems in law enforcement. Both Minneapolis and St. Paul have established citizen advisory councils as a component of their team procedures.[35] However, according to former Minneapolis Chief of Police Elmer Nordlund, most of the Minneapolis advisory councils have been inactive and have provided only very limited input into the development of departmental policy.[36] In addition, because of financial constraints, Minneapolis is moving away from the decentralized team police approach, a move which will further distance police from non-emergency contact between police and community members.[37] St. Paul, on the other hand, has maintained its advisory councils despite budget constraints.[38] During the early years of team policing in St. Paul, these councils were very active.[39] Overtime, however, police participation in these councils has reportedly become less active, limiting community involvement in the monitoring of law enforcement policy and police conduct.[40]

Officer Participation in Community Affairs

One avenue of improving communication between police personnel and civilians and lessening the cynicism which is reportedly endemic among

[27] *Police Discretion*, p. 105.

[28] Judge Carl McGowan, "Rulemaking and the Police," 70 *Mich. L. Rev.* 659, 676–89, 693–94 (1972) (hereafter cited as "Rulemaking"), pp. 676–89, 693–94; David A. Ward, Minneapolis Transcript, p. 299.

[29] Minneapolis, Minn., *Mechanisms for Controlling Police Discretion: A Report by the Special Committee on Police Issues Prepared for Mayor Albert Hofstede, City Council President Louis De Mars, The Citizens of Minneapolis*, prepared by Barbara Isaacman (1975) (hereafter cited as the *Ward Report*), p. 4.

[30] *Minneapolis Police Manual*, "Credits."

[31] St. Paul, Minnesota, "United States Commission on Civil Rights, Administration of Justice, City Police Department," Questionnaire Responses" (1979) (hereafter cited as "St. Paul Survey"), §10.

[32] Ibid; *Minneapolis Police Manual*, "Preface."

[33] State agencies, however, are required to hold public hearings before rules are adopted. Minn. Stat. §15.0412, Subd. 4 (1980).

[34] "Team policing" originated in Aberdeen, Scotland in 1948 as a technique for reducing the isolation of the police and increasing community participation in law enforcement activities. In 1966 Great Britain introduced "unit beat policing" which also stressed public-police cooperation. *Police*, p. 154. *See also*, Paul W. Whisenand and R. Ferguson, *The Managing of Police Organizations* (Englewood Cliffs, N.J.: Prentice-Hall, 1978) (hereafter cited as *Managing*), p. 78; Jesse G. Rubin, "Police Identity and the Police Role," in *The Police Community*, eds. Jack Goldsmith and Sharon S. Goldsmith (Pacific Palisades, Calif.: Palisades Publishers, 1974), p. 145; *Conflict or Cooperation*, pp. 162–164; *Staff One*, p. 228.

[35] Minneapolis, Minn. "Administration of Justice: City Police Department," responses to questionnaire submitted to the Minneapolis Police Department by the MWRO of the U.S., Commission on Civil Rights (1979) (hereafter cited as "Minneapolis Survey"), §39; Former St. Paul Chief of Police, Richard Rowen, interview in St. Paul, Minn., Jan. 3, 1979 (hereafter cited as Rowen Interview); Lt. G.N. Hutton, Commander Team B-6, St. Paul Police Department, intereview in St. Paul, Minn., Jan. 3, 1979.

[36] Interview in Minneapolis, Minn., Apr. 16, 1979.

[37] Ibid.

[38] George Latimer, Mayor, City of St. Paul, Minn., St. Paul Transcript, pp. 727, 729.

[39] Lt. George N. Hutton, Commander, Team B-6, St. Paul Transcript, p. 259.

[40] Ibid.; Peggy Foster, President, Westside Citizens' Organization, St. Paul Transcript, pp. 114, 120.

police officers throughout the country is through officer participation in community activities.[41] In both Minneapolis and St. Paul, opportunity for such participation is maximized by a residency requirement.[42] Both cities require their police officers to become residents wiithin 18 months of being hire.[43]

Neither city provides officers with paid time-off to work in local activities of community concern.[44] The assignment of St. Paul officers to fixed shifts, however, does increase their ability to become involved in community affairs. While Minneapolis police officers rotate through day, afternoon, and evening shifts,[45] St. Paul Officers are permanently assigned through a combination of seniority and choice to only one tour of duty.[46] St. Paul officers have reported that such stable working hours diminish work-related stress and contribute to family stability.[47] The fixed shifts could also enable them to commit themselves to active involvement in community affairs. Nonetheless, those officers who volunteered to talk with the Minnesota Advisory Committee all reported that they do not routinely take an active part in community affairs.[48] As a result, an excellent opportunity for informal communication between police and civilians is being missed.

Reviewing Police Conduct

Several of the mechanisms for reviewing the conduct of individual police officers and, where necessary, imposing sanctions for misconduct discussed below have been implemented or proposed in various communities. None has received the unqualified approval of police and civilian communities.

Internal Affairs Units (IAU)

Internal affairs units designed to investigate allegations of police misconduct and make recommendations for action to the departmental police chief have been widely established in response to the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals.[49] That Commission and others have emphasized the necessity for an effective internal discipline system consisting of a separate investigation unit to determine the facts underlying allegations of police misconduct and a chief administrative officer willing to accept the responsibility for the conduct of his or her subordinates and equally willing to control abuses.[50]

Officers assigned to the internal affairs unit report thattheir jobs are difficult and that they suffer severe moral problems.[51] According to Arthur Niederhoffer, professor of criminal justice and former police officer, officers hesitate to violate professional solidarity of police officers by informing on each other for misconduct.[52] Niederhoffer reports that a rule in New York which requires officers to report the misconduct of fellow officers is known informally as the "rat rule" which no officer with "self" respect" obeys.[53] The stigma appears to carry over to internal affairs assignments. As a result, experts including the authors of the National Advisory Commission on Criminal Justice Standards and Goals report recommend that such officers be rotated on a regular basis.[54]

One way in which an internal affairs unit can be used as a preventive as opposed to a punitive agency in regard to police misconduct is through regular monitoring of the conduct of all departmental police personnel.[55] A complaint card on each officer is maintained which lists all complaints lodged against the officer and the ultimate disposition of the complaint regardless of outcome. If a pattern appears to be developing, the officer's captain is informed. In turn, the captain engages in a counseling program with the officer to assist the person in altering his or her behavior before punitive action becomes necessary. In one community, Los Angeles, California, such a monitoring counseling program was effective in reducing complaints 50 percent.[56]

