

POLICE-COMMUNITY RELATIONS IN MONTGOMERY, ALABAMA

**A report prepared by the Alabama Advisory
Committee to the U.S. Commission of Civil Rights**

ATTRIBUTION:

This report has been prepared by the Alabama State Advisory Committee to the United States Commission on Civil Rights for submission to the Commission. As such, its contents, and the findings and recommendations to be published as a supplement to this report, are attributable only to the State Advisory Committee.

RIGHT OF RESPONSE:

Prior to the publication of this report, the State Advisory Committee afforded to all individuals or organizations that might have been defamed, degraded, or incriminated by any material contained in the report, and to certain individuals whose views were expressed or described in the report, an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

The United States Commission on Civil Rights is an independent, bipartisan, fact-finding agency of the executive branch first established under the Civil Rights Act of 1957. On November 30, 1983, a new Commission was established under the Civil Rights Act of 1983 (P.L. 98-183). Although the Commission's duties and powers are the same under the Act of 1983 as those of the previous Commission, its membership changed from six to eight Commissioners, four of whom are appointed by the President and four by the Congress.

State Advisory Committees

The Commission's duties are:

To investigate sworn allegations that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, handicap, or national origin.

To study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of color, race, religion, sex, age, handicap, or national origin.

To appraise the laws and policies of the Federal government with respect to discrimination or equal protection of the laws under the Constitution because of color, race, religion, sex, age, handicap, or national origin.

To investigate sworn allegations that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination.

To submit reports to the President and to the Congress.

The Commission has 51 advisory committees—one for each state and the District of Columbia. Each is composed of citizens familiar with local and state civil rights issues. The members serve without compensation and assist the Commission with its fact-finding, investigative, and information dissemination functions.

Individual members of these committees are nominated by the Commissioners or the regional director of their area and voted upon at a regular meeting of the Commissioners. Their term of office is 2 years, but they can be reappointed.

LETTER OF TRANSMITTAL

Alabama Advisory Committee to the
U. S. Commission on Civil Rights

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J. Al Latham, Jr., Staff Director

Sirs and Mesdames:

The Alabama Advisory Committee submits this report, Police/Community Relations in Montgomery, as part of its responsibility to advise the Commission on civil rights matters within the state.

The report centers on city police policies and practices which impact upon police/community relations, as well as an overview of how Montgomery citizens, particularly the black community, have viewed their police department.

The Alabama Committee undertook this study in 1983 after it had received a number of complaints asserting discriminatory conduct on the part of Montgomery police officers. Staff and Committee members interviewed police and city officials and minority persons, leading up to a one-day factfinding meeting in Montgomery on September 26, 1983. A report with findings and recommendations was drafted by the Committee and submitted to the Commission in June 1985. A significant period of time elapsed during which the report did not reach the Commissioners. On May 23, 1986, I, on behalf of the Alabama Committee, requested Commissioner Francis Guess to have our report placed on the June 12, 1986 agenda of the Commissioners' meeting. Simultaneously, I sent the report with Findings and Recommendations to all the Commissioners. With the cooperation of Commissioner Guess and Chairman Clarence Pendleton, it was agreed that since the Montgomery report was not placed on the June agenda, it would be edited with the cooperation of Commission

staff for Commission approval at the July 1986 meeting. Meanwhile, the Alabama Committee would update the findings and recommendations for a subsequent supplement to the report.

Pursuant to the above agreement, the Alabama Committee presents the report herein. Pursuant to this agreement, the Alabama Committee has conducted additional interviews and will hold a public factfinding meeting on July 18, 1986 in Montgomery for the purpose of updating its findings and recommendations.

The Committee plans to submit its findings and recommendations to the Commission for immediate approval as a supplement to the report. In the meantime, we urge that at the July 1986 Commission meeting, the report herein be approved for publication as a 1983 report on Police/Community Relations in Montgomery with supplemental findings and recommendations.

Sincerely,

RODNEY MAX, Chair
Alabama Advisory Committee
to the U. S. Commission on Civil Rights

ALABAMA ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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* Committee chartered in July 1982 and responsible for 1983 report.

** Committee chartered in May 1985 and responsible for 1986 Findings and Recommendations.

*** Members who have served continuously from July 1982.

ACKNOWLEDGEMENTS

The Alabama Advisory Committee wishes to thank the staff of the Commission's Southern Regional Office in Atlanta for coordinating the study of police/community relations in Montgomery and preparing this report.

The study was the principal staff assignment of Courtney Siceloff, Civil Rights Analyst, and Clinton Fried, former Regional Attorney. Portia Raby and Emma Allen provided support throughout the study. Supervisory assistance was provided by Idalia Morales, Deputy Director. Staff worked under the guidance of Bobby D. Doctor, Regional Director.

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I. INTRODUCTION

Montgomery, Alabama's capital city, is located on the Alabama River in the central portion of the state at the northern edge of the "Black Belt," covering some 51 square miles. Incorporated in 1819, Montgomery became in 1861 the capital of the Confederacy, giving rise to its nickname "The Cradle of the Confederacy." 1/

The City of Montgomery is the county seat of Montgomery County which has a population of 197,038, of which 77,614, or 39.4 percent, are black. The city has a total population of 177,857 of which 69,660, or 39.2 percent, are black. 2/

The principal industries in the Montgomery area are machinery manufacturers, glass products, textile manufacturers, refrigeration equipment, furniture makers, food products and paper processors. 3/

The city has a mayor-council form of government which was implemented in 1975 pursuant to the Mayor-Council Act of 1973. 4/ The 9 council members are elected by district and serve a 4 year term. 5/ The president of the council, who is elected by council members, presides over council meetings. 6/ The council possesses all powers held by the city. 7/

The mayor, who also serves a 4 year term, is elected by a majority vote. As the designated head of the administrative branch of government, the mayor is not permitted to sit with the council or vote in its proceedings. The mayor is empowered to enforce all city laws and ordinances and is authorized to appoint, and where necessary, remove all officers and employees of the city with a few exceptions. The mayor is the designated head of all city departments. 8/

In January 1983, members of the Alabama State Advisory Committee (SAC) to the U. S. Commission on Civil Rights voted to conduct a study into the status of police/community relations in Montgomery. The decision to adopt this study was predicated in large measure on the alarming number of complaints received by SAC members alleging abusive and discriminatory conduct by members of the Montgomery Police Department (MPD). Significantly, the decision to undertake this task preceded a series of violent incidents, as outlined below, involving Montgomery police and black citizens.

- On February 27, 1983, two white plain clothes policemen became embroiled in a fight with 11 members of a black family who were in Montgomery to attend a funeral. The police officers had burst into a house where the family was residing while pursuing a 21 year old family member who, the police claim, was prowling outside. One officer was shot and both were beaten. Family members claimed they were beaten while held in police custody. 9/
- On April 9, 1983, a 22 year old black man was shot and wounded by a white officer in a case of apparent mistaken identity. 10/
- On May 21, 1983, an unarmed black man was shot to death by a black female officer after a struggle ensued between the victim and two police officers. 11/
- On June 1, 1983, a 62 year old black man, who earlier had threatened neighbors, was shot and killed by a white officer when he allegedly pointed a shotgun in a police officer's direction. 12/
- On September 9, 1983, a white police officer shot and killed an unarmed black burglary suspect in an elementary school because he saw the movement of a shadow and feared for his life. 13/

The Alabama Advisory Committee takes no position with respect to the appropriateness of the actions taken by the police officers in incidents complained of to Advisory Committee members, which ranged from allegations of lack of sensitivity in dealing with the public to allegations of outright acts of brutality. Yet, if these allegations even appear to adhere to a pattern of discriminatory practice, that in itself can have a deleterious impact on police/community relations and community life in general. Thus, the Alabama Advisory Committee chose to focus upon the perception of police /community relations in Montgomery and those police policies and practices which impact upon community perceptions.

To this end information has been gathered and interviews have been conducted with a myriad of Montgomery city and county officials, police department personnel, officials of civil

rights groups, and complainants. The Advisory Committee's inquiry culminated with a one-day open meeting which was held in Montgomery on September 26, 1983, at which time the Committee members heard from and questioned representative members of the abovementioned groups.

A draft of this report attributed statements to four individuals who had been privately interviewed by Advisory Committee members and/or staff. In a subsequent public forum or in letters forwarded by the Montgomery mayor's office to Commission staff, these individuals disputed statements previously attributed to them. This report reflects the modifications or deletions made to resolve these individuals' objections. Hereafter, sections of the report in which statements have been modified or deleted will be marked by three astericks (***) .

The Findings and Recommendations which were attached to the 1983 report have been replaced with updated Findings and Recommendations based on conditions as they exist in 1986. The Committee held interviews in June 1986, followed by an open meeting on July 18, 1986, to gather data. Participants in both the interviews and open meeting included city officials, representatives of biracial groups, business leaders, black professionals, as well as individuals who requested participation. Committee members then revised the Findings and Recommendations to reflect the current situation.

It is the hope of the members of the Advisory Committee that this report will serve as a catalyst to promote a shared goal of improvedPolice Community Relations in Montgomery.

Notes to Introduction

1. Montgomery and Metropolitan Area Telephone Directory, South Central Bell Telephone Company (1983).
2. U.S., Department of Commerce, Bureau of the Census, General Population Characteristic: Alabama, 1980 Census of Population, no. PC80-1 B2, pp. 70, 131.
3. Welcome to Montgomery, Montgomery Area Chamber of Commerce (not dated).
4. 1973 Ala. Acts No. 618.
5. 1973 Ala. Acts No. 618, Art. III, Sec. 3.01.
6. 1973 Ala. Acts No. 618, Art. III, Sec. 3.06.
7. 1973 Ala. Acts No. 618, Art. III, Sec. 3.07.
8. 1973 Ala. Acts No. 618, Art. IV.
9. The New York Times, March 16, 1983, p.8, The Advertiser (Montgomery) March 23, 1983, p. 1A, April 13, 1983, p. 1A, October 18, 1983, p. 1A; The Journal (Montgomery), February 28, 1983, p. 1A; March 3, 1983, p. 1A; The Journal and Advertiser (Montgomery) October 16, 1983, p. 1A.
10. The Advertiser (Montgomery), April 11, 1983, p. 1A.
11. The Advertiser (Montgomery), May 23, 1983, p. 1A.
12. The Advertiser (Montgomery), June 3, 1983, p. 1A.
13. The Journal and Advertiser (Montgomery), September 13, 1983. p. 1A.

II. PERCEPTIONS OF POLICE/COMMUNITY RELATIONS

Harmonious police/community relations require citizen support of the Montgomery Police Department (MPD). That cooperation can be obtained only where the community perceived the police force as working on its behalf.

There is no unanimity of opinion in Montgomery as to how its citizens view its police department. Although some would prefer to dichotomize opinion along racial lines, this practice only serves to deflect attention from its proper focus: police policies and practices.

What do Montgomery citizens think about their police department? To obtain an overview of perceptions which exist within the community the following excerpts from the Alabama Advisory Committee's open meeting are offered as illustrations:

Rev. Mark Waldo, Secretary of the Ministerial Union

But it seems to me that it is pretty obvious that the level of trust is quite low in the community. Whenever an incident takes place, people are acting out of mistrust.... 1/

Donald Watkins, former city council member and attorney

I think the attitude at the top sets the attitude among the ranking below. If the attitude at the top is; No matter what you do, I am going to be with you, and I will back you until somebody proves you wrong later on, then the men in the street also have that attitude. I'm going to do whatever I think is appropriate, and I can get away with, unless you can hem me up in a corner in Court or hem me up in some investigation by an administrative body....Everybody in the Police Department is not part of this little clique that is terrorizing and brutalizing black people. You got a little clique of people that is involved in that. But because of the image that they have projected, many blacks on the street, rank and file black citizens, don't make the fine point distinction that I seem to make to this body....2/

Ms. Katie Brown, a black Montgomery mother

They...the young ones [police officers] are completely radicals. They are way off. They don't have any respect, no manners.... They don't talk to animals that way.... You are made to feel like you are not a part of this city. 3/

Attorney Vanzetta Penn Durant

Much of the discussion, some of which is beginning to surface now, within the Police Department, is due to the fact that the Police Officers themselves are getting varying signals as to what is acceptable behavior and what is not acceptable. And if the officers are getting those signals, the communities that they guard can't help but get these signals. And that is a travesty to the whole community, not just the black. 4/

The perception in the low income black community, particularly among blacks who live in housing projects, is that the police officers who patrol their neighborhoods are there more as a militaristic overseer.... The black community does not take or does not regard the Police Department as a department for all people in the city.... 5/

Council member Joe Reed

To put it in simple form, Mayor Folmar perceives Montgomery as Fort Montgomery. He is the commanding general and the police is (sic) his army. He sees himself as the commanding chief. Black folks and working poor whites and that "liberal element," that is the enemy. 6/

Businessman Knox Kershaw

As far as the police and the community relations...where I live in town, it doesn't affect me at all.