[41] *Staff One,* p. 186; *See also,* Bruce J. Ferris, "The Role of the Police," *The Annals,* November 1967, pp. 58, 61–62; *Cynicism,* pp. 13, 321.
[42] Minneapolis Survey, §46; St. Paul Survey, §46.
[43] Ibid.
[44] Sergeant John Baade, Minneapolis Police Department, interview in Minneapolis, Minn. July 12, 1979; Lt. John McCabe, Training Director, St. Police Department, St. Paul Transcript, pp. 405–406.
[45] Minneapolis Survey, §15.
[46] St. Paul Survey, §19.
[47] Sergeant Terry Trooien Officer Robert Kumagai, Officer Corneluis Brennor St. Paul Transcript, pp. 208–11.
[48] Sergeant Terry Trooien, Officer Robert Kumagai, Officer Cornelius Brennon, St. Paul Transcript, pp. 189–190.
[49] *Police,* Standards 19.2–19.5, pp. 477-91.
[50] *Managing,* p. 77; *Police,* p. 469; *Free Society,* p. 175; American Bar Association, *The Urban Police Function* (Chicago: A.B.A, 1972) (hereafter cited as *Police Function),* p. 164.
[51] *Staff One,* p. 174.
[52] *Cynicism,* p. 301.
[53] Ibid.
[54] *Police,* Standard 19.3, p. 480.
[55] *See e.g.,* Catherine H. Milton, Jeanne Wahl Holleck, James Lardner, Gary L. Abrecht, *Police Use of Deadly Force* (Washington, D.C.: The Police Foundation, 1977) (hereafter cited as *Deadly Force),* pp. 94–104.
[56] *Staff One,* p. 177.

Minneapolis and St. Paul both maintain internal affairs units.[57] While the Internal Affairs Unit of Minneapolis does not routinely monitor the conduct of police officers, the St. Paul Internal Affairs Unit does do so.[58] The St. Paul Internal Affairs Unit, for example, monitors charges of resisting arrest or assaulting a police officer filed by officers against civilians, charges which have allegedly been used to cover incidents of police abuse of force.[59] Both cities, however, have chosen to utilize their internal affairs units principally as investigatory bodies where actual complaints of police misconduct have been filed either by civilians or fellow police officers.[60] Further, neither of these police departments has established a preventive in-house counseling program.[61]

Civilian Review Boards

According to a number of criminal justice experts, public confidence in a police department is diminished to the extent that effective internal discipline for police misconduct is not imposed or communicated to the public[62] Nonetheless, as supplements or alternative to internal review of police practices, civilian review boards have frequently been proposed. In the United States, such boards have generally met with failure in part because of active opposition of police departments and in part because the public has been unwilling to support such boards.[63]

Minority communities in particular have expressed the need for external review of police conduct, at least in part because minority group members have often been victimized by abusive police practices.[64] The active opposition of police to such boards such as occurred during the late Sixties in New York has reportedly increased the mistrust of minorities in the police.[65] During the attempt to establish a civilian review board in New York, for example, the black community viewed the board as a means of defending itself against police brutality and the opposition of the Policemen's Benevolent Association as the statement of an adverse power.[66]

Neither the Minneapolis nor the St. Paul police departments has established a civilian review board. Ranking officers in both departments, along with Mark Shields, Executive Director, Minnesota Peace Officers Standards and Training Board, have expressed their strenuous opposition to such units.[67] In addition, the Ward Report concluded that because of constitutional issues, civilian review boards will inevitably be weak and ineffective as mechanisms for eliminating police misconduct.[68] As a result, the Ward Report recommended against establishing a civilian review board in Minneapolis.[69]

Peer Review Panels

As mechanisms eliminating unnecessary use of force by police officers, peer review panels have also been recommended and implemented in at least two cities, Oakland, California and Kansas City, Missouri.[70] The concept of the peer review panel was developed by Hans Toch, an eminent professor of criminal justice for the Oakland police department. Toch has worked extensively to develop ways of eliminating all excessive force inflicted by police officers on civilians, a goal he believes is essential in a democratic society.[71] In working with the Oakland police department, Toch was able to identify a few officers who appeared to be violence prone, and more likely than others to become involved in physcial confrontation with civilians.[72] Rather than merely advocating punitive action against these officers, Toch implemented a peer review panel

[57] *Minneapolis Police Manual*, §§4-315; *St. Paul Police Manual*, §§230.00—230.5

[58] Sergeant Barbara Beaty, former Supervisor, Internal Affairs Unit, Minneapolis Police Department, Minneapolis Transcript, pp 541-43; Captain Edward Fitzgerald, Chief of the Internal Affairs Unit, St. Paul Police Department, St. Paul Transcript, p. 423; Captain W.E. Dugas, former Chief of Interanal Affairs, St. Paul Police Department, interview in St. Paul, Minn. Jan. 3, 1979 (hereafter cited as Dugas Interview).

[59] Dugas Interview; The value of such monitoring is discussed in K. Edward Renner and Denice A. Gierach, "An Approach to the Problem of Excessive Force by Police," *J. Police Science and Administration* vol. 3 (1975).

[60] Sergeant Barbara Beaty, Minneapolis Transcript, pp. 520-23, 543; Dugas Interview.

[61] Ibid.

[62] *Police Function*, p. 124; Tennessee Advisory Committee to the U.S. Commission on Civil Rights, *Civic Crisis— Civic Challenge: Police Community Relations in Memphis* (1978), p. 89.

[63] *Police*, p. 472; Louis A. Radelet, *The Police and the Community* (Beverly Hills, Calif.: Glincoe Press, 1973) (hereafter cited as *Police and the Community*), p. 351.

[64] Nicholas Alex, *Black in Blue. A Study of the Negro Policeman* (New York: Meredith Corp., 1969) (hereafter cited as *Black in Blue*), p. 208.

[65] National commission on the Causes and Prevention of Violence, "The Police in Portest," in *Power and Authority in Law Enforcement*, eds. Terry R. Armstrong and Kenneth M. Cinnamon (Springfield, Ill.: Charles C. Thomas, 1976) (hereafter cited as "Police in Protest," pp. 168.

[66] "Police in Protest," pp. 168-70; *Black in Blue*, pp. 208-209.

[67] *See e.g.* Captain Jack McCarthy, former Commander, Administrative Services, Minneapolis Police Department, Minneapolis Transcript, p. 502; Captain Edward Fitzgerald, St. Paul Transcript, pp. 432-33; Mark Shields, Executive Director, Minnesota Peach Officers Standards and Training Board, Minneapolis Transcript, p. 165.

[68] pp. 82-90; *See also* David A. Ward, Minneapolis Transcript, p. 300.

[69] p. 6.

[70] *Peacekeeping*, pp. 39-40. The Kansas City program was terminated in 1976. *Deadly Force*, p. 99.

[71] *Peacekeeping*, p. 6.

[72] *Peacekeeping*, p. 25.

whose job was to identify all violence prone officers in the Oakland police department and work with these officers toward changing their behavior. Individual officers were referred to the panel either by thei superiors or on the basis of having been involved in a pre-determined number of violent incidents.[73] The panel consisted entirely of fellow police officers, including members who themselves had earlier been referred for involvement in an excessive number of violent incidents with civilians. Toch believed that those officers who had successfully curbed their own tendencies to respond to civilians with excessive force would serve as successful role models.[74]

The peer review panel which was established in Oakland, California has reportedly been successful in reducing the number of violent confrontations between police and civilians.[75] At least part of the success is reportedly due to the timing and purpose of the panel, i.e, to assist the officer change his or her own physically aggressive behavior before punishment becomes necessary.

Neither of the Twin Cities has implemented a peer review panel to assist officers who appear to be having difficulty controlling their aggression. Neither department believes that excessive use of force by police officers occurs with sufficient frequency to require special attention.[76]

Resolving Civilian-Police Disputes

Office of Ombudsman

The Ombudsman concept has its roots in European history.[77] From its official beginnings in Sweden in the eighteenth century,[78] ombudsmen have subsequently appeared in a number of countries and in several of the States and cities within the United States.[79] Minnesota has established a quasiombudsman through he executive branch to handle complaints only from prisoners concerning the conditions of the confinement.[80]

An ombudsman serves an appellate function.[81] The office of ombudsman does not replace internal administrative controls but rather supplements them by providing an external source of review of agency actions. Experts agree that to be effective, the ombudsman must be independent of the executive branch, impartial in government, universally accessible by citizens, and possessing the power to recommend corrective action and publicize his or her findings.[82] The ombudsman does not ordinarily possess independent powers to seek judicial or administrative enforcemet of his or her recommendations.[83] Rather, the function of the ombudsman is to investigate complaints of administrative abuse, resolve grievances, improve the performance of public officials, and aid elected representatives to oversee the conduct of executive agencies.[84]

A number of organizations which have studied the relationship between administrative agencies (such as police departments) and persons affected by administrative actions have concluded that an office of ombudsman is a preferred system of external review. For example, the American Bar Association recommended that State and local governments establish ombudsmen "authroized to inquire into administrative action and to make public criticism."[85] The 1975 Ward Report concluded that the external mechanism to review police conduct should be established and recommended that the office of ombudsman be established by the Minneapolis City Council to receive "complaints from citizens pertaining to all municipal departments."[86] The Ward Report also concluded that the ombudsman is superior to civilian review boards because "it is the mechanism which is most likely to complement rather than clash with police rulemaking and that of all the available forms of review it is the one which is most compatible with he concept of agency responsibility for acts of individual misconduct."[87]

[73] *Peacekeeping*, p. 38.
[74] Ibid.
[75] *Peacekeeping*, p. 40; *Deadly Force*, p. 98.
[76] Donald R. Dwyer, former Chief of Police, Minneapolis Police Department, Minneapolis Transcript, pp. 629-30; Rowen Interview; *See also*, Mayor George Latimer, St. Paul, Minnesota, St. Paul Transcript, p. 718.
[77] Stanley V. Anderson, *Ombudsman Papers: American Experience and Proposals* (Berkeley, Calif.: Institute of Government Studies, 1969) (hereafter cited as *Ombudsman Papers)*, p. 2.
[78] Frank Stacey, *Ombudsmen Compared* (Oxford, G.B.: Clarendon Press, 1978) (hereafter cited as *Ombudsmen Compared)*, p. 1.
[79] Kent M. Weeks, *Ombudsmen Around the World: A Comparative Chart* (Nashville, Tenn,: U. of Calif. 1978).
[80] Minn. Stat. §§241.41—241.45 (1980).
[81] *Police and the Community*, pp. 349, 375; *Free Society*, p. 178.
[82] *See e.g., Ombudsman Papers*, p.3.
[83] The Swedish Ombudsman who may prosecute or institute disciplinary proceedings is an exception to this general rule. *Ombudsmen Compared*, p. 4.
[84] *Ombudsman Papers*, p. 3.
[85] American Bar Association, *Section of Administrative Law Recommendation No. 1 and Report No. 1 of the Section of Administrative Law on the Establishment of an Ombudsman* (1969), p. 250.
[86] p. 6
[87] pp. 6-7.

The recommendation of the Ward Report that an office of ombudsman be established in Minneapolis has not been implemented. However, in discussing the ombudsman concept, the former Minneapolis Chief of Police, Donald R. Dwyer, indicated that he would support this form of external review if the office had the power and responsibility to monitor all city departments, not merely the police department, and if the choice of ombudsman was totally apolitical.[88]

The Mayor of St. Paul, George Latimer, has stated that establishing an office of ombudsman in St. Paul is unnecessary. According to Latimer, such external review would not be as effective as the current St. Paul practice which utilizes "an aggressive complaint and information office with a City Council and Mayor that supports aggressive inventigation of a whole range of complaints."[89] Latimer has concluded that an ombudsman "which is removed and is of necessity in a rather ivory tower setting in which there will be a case-by-case resolution at best" would be ineffective.[90]

Arbitration

Although arbitration and its conceptual sister mediation[91] have been used extensively to resolve disputes in a variety of problem areas such as landlord-tenant, minor criminal matters between defendants and victims, labor disputes,and grievances in prisons, they have not been utilized in resolving civilian-police disputes.[92] Arbitration and mediation of such disputes could, however, be utilized to supplement the activity of internal affaris units.[93] Arbitration involves a neutral decision-maker at appellate level.[94]