I don't have any problems with the police Department....It is problems that result from just the the way it is. You know, it is just high crime areas in Montgomery....7/

Mary Weidler, Executive Director, ACLU

But, again...that some of the kinds of complaints that we have gotten, for example from housing projects are that police come in the middle of the night and they ride around and shine their spotlights in people's windows, or they just stop people on the street and say, come to the car.... You know what has happened to other people in your community. You are really very hesitant to do that in fear that you might get shot or something worse is going to happen to you. I really think that there is a climate of fear in certain black neighborhoods.... I think we have an extremely serious problem in this community. 8/

In addition to the excerpts outlined above, the following perceptions were shared in interviews with Advisory Committee members and staff:

Skip Haley, News Manager, WSFA-TV, commented that the overall community perception is that there is no serious problem other than problems that always exist between blacks and whites. However, he surmised that some encouragement of arrogance comes from the leadership whose first response is to defend. Haley felt that more optimism would be warranted if the police were aggressive in resolving departmental problems. 9/

Former City Council President Willie Peak, who is white, indicated that he believes there are instances of unprofessional conduct by the police officers that go unreported due to fear of retaliation by police or city administration. 10/

Hank Schmidt, Radio Station WBAM News Director, who identified himself as a police supporter, stated that he goes to most of the incidents where policemen are called and has not personally witnessed any gross cases of excessive force by the police. He also indicated that he had

not heard the word "nigger" used by either a black or white officer. Schmidt thought that the perception of many whites is that much of the police action characterized by some as police brutality is blown up for political purposes. 11/

Jenifer Johnson, President, Church Women United, considered community relations the worst ever. She stated that some black middle class mothers are frightened to allow their children outside due to fear they will be shot. Her feelings were that blacks have been nonviolent due to good black leadership. 12/

Tulane Court (public housing project) president Memphis Washington thought that some policemen regularly use racial epithets. Also he felt there are too many "trigger happy" police officers. 13/

Joel Barfoot, Montgomery County Commissioner, stated that problems stem from the higher ranks. Conditions within the department, he felt, have grown worse since federal court intervention as the mayor is using the ban on testing to his own benefit, by permitting him to hire and promote officers without the use of a validated test. 14/

John "Bubba" Trotman, businessman and executive board member of the Montgomery Chamber of Commerce, and Will Hill Tankersley, Montgomery businessman, both concluded that Montgomery's image is hurting industrial growth, but the MPD has the best record of any in the state. 15/

* * *

The tone of leadership within the police department has much to do with the perception in the community. The chief issued a press release following the February 1983 altercation between the police officers and members of a black family which stated; "The black subjects were acting in a manner of wild animals that had their prey on the ground."

Chief Swindall, in response to a question about his assessment of police/community relations stated at the Advisory Committee open meeting:

Well, I think it's according to who you are listening to as far as what the perception of the community relations of Montgomery Police Department and community consists of. I think there is a

genuine concern among some of the blacks in the community.... I think that they have a real problem within the black community as far as crime goes. We spend an awful lot of time in the black community. About 90 percent of our time is spent in the black community.... 16/

Likewise, Mayor Folmar told SAC members:

The Montgomery Police Department became the focal point of this mistrust in the black community as some black leaders sensationalized almost every arrest that's been made by the police. Much abuse was heaped upon the Montgomery Police Department. 17/

The mayor went on the state:

There is some mistrust of the black element of the Montgomery Police Department in the black community. Even though a majority of the calls for services originated in the black community, there are those who regard the police as the enemy. 18/

The preceding anthology of opinions given by a range of Montgomery citizens including politicians, community leaders, civil rights leaders, past and present police officers, and business leaders reflect that there exist serious problems with regard to the perception of police/community relations.

In a suit filed by the U.S. Department of Justice against the City of Montgomery and Montgomery City-County Personnel Board before the then U.S. District Judge Frank Johnson, a consent decree was entered stating that city and county officers would not engage in race discrimination in the hiring, assignment and promotion of city employees. Furthermore the city agreed that during the following four months that they would hire an equal number of black and white police officers up to a total of 50 persons. 19/ The composition of the police department is detailed in the following chapter.

The U.S. Commission on Civil Rights in its study and report, Who is Guarding the Guardians? A Report of Police Practices, issued the following findings:

Serious underutilization of minorities and women in local law enforcement agencies continues to hamper the ability of police departments to function effectively in and earn the respect of predominately minority neighborhoods, thereby increasing the probability of tension and violence. 20/

The President's Commission on Law Enforcement and Administration of Justice made the following recommendation:

Police departments in all communities with a substantial minority population must vigorously recruit minority group officers.... In order to gain the general confidence and acceptance of a community, personnel within a police department should be representative of the community as a whole. 21/

While the perception of police/community relations was sharply critical among most black observers, including elected officials, the perception of police/community relations as projected by most of the white officials and business leaders was muted and quite different. Unfortunately, the real issue of humane and equitable treatment of citizens by police officers is often obscured by veiled racial polemics which delay progress in remedying existing problems.

Another incident in which an unarmed black person was shot and killed by a white policeman (August 1984) has resulted in a diminution of confrontational rhetoric between the mayor and the city's black leaders. 22/ Prior to meeting with Mayor Emory Folmar over this shooting incident, black city councilmen attacked the mayor in a public meeting regarding his alleged lack of sensitivity on police/community relations. However, in the aftermath of the meeting, Councilman Joe Reed described the meeting as productive and the mayor stated that the black councilmen had made good suggestions regarding police policy. A newspaper writer observed that "such dialogue with adversaries is a departure from the mayor's usual stance. It may be a sign that the ice between the city's white and black leadership has started to thaw". 23/

Notes to Chapter II

All transcript references (TR) refer to Alabama Advisory Committee factfinding meeting into Montgomery Police/Com-Relations held in Montgomery on September 26, 1983.

1. TR. p. 236.
2. TR. pp. 191-2, 200.
3. TR. p. 168.

4. TR. pp. 172-3.
5. TR. pp. 162-3.
6. TR. p. 209.
7. TR. pp. 220-1.
8. TR. pp. 165-6.
9. Skip Haley, News Manager, WSFA-TV, Montgomery Interview, June 20, 1983.
10. Willie Peak, City Council President (defeated in reelection attempt in November 1983) Montgomery Interview, May 5, 1983, (hereinafter cited as Peak Interview).
11. Hank Schmidt, WBAM Radio News Director, Montgomery Interview, June 22, 1983.
12. Jenifer Johnson, President Church Women United, Montgomery Interview, June 22, 1983.
13. Memphis Washington, Montgomery Interview, June 22, 1983.
14. Joel Barfoot, Montgomery County Council, Montgomery Interview, May 24, 1983, (hereinafter cited as Barfoot Interview); United States v. City of Montgomery, C.A. No. 3739-N, (M.D. Ala., January 29, 1979, and March 29, 1979).
15. John "Bubba" Trotman, Montgomery Interview, May 20, 1983, (hereinafter cited as Trotman Interview), and Will Hill Tankersley, Senior Vice President, Sterne, Agee & Leech, Montgomery Interview, June 28, 1983, (hereinafter cited as Tankersley Interview).

16. TR. pp. 26-7.
17. TR. p. 12.
18. TR. p. 13.
19. United States v. City of Montgomery, C.A. No.3739-N (M.D. Ala., January 29, 1979).
20. U.S. Commission on Civil Rights, Who is Guarding The Guardians? A Report on Police Practices, October 1981, p. 153.
21. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police, 1976, p.167.
22. Joe Reed, City Councilperson, Telephone Interview, April 16, 1985.
23. The Journal-Advertiser, (Montgomery) September 8, 1984, p. 1-A.

III. MONTGOMERY POLICE DEPARTMENT WORK FORCE

The Montgomery Police Department (MPD) employs a total of 538 persons of whom 20.3 percent are black and 32 percent are female (see Fig. 1). Of this total, 419 persons are considered sworn personnel, and 119 persons are civilian or non-sworn (see Figures 2 and 3). There are 64 sworn black officers and 79 sworn female officers. When the department's 37 sworn part-time female school patrol officers are removed from the analysis of sworn personnel, the black and female employment rate drops to 9.3 and 10.0 percent respectively, contrasted with the black population of Montgomery which exceeds 39 percent.

In the MPD, blacks and women occupy very few slots among the ranking officers. When individual ranks are examined it appears that 1 of 7 majors is black and none are female. There is no black or female among 12 captains. In the rank of lieutenant, 2 of 24 officers are black (8.3 percent) and 1 (4.2 percent) is female. Both the chief and deputy chief are white males. Of the 77 officers who hold the rank of sergeant and above, 10 (13 percent) are black and 2 (2.6 percent) are female.

There are 66 officers who hold the rank of corporal: 5 (7.6 percent) are black and 9 (13.6 percent) are female. There are 44 officers who hold the investigator rank and 4 (9 percent) are black and 6 (10.6 percent) are female. In the most numerous category of police officer, there are 189 officers, of whom 29 (15.3 percent) are black and 20 (10.6 percent) are female. Of the 5 sworn police nurses, 4 are white and 1 is black: all are female. There are 37 sworn (28 non-sworn) school patrol officers; all sworn officers are female and 15 (40.5 percent) are black. When the rank of police officer or above is considered, 58 percent of all blacks and 54 percent of all female officers are found in the lowest rank (see Fig. 2).

Among the non-sworn personnel, 44 (37 percent) are black and 94 (79 percent) are female. Although there are 119 non-sworn employees constituting only 22.1 percent of the MPD work force, non-sworn female employees comprise 94 of its 173 female employees, or 54.3 percent. Similarly, while blacks comprise 15.3 percent of the sworn personnel, 44 of 109 (40.4 percent) black employees are found in non-sworn positions (see Fig 3).

Since 1980, the MPD has hired 359 officers. Of this number 229 (63.8 percent) have been white males, 81 (22.6 percent) black males, 26 (7.2 percent) white females, and 23 (6.4 percent) black females. The department has no minority hiring goals. 1/ Although there is a limited number of both blacks and females in the MPD, particularly in the higher ranks, Mayor Folmar stresses that at the time he became mayor in 1977 there were only 2 blacks who held the rank of sergeant, and none above that rank:

I think if there is a complaint by some, I have advanced black officers too (sic) rapid a pace. I get that criticism from some members of the community. 2/

According to Chief Swindal, 1 "Well, I think it's a matter of time" before blacks and females reach the higher ranks within the department as their numbers increase within the ranks. ... "I think," he said, "it's moving kind of rapid...in some cases, some people say it moves too rapid. I can live with that, and it doesn't bother anybody because they are black or white,...but because he is capable of doing a good job" 3/

In summary, the MPD employs roughly 6 white officers for each black officer employed and the department employs 9 male officers for each female employed. There are a limited number of blacks and females in supervisory roles.

Fig. 1

TOTAL FORCE

		Male		Percent	Female		Percent
		Black/White			Black/White		
Total	538	43	322	67.8	65	108	32.2
	Percent	8.0	60.0		12	20	

(Total Percent Black - 20)

SOURCE: Letter from Major J.L. (Grady) Arnette, MPD, to Clinton Fried, Regional Attorney, USCCR, July 15, 1983

Fig. 2

SWORN FORCE

(April 1982)

Job Classification		Male		Female		Percent Female	Percent Black
		Black	White	Black	White		
Chief of Police	(1)		1			0	0
Deputy Chief of Police	(1)		1			0	0
Major	(7)	1	6			0	14.3
Captain	(12)	0	12			0	0
Lieutenant	(24)	2	21		1	4.2	8.3
Sergeant	(32)	7	24		1	3.1	21.9
Corporal	(66)	2	55	3	6	13.6	7.6
Investigator	(44)	3	35	1	5	13.6	9.1
Police Officer	(189)	21	148	8	12	10.6	15.3
Warden	(1)	0	1	0	0	0	0
Police Nurse	(5)			1	4	100.0	20.0
*School Patrol Officer	(37)			15	22	100.0	40.5
TOTAL	(419)	36	304	28	51	18.8	15.3

*School Patrol Officers are part time employees -- work only three (3) hours per day. Those employed prior to Jan. 1979 (37 officers) are considered sworn personnel. The balance (28) employed after that date are considered civilian employees.

SOURCE: Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, USCCR, to Mayor Folmar, April 22, 1983.

Fig. 3

NON-SWORN PERSONNEL

		Male		Female		Percent	Percent
		Black/White		Black/White		Female	Black
School Patrol Officer *	28			15	13	100	53.6
**Appl. System Analyst	1	1				0	0
**Appl. System Programmer	1				1	100	0
Data Entry Operator II	4			1	3	100	25.0
Clerk IV	1				1	100	0
Clerk III	9	1		1	7	88.9	11.1
Clerk Steno II	3				3	100	0
Clerk Typist II	11			4	7	100	36.4
Clerk II	17			6	11	100	35.3
Police Dispatcher	8			3	5	100	37.5
Police Physician	1	1				0	0
Utility Clerk	1				1	100	0
Stores Clerk I	2	1		1		50	50.0
Stores Clerk II	1	1				0	0
Maintenance Foreman	1	1				0	100
Municipal Jail							
Security Officer	13	4	5	3	1	30.8	53.8
Mess Steward	1	1				0	100
Cook	1	1				0	100
Animal Control Supervisor	1		1			0	0
Animal Control Officer	8		3	2	3	62.5	25.0
Youth Aid Counselor	2			1	1	100.0	50.0
Cadet	4		4			0	0
TOTAL	119	7	18	37	57	79.0	37.0

*School Patrol Officers are part time employees -- work only three (3) hours per day. Those employed prior to Jan. 1979 (37 officers) are considered sworn personnel. The balance (28), employed after that date, are considered civilian employees.

** Application System Analyst/Application System Programmer

SOURCE: Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, Southern Regional Office (SRO) USCCR, to Mayor Folmar, April 22, 1983.