The arbitrator evaluates the respective positions of the disputants together with the underlying facts and decides what action is appropriate.[95] In voluntary as opposed to binding arbitration, his or her decision is persuasive but not binding on the parties.[96] The mediator, on the other hand, is a harmonizer who assists the parties reconcile their differences through recognition of common interests.[97] Thus, an individual would continue to file a complaint of police misconduct with IAU which would investigate the facts and transmit findings to the police chief for action. Only if the complainant were dissatisfied with the outcome of the internal process would the matter be referred to an arbitrator or mediator. At the present time, an officer dissatisfied with a disciplinary decision of the police chief may appeal to his or her Civil Service Commission before being forced to seek judical remedies.[98] Disgruntled civilians have no similar administrative appellate route. Arbitration or mediation would fill that gap.

The purposes of arbitration and mediation differ from those of an internal affairs unit in that the former aims to resolve the underlying grievance whereas the IAU has a distinct function.[99] For many civilians, restitution of demaged property or payment of medical bills for injury resulting from unnecessary force may be far more important than whether the officer was disciplined for misconduct.

The Community Relations Service (CRS) of the Department of Justice has served as mediator in a number of cities including Minneapolis on issues of community-wide concern.[100] However, CRS does not ordinarily become involved in mediating individual disputes.[101] The American Arbitration Association (AAA), a private non-profit organization founded in 1926 to foster voluntary conflict resolution does assist in resolving individual conflicts.[102] The Association trains mediators and arbitrators and has been involved in a variety of programs to increase opportunities ot reconcile disputants before recourse to judicial or administrative enforcement is necessary.[103]

The AAA is willing to become involved in an arbitration or mediation program in the Twin Cities, in particular to train a group of experts in regard to

[88] Minneapolis Transcript, p. 657.
[89] St. Paul Transcript, p. 759.
[90] Ibid., p. 760.
[91] Binding arbitration imposes a decision on the parties. In voluntary arbitration, the parties may accept or reject the arbitrator's decision. Both binding and voluntary arbitration involve a hearing with the formal presentation of evidence. Charles Bridge, Regional Director, Chicago, Illinois, American Arbitration Association interview in Chicago, Illinois, Oct. 29, 1979 (hereafter cited as Bridge Interview); American Arbitration Association, "Commercial Arbitration Rules" (New York: 1979).
[92] Bridge Interview.
[93] Minnesota has adopted the Uniform Arbitration Act. Minn. Stat. §§ 572.08-572.30 (1980).
[94] Bridge Interview.
[95] Ibid.
[96] Ibid. *See* discussion fn. 913
[97] Bridge Interview.
[98] Brian Isaacson, Personnel Director, City of Minneapolis; Minneapolis Transcript, pp. 438-39; Eleanor Rountry, Personnel Office, Civil Service Commission, City of St. Paul, St. Paul Transcript, p. 325.
[99] *Minneapolis Police Manual* §§4-400—4-411; *St. Paul Police Manual,* §§230.00—230.05; Bridge Interview.
[100] Richard A. Salem, Midwest Regional Director, Community Relations Service, Department of Justice letter to Clark G. Roberts, Regional Director, MWRO, U.S., Commission on Civil Rights, Nov. 20, 1979.
[101] Ibid.
[102] American Arbitration Association, "Your Dispute Resolution Forum" (New York, undated).
[103] Bridge Interview.

resolving civilian-police disputes, if it received the support of the police departments of those cities.[104] The Federal Law Enforcement Assistance Administration has stated that it has the authority to fund a pilot arbitration or mediation program.[105] The AAA is also willing to teach police officers at both the initial and in-service levels the techniques of mediation.[106] According to Gerald Bridgeman, President of the Minneapolis Police Officers Federation, most police departments including his own have spent too much time emphasizing force and not enough teaching techniques of persuasion.[107] The Regional Director of the AAA, Chicago, Illinois, Charles Bridge, has stated that training in mediation techniques will improve officers' ability to handle potentially explosive situations effectively without resorting to force.[108]

This chapter has reviewed several current issues in policing and the responses of the Twin Cities Police departments to those issues. The following chapter presents recommendations for limiting the use of force by police officers, ensuring the equality of police services and law enforcement practices throughtout the Twin Cities, increasing the representation of minorities and women on the Minneapolis and St. Paul police forces, and expanding public participation in the development and reveiw of police division policy and procedures.

[104] Robert Coulson, President, American Arbitration Association, telephone interview Nov. 9, 1979; Bridge Interview.

[105] David Tevelin, Attorney Advisor, Office of General Counsel, Law Enforcement Assistance Administration, telephone interview Nov. 14, 1979; *See also*, Justice System Improvement Act of 1979, Pub. L. No. 96-157, §§202, (c) 93 Stat. 1167. However, LEAA is currently being phased out and no further projects are scheduled for funding. Wilbur Brantley, Director, Office of Civil Rights Compliance, LEAA, telephone interview, Aug. 25,1980.

[106] Bridge Interview.

[107] Minneapolis Transcript, p. 231.

[108] Bridge Interview.

Chapter 10

Findings and Recommendations

The present study of the Minneapolis and St. Paul police departments was undertaken by the Minnesota Advisory Committee after receiving a steady stream of complaints about police practices in the Twin Cities. These complaints originated principally from residents of minority and poor neighborhoods. The complaints alleged that some officers were misusing force against civilians and that these abuses when reported to the respective police departments were being tacitly condoned by lack of official action. In addition, the Committee received a number of complaints that minority and poor neighborhoods were often underprotected against criminal activity by the police. In short, the complainants alleged that their communities were "underprotected and overcontrolled."

In response to the urging of a number of individuals and community groups in the Twin Cities, the Minnesota Advisory Committee launched an investigation of police practices in Minneapolis and St. Paul. The Committee reviewed official policy-making and training procedures, as well as the experiences and perceptions of community residents and police personnel, including administrators, supervisors, and officers. The Committee held two-day, fact-finding meetings in both Minneapolis and St. Paul at which knowledgeable persons presented facts and opinions concerning problems in the operation of the two police departments and ideas for solving those problems. In addition, the Committee analyzed a mountain of relevant data submitted by the Twin Cities' police department and other local, state, and Federal agencies.

Specifically, the Committee evaluated use of force policies and practices, delivery of police services, and the employment of minorities and females by Minneapolis and St. Paul police departments. The most significant problem which the Committee identified at the local level appears to be the lack of community input into the establishment of departmental policy and in the review of police practices. The latter is due in large part to the unavailability of essential data to persons outside the Twin Cities' police departments which are essential to adequate monitoring activities. Thus, there is currently no satisfactory answer to the question "who polices the police" in Minneapolis and St. Paul.

In addition to reviewing departmental policies and practices, the Committee also evaluated the oversight of local, county, state and Federal agencies charged with various responsibilities to ensure high quality police performance. While deficiencies were certainly found, the Committee also concluded that Minnesota has recently enacted some exceptionally progressive legislation which hopefully will ensure well-qualified police personnel and provide external control of police discretion and external sanctions for abuses of police authority.

The following section sets forth the specific findings made by the Minnesota Advisory Committee for each of the Twin Cities' police departments. Recommendations to solve the problems identified are also presented. Although the initial phase of the Committee's work has now been completed, the Committee will continue to monitor the Minneapolis and St. Paul police departments and evaluate the

impact of changes currently being proposed and implemented.

Findings

Problem: Police v. the Community

Minneapolis

Minority citizens in Minneapolis distrust the police and believe that their communities suffer greater abuse at the hands of the police than their white counterparts.

St. Paul

Tensions betweeen members of minority communities and the police persist and, as in Minneapolis, minorities in St. Paul perceive that the St. Paul Police Department discriminates against members of their communities, particularly the Hispanic community. One consequence is a high level of distrust in minority communities of St. Paul Police officers.

Use of Force

Minneapolis

1. The Minneapolis Police Department does not adequately prepare its officers to use persuasive techniques to achieve civilian cooperation with immediate law enforcement goals.
2. In comparison to professionally mature officers, younger and inexperienced officers are more likely to use force against civilians.
3. The Minneapolis Police Department use of deadly force policy conforms with state law.
4. Although Minneapolis police officers rarely use deadly force against civilians, the number of shots fired doubled in 1979 over the number fired in 1978, an increase which is cause for alarm.

St. Paul

1. The St. Paul Police Department Manual requires police officers to use force to control situations only after other reasonable means have been attempted or would clearly be ineffective.
2. The St. Paul Police Academy provides inadequate training to recruits and to experienced officers in techniques for controlling situations other than through force.
3. In comparison to professionaly mature officers, younger and inexperienced officers are more likely to use force against civilians.
4. Many citizens have complained that St. Paul police officers abuse their authority through verbal and physical harassment.
5. The St. Paul Police Department use of deadly force policy conforms to state law.
6. The number of shots fired by St. Paul police officers has been steadily diminishing over the last 10 years.

Accountability

Minneapolis

1. The Minneapolis Police Department's Internal Affairs Unit does not adequately respond to citizens' complaints against Minneapolis police officers.
2. Minority citizens in Minneapolis generally have little confidence in the Minneapolis Police Department's Internal Affairs Unit.

St. Paul

Many minority citizens in St. Paul have little confidence that complaints against police officers in the St. Paul Police Department will be fairly and effectively dealt with by the Internal Affairs Unit.

Employment in the Twin Cities Police Departments

Minneapolis

1. The Minneapolis Police Department personnel records indicate that there is a serious underutilization of women and minorities.
2. The majority of women and minority sworn officers in the Minneapolis Police Department are at the entry level of police officer. Given the concentration of minorities and women at the officer's level and the present number of ranking white administrators, it will be a considerable time before a substantial number of minorities and women will obtain high ranking administrative positions.
3. Although the Minneapolis Civil Service Commission hired an outside consultant to validate its police tests, the Commission decided to complete the validation study itself because of time constraints.
4. The Minnesota Peace Officers Standards and Training Board (POST Board) does not intend to validate the licensing examination because it has concluded the test does not fall under the Equal Employment Opportunity Commission (EEOC)

Uniform Guidelines since the test is not a selection tool. The EEOC General Counsel, however, has indicated that indeed the POST Board licensing examination does fall under the EEOC Uniform Guidelines and must be validated.

5. The recent change in the tenure of the Chief of Police to three years instead of two is a positive step toward ameliorating political influence in the appointment process and, is intended to reduce the disruptive internal instability which has been characteristic of the department.

St. Paul

1. Employment figures of entry-level personnel in the St. Paul Police Department today do not indicate a serious underrepresentation of minorities. Women, however, are seriously underrepresented. Above the entry rank of police officer, minorities and women are both significantly underrepresented.

2. Although the St. Paul Civil Service Commission has indicated that examinations for police officers have been validated, there is still a disproportionately high number of women applicants who fail the examination.

Distribution of Police Services

General Findings

Members of black and Hispanic communities perceive and have experienced prejudicial attitudes and discriminatory treatment from both the St. Paul and Minneapolis Police Departments. Further, blacks in Minneapolis have complained to the police and, on occasion, to the Mayor about the police over-patrolling their neighborhoods as well as not responding quickly to calls for service. Some black citizens are afraid to call the police to request services. Because the Minneapolis Police Department does not monitor police response time to calls for service, the department has no way of knowing whether or not citizens have valid complaints. The fact that several complaints have been made regarding slow response and lack of service indicates that a problem at least in police-community relations exists in both of the Twin Cities.

Minneapolis

The Minneapolis Police Department assigns few minority police officers to the areas with a high concentration of minority citizens.

St. Paul

The St. Paul Police Department has a small number of Hispanic police officers assigned to areas with a high concentration of Hispanic residents. The outstanding problem expressed by some members of the community was that a communications problem exists in the area because of police officers' lack of familiarity with cultural and language differences.

Training

General Findings

1. Upper level administrators in both of the Twin Cities' police departments believe that formal training in cultural diversity is unimportant to the development of good police officers.

2. The training of entry level officers in both departments exceeds the minimum standards established by the Minnesota POST Board.

Minneapolis

The Minneapolis Police Department has on occasion promoted individual police officers into supervisory positions without providing adequate training in supervision.