Notes to Chapter III

1. TR. p. 67.
2. TR. p. 23.
3. TR. p.50.

IV. HIRING AND PROMOTIONS

The City-County Personnel Department, an independent body, has been in operation since 1950 and is responsible for classification of Montgomery Police Department (MPD) jobs, pay scales, and certification of eligible applicants. 1/ The department certifies the top five applicants for both hiring and promotions. According to Wade Moss, Personnel Director, City and County of Montgomery, the final hiring authority resides with the mayor; there is no review of his selection so long as the choice is made from the top 5 names. 2/

The Personnel Department is supervised by a board composed of 3 persons who serve 6-year overlapping terms. Each of the following appoints one member: the city governing body, county governing body, and a committee composed of the probate and circuit judges of the county. Aside from formulating rules and revisions of the Merit System Act and serving in an advisory capacity, the board hears and decides appeals by any person in the classified service with respect to employment status or condition of employment. 3/ The Department has 6 employees; 5 are female and 1 is male. Two employees are black. 4/

MPD hiring is subject to a Federal Court order. On January 30, 1979, District Judge Frank Johnson entered a partial consent decree prohibiting the police department from engaging in race discrimination in hiring, promotions, upgrading, training, assignment, discharge of an employee, applicant or potential applicant. Both the city and personnel board were ordered to keep detailed records concerning applicants throughout the hiring process and report this data every six months. Any test used as a hiring criterion was to have little or no adverse impact; sex was not an issue raised in this litigation. Dr. Carl Cecil of the University of Alabama, recommended by the Federal Court, was hired by Montgomery to devise a validated written entrance examination for the MPD. Dr. Cecil has had this project since 1973. A subsequent order authorized the use of the Carl Cecil hiring examination, reserving the question of its validity to a later date. 5/

Applicants for the MPD positions must file an application with the personnel department. Each applicant must be be-

tween 21-45 years of age, between 5'5" and 6'10" tall, weigh between 120-300 pounds, hold a high school diploma or its equivalent, possess an Alabama driver's license and be free of any felony convictions. 6/ A written test is given to all applicants every 3-6 months by the City-County Personnel Department, and an eligibility list is composed of all applicants who pass both the written test and an agility test which is given by the MPD. 7/ Currently, those persons who pass both tests are ranked by the personnel department on the basis of when the applications were received and not upon the scores earned in accordance with the Department of Justice instructions that applicants not be ranked on the scores earned. Generally, 80 percent of those persons passing the written test make the eligibility list. Moss believes the written test is valid despite a high level of failure among blacks which he attributed to poor verbal skills and a high level of functional illiteracy. 8/

After the initial background check, the applicant brings in the following documents for review: driver's license, social security card, birth certificate, high school diploma or G.E.D., college diploma or training school certificates, military records, medical records, and other relevant documents. The next step in the selection process is an interview with background investigators and a polygraph examination based upon information obtained from the background investigation. When followup information is needed, a second interview with background investigators is held. Applicants who advance to this level are then interviewed by the deputy chief and division commanders, who forward a recommendation to the chief, who makes the final recommendation to the mayor. A psychological examination is administered, if a need is indicated, and the final step in the hiring process is a physical examination by the police department's physician. 9/ For the past several years, everyone who made the eligibility list has been forwarded to the mayor for hiring. 10/ There are no written guidelines for how the background investigation or personal interview should be conducted. 11/

Wade Moss, the City-County Personnel Director, who has served in this position for 32 years, believes the hiring process is adequate, "if done with integrity," but believes the critical issue is what standard is being applied to those who are hired. 12/

He believes there is a problem in getting blacks through the hiring process. Although Moss believes all persons

excluded from hiring were justifiably excluded, he also believes that some white applicants were hired who should not have been. It appears to Moss that more is expected of black recruits than white recruits.^{13/} Moss noted several areas where a double standard might be in operation: (1) background investigations, (2) performance evaluations, (3) disciplinary actions, and (4) efforts of some MPD personnel to circumvent personnel rules. ^{14/}

According to a news article, most officers cite low pay as an important factor in either qualified persons not applying for the MPD or dropping out due to financial constraints. The president of the Fraternal Order of Police, Joyce Oyler, stated that the majority of officers without rank held down a second job. She added that a lot of sergeants and lieutenants hold second jobs. ^{15/}

The personnel department has the initial responsibility for determining that promotion qualifications are met. At a minimum, an officer must have one year service within grade to be considered eligible for promotion. ^{16/} Once the personnel department submits to MPD the names of officers meeting the advertised qualifications for promotion, the administrative staff, the officer's training officer and the chief rate the qualified officers, assigning a score of 1 to 10 which is averaged together with previous evaluation forms. The numerical evaluations are then sent to the personnel department for final ranking. ^{17/} Anyone who reaches the top 5 of those eligible for promotion can be considered for promotion. ^{18/} If there are 2 or more vacancies, then the personnel director can certify 4 names more than the number of vacancies which exist. ^{19/} The actual selection of the candidate to be promoted is made by the mayor who is the appointing authority, aided by the recommendation of the chief. ^{20/}

Prior to April 30, 1979, the promotion to the sergeant rank was based in part on a written examination with the single prerequisite being that the applicant must have served a minimum of 2 years on the police force. On that date the District Court enjoined further use of the sergeant promotion exam due to the adverse impact it had on blacks. ^{21/} Personnel Director Moss explained that promotion to the sergeant rank is now based solely on job performance and senior staff evaluation. Moss stressed that the promotion to the sergeant rank is a critical

promotion because if this rank is not reached there will be no further advancement within the department. Although written tests can be given for the rank of lieutenant, captain, major and chief, none have been given for the past 2 years though such promotions have been made during this period. 22/

When a vacancy occurs for an assignment to investigator or corporal, division commanders are requested to submit the names of officers for consideration for such assignments. The investigator assignment is generally based upon seniority within the division where the vacancy occurs. The staff, together with the chief, then considers the applicant based upon leadership qualities and job performance. A recommendation is then sent to the mayor, who actually makes the assignment. 23/

Moss believes that is general agreement that the current promotional system is too subjective, but he believes a seniority system would only perpetuate the status quo. Moss noted that the appointing authority has the right to go outside MPD to make promotions, but stated that this has not been done in 32 years. 24/ County commission member Joel Barfoot, a former MPD 10 year veteran, told Commission staff that favorites are played within the department and noted that the mayor's bodyguards with little supervisory experience have been promoted. Barfoot stated there is absolutely no incentive for educational advancement within the department. 25/ Former city council member Donald Watkins, who chose not to run for reelection in October 1983, charged "one of the quickest ways to come up through the ranking of the Montgomery Police Department is to be involved in a serious incident between a black citizen or suspect." 26/ "...The promotion system," he said, "rewards those who are brought to public attention through violent confrontations of black citizens" 27/ Former city council president Willie Peak believes that officers who wish to be promoted have to shoot or beat up someone. 28/

* * *

With regard to his role in MPD promotions, Mayor Folmar told the Alabama Advisory Committee:

On promotions, I make it my business to listen to radio traffic. I go to crime scenes. I watch people in action. I

read their reports. I make suggestions as to who I think are good officers. But the staff and the chief make recommendations to me in the final analysis of a promotion and according to our personnel rules, then, I get a list with five names on it. And from that list of five, I can make any corrections (sic) that I think warrants it. 29/

The mayor specifically refuted allegations that his personal bodyguards on the police force were given unusually rapid promotions stating:

Well, I think somebody can't do arithmetic. I have made over two hundred promotions in the Police Department. I promoted seven or eight aides. So about 192 promotions have taken place that had no relationship whatsoever as being my aide.... 30/

Chief Swindall explained the low number of black officers in the higher ranks: "Well I think it's a matter of time.... I think it's moving kind of rapid." 31/ Education, he said, only plays a role in promotions to the extent the officer will excel at his or her job. "It is not going to make him a better police officer." 32/ Swindall stressed that promotions are based on qualifications and favors a promotion system where test scores, oral interviews and performance are all weighed. 33/

A review of promotion rosters from January 1, 1980, through April 22, 1983, reveals there were a total of 85 promotions to the rank of sergeant, lieutenant, captain, and major (see Fig. 1). Among those 85 promoted officers, 12 (14 percent) were black males, 72 (84.7 percent) were white males, 1 (1.2 percent) was a white female, and none were black females.

ELIGIBILITY AND PROMOTIONS BY RACE AND SEX*
January 1, 1980 - April 22, 1983

(Promotions Within Parenthesis)

Fig. 1

	<u>Black Male</u>	<u>White Male</u>	<u>Black Female</u>	<u>White Female</u>
Sergeant	31(8)	373(30)	5	28
% Eligible Selected	25.8	8.0	0	0
Lieutenant	20(2)	99(23)	0	9(1)
% Eligible Selected	10	23.2	0	11.1
Captain	5(1)	52(13)	0	1
% Eligible Selected	20	25	0	0
Major	1(1)	37(6)	0	0
% Eligible Selected	100	16.2	0	0
TOTAL	57(12) 21.0	561(72) 12.8	5(0) 0	38(1) 2.6

*SOURCE: Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, Southern Regional Office, USCCR, to Mayor Folmar, April 22, 1983.

Notes to Chapter IV

1. City and County of Montgomery Personnel Board, Rules and Regulations (February 10, 1983) (hereinafter cited as Rules and Regulations).
2. Wade Moss, Personnel Director, City and County of Montgomery Personnel Department, Montgomery Interview, May 6, 1983, (hereinafter cited as Moss Interview).
3. Rules and Regulations, Rule III, Sec. 2 and 2(c).
4. Moss Interview.
5. United States v. City of Montgomery, C.A. No. 3739-N, (M.D. Ala., January 29, 1979, and March 29, 1979) (orders adopting consent agreement).
6. Major Grady Arnette, Commander, Training and Recruitment Division, MPD, Montgomery Interview, May 3, 1983. (hereinafter cited as Arnette Interview).
7. Moss Interview. According to Wade Moss, Dr. Carl Cecil of the University of Alabama, recommended by the Federal Court, has been working on the written test's validation since 1973. Moss noted that the test's passing grade is quite low, and although the test has not been approved, the Justice Department has not offered any assistance in devising a better test. The agility test is similar to one administered by the Los Angeles Police Department and has not been approved by the Justice Department.
8. Moss Interview.
9. Arnette Interview, and MPD data.
10. Moss and Arnette Interviews.
11. Ibid.
12. Moss Interview.
13. Ibid.

14. Ibid.
15. The Advertiser (Montgomery), May 29, 1983, p. 1-A.
16. Rules and Regulations, Rule VII, Sec. 6, p. 15.
17. Moss Interview; MPD data; Charles Swindall, Chief of Police, Montgomery Interview, May 5, 1983, (hereinafter cited as Swindall Interview).
18. Rules and Regulations, Rule VIII, Sec. 6, p. 15.
19. Ibid.
20. Swindall Interview and MPD Data.
21. United States v. Montgomery, C.A. No. 3729-N (M.D. Ala., April 30, 1979) (order enjoining use of sergeant's promotion exam).
22. Moss Interview.
23. Swindall Interview.
24. Moss Interview.
25. Barfoot Interview.
26. TR. p. 178.
27. TR. p. 181.
28. Peak Interview.
29. TR. p. 19.
30. TR. pp. 19, 29.
31. TR. p. 50.
32. Ibid.
33. Swindall Interview.

V. TRAINING AND RECRUITMENT

The Montgomery Police Academy became a regional academy in 1975, and since that date has been responsible for police officer training for 18 counties and more than 60 law enforcement agencies within south and central Alabama. Approximately 33 percent of the 1,000 officers trained by the academy since 1975 have been employed by the MPD. 1/

The Montgomery Police Academy provides the minimum 280 hours (7 week course) of police officer training as required by the Alabama Peace Officers Standards and Training Act, 2/ as amended (see Appendix I for course listing). The academy provides a total of 640 hours (16 weeks) of training for Montgomery police officers which includes the basic 280 hour course of study (see Appendix II for additional courses given Montgomery police trainees). 3/

The academy has a total of 75 instructors, 31 of whom are police officers, and 34 are civilians. The academy has 10 female instructors and 5 black instructors. The civilian instructors donate their time and are drawn from such organizations as the Veterans Administration, Chamber of Commerce, news media, District Attorney's Office, Attorney General's Office, Family Guidance, Military, and the State of Alabama Public Health, Death and Awareness Center. 4/ Troy State University is a joint sponsor of the training conducted at the academy. The Alabama Advanced Criminal Justice Training Academy which was established by both Troy State and the City of Montgomery to provide advanced police training programs was expanded to provide training at the Montgomery Police Academy. In addition, the Alabama Law Enforcement Planning Agency, the Alabama Educational Trust Fund, and the Alabama Peace Officers Standards and Training Commission have provided training funds. 5/

The department has recently (Spring 1984) added 20 hours of instruction in human relations, including course work in Human Behavior Transactional Analysis Values, Dealing with Alcohol, Police Contact, Perspectives on Social Initiatives, and Minorities. 6/ Major Grady Arnette of the MPD has proposed a 40 hour, 1 week school on human relations for officers already in the field. The implementation decision is presently in the hand of the Chief. 7/

Although Arnette favors having psychological screening become a part of the selection process, but because of the "nature and length of time it takes to get a psychological evaluation, it is not feasible," 8/ he asserts. Despite the lack of formal psychological screening, Chief Swindall told Commission staff and Advisory Committee members that the MPD has a working relationship with local mental health agencies and noted that psychologists have been employed from time to time on an "as needed" basis. With regard to improved community relations, the chief believes problems can only be resolved as they surface. 9/

* * *

Data obtained from MPD showing the attrition occurring in 7 full training classes for MPD recruits conducted between 1980 and 1982 reveals that fewer black and female recruits enter training than their white male counterparts, and are more likely to fail to graduate. Out of a total of 307 persons beginning training during this period, 70 percent were white and 30 percent black; only 14 percent were female. While 126 (48 percent) of the white candidates graduated, only 34 (37 percent) of the black candidates graduated. Similarly 143 (54 percent) of the males graduated, but only 17 (40 percent) of the females (see Table 1). 10/

Major Arnette attributes the admittedly high failure rate to stress, even though student counseling is offered throughout training and a counselor is assigned to each trainee once a deficiency appears. According to Arnette, a trainee must achieve a minimum passing score of 75 in 3 areas in order to graduate: academics, firearms, and first aid. Although Arnette is the person who makes the termination recommendation, either the mayor or chief makes the actual termination. 11/

The fact that an officer may have obtained additional education at either the undergraduate or graduate level plays no articulated role in either hiring or promotions. The Committee requested the MPD data relating to sworn personnel with a college education, but this information was not provided. 12/ According to Chief Swindall:

It is not going to make him a better police officer. It will be the fact he can apply his knowledge, his training, and his day-

to-day work, but it is not going to make him any more capable with dealing with humans than in the average. But it does not, pay purposes, have no effect on him (sic)....13/

The City-County Personnel Department has the final responsibility for MPD recruitment, but it works closely with the mayor and MPD. Although recruitment is statewide, most needs are met from the Montgomery area with most initiatives in hiring emanating from the mayor's office. 14/ MPD solicits applicants through billboard, television, and radio advertising, and through pamphlets distributed in shopping centers, the Alabama State Fair, college campuses including Troy State University and Alabama State University. 15/ However, low entry salaries, especially in comparison with other law enforcement agencies, were cited as a factor in the difficulty in recruiting college graduates.