External Oversight and Control of the Police

General Findings

Both the Minneapolis and St. Paul City Councils have the power to investigate the affairs of their respective cities including the conduct of any department or agency, City Council involvement in police matters, however, has generally been limited to approval of the budget and appointment of the chief of police.

Minneapolis

Department of Civil Rights and Commission on Civil Rights

The Minneapolis Department of Civil Rights and Commission on Civil Rights do not investigate or take complaints from citizens on police abuse or misconduct.

City Attorney's Office

1. The Minneapolis city attorney serves a number of conflicting roles in relation to police officers accused of misconduct.

2. In the last five years, no Minneapolis police officer has been found guilty as a result of criminal prosecution by the city attorney.

3. Of the 170 cases of alleged police misconduct filed in the State and Federal courts by civilians against Minneapolis police officers in the last five years, five were settled and three resulted in judgments against the officers and the city.

4. The city of Minneapolis, which pays judgments against officers only when the city attorney determines the conduct occurred in the scope of the officer's employment and was not willful or wanton, has never refused to pay a judgment arising from alleged police misconduct.

5. The city attorney's office does not participate on any committee to review police shootings or other use of force nor does it independently review or investigate such incidents.

6. There is no continuing in-house legal counsel available to the Minneapolis Police Department.

County Attorney: Hennepin County

1. The Hennepin County attorney is responsible for prosecuting all gross misdemeanors and felonies occurring in Minneapolis including those committed by police officers on duty. Of the six cases of police misconduct submitted to the Grand Jury in 1979, none was returned with an indictment.

2. The county attorney does not participate in any committee to review police shootings or other use of force by police personnel.

3. According to the Hennepin County attorney, some system of external review of police practices is essential because police officers often fail to report or provide information about instances of misconduct of fellow officers of which they are uniquely aware, and they often refuse to cooperate in investigating their fellow officers. He recommends an Office of Ombudsman be established to review the practices of all municipal departments including the police department.

St. Paul

Human Rights Department

St. Paul Human Rights Department investigations of police brutality in the past have not received the cooperation of the St. Paul Police Department. Even though the department has the authority to conduct investigations in the area of police brutality, lack of police cooperation has made it difficult for the agency to conduct in-depth investigations of several complaints. After investigating reports of altercations between Hispanic civilians and the police, the Department made several good recommendations. Those recommendations have never been implemented.

City Attorney's Office

1. Like his Minneapolis counterpart, the St. Paul city attorney serves a number of conflicting roles in regard to the police department.

2. No case of alleged misconduct filed by a civilian in either State or Federal court has ever resulted in a judgment against an officer or the city.

3. One case of employment discrimination filed in 1972 was settled when the city agreed to and did implement an affirmative action program for hiring minorities on the St. Paul police force.

4. The St. Paul city attorney does not participate in any committee to review police shootings or other use of force nor does it independently review or investigate such incidents. Instead, selected cases are referred by the Internal Affairs Unit of the police department for review of possible misdemeanor criminal liability.

5. The city attorney provides only limited input into the training of St. Paul police officers.

6. The city attorney serves as legal advisory but not in-house counsel to the St. Paul Police Department.

County Attorney: Ramsey County

1. The Ramsey County attorney is responsible for prosecuting all gross misdemeanors and felonies occuring in St. Paul including those committed by police officers while on duty. Cases of alleged police misconduct are referred from the Internal Affairs Unit. Both of the Officers against whom criminal misconduct was alleged in the period 1976 and 1979, were acquited after a jury trial.

2. The county attorney does not participate on any committee to review use of deadly force by police officers or otherwise review police practices.

3. The county attorney provides extensive legal initial and in-service training for police officers regarding minimum legal standards for police conduct.

4. The Ramsey County attorney believes the Grand Jury serves as a competent system of external civilian review of alleged police misconduct.

State Involvement

Peace Officers Standards and Training Board

1. The Minnesota Peace Officers Standards and Training (POST) Board establishes minimum standards of training and conduct for all Minnesota police officers. The Board licenses local police

officers, has the power to revoke or refuse to renew the licenses of local police officers for reasons of misconduct but has no power to impose other sanctions and has established a three-track system for becoming a licensed police officer. Each track requires academic and skills training beyond high school and one requires two years of college.

2. In regard to the regulation of police conduct, the Board has no authority over police departments as such but only over individual police officers. Therefore, the Board is unable, for example, to require police departments to implement Internal Affairs Units, establish uniform procedures for such units, or develop a graduated system of administrative sanctions for proven misconduct by police personnel.

3. The Board has no independent investigation unit but instead relies on the investigations of local police agencies to determine the facts of alleged misconduct by police personnel.

Minnesota Department of Human Rights

1. The Minnesota Department of Human Rights is mandated to investigate complaints of discrimination based upon race, sex, color, and national origin as well as creed, religion, disability, or status with regard to public assistance in employment and public services, and, where necessary, to enforce compliance with the Minnesota Human Rights Act. The Department has jurisdiction over complaints of abuse of force by police officers where the complaint alleges that the basis of such abuse was the complainant's membership in one of the foregoing protected categories, but it has no jurisdiction over complaints of abuse of force by police officers where cultural background or economic class is alleged to be the basis of abuse. Further, the Department has jurisdiction over complaints of discrimination in hiring and terms and conditions of employment where the basic of the alleged discrimination is membership in one of the protected categories.

2. The Department does not keep a record of complaints filed with it over which it has no jurisdiction.

3. Since 1972, the Department has received 56 complaints from civilians against Minneapolis police officers most of which have alleged that police officers have used excessive force. One of the 11 cases which remain open, the Department has made a finding of probable cause in five cases while six are still at the investigatory stage.

4. The Department is denied access to Internal Affairs Unit files by the Minneapolis Police Department which severely hampers its ability to investigate the facts underlying complaints of police misconduct.

5. Since 1969, the Department has received 26 complaints of discrimination filed by civilians against St. Paul police officers most of which have alleged that police officers have used unnecessary force against the complainant. Probable cause was found in only one case which was settled upon the officer's apology to the complainant.

6. The St. Paul Police Department has refused to disclose the contents of its files to the Department because the St. Paul city attorney has interpreted the Minnesota Governmental Data Act to preclude release of any information concerning individual police officers and their conduct except the nature of the complaint and final disposition which is released only to the complainant. This restrictive policy severely hampers the investigative work of the Department. The St. Paul Police Department, through the city attorney, has threatened to abolish its Internal Affairs Unit if it is required to release its internal investigation files.

7. The Department believes that lack of access to the internal investigation files of both the Minneapolis and St. Paul Police Departments has greatly hampered its ability to fairly and fully evaluate the factual bases of complaints of misconduct which have been filed by civilians against Twin Cities' police personnel. The municipal court of Ramsey County has recently interpreted the Minnesota Governmental Data Act to require the St. Paul Police Department to release the contents of any Internal Affairs Unit file where a final disposition has been made.

Federal Involvement

1. The Minneapolis and St. Paul Police Departments receive substantial monies from the Federal government through the Law Enforcement Assistance Administration (LEAA), the office of Revenue Sharing (ORS), and the Department of Labor (DOL), under the Comprehensive Employment and Training Act (CETA). In 1979, the Minneapolis Police Department received a total of $3 million from the Federal government to support its $25.38 million law enforcement budget. In 1979, the St. Paul Police Department received $3 million from

the Federal government to support its $14.57 million law enforcement budget.

2. All Federal funding agencies are responsible for ensuring that the ultimate beneficiaries of their funds are not subjected to unlawful discrimination. Categories of persons protected by these statutes are not uniform. That is:

- Title VI prohibits discrimination based upon race, color, or national origin, sex, or religion;
- LEAA prohibits discrimination based upon race, color, national origin, sex, religion, age, or handicap;
- ORS prohibits discrimination based upon race, color, national origin, sex, religion, age, or handicap;
- CETA prohibts discrimination based upon race, color, national origin, sex, religion, age, handicap, citizenship, or political affiliation.

3. The lack of uniformity among classifications of persons protected against discrimination by recipients of Federal funds has no rational basis and creates unfairness for ultimate beneficiaries as well as problems in coordinating enforcement responsibilities.

4. None of the governing statutes of the Federal agencies providing funds to the Twin Cities' police departments protects ultimate beneficiaries from discrimination based upon economic class or cultural background.

5. The excessive use of force by police against a civilian and their failure to provide services because of the civilian's membership in one of the protected classification constitutes unlawful discrimination. Federal funding agencies are responsible for ensuring that such unlawful discrimination does not occur. However, few civilians or police officers are aware that they may file complaints with these agencies. In addition, unless the complaints allege a "pattern or practice" of abuse, Federal agencies are not empowered to require that recipients modify their policies and practices as a condition of continued funding. As a result, these agencies have decided to refer most complaints of unlawful discrimination to appropriate enforcement agencies which are the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC).

6. DOJ is severely limited in its ability to prosecute police officers accused of excessive physical force against civilians by a requirement that the officer must have specifically intended to deprive the civilian of a constitutional or other federally protected right by acting outside the limits of State law governing use of force by police officers. As a result, no police officer in either of the Twin Cities' police departments has been criminally prosecuted by DOJ for abuse of civilians.

7. No Federal agency is currently monitoring nor intends to monitor either of the Twin Cities' police departments to ensure that police services are being even-handedly delivered to all segments of the Minneapolis and St. Paul communities.

8. Since 1976, the EEOC has received two complaints of sex-based employment discrimination against the Minneapolis Police Department, and two race-based and one sex-based complaint against the St. Paul Police Department. In none of the cases has the EEOC made a finding of probable cause. Further, the EEOC did not find probable cause even in a 1972 case which the St. Paul Police Department ultimately agreed to an affirmative action plan for recruiting minorities after suit was filed in Federal court.

9. One percent of the sworn positions in the Minneapolis Police Department are held by females. Two percent of the sworn positions in the St. Paul Police Department are held by women. Nonetheless:

- LEAA reviewed the Equal Employment Opportunity Program (EEOP) submitted by Minneapolis and determined that it complies with civil rights requirements and has not required St. Paul to submit an EEOP;
- ORS which is responsible for investigating recipients where there is a significant disparity between the actual and available workforce has not and does not intend to review the practices of the Twin Cities' police departments;
- The Employment and Training Administration (ETA) which is responsible for reviewing compliance of grantees with CETA nondiscrimination requirements has determined that both the Twin Cities' police departments are in compliance with CETA requirements.

Development and Review of Police Policies and Practices

1. Entry level police personnel, those with the least experience, are assigned to patrol duty where they interact more often with civilians under stressful conditions than do experienced personnel who have been promoted to supervisory and administrative jobs. As a result, firm and clear administrative

guidelines are needed to limit the shape and discretion of these entry-level officers to ensure even-handed law enforcement and service delivery. Both the Minneapolis and St. Paul Police Departments encourage officers, including entry level personnel, to use flexibility in methods of enforcement. They are encourgaed to rely on their individual experience, training, and judgment in responding to varying law enforcement needs but are provided no express guidance through rules and regulations to prevent discriminatory and inconsistent policies and practices from developing.

2. Members of racial and cultural minorities interact most frequently with police in adverse situations. Police in both of the Twin Cities are inadequately trained and experienced to resolve and control those situations through persuasive as opposed to coercive techniques.

3. There is inadequate civilian input into the development, review, and amendment of policies, procedures, and practices in both of the Twin Cities' police departments.

4. Civilians who are dissatisfied with the results of action taken on their complaints by the Internal Affairs Units of both the Twin Cities' police departments have no recourse to an administrative appeal.

Recommendations

To the City Councils

1. The City Councils of Minneapolis and St. Paul should establish formal administrative rulemaking procedures for their respective Police Departments which require public input through notice and comment provisions.

2. The City Council's of Minneapolis and St. Paul should establish a mechanism in their respective cities for mediating or arbitrating civilian-police disputes which permits civilians to obtain appropriate restitution and damage to self or property unnecessarily inflicted by police personnel.

3. The City Council's of Minneapolis and St. Paul should each establish an Office of Ombudsman to investigate complaints that any city department or employee violated established policies and practices and publish recommendations for appropriate remedial action.

4. The Minneapolis City Council should amend the Minneapolis Civil Rights Ordinance to empower its civil rights agencies to investigate citizens complaints of police misconduct including brutality.