TABLE I

MONTGOMERY POLICE RECRUITS STARTING AND FINISHING
POLICE ACADEMY TRAINING
(Starting January 3, 1980)

<u>Class</u>	<u>WM</u>	<u>WF</u>	<u>BM</u>	<u>BF</u>	<u>% W</u>	<u>% B</u>
80-A						
S 36	21	3	7	5	67	33
F 23	13	3	3	4	70	30
80-B						
S 44	25	2	15	2	61	39
F 25	15	1	9	0	64	36
80-C						
S 41	27	3	6	5	73	27
F 21	18	1	1	1	90	10
81-A						
S 51	32	1	15	3	65	35
F 25	18	1	5	1	76	24
81-B						
S 45	35	3	5	2	84	16
F 25	21	1	3	0	88	12
82-A						
S 56	38	5	9	4	77	23
F 22	18	1	1	2	86	14
82-B						
S 34	20	1	9	4	62	38
F 19	14	1	4	0	79	21
TOTAL						
S 307	198	18	66	25	70	30
F 160	117	9	26	8	79	21

WM - White Males
WF - White Females
BM - Black Males
BF - Black Females
S - Start
F - Finish

Percent Graduated
WM + WF = 58
BM + BF = 37
M = 54
F = 40

SOURCE: Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, SRO, USCCR, to Mayor Folmar, April 22, 1983.

Notes to Chapter V

- 1. Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, SRO., USCCR, to Mayor Folmar, April 22, 1983.
- 2. 1971 Ala. Acts 156.
- 3. Ibid.
- 4. TR. pp. 79-80.
- 5. MPD Data.
- 6. MPD Data (Supplemented February 8, 1984).
- 7. TR. pp. 71-72.
- 8. TR. p. 71.
- 9. Swindall Interview.
- 10. Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, SRO, USCCR, to Mayor Folmar, April 22, 1983.
- 11. Arnette Interview.
- 12. Bobby Doctor, Letter to Chief Charles Swindall, September 20, 1983, (hereafter cited as Doctor Letter).
- 13. TR. p. 51.
- 14. Moss Interview.
- 15. Arnette Interview.

VI. WEAPONS POLICY

Montgomery Police Department (MPD) uniformed personnel are permitted to carry a departmental-issued weapon or their own weapon of .38 or .357 magnum caliber handgun (Colt or Smith & Wesson). All personal weapons must be nickel plated and have a barrel length of at least 3 1/2 inches, but no greater than 6 inches. 1/ Before a personal weapon can be carried it must be approved by, and registered with, each officer's division commander. Ammunition must be departmental-issued .38 caliber ball or hollow point. 2/ MPD issues 125 grain, semi-jacketed, hollow point bullets which are designed to expand when they hit a person, but not pass through or ricochet. 3/

Plainclothes officers may carry the departmental-issued weapon or their own .38 or .357 magnum caliber handgun (Colt or Smith & Wesson) with a barrel of not less than 3 1/2 inches or longer than 6 inches and may be either blue or nickel plated. Each plainclothes officer assigned to undercover or special services may, upon approval of the division commander and chief, carry a sidearm appropriate to his or her assignment. These weapons must be concealed at all times. The ammunition utilized must meet the same specifications as for uniformed officers. 4/ Chief Swindall termed the personal weapon authorized for plainclothes officers as a backup weapon which is usually carried in a shoulder holster or waistband. He also stated that the same factors that attract someone to police work also attract people who like guns and noted that in the past officers had a problem in being disarmed by offenders, a problem which still persists in crowds and that as a consequence some officers carry 2 firearms. 5/ According to Swindall, knives are not issued by the department, but personally owned pocket knives are permitted. Any lock blade knives would have to be exposed in accordance with city ordinance. 6/ Rifles are not permitted by the department except for specially trained members of the SWAT squad, but shotguns may be used by uniformed and plainclothes officers utilizing No. 1 or 00 buckshot. Personal 12-gauge shotguns may be carried if registered with and approved by the officer's division commander. 7/

The issue of an officer carrying a personal weapon is a sensitive one in Montgomery. In 1975, a fleeing black man was killed by a white policeman near the scene of a Montgomery robbery. The first police report was that the officer returned the fire of the suspect. In what turned out to be a massive coverup, an investigation revealed that the black man was unarmed, was shot in the back rather than the chest, that the reported gun of the suspect was one that the police had confiscated earlier in a drug raid and had been planted by one of the officers near the suspect. The mayor, police chief, and 8 officers were either fired or resigned in the aftermath. 8/

Notes to Chapter VI

1. Firearms Manual, General Order No. 33, p.3, Montgomery Police Academy, Montgomery, Ala., (undated) (hereinafter cited as Firearms Manual).
2. Ibid. and Swindall Interview.
3. The Journal and Advertiser, April 17, 1983, p. 1.
4. Firearms Manual, General Order No. 33, p. 3.
5. Swindall Interview; TR. p. 32.
6. Swindall Interview.
7. Firearms Manual, General Order No. 33, pp. 3, 4.
8. Washington Post, April 3, 1977, p. C-1.

VII. USE OF FORCE

Due to its extreme consequences, the decision to use force, and in particular the use of deadly force, is the most critical choice an officer can make. Alabama's fleeing felon law is perceived by some segments of the Montgomery community as a major source of tension. Alabama law states that an officer can use deadly force when he "reasonably believes" it is necessary to make a felony arrest or prevent the escape of a person charged with a felony and to defend himself and others 1/ (see Appendix C).

City Councilperson Donald Watkins, who later did not seek reelection, believes Alabama's current law must be changed:

And I don't think you should just shoot and kill somebody to prevent the escape of a felon who presents no danger to anyone else. I don't think just because one is stealing property, for example, that you have a right to shoot and kill somebody.... I think that the law is archaic and probably needs to be brought in line whereas you shoot or you use deadly force only when you believe that your life is in danger or the life of somebody else who is in the immediate vicinity. 2/

Watkins also noted a series of police shootings over a recent 6 month period which resulted in 3 deaths and 2 woundings:

The thing that bothers me in every case, the justification is 'he appeared to be reaching for a gun, and I shot because I thought I was in fear.' Also, 'he was about to escape and get away.' And it is as though the statement is rehearsed in each case. 3/

Montgomery Attorney Vanzetta Penn Durant stated:

One has to wonder how one can interpret adequately the wording of the fleeing felon law to safeguard the rights of the citizens. I think it needs to be

amended...and I think there needs to be more restrictions on the officers. 4/

Major Sam Hicks, Commander of MPD's Patrol Division, believes firearms should not be used when only a property offense has occurred. 5/ Likewise, County Commissioner Joel Barfoot, a former MPD captain, suggests that the MPD's shooting policy be reviewed and that the fleeing felon law should be limited to certain crimes of violence. 6/ Significantly, the Montgomery County Sheriff's office limits the use of firearms to defense of life. 7/

Mayor Folmar at the Montgomery factfinding meeting told the Alabama Advisory Committee:

The fleeing felon law is on the books. If it needs to be changed, or if people wish it to be changed, there is a legislative process by which to change it. I do not, and I would not recondone (sic) or authorize someone to shoot somebody for shoplifting or for things of that nature, misdemeanor level.... If that person is seen by an officer to commit a murder, a rape or assault of such nature as to be a major felony, I think that the public needs to be protected. And a police officer needs to have that statute to protect that officer as they go about doing their duty. 8/

Chief Swindall asserted at the factfinding meeting that the use of deadly force was:

limited to protection of the public, protection of the officer himself, and to stop a fleeing felon that has committed such a heinous crime, that to stop him is the sole best interest of the Community. 9/

During the interviews with Commission staff, Chief Swindall stated that MPD policy regarding the use of force was narrower than the state standard as it authorized only that force necessary to effectuate an arrest. 10/

A close reading of the Departmental Manual reveals, however, that deadly force may be used in defense of life, or

when authorized by state law with regard to how and when force may be used. 11/ Thus, it would appear that MPD policy in fact incorporates by reference the state's broad fleeing felon law. The Departmental Manual specifically prohibits MPD employees from using a firearm: (1) to fire a warning shot, (2) when there is reasonable cause to believe the person to be fired upon is a juvenile, except in defense of life, when all other reasonable means have been exhausted; (3) to shoot at or fire from a moving vehicle except in defense of life when all other means have been exhausted, or (4) when the risk to the public is greater than the threat posed by the assailant. 12/ A departmental firearms policy narrower than state law, while triggering possible departmental sanction would free an offending officer from criminal responsibility.

When a MPD officer utilizes any force in the performance of his or her duty, she/he must immediately report all of the facts, information, and circumstances concerning the incident in writing to the supervisor of his or her division. If the officer's supervisor is not readily available, the patrol supervisor is to be notified, who will then investigate and accept statements concerning the incident, and report to the officer's supervisor at the first reasonable opportunity. Whenever deadly force is used, the deputy chief, or his designated representative, is to be notified. 13/ The Advisory Committee requested of the MPD administrative actions taken, but the information was not made available. 14/

Anytime an MPD officer is involved in a wounding of an individual, the incident is investigated by a team of investigators from the Montgomery County Sheriff's Department, the Montgomery County District Attorney, and the Alabama Bureau of Investigation. 15/ No law enforcement officer in Montgomery has ever been indicted for the misuse of a firearm. 16/ However, officer dismissals and resignations are reported in Chapter IX.

On June 12, 1984, U.S. District Judge Myron Thompson, relying upon his previous opinion in Ayler v. Hopper, 17/ ruled that Alabama's fleeing felon law was unconstitutional "unless the official has good reason to believe that the use of such force is necessary to prevent imminent, or at least a substantial likelihood of death or great bodily harm." 18/ In Pruitt, a black male suspected of burglary in progress, was shot in the buttocks with 12-gauge buckshot by a Montgomery police officer when he failed to heed the officer's

warning "halt, police". The suspect had fled from behind a bush near the building suspected of being burgled. The suspect was searched and found to have been unarmed and it was determined that no burglary had been committed. Judge Thompson ruled that the circumstances did not meet the Ayler standard, and, therefore, violated Pruitt's civil rights. 19/ Subsequently, the suspect was arrested and charged with a rape occurring at the building, but a grand jury failed to return an indictment. 20/

The City of Montgomery has filed an appeal in the Eleventh Circuit in Pruitt and Alabama Attorney General Charles Graddick has announced his intention to join the city on the appeal. 21/

In a recent development (March 1985) which may obviate such an appeal, the U.S. Supreme Court ruled in a Memphis, Tennessee case that the police did not have a constitutional right to use deadly force in order to prevent the escape of an unarmed burglar suspect. 22/ In a 5 to 3 decision, the court stated:

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable....Many crimes classified as misdemeanors, or nonexistent, at common law are now felonies....They have also made the assumption that a 'felon' is more dangerous than a misdemeanor untenable. Indeed, numerous misdemeanors involve conduct more dangerous than many felonies....However, the fact that Garner was a suspected burglar could not, without regard to the other circumstances, automatically justify the use of deadly force. Hyman [the police officer] did not have probable cause to believe that Garner, whom he correctly believed to be unarmed, posed any physical danger to himself or others.... 23/

Notes to Chapter VII

1. Ala. Code 13A, 83-27 (1979).
2. TR. p. 190.
3. Ibid. p. 191.
4. Ibid. p. 135.
5. Interview with Major Sam Hicks, MPD, Montgomery, Ala. May 3, 1983.
6. Barfoot Interview.
7. Interview with Chief Deputy, C.L. Calvin Huggins, Montgomery County Sheriff's Office, Montgomery, Ala., June 21, 1983 (hereinafter cited as Huggins Interview).
8. TR. p. 24.
9. Ibid. p. 29.
10. Swindall Interview.
11. Department Manual, MPD Sec. 2.502 , (undated).
12. Ibid. 2.471, General Order No. 20, MPD.
13. Ibid. 2.503, General Order No. 20, MPD.
14. Doctor Letter.
15. Swindall and Huggins Interviews.
16. Huggins Interview.
17. 532F. Supp. 198 (M.D. Ala. 1981).
18. Pruitt v. Montgomery, No. 83-T-903-N (N.D. Ala. June 12, 1984), (order granting partial summary judgement).

19. Ibid.
20. Ibid.
21. The Advertiser (Montgomery), June 22, 1984,
p. 1-A.
22. Tennessee v. Garner, 53 U.S. L.W. 4410 (U.S. March
26, 1985).
23. Ibid. pp. 4412, 4413, 4415.

VIII. FIELD INTERVIEWS

In discussion with members of the Alabama Advisory Committee and Commission's regional staff, many complaints were received concerning MPD's use of field interviews--the practice of stopping and interviewing persons who appear to be suspicious or happen to be in the wrong place at the wrong time. Seen as a means of intimidating and harassing black citizens, the field interviews provide multiple opportunities for confrontations to develop between MPD officers and the people they are sworn to protect. Chief Swindall counters that the field interview is a legitimate law enforcement technique and that field interview cards are filed away for use in investigating criminal wrongdoing (See Exhibit A on page 44 for copy of interview cards used). 1/ There are no written orders on how field interviews are to be conducted. 2/ Explained Swindall:

We stop people that's (sic) in the community that have no apparent reason for being there. And we interview the person as to why he is there, what his business is in your community, and we file those cards. Then we have a wave of crime, or if we have any crime wave in that particular street, neighborhood, we will compare those field interview cards with the suspect. We might develop or use them to separate a suspect. 3/

As to whether field interviews are used to harass blacks, Swindall stated:

It is just not so. We are called to the community, in most cases, by some neighbor who says there is an individual prowler around his neighborhood at one, two and three o'clock in the morning, when he has no real business. He is sitting behind bushes or something. I think that the neighborhood should know what he is doing there. That is the reason they call us out there, to see what he is doing there, and I don't consider that to be harassment. 4/

Attorney Donald Watkins, however, told State Advisory Committee members:

I can tell you what officers tell me. Generally, field interviews have been a source of police harassment on the west side [predominantly black] of town. I can't tell you about the east side of townBut there has been a source of harassment. I have had reports that persons will be with family members. A husband and a wife and children will come out of the stores and shopping centers, and the male of that family group is stopped and asked for identification and asked, what are you doing here and hassled and an attempt is made to provoke the male in front of the family in hopes that the male will say something where a disorderly conduct charge can be placed on him. And if he gives any kind of resistance, a resisting of arrest charge is placed on him. If he strikes or touches the officer in the least manner, then assault and battery against a police officer charge will also be handed upon him. I have had reports from the police officers that they will be cruising neighborhoods and perhaps some gentlemen will come out of his home early in the morning in a bathrobe to get the newspaper, and a police cruiser will stop and want him to come over and show some identification for being out in a bathrobe early in the morning. And when he doesn't have any, then he is hassled for not having identification and being out in the neighborhood in a bathrobe trying to get the newspaper. But I am pleased to say that in some incidents, black officers riding with white officers have been able to bring those situations under control and prevent them from developing into a worse situation than they already have constituted. 5/

County Council member John Knight related a personal incident in which he was stopped by MPD officers:

Well, the Montgomery Police Department... uses various methods to harass public officials. I, for one, have been intimidated

on more than one occasion. I was attending a mass rally concerning the Todd Road incident not too long ago. When I left the mass rally on my way home, I noticed police officers[s] following me. So by the time I got home, probably about five blocks from my house, I was stopped by these officers. They were very nasty, they tried to intimidate me to the point to make me angry, asked me to get out of the car and asking me what my name was, asking me didn't I know what standard police procedures were, and things of this nature. 6/

Likewise, John Hilliard, a student at Alabama State University (ASU), recounted an incident in which he was accosted by two plainclothes officers. According to Hilliard, an unmarked car swerved close to him at a high rate of speed, stopped, and two white men exited the vehicle with one of the men pointing a pistol at him ordering him not to move. Upon request, Hilliard showed identification, and was then thrown into the unmarked vehicle. Hilliard indicated he was the target of racial slurs both at the time of the initial arrest and while in the unmarked car. Further, Hilliard indicated that he was subsequently taken behind an ASU auditorium, released, and warned not to report the incident. An investigation followed, as well as an apology which included the statement that it was routine procedure to "stop" persons for questioning, but that offensive language should not have been used. 7/

* * *

The use of a technique similar to the field interview recently failed to pass constitutional scrutiny. In Kolender v. Lawson, 8/ the United States Supreme Court invalidated a California statute requiring persons who loiter or wander on the street to provide a "credible and reliable" identification and to account for their presence when requested by a police officer. The Court held the statute was unconstitutionally vague within the meaning of the Due Process Clause of the Fourteenth Amendment. The Court in striking it down described the broad power given by the statute stating:

An individual, whom police think is suspicious but does not have probable cause to believe has committed a crime, is entitled to continue to walk the public streets "only at the whim" of any police officer who happens to stop that individual under [the statute]. 9/

In an interview which followed the Kolender decision, Chief Swindall stated that he had ordered that officers "lighten-up" on field interviews, but defended his refusal to issue written orders on the subject, stating it would be an invitation to criminal activity. 10/

MASTER NAME INDEX CARD

Name				Dangerous				Soc. Sec. #				Case #			
Home Address				Home Phone				<input type="checkbox"/> Complainant <input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/> Witness <input type="checkbox"/> Arrested <input type="checkbox"/> Suspect <input type="checkbox"/> Ex-felon <input type="checkbox"/> Mental				<input type="checkbox"/> Incident report <input type="checkbox"/> Offense report <input type="checkbox"/> Supplement <input type="checkbox"/> F.I. Card <input type="checkbox"/> Traffic citation <input type="checkbox"/> Accident report <input type="checkbox"/> Other			
City		State		Bus. Phone											
Business Address															
City		State		Bus. Phone				Offense				Charge			
Race	Sex	Ht.	Wt.	Hair	Eyes	Date		Offense				Charge			
DOB		POB		In file		<input type="checkbox"/> Photo		Number <input type="checkbox"/> F/P Card		FBI # <input type="checkbox"/> Crim. History					
Aliases						<input type="checkbox"/> Armed		<input type="checkbox"/> Knife <input type="checkbox"/> Shotgun <input type="checkbox"/> Rifle <input type="checkbox"/> Revolver		<input type="checkbox"/> Razor <input type="checkbox"/> Pistol <input type="checkbox"/> Other					
Location of Interview						<input type="checkbox"/> Glasses <input type="checkbox"/> Beard		<input type="checkbox"/> Mustache		Complexion					
Scars/Tattoo/Deformities						Time of Day		Day of Week		S M T W T F S <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
Auto Color		Year	Make	Body Type		VIN		License		Year/State					
Associates Name				Name				Remarks							
Home Address				Home Address											
City		State		City		State									
Business Address				Business Address											
City		State		City		State									
Home Phone		Bus. Phone		Home Phone		Bus. Phone		Officer -							

Notes to Chapter VIII

1. Swindall Interview and TR. p. 33.
2. Hicks Interview.
3. Chief Swindall, TR. p. 33.
4. Ibid., pp. 33-4.
5. TR. pp. 181-3.
6. TR. p. 213.
7. John Hilliard, Montgomery Interview, June 21, 1983.
8. 103 S.Ct. 1855 (1983).
9. Ibid. p. 1859.
10. Swindall Interview.

IX. INTERNAL AFFAIRS BUREAU

The Internal Affairs Division (IA) is the Montgomery Police Department division responsible for investigating and processing complaints made by Montgomery citizens against police officers. Until November 16, 1983, the effective date of his retirement, Captain Thomas (Mac) I. McLain, a 54 year old white male who had been with the MPD since 1976, headed the IA. McLain had served in this position for 3 years and without professional assistance, until a black female officer, Cassandra Williams, was added to the division in 1983. In addition, McLain served as the liaison person for the Community Relations Bureau within the department. 1/ Significantly, neither McLain nor Williams received specialized formal training as internal affairs officers. 2/

McLain, in an interview in May 1983 and later before the Advisory Committee in the open meeting on September 26, 1983, indicated that beginning in April 1983, the MPD revised its procedures regarding complaints. A complaint form was designed, duplicated, and distributed throughout the MPD, including the front desk. Under the system, complaints are received in person at MPD headquarters or over the telephone. If a complainant is reluctant to personally appear at the police station, an officer goes to the complainant to collect information. 3/ A complaint form is completed on anyone making a complaint. The form is filled out by anyone within MPD receiving the complaint, usually a division commander, desk officer, or an IA officer. 4/ All complainants are contacted regarding the outcome of the investigation this was previously done only on a haphazard basis. 5/

All written complaints are forwarded to both IA and the subject officer's division commander. The actual identification of an offending officer is facilitated through the use of worksheets and "call cards" which pinpoint the whereabouts of officers at any given point in time. Any officer involved in a resisting arrest or an assault on an officer case must also submit a formal written statement. 6/

The actual investigation of a given complaint can be conducted by either IA, or an officer's division commander, with the deputy chief and chief having the final authority for assigning a complaint for investigation. 7/ Although

McLain was not clear on whether a complaint would be investigated by IA or a division commander, Chief Swindall stated that if the complaint were minor, such as whether the issuing of a traffic ticket was proper, or whether an officer was discourteous, the division commander would investigate. But if the complaint were more serious, it would be investigated by IA. 8/ Generally, Swindall described a major complaint as a violation of departmental policy and state law, while a minor complaint would concern how the officer carried out his duty. 9/ When specifically asked how the use of racial insults such as "nigger" would be classified, Swindall answered that it would probably be considered minor, though personally he would consider it major. 10/ Regardless of the designation of a complaint as being major or minor, all complaints are investigated. 11/

Despite the recently implemented changes in MPD's complaint procedures, there are no written orders (Standard Operating Procedures, hereafter SOPs) describing the department's complaint procedures, other than the routing it is to take after the investigation is completed. 12/ Likewise, the IA commander was not aware of any efforts undertaken to publicize the procedure to the public. 13/

Chief Swindall acknowledged that the department's record-keeping in the area of complaints is in need of improvement. 14/ Captain McLain stated at the Alabama Advisory Committee's factfinding meeting that "No records were kept before this committee [Alabama Advisory Committee] came in." 15/

Major Sam Hicks, in charge of the Patrol Division, stated that complaints were not recorded, but were referred to IA only if the complainant was pushing hard. He further indicated that if he could personally satisfy the complainants, it would not be referred at all. 16/

When an officer's division commander investigates a complaint a copy of all paperwork is forwarded to IA. Even where IA initiates the investigation, there is close coordination with the officer's division commander. If the complainant has not been contacted, IA does so. 17/ When IA is authorized to conduct the investigation of a complaint, signed statements are taken from all witnesses, including the complainant. All the information is then analyzed by IA and a summary report is forwarded to the chief through the deputy chief. This report usually in-

cludes the IA director's opinion as to the guilt or innocence of the officer being investigated, but any punishment to be meted out is decided upon by the deputy chief or chief. There is no set punishment for a sustained complaint. 18/ If the officer does not accept the punishment, an appeal may be made first to the departmental trial board, and from there to the City-County Personnel Board. A copy of the complaint is placed in the officer's folder. 19/

A conversation with the person who replaced McLain as head of the Internal Affairs Bureau, Lieutenant Orvie Locklar, brought into question the extent that the new procedure was ever implemented. Locklar indicated a year later that not all of the procedural changes instituted in 1983 are being maintained. Complaint forms as such are not utilized. For a complaint to be investigated, the complainant must come to police headquarters and give a signed, sworn statement. Only if a complainant is handicapped or cannot physically come to headquarters will the officer go to that person's residence. The complainant who files a sworn complaint will be informed of the disposition of the complaint. Citizens can telephone in minor complaints, such as the rudeness of an officer in giving a traffic ticket, and the complaint is passed on to the officer's supervisor. Locklar stated that he has no problem in informing a complainant of the disposition of a telephone complaint, if the complainant initiates the inquiry. 20/

Confidential files are kept by IA in either of two methods. First, cases worked by the Investigative Division result in the creation of a numbered file. Secondly, in those cases which are deemed minor, investigated by IA or any division other than Investigative, a file is created under the officer's name. 21/

IA also monitors complaints alleging physical abuse of arrestees. McLain noted that the jailor now keeps a diary noting the physical condition of all arrestees which aids in detecting incidents involving in-custody abuse. Any complaints alleging in-custody police beatings are actually investigated by MPD detectives with IA receiving copies of all reports. 22/

The apparent willingness and thoroughness of MPD officials to receive and investigate complaints received from private citizens and local attorneys have been sharply questioned by some prominent Montgomery citizens.

According to Montgomery attorney Vanzetta Penn Durant:

As the memoranda indicates, I am concerned about the complaints themselves chiefly because there is definitely...[a] pattern of inconsistency in the investigation, the handling, disposition [of complaints] here in Montgomery. ...at times the complaints have been investigated by the chief, ...by persons who work in the Internal Affairs Bureau. And at times there has been no investigation at all. 23/

When asked to describe the general attitude which pervades MPD with regard to complaints Durant stated:

There is a chilling atmosphere about the use of attorneys for filing complaints. And also, in fact, there is a chilling atmosphere...about the use of attorneys for your defense....But in the case of a complaining citizen, that citizen is almost made to feel guilty for filing a complaint.....these people tend to come from an income bracket that is below ten thousand dollars a year per family. They tend to be undereducated or uneducated formally....They are not aware of their rights to file a complaint....The very real considerations that the complainant makes is that he has just been beat (sic), and he has to go back to his community where again the police may come. So there is a fear. 24/

Ms. Durant was also critical of the attitude manifested by Montgomery's mayor which she felt was typified during the trial of a Federal lawsuit alleging police misconduct:

[his] attitude at that time was hostile, hostile to the complainant, hostile to the whole idea of officers under his authority having been charged with misconduct, hostile toward me as an attorney.... 25/

And addressing the issue of lack of public knowledge as to the MPD's complaint procedure Durant stated:

And if the Police Department were interested in handling complaints, judiciously and expeditiously, it seems to me that the Police Depart-

ment would publish just a very short handout... that notifies a citizen how he can file a complaint, with whom, the time limit, or non-time limit necessary for a complaint.... Members of the bar are not on notice as to how one files a complaint against a police officer. 26/

Similarly, Mary Weidler, Director, Alabama Civil Liberties Union, told the Alabama Advisory Committee that although the public was encouraged by her organization to file complaints with the MPD when circumstances warrant, the Civil Liberties Union does not file complaints. "I think part of the reason for that is that we are unsure of what the procedure is for the complainant to file a complaint..." She also stated there was not a lot of use in calling the MPD as "They were not going to respond to the kind of information inquiries that we had." 27/

Former city councilman and local attorney Donald Watkins told the Alabama Advisory Committee: "But with respect to humans, the general trend since I have been practicing has been one of not effectively investigating them [complaints] and disposing of them." 28/ He went on to tell the Committee: "As a matter of fact, I stopped going through the complaint process when I saw that the complaint process was an exercise in futility." 29/

Although there was no formal system of receiving complaints, the Internal Affairs Bureau had information relating to only 57 complaints occurring between 1980 and April 22, 1983, which were categorized as police brutality, false arrest, conduct unbecoming an officer, violation of civil rights, harassment, shooting, and assault (See Table 1). As a result of these complaints only one officer was terminated and two resigned. A total of 29 complaints was determined to be unfounded, a false complaint, or the officer was cleared of charges. Curiously, IA did not know what disciplinary action was taken in 9 cases (See Table 2). There are six MPD officers who have been the focus of more than one complaint: Four are white and two are black; all are male. 30/

Table 1*

Number of complaints received by category from 1980 to April 22, 1983.

POLICE BRUTALITY	17
FALSE ARREST	9
CONDUCT UNBECOMING AN OFFICER	10
VIOLATION OF CIVIL RIGHTS	1
HARASSMENT	7
SHOOTING	9
ASSAULT	4
	<hr/> 57

Table 2*

Disciplinary action taken from 1980 to April 22, 1983.

UNFOUNDED	11
CLEARED BY FBI	6
RESIGNED	2
CLEARED	8
REFERRED TO UNIFORM DIVISION	1
NOT INVESTIGATED BY IA	3
REPRIMANDED	5
SUSPENDED	3
REFERRED TO PATROL COMMANDER	2
REFERRED TO TRAFFIC COMMANDER	1
REFUSED TO GIVE SIGNED STATEMENT	1
FALSE COMPLAINT	4
UNKNOWN	9
TERMINATED	1
	<hr/> 57

* SOURCE: Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Regional Director, SRO, USSCR, to Mayor Folmar, April 22, 1983

Notes to Chapter IX

1. Captain Thomas I. McLain, Internal Affairs Division, MPD, Montgomery Interview, May 3, 1983 (hereinafter cited as McLain Interview).
2. McLain Interview and TR. pp. 77-78.
3. McLain Interview and TR. p. 73.
4. McLain Interview and TR. p. 73.
5. Swindall and McLain Statements, TR. pp. 37,76.
6. McLain Interview.
7. Ibid.
8. TR. pp. 34, 35, 76.
9. TR. p. 41
10. Ibid. p. 42.
11. Ibid. p. 43.
12. Ibid.
13. McLain, TR. p. 73.
14. TR. p. 48.
15. TR. p. 75.
16. Hicks Interview.
17. MPD Data and McLain Interview.
18. Swindall Interview.
19. Ibid.
20. Lt. Orvie Locklar, Internal Affairs Division, MPD, Telephone Interview, October 10, 1984.

21. McLain and Swindall Interviews.
22. McLain Interview.
23. TR. p. 126.
24. Ibid pp. 129-130.
25. Ibid. p. 133.
26. Ibid. p. 139.
27. TR. pp. 142-3.
28. TR. p. 177.
29. Ibid. p. 189.
30. Data provided by MPD pursuant to a request made by letter from Bobby Doctor, Director, SRO, USCCR, to Mayor Folmar, April 22, 1983.

X. POLICE DISCIPLINE

The MPD departmental manual states that the chief of police, under the general direction of the mayor, has the authority to command and supervise the police force. 1/ MPD personnel may be punished for the commission of any crime or misdemeanor offense defined by law or for engaging in any act or omission constituting a violation of policy, rules, procedures, directives or orders of the department. 2/ A Department Trial Board has been established to hear charges of alleged violations of MPD rules or regulations. If a Departmental trial board is convened, the officer charged will be afforded at least 7 days notice and informed of the right to counsel, the right to select two members to the trial board, and the time and place of the hearing. 3/ The trial board can impose as punishment a suspension of five days or less. 4/

The trial board determines the validity of the charge and recommends disciplinary action. 5/ The trial board hears all disciplinary matters other than demotions or dismissals. The chief has adopted the policy not to increase any punishment recommended by the trial board, but he can reduce the punishment. 6/ The board consists of 7 persons, including the chief, a captain, a lieutenant, a sergeant, a corporal, and 2 members of the accused officer's choosing. 7/ The chief of police serves as the chair of the trial board and directs the proceedings. Each member of the board has 1 vote and a simple majority rules. The chair of the board votes when there is a tie vote. 8/

Although general rules of evidence apply to trial board proceedings, any substantial evidence may be admitted by the chief. Testimony before the board is not under oath. Trial board proceedings are conducted generally in private with only the accused, his attorney, the witness offering testimony, the accused's commanding officer, members of the trial board and the designated secretary permitted to attend. 9/ The proceedings are recorded by a stenographer. 10/ An officer may waive the trial board proceedings by agreeing voluntarily to accept the punishment agreed upon. 11/

Any suspensions by the chief which exceed five days must be reviewed by the mayor's office. If a suspension exceeds 29 days, dismissal is automatic. 12/ Only a suspension of 30 days or more is appealable to the City-County Personnel Board. 13/ Similarly, if an officer is fired or demoted, a hearing can be held before the Personnel Board which can modify the suspension or reinstate the discharged employee. Appeal to the board is not automatic, but must be specifically requested by the officer being disciplined. The board does not intercede in cases where discipline of officers for infractions of regulations is alleged to be insufficient. 14/

Chief Swindall indicated there was no list of violations with a range of specific disciplinary actions.

With regard to police discipline, the City-County Personnel Director opined that there are "semi-untouchables" on the MPD. He further stated that there appears to be "a rigid system of ins and outs" -- the "ins" who are treated favorably and the "outs" who link this favoritism to the Mayor's involvement. A significant number of officers resent that involvement. 15/

Notes to Chapter X

1. Montgomery Police Department Departmental Manual, Sec. 3.005 (undated) (hereinafter cited as Manual).
2. Ibid. pp. 3.005 - .011.
3. Ibid. p. 3.014.
4. Ibid. p. 3.050.
5. Ibid. p. 3.020.
6. Swindall Interview.
7. Manual p. 3.026.
8. Ibid. p. 3.032.
9. Ibid. p. 3.035.
10. Swindall Interview.
11. Manual, Sec. 3.038.
12. Rules and Regulations, Rule IX, Sec. 4, p. 22, and Swindall Interview.
13. Moss Interview; Rules and Regulations, Rule IX, Sec. 4.
14. Moss Interview.
15. Ibid.

XI. THE COMMUNITY RELATIONS BUREAU

The Police Community Relations Bureau (CRB) manual states "Police Community Relations is the combined effort of the total community and the police to objectively and sincerely cope with and to mutually resolve the common problems always with equal justice to all." 1/

CRB, until recently, was headed by Lieutenant Albert Hardy, a black male in his thirties who has been with MPD for nine years. He has seen a wide range of duty, including the jail, motorcycle patrol, crimes against persons and property, vice and narcotics, strike force, special services and the patrol division. The bureau was under the direct supervision of Captain McLain in Internal Affairs until his retirement. 2/

CRB was originally a Housing and Urban Development program staffed with 30 persons. There are six MPD officers assigned to CRB: Five are black and one is white. Four of the officers are male and two are female; one is a lieutenant, two are corporals, two are patrolmen, and one is an investigator. CRB is permanently stationed at the Riverside Heights Public Housing Project with part-time staffed satellite offices at Cleveland Court, Cedar Park, Gibbs Village, Smiley Court and Trinnon Court public housing projects which house a total population of some 19,000 persons. 3/ The racial occupancy of the housing projects ranges from approximately 80 to 100 percent black. 4/

* * *

The U. S. Commission on Civil Rights concluded in its study of police practices that although a large part of police work was in the social service role, only a small proportion of the officers' training was in this area, and the Commission called for additional training in the social services. 5/

* * *

The Deputy Director of the Public Housing Authority of Montgomery, Mr. Wiley Thomas, was very supportive of the CRB, which is based in the public housing projects, but he felt that the only problem with the agency was that there were not more officers assigned to the Bureau. 6/

CRB runs 4 major programs: (1) courtroom intervention, (2) family disputes, (3) special services, and (4) investigations requested by the warrant clerk. 7/

Corporal McDonald, oversees the courtroom program. McDonald explained that a CRB officer talks to parties involved in domestic conflicts, mental health problems, harassment, assault, animal control, nuisance and animal trespass disputes in an effort to mediate. Cases can be referred for CRB intervention from the court after an arrest by the warrant clerk and by individual referrals. If a case is referred from the warrant clerk, it is sent back to the warrant clerk for action after a CRB investigation. CRB can obtain the assistance of the court in implementing its recommendations. The program receives most of its referrals from the municipal court judge based upon the court's view that a community problem exists and that additional information is needed before a disposition of the case can be made. This program has been well supported by the courts. 8/

In family dispute referrals, CRB officers serve as referees and encourage complainants to resolve their own problems. CRB officers make referrals to domestic counseling, mental health centers, Alcoholics Anonymous, and the warrant clerk. The Forrest Avenue Family Guidance Center is that most frequent referral made by CRB officers. 9/

The Police Community Relations (PCR) Volunteer Program places PCR volunteers in each of the 8 public housing projects in Montgomery. These volunteers from the community, screened by CRB officers, answer office telephones, take written complaints and give counsel to the residents. Each office has a "staff volunteer", and several volunteers who wear gold T-shirts identifying themselves as PCR volunteers. 10/

CRB also utilizes a mobile precinct, a converted Winnebago recreation vehicle, in its "We Care Program". This mobile precinct is staffed with a CRB officer, an investigator from the Youth Aid Division, personnel from the Montgomery Housing Authority and the Department of Pensions and Security, and representatives from other community service agencies. The unit renders assistance and answers questions in various areas of the city. A flyer is distributed in the community publicizing the time and date the mobile unit will visit. 11/

Another program organized and run by CRB is the Police and Youth Community Program (PAYC), which has as its expressed purpose to inform, educate and to build a better relationship between the community and the police. 12/ Weekly meetings held on Thursday at various locations feature guest speakers, film displays, "rap" sessions, and refreshments. The meetings are publicized through flyers and are attended by persons 12 years old and over. 13/

Teenagers between the ages of 12-18 who are active in the PAYC program are members of the Police and Your Community Team. The team plans group activities for youngsters in the community such as clean-up campaigns and talent shows. Each PAYC team member is given a T-shirt with the slogan "I'm a PAYC TEAM MEMBER, ARE YOU?" on the front, and "POLICE COMMUNITY RELATIONS" on the back to wear during PAYC functions during the summer months. 14/

Lastly, officers from CRB visit families of Montgomery citizens who have had a death occur from natural or violent causes to offer sympathy on behalf of the mayor, chief of police, and MPD. Officers counsel family members, contact the Traffic Division regarding funeral arrangements, give advice on safety precautions, and aid families in getting in touch with social agencies when needed. 15/

A program that is not presently included within CRB is the Victims' Rights Program which is part of the District Attorney's Office, according to its originator, Investigator Tony Burks. 16/ The program focuses on the victims of rape, robbery, murder and felony assault. Burks' first contact with the crime victim occurs when the case is brought before the grand jury. Burks ascertains the victim's financial loss where possible, and explains the judicial proceedings. Although Burks has received favorable feedback from Chief Swindall, he complains that a greater staffing is necessary. 17/

A program planned, but not as yet implemented in CRB is the Crime Against the Elderly (CATE) Task Force which will provide advocacy and assistance for elderly crime victims 65 years of age and older. It is anticipated that the program will have 3 facets: (1) investigative/prosecutive, (2) needs assessment/referral/followup, and (3) education/public awareness. 18/

However, some criticism of the CRB was received at the SAC factfinding meeting. Attorney Vanzetta Durant told Committee members:

The Community Relations Division of the Police Department is undoubtedly a good effort and needs to be in place. But in practice, I don't see any evidence that the persons...[within] that agency have had any training. And I don't see other activities by the Police Department to buttress what they are doing. I have suggested to Chief Swindall, to some judges here in Montgomery, that it seems to me that one thing that can be done that probably will have a more significant impact than a one hundred person Community Relations Division, is to put officers on the beat. The police officers in Montgomery don't know the communities.... You cannot possibly become personally acquainted with the people who reside in the community by riding through a community daily in a police car with the windows up. It is an intimidating sight. The officer never leaves the car. The officers do not know the people who run the stores, and shops and the "shot" houses in the communities. They don't become acquainted with the youngsters as they are growing up. They can only determine who is likely to get in trouble by whether that person has an arrest record, and whether he looks like somebody else. 19/

More critical remarks were leveled by County Commission member John Knight:

As a matter of fact, I initiated a meeting with the Chief of Police years ago to try to come to something in terms of police protection for the residents of public housing projects in the City of Montgomery. I was under the impression that the Community Relations Division would be a division that would be helpful and of assistance. However, it turned out to be more political than community relations. A typical example will be: At one time when we had problems with the Montgomery

Police Department and we had a meeting at a church on Hall Street, they [police] used the Community Relations Division to hold discos in the same street, at the same hour, at the same time that we were having a meeting to discuss the beating of a young man in the Tulane Court area. They also used the Community Relations Division to go door-to-door, house-to-house, and to try to gather information on individuals who have been at [in] the Tulane Court area to try to find out the specifics of what had taken place [re: criminal activity]....

So in an effort to try to cooperate with the Police Department, to work with them and to try to come to some decision that would be sensitive to the needs of the poor people that live in the public housing, to use them and, more or less, to use them in the pimp role. What I mean by that is, they would find somebody who was guilty of some insignificant crime or small crimes, and they would not prosecute or do anything, but they will use these people on a continuous basis to turn information over to the Police Department on other areas that they were concerned about. It has disturbed me and it has disturbed me greatly. 20/

Tulane Court resident Memphis Washington told SAC members at a community meeting that CRB has had little impact on the community and complained that street dances held by CRB for teenagers interfere with the sleep of working adults. 21/

Although criticized by some public housing residents these CRB officers demonstrate a dedication to the goal of better police/community relations in Montgomery. This was brought out from discussions with CRB staff and from observations of these officers discharging their duties.

Notes to Chapter XI

1. Information Regarding Police Community Relations: Duties and Functions, Community Relations Bureau, MPD, p. ii (Introduction) (May 6, 1983) (hereinafter cited as Duties and Functions).
2. Sergeant Albert (promoted to MPD Lieutenant in May 1983) and Corporal Margie McDonald, staff members of the Community Relations Bureau, Montgomery Interview, May 4, 1983 (hereinafter cited as Hardy and McDonald Interview).
3. Ibid.
4. Elizabeth Griffin, Director Tenant Selection, Public Housing Authority of the City of Montgomery, telephone interview, December 19, 1984.
5. U.S. Commission on Civil Rights, Who is Guarding the Guardians? A Report on Police Practices, p. 155, (October 1981).
6. Montgomery Interview, May 4, 1983.
7. Hardy and McDonald Interview.
8. Ibid.
9. Duties and Functions, pp. 24.
10. Ibid. p. 28.
11. Ibid. pp. 33-35.
12. Ibid. p. 35.

13. Ibid.
14. Ibid. p. 37.
15. Ibid.
16. Tony Burks, Investigator, Montgomery Police Department, Montgomery Interview, May 4, 1983.
17. Ibid.
18. Duties and Functions, at 38-42.
19. TR. pp. 136-7.
20. TR. pp. 211-2.
21. Memphis Washington, Montgomery Interview, June 22, 1983.

XII. MONTGOMERY BIRACIAL COMMITTEE

On May 24, 1983, Mayor Emory Folmar presented his plan for a 32-member biracial committee to the city council stating that he needed help because of deteriorating racial relations in the city. 1/ In explaining the rationale for the Montgomery Biracial Committee (MBC), the mayor stated:

Whether real or imagined, there is a perception of a problem in some people's minds. If there is a problem, and I'm not saying there is, this committee would provide a forum for exchange of ideas and would hopefully come out with some solution for solving them. 2/

Mayor Folmar's initial proposal called for each of nine city council members to appoint three members to the MBC with the mayor making five appointments. The mayor named Bill Chandler, Montgomery YMCA executive director, as chair of the MBC and Alabama State University President Robert Randolph as vice chair. Six council members each made their appointment, but three black council members refused to do so. The three council members, in often acerbic exchanges with the mayor, viewed the mayor's proposal as a political ploy to control the group chosen to implement a process of biracial communication which had wide community support across racial lines. 3/ Particularly vexing to the three black council members and Montgomery black leadership was not only the mayor's naming the chair, but his selection of Chandler to fill the position. 4/ City Council Member Dr. Joe Reed expressed it this way:

It was a stacked deck. They had got together-- they being the Mayor and his forces---and pulled together a committee. He had already appointed a chair and the vice chair.... And I was not going to participate. It was just a cover up.... I have not said that I would never participate in any biracial committee. It was the arrangement... that I would not participate in. 5/

Not all of Montgomery's citizens share the view of Council Member Reed. Alice Reynolds, who is now president of the City Council, told the Advisory Committee:

Well, I can't think of a fairer way to select

a biracial committee. It grieves me very much that all of the council members won't participate in selection of the members....6/

Will Tankersley, A Montgomery businessman, is an active member of the MBC, who believes the committee is the only vehicle that can do something; he stressed that the mayor was correct in making his appointments although he has no influence on its proceedings. 7/ William Stephens, legal counsel to the State Retirement System, also believes that the MBC will work in spite of some black opposition because political leaders and businessmen realize a mechanism is needed to reduce confrontation. 8/

While the prominent black leaders, especially the black council members, have been criticized for non-participation, the initiative for a biracial committee came from the black leadership. John Knight, Jr., County Commissioner and facilitator of the Ad Hoc Committee composed of representatives of many black organizations, telephoned the executive vice president of the Montgomery Area Chamber of Commerce (Tom Blake) to suggest that the Board of the Chamber and members of the Ad Hoc Committee meet promptly to discuss organizing a biracial committee. The Chamber was known to have been helpful in resolving racial tensions in the city in the 1960s. 9/ Following Knight's call, the Chamber president (Sam Schloss) went to Mayor Folmar suggesting that he form a biracial committee, but did not specify its composition nor structure. 10/ Mayor Folmar announced the formation of the Biracial Committee on May 24, 1983. 11/ The Chamber endorsed the mayor's plan on May 26, the night before a May 27 meeting between Chamber representatives and the black leadership to discuss formation of a biracial committee. 12/

The black leadership proposed that the Chamber and the Ad Hoc Committee each appoint 15 members to a 30-person committee. The Chamber representatives declined to urge the Chamber to make such appointments, feeling that it was more appropriate for the mayor and council to establish such a biracial committee. 13/ To date, no member of the Chamber's executive board nor the ad hoc group has accepted membership on the Biracial Committee. 14/

MBC, composed of 22 persons named by the mayor and 6 of 9 council members, decided to elect its own officers due to the controversy which developed because the mayor had made the initial appointment. Chandler was again named chair,

and George Green, a black, was selected as vice chair. The committee also decided to open its membership to any person who cared to serve. Those named by the mayor and council members were designated as an executive committee, but in practice no difference in function existed between those officially named and those who volunteered to participate. 15/ Following the city council elections in October 1983, several council members appointed an additional 3 members to the biracial panel. With fluctuating participation, no attendance record is maintained of the biracial committee. 16/

Chandler stated that the purpose of the committee is to bring members of both races together in order to create more communication and find solutions to problems facing the community. 17/

The MBC agreed to study police-community relations, unemployment, housing, transportation, education, and problems of communication in the city. 18/ Most of the effort to date has concerned police/community relations. The committee has recommended that a personality test be given prospective police officers, that the human relations and minority awareness programs at the Police Academy be reviewed and expanded. Also, the Police Department should announce a Code of Ethics to include a section on acts of discrimination and harassment. 19/ The committee sponsored a Police/Community Relations Week in May 1984 which involved an open house at police headquarters, a photo-slide presentation of police operations and a telephone call-in to discuss concerns about police operations. 20/ The committee anticipates releasing a report with recommendations on police/community relations.

There are several other groups which meet on an interracial basis. One that grew out of the racial tension in the city was what has been dubbed the "Jack Smith" dinners where persons are encouraged to bring to a "dutch" meal a person of another race. The object was to bring people together to develop personal relationships. No speakers, statements, or positions were to be taken by the group. 21/ In addition, several religious denominations have initiated biracial contacts recently or have continued to meet biracially over a period of years. There has been an exchange of ministers and congregations among some black and white Baptist churches. 22/ The Church Women United, and the Montgomery Ministerial Union have had a tradition of being organized on a biracial basis.

Notes to Chapter XII

1. The Advertiser (Montgomery), May 26, 1983, p. 1-D..
2. Ibid.
3. Ibid.
4. Chandler is a close friend of Mayor Folmar and was YMCA director when a Federal lawsuit was filed causing blacks to be admitted to all YMCA facilities. The Advertiser (Montgomery), September 28, 1983, p. 1-D.
5. TR. p. 217.
6. TR. p. 61.
7. Tankersley Interview.
8. William Stephens, Montgomery Interview, June 20, 1983 (hereinafter cited as Stephens Interview).
9. John Knight, Jr., Montgomery Interview, June 22, 1983 (hereinafter cited as Knight Interview); John Trotman, member Chamber of Commerce negotiating panel, Montgomery Interview, June 20, 1983 (hereinafter cited as Trotman Interview).
10. James S. Gaskell, Jr., Chairman of the Board (at time of interview), First Alabama Bank of Montgomery, Montgomery Interview, June 22, 1983 (hereinafter cited as Gaskell Interview).
11. The Advertiser (Montgomery), May 26, 1983, p. 1-D.
12. Trotman Interview; Alabama Journal and The Advertiser (Montgomery), May 28, 1983, p. 1-A.
13. Gaskell Interview.
14. Knight Interview; and Tom Blake, Executive Vice President of Metro Montgomery Chamber of Commerce, Telephone Interview, April 19, 1984.

15. William Chandler, Chair, Montgomery BiRacial Committee, Telephone Interview, August 29, 1984 (hereinafter cited as Chandler Interview).
16. Nancy Dennis, reporter, Alabama Journal, Telephone Interview, June 12, 1984.
17. Chandler Interview.
18. Chandler, Written Statement provided Alabama Advisory Committee at open meeting, September 26, 1983.
19. The Advertiser (Montgomery), October 3, 1983, p. 6-C.
20. Montgomery BiRacial Committee, Police/Community Relations Program (mimeographed circular) undated.
21. Stephens Interview.
22. TR. p. 241-242.

III. FINDINGS AND RECOMMENDATIONS

September 1986

In 1983, the Alabama Advisory Committee to the U.S. Commission on Civil Rights undertook a study of police/community relations in Montgomery after it had received a number of complaints asserting discriminatory conduct on the part of local police officers. A factfinding meeting was held on September 26, 1983, to provide additional data.

The report was delayed, and it was not until May 1986 that the Commissioners of the U. S. Commission on Civil Rights received the report. The Commissioners agreed to consider the report provided the Advisory Committee agreed to two conditions -- (1) remove statements attributed to 4 individuals who later disputed such statements, and (2) update the findings and recommendations in the light of the situation in 1986. The Commission on July 11, 1986, approved the 1983 report and subsequently approved these findings and recommendations. The basis for such findings and recommendations was a series of interviews conducted by Advisory Committee members and Commission staff in June 1986 and a subsequent factfinding meeting held in Montgomery on July 18, 1986. Data on the Montgomery Police Department (MPD) was provided by the city administration.

The Advisory Committee observes that there is a new look of the MPD in 1986 as compared to 1983. The new chief, John Wilson, has brought an improved attitude -- more openness to ideas and a desire to establish better communication with the community. Other changes, not necessarily instituted by Chief Wilson, include the issuing of a distinctive dress for members of the investigative unit for better identification as police officers, the required use of marked police vehicles to assist in arrests made by unmarked units and a written policy for handling complaints. The mayor appears to have delegated more responsibility to the chief for day-to-day MPD operations.

The Advisory Committee acknowledges the openness of Montgomery city officials and community leaders regarding their sharing information at the interviews and factfinding meeting as well as the willingness to receive these recommendations.

A. EFFECTIVE COMMUNICATION

Findings:

The primary concern of the Alabama Advisory Committee is the lack of a vehicle for effective biracial communication in Montgomery. Racial polarization is one characteristic of the city. During the course of the Committee's 1983 study, the mayor and city council created the Montgomery BiRacial Committee. Several councilmembers failed to make committee appointments. Few prominent white businessmen participated. Membership was open and attendance fluctuated. The BiRacial Committee ceased to meet. In 1983, there were other groups which also met on a biracial basis and continue to do so.

Two new organizations-- Leadership Montgomery and One Montgomery-- have been started since 1983 and have made creditable contributions toward bringing blacks and whites together to discuss problems and goals in the city. Twelve blacks and 18 whites under the age of 40 and equally divided between males and females, enter a year's training period in Leadership Montgomery. Participants meet monthly and remain a part of the organization following the training program. One group of Class II, Spring 1985 to Spring 1986, made a candid assessment of the police department and police/community relations. A copy was shared with the police chief, but was not circulated beyond Leadership Montgomery.

One Montgomery, meeting since early 1985, convenes at a weekly breakfast, and has an attendance ranging from 24 to 40. Persons "political" are not asked to join the group. Speakers discuss topics from the Police Department's Community Relations Bureau to teen-aged pregnancy. Mr. William Chandler, YMCA Director, former chair of the Montgomery BiRacial Committee and prime mover of the group through notices to members and fund raising for its special needs, told the Advisory Committee that the organization was open for concerned persons to bring issues to the group but that the group did not take the initiative in looking into situations. 1/ Nor has One Montgomery as a group dealt with any issues brought before it. 2/ One Montgomery avoids publicity, and several prominent Montgomerians were unaware of the existence of the group. It appeared that few prominent business leaders were participants, no active government agency directors, and no black person considered controversial.

The Committee also heard statements in the factfinding meeting that white persons were reluctant to speak out on issues that would appear critical of the city administration due to a fear of intimidation. 3/

The Alabama Advisory Committee is pleased to note the efforts to establish black-white dialogue in Montgomery. However, these efforts need to be strengthened. The Committee suggests that local leaders consider the development of a model organization with definite membership and staggered terms designed to improve interracial dialogue. The membership of such an organization would consist of three equal parts -- one of traditional white business "power structure"; one of black business leaders, activists, and "grassroots" or public housing residents; and one of government representatives to include the mayor or his representative, police chief, sheriff, city housing director, etc. The role of putting together such a group would probably need to be the responsibility of the city's white business leadership working in cooperation with the relevant black leadership. Furthermore, the group would assess the situation in the community and take the initiative of undertaking projects to address problematic areas. The focus of the group need not be only police/community relations, although the topic could be one of the first areas to be undertaken.

Such a proposal does not necessarily call for a new organization. One Montgomery could be that group if certain changes in structure and initiative were undertaken.

B. FIELD INTERVIEWS

Findings:

Police Chief Wilson described to the Advisory Committee the field interviews and records (cards) of such interviews as necessary tools for crime solving. 4/ However, it is the opinion of the Alabama Advisory Committee that the common use of the field interview as an accepted technique of law enforcement by MPD infringes on constitutional rights, is a violation of the law, and creates opportunities for police abuse and harassment. Community persons stated that the use of field interviews causes fear and resentment in the black community and is a major deterrent to positive police/community relations. 5/ The lack of articulated, written standards for conducting such investigatory stops, or lack of internal review mechanism for ascertaining their legitimacy, places each Montgomery citizen at risk of being stopped, with the primary impact falling on members of the black community.

Recommendation:

The Alabama Advisory Committee acknowledges the fear and animosity created in the black community by the use of field interviews which are inherently subjective. The Committee recommends that the MPD issue a general order specifying the legal restrictions on the use of investigatory stops, referred to as field interviews by the MPD, based on the two court decisions dealing with the issue. Terry v. Ohio 6/ authorizes "seizures" under the Fourth Amendment if there is an articulable suspicion that a person has committed or is about to commit a crime, and U.S. v. Brignoni - Ponce 7/ holds that reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of the stop.

Police, in making investigatory stops, should also give an explanation and purpose for the stop.

C. COMMUNITY RELATIONS BUREAU

Findings:

MPD has made a noteworthy effort through its Community Relations Bureau to favorably affect police community relations. Captain Sidney Williams, director of the unit, has apparently gained additional respect from colleagues and the general public.

The effectiveness of this effort, however, is severely hampered by the absence of staff professionally trained in community relations. In addition, the Advisory Committee is concerned that the Bureau, due to its overwhelming black staffing and the placement of offices in the predominantly black public housing projects, has the appearance of being a "black unit" for the black community.

Recommendations:

More funds and staff should be made available if MPD's Community Relations Bureau is to achieve its goal of harmonious police/community relations. Police involvement with youth is commendable and should be expanded. If the city is unable to locate additional funds for this vital bureau, responsible community-minded business leaders should take the lead in obtaining private contributions so that the Community Relations Bureau can be upgraded. MPD should take immediate steps to ensure that additional white males be added to the staff which should be concerned with community relations in the entire community. It must be clearly understood by all MPD personnel that harmonious police/community relations are the responsibility of each member of the department.

Finally, it is the opinion of Alabama Advisory Committee that greater impact on overall police/community relations could be obtained by placing well trained, sensitive foot patrol officers on regular beats in the downtown area and in densely inhabited residential areas. The Committee recognizes that foot patrols are not appropriate for non-dense areas. The on-going presence of responsible MPD officers in traditionally crime intense neighborhoods would permit the establishment of meaningful bonds between MPD officers and the communities they serve.

D. USE OF DEADLY FORCE

Findings:

During the course of the Committee study in 1983, several persons were wounded or killed in encounters with MPD officers. The Committee listed as the highest priority the modification of the "fleeing felon" policy then in effect.

In June 1984 U.S. District Judge Myron Thompson ruled that Alabama's fleeing felon law was unconstitutional in the case of Pruitt v. Montgomery. 8/ Although the city of Montgomery appealed that decision, the following General Order was issued, using the language of the court decision:

1. Deadly force will be used to protect the officer, another officer, or another citizen from death or great bodily harm.
2. Deadly force will be used to prevent the escape of a fleeing felon who has committed such a violent crime that the officer has good reason to believe that the use of such force is necessary to prevent imminent, or at least a substantial likelihood of, death or great bodily harm to himself, or another citizen if the fleeing felon is not immediately apprehended. 9/

Advisory Committee members were told during interviews with Montgomery residents in June 1986 that there had not been instances of police shootings during the preceding 3 years. Committee members are pleased to note this apparent absence of the use of deadly force, which use constituted a major source of tension in 1983.

Subsequently in March 1985 the U.S. Supreme Court, in striking down the Tennessee fleeing felon law, utilized the phrase "probable cause" rather than "good reason to believe" as a condition for a police officer to use deadly force in the apprehension of an individual. 10/

Recommendation:

The Alabama Advisory Committee recommends that the Montgomery Police Department substitute the Supreme Court phrase "probable cause" in the General Order regarding the use of deadly force for the current term of "good reason to believe." The Committee believes the substitution provides a more objective standard with a number of case precedents available as guidelines in the determination of probable cause.

E. FIREARMS POLICY

Findings:

The Committee in 1983 heard complaints about the misuse of weapons and that the policy of allowing police officers to carry personal weapons could lead to an incident of a "drop gun." Those concerns were not expressed in 1986. According to police department officials, the policy of allowing personal weapons enables officers to use weapons of a higher quality than those issued by the department. 11/

Recommendation:

The Committee recommends that the tight controls over the use of personal weapons as enunciated by the Montgomery Police Department be rigorously enforced so as to preclude any abuse of the policy allowing the use of personal weapons. While it is preferable that the department issue all officers with top quality firearms, the use of such personal weapons should be limited to those of a quality superior to departmental issued weapons. This policy of allowing officers to carry personal weapons under strict controls should be communicated to the public in order to allay concerns relating to the possible misuse of firearms by police officers.

F. EMPLOYMENT ON THE SWORN FORCEFindings:

Blacks in 1986 comprise 17.6 percent and women 10 percent of the fulltime MPD sworn force. Likewise blacks hold 17 percent and women 8.5 percent of the supervisory positions with the rank of sergenant and above. 12/ While the figures for blacks and women have improved since 1983, there remains a substantial gap between those figures and their respective percentages of the population. While under a court order prohibiting race discrimination in its employment practices, the MPD continues to hire and promote its officers without the benefit of a validated test, although the Department has had the requirement to devise such a test since 1973. Such an absence of validated tests permits the MPD to have complete discretion in employment and promotions, as long as the Department hires and promotes a sufficient number of blacks and women. This discretionary power has given rise to criticism, one of which is the alleged practice of rapid promotions for the mayor's former bodyguards, none of whom have been black nor female.

While the MPD asserts that its payscale is competitive--a news article to the contrary 13/ --police Chief Wilson cited the practice of having police trainees sign contracts guaranteeing the repayment of training fees should the officer not remain on the force a specified period of time. He also stated that MPD officers were attracted to the Montgomery Sheriff's Department and the Alabama Highway Patrol. 14/ The Advisory Committee recognizes that post secondary education assists persons to become more responsible and sensitive officers and are encouraged by the views in this regard of Major Grady Arnett, director of of the Police Academy. However, the Advisory Committee continues to be concerned with the pervasive unsympathic attitude within the department towards the value of higher education for officers and supervisors, and a hiring and promotion system which offers no direct incentives for higher education.

Recommendations:

The Alabama Advisory Committee recommends that the MPD augment their efforts in recruitment of minorities and women and provide any additional training which might be necessary to increase the hiring and promotion of blacks, other minorities and women.

The Committee concedes that background investigations and interviews are useful in personnel selection, but by nature are subjective. They should therefore be examined for potential adverse impact on blacks and women. Additional efforts should be made for validation of entry level and promotional tests.

City officials should also consider how educational advancement can be made a nondiscriminatory factor in both hiring and promotions, including whether education should be encouraged through a program of tuition reimbursement and/or pay incentives.

G. PSYCHOLOGICAL SCREENING

Findings:

In 1983 nor in 1986 is there routine psychological screening of MPD applicants, nor is there any systematic review of the psychological status of veteran MPD officers. Psychological screening of both applicants and veteran officers has potential value in keeping inappropriate and sometimes violent persons off the police force. The Committee found that there is limited mental health intervention where officers give the appearance of uncharacteristic behavior. This lack of routine review of veteran officers which could well signal a need for professional intervention could also conceivably prevent dangerous confrontations.

Recommendation:

The MPD should work with qualified experts to develop a psychological screening program for MPD applicants and on-board personnel to help prevent the employment of "inappropriate candidates -- those predisposed to violence and/or racism, and those who may not be able to perform under rigorous physical and mental stress that is part of police work." 15/

H. POLICE TRAINING

Findings:

The Committee was encouraged by the department's implementation of additional hours of police academy course work in human relations and cultural awareness. Unfortunately, the need for in-house training of veteran MPD officers in the area of human relations and racial sensitivity has gone unaddressed though such instruction is under study.

Recommendation:

The Alabama Advisory Committee recommends that the MPD implement for veteran officers a program of instruction focusing on human relations, racial sensitivity and college level courses in the areas of psychology and sociology.

I. INTERNAL AFFAIRSFindings:

When the Advisory Committee began its study in 1983, no records of complaints were maintained. 16/ The Committee is pleased to note that MPD has now drawn up a written policy detailing how complaints will be received, which ones would be referred to a division commander and which ones would be investigated by Internal Affairs (IA).

The best method of ensuring control of police misconduct and maintaining public confidence in the department's ability to police itself is through a prompt and thorough investigation, with discipline where warranted, communicated to the individuals affected and the community. IA is sometimes viewed as unresponsive due to a lack of consistent feedback to complainants on the disposition of complaints.

The Committee also commends the MPD for recently informing the media of discipline taken against several officers. However, there are no written standards of punishment for police wrongdoing. Such a crucial matter must not be left to arbitrary decisions made in the heat of the moment. Each case involving police misconduct is individual in nature, but police conduct should be subject to articulated standards.

Recommendations:

The Advisory Committee makes the following recommendations, consistent with those of the U. S. Commission on Civil Rights and the President's Commission on Law Enforcement and Administration of Justice: 17/

- (1) All complaints of police misconduct whether reported in person or by a community organization, whether in writing or over the telephone, whether made anonymously or in another form, should be reduced to writing on a prenumbered form. The use of prenumbered forms provides accountability that the MPD use of a log fails to do adequately.
- (2) The complaint process should be published in a brochure and widely distributed. The process would indicate ways that complaints could be filed, the procedure of the MPD for investigating the complaint, the discipline involved, and the responsibility of MPD to inform the complainant of the disposition of the complaint.

- (3) Each individual and organization filing a complaint with MPD should be notified of the complaint disposition, accompanied by an explanation of the outcome.
- (4) The identity of the complaining party should be withheld from the accused officers, unless voluntarily given.
- (5) A non-threatening environment and location for receiving complaints should be created. It is preferable to base a location removed from MPD headquarters which may pose a coercive and hostile atmosphere for potential complainants.
- (6) Detailed written orders regarding the jurisdiction, operation, and investigatory methods of the Internal Affairs Bureau should be issued to all MPD personnel and made available to the public.
- (7) MPD should, on at least a quarterly basis, provide reports to the city council and public on: (a) the number and kinds of complaints alleging police misconduct, (b) the number and disposition of investigations conducted pursuant to each complaint, and (c) any disciplinary action taken on each charge of misconduct investigated.
- (8) Complete investigatory files should be kept on each and every complaint.
- (9) An officer who has caused a civilian death, regardless of circumstances, should be placed on off-duty status until the completion of the investigation and until it is determined that it is appropriate to return the officer to duty.
- (10) A practice should be implemented of placing citizens complaints in police personnel jackets. Officers who are the objects of multiple citizens' complaints should receive special training and counseling which will aid them in dealing more

appropriately with the public. Depending upon the severity of the complaints involved, disciplinary action, including reassignment to a position requiring less community contact, or actual termination should be considered.

- (11) Once an allegation of police wrongdoing is sustained, discipline should be imposed that is commensurate with the seriousness of the offense as swiftly and consistently as feasible. To the extent possible, punishment, or a range of punishments, for categories of police misconduct should be predetermined and communicated to law enforcement personnel and the public. It is the latter group --the public -- that needs to be aware of this discipline and punishment in order to achieve public confidence in and support of the MPD.

All July Transcript References (J-TR) refer to the Alabama Advisory Committee factfinding meeting held in Montgomery on July 18, 1986 to update the findings and recommendations.

1. William Chandler, J-TR pp. 144-145.
2. Chandler, Interview in Montgomery, June 25, 1986.
3. Vanzetta Penn McPherson, Attorney, J-TR pp. 207-208.
4. Police Chief John Wilson, J-TR p. 62.
5. McPherson, Interview in Montgomery, June 26, 1986; Donald Watkins, Interview in Montgomery, June 27, 1986.
6. 392 U.S. 1 (1968).
7. 422 U.S. 873, 881-882 (1975)
8. Pruitt v. Montgomery, No. 83-T-903-N (N.D.Ala., June 12, 1984), (Order granting partial summary judgement).
9. Montgomery Police Department, General Order #2, made effective August 24, 1984.
10. Tennessee v. Garner, 53 U.S. L.W. 4410 (U.S. March 26, 1985).
11. Mayor Emory Folmar, Interview in Montgomery, June 25, 1986.
12. City of Montgomery, "Montgomery Police Department Personnel", June 23, 1986.
13. The Advertiser, (Montgomery), May 29, 1983, p. 1-A.
14. Police Chief Wilson, Interview in Montgomery, June 25, 1986.
15. U.S. Commission on Civil Rights, Who is Guarding the Guardians? A Report on Police Practices, p. 154 (October 1981), (hereinafter cited as Guardians).
16. Captain Thomas I. McLean, former Director of I.A., September 1983 Factfinding Meeting transcript, p. 75.
17. Guardians, pp. 158-159; U.S. Commission on Civil Rights, Tennessee Advisory Committee, Civic Crisis - Civic Challenge: Police Community Relations in Memphis, pp. 105-106, (August 1978); U.S. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police, p. 189. (1967).

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Speed Timing Devices -----	1
Street Interrogations and Field Interview Cards -----	2
Trace Evidence -----	1
Unified Court System -----	1
Use of Informants -----	2
Vehicle Searches -----	2
Vehicle Stops -----	18
Veteran's Administration Benefits -----	1
Word Processing and Electronic Dictation -----	2
Decoy Squad -----	1
Human Behavior -----	4 *
Intoximeter Testing -----	1
Out-Processing -----	1
Transactional Analysis -----	4 *
Shift Supervisor Orientation -----	2
Values -----	2 *
Dealing with Alcohol, Police Contact -----	4 *
Perspectives on Social Initiatives -----	2 *
Minorities -----	4 *

* Human Relations courses are to be added to curriculum with trainee class 84-A which was to have begun the week of March 5, 1984.

1980 Ala. Acts 1979, No. 79-599

§ 13A-3-27. Use of force in making an arrest or preventing an escape.

(a) A peace officer is justified in using that degree of physical force which he reasonably believes to be necessary, upon a person in order:

(1) To make an arrest for a misdemeanor, violation or violation of a criminal ordinance, or to prevent the escape from custody of a person arrested for a misdemeanor, violation or violation of a criminal ordinance, unless the peace officer knows that the arrest is unauthorized; or

(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest for a misdemeanor, violation or violation of a criminal ordinance, or while preventing or attempting to prevent an escape from custody of a person who has been legally arrested for a misdemeanor, violation or violation of a criminal ordinance.

(b) A peace officer is justified in using deadly physical force upon another person when and to the extent that he reasonably believes it necessary in order:

(1) To make an arrest for a felony, or to prevent the escape from custody of a person arrested for a felony, unless the officer knows that the arrest is unauthorized; or

(2) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

(c) Nothing in subdivision (a)(1), or (b)(1), or (f)(2) constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to persons being arrested or to innocent persons whom he is not seeking to arrest or retain in custody.

(d) A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (a) and (b) unless the warrant is invalid and is known by the officer to be invalid.

(e) Except