To the Police Departments

Minneapolis

1. Neighborhood police advisory councils should be established throughout Minneapolis to assure community participation in establishing law enforcement priorities and reviewing the effectiveness of current practices. The neighborhood police councils should also provide a forum for discussion and coordination of various community actions required to improve police-community relations. The councils should provide for open and direct channels of communication between the community and the Minneapolis Police Department. The Chief of Police and/or his or her delegate should regularly attend each of these meetings.

2. The Internal Affairs Unit should regularly monitor the conduct of each police officer, including charges of resisting arrest or disorderly conduct filed by the officer against civilians, disciplinary complaints filed against him or her regardless of disposition, and shots fired.

3. The Minneapolis Police Department should establish and implement a number of mechanisms simultaneously for assisting officers improve their conflict resolution skills, including 1) a peer review and counseling program to assist officers with emotional and behavioral problems before disciplinary sanctions must be imposed, 2) an amendment to the Police Manual specifically requiring that persuasive techniques for controlling situations be utilized and exhausted before resorting to force, 3) a restriction of the use of deadly force to situations where it is necessary to protect the officer or another from imminent death or great bodily harm, and 4) extensive initial and in-service training in dispute resolution, including techniques of arbitration and mediation.

4. The Minneapolis Police Manual of Rules and Regulations should be readily available to the public as an appendix to the Municipal Administrative Code.

5. The Minneapolis Police Department should assign more minority police officers to those areas which have a high concentration of minorities to promote better community relationships in those areas.

6. The Minneapolis Police Department should develop a Human Relations training program that would familiarize new recruits and other police

personnel with the cultural and ethnic diversities of civilians residing in their service area.

7. The Minneapolis Police Department should require that all personnel complete a training course that would adequately prepare them for management and supervisory responsibilities before assuming a supervisory position.

8. The Minneapolis Police Department, the city Affirmative Action Officer, the Civil Service Commission, and the Police Federation should jointly develop a voluntary Affirmative Action plan that would facilitate the recruitment and selection of minorities and women into the department and their promotion to administrative positions. Such a plan should continue until the department is representative of the city's available labor force.

St. Paul

1. The St. Paul Police Department should take an active role in ensuring the continuing vitality of the neighborhood advisory committees which were instituted as part of the team police project. These Advisory Councils should provide a forum for discussion and coordinate various actions required to improve police-community relations.

2. St. Paul police officers should receieve extensive initial and in-service training in dispute resolution, including techniques of arbitration and mediation.

3. The St. Paul Police Department should institute a peer review panel and an in-house counseling program to assist officers with emotional and behavioral problems before disciplinary sanctions must be imposed.

4. The St. Paul Police Department should amend its rules and regulations to restrict the use of deadly force by its authorized personnel to situations where it is necessary to protect the officer or another from imminent death or great bodily harm.

5. The St. Paul Civil Service Commission, the St. Paul Police Department, the Police Federation, and the City Administration should develop an Affirmative Action plan that will assure the expeditious promotion of women and minorities into administrative positions and women into entry level positions to resolve the problems of underrepresentation in the St. Paul Police Department.

6. The St. Paul Police Department should assign more Hispanic officers to the predominantly Hispanic westside area.

7. The St. Paul Police Academy should include a Human Relations course in its training program that would familiarize the police officers with the cultural and ethnic diversities of citizens in their service areas.

8. The St. Paul Police Department should cooperate fully with the investigations of the St. Paul Human Rights Department and work together to resolve any future police-community conflict that may arise.

To the Civil Service Commissions

Minneapolis

The Minneapolis Civil Service Commission should hire an outside consultant to conduct a validation study of the present police examination.

St. Paul

The St. Paul Civil Service Commission should examine the current police officers' selection examination to determine why so many women are failing it and ensure that any such selection test measures essential policing job skills.

To the City Solicitors and County Prosecutors

1. The Minneapolis City Attorney along with the Hennepin County Attorney, the U.S. Attorney, a representative of the Police Department, and a member of the City Council should immediately form a committee to review all police shootings and recommend appropriate action to the Police Chief and take such action as is proper under the jurisdiction of each official.

2. The St. Paul city attorney along with the Ramsey County attorney, the U.S. attorney, a representative of the Police Department, and a member of the City Council should immediately form a committee to review all police shootings and recommend appropriate action to the Police Chief and take such action as is proper under the jurisdiction of each official.

To the Minnesota Legislature

1. The Minnesota Legislature should enact legislation empowering the Peace Office Standards and Training Board to require municipal police departments to establish and implement uniform standards and procedures for the internal review of police conduct.

2. The Minnesota Legislature should enact legislation granting the Minnesota Department of Human Rights access to the relevant internal affairs files of municipal police departments, including investigatory reports, where complaints of police abuse and failure to provide service have been filed with the department.

3. The Minnesota Legislature should amend the Human Rights Act to prohibit discrimination in public services and employment based upon cultural background and economic class.

4. The Minnesota Legislature should enact legislation establishing an Office of Ombudsman to review and investigate complaints that State and municipal agencies, including the Minneapolis and St. Paul Police Departments, are not complying with established policies and procedures and to recommend publicly modifications of those polices and procedures.

5. The Minnesota Legislature should amend its peace officer use of deadly force statute to restrict such force to situations when it is necessary to protect the officer or another from imminent death or great bodily harm.

To the Minnesota Peace Officers Standard and Training (POST) Board

The POST Board should validate its licensing examination to assure that the test does not adversely impact on minorities and women for reasons unrelated to essential policing job skills.

To the Congress

Congress should establish a uniform classification of protected categories under Federal funding statutes except where an exception is clearly justified by the purposes of the legislation.

2. Congress should add cultural background and economic class to the list of protected categories under Federal funding statutes.

3. Congress should enact legislation coordinating the enforcement responsibilities and procedures of various Federal funding agencies to ensure compliance of funds recipients with nondiscrimination provisions.

To Federal Funding Agencies

1. The Federal funding agencies in cooperation with the DOJ should immediately develop a uniform system and set of standards and procedures for ensuring compliance with nondiscrimination provisions.

2. Each of the Federal funding agencies—ORS, LEAA, CETA, should immediately review the policies and practices of the Minneapolis and St. Paul Police Departments to determine whether these departments are discriminating against females and minorities in hiring or promotion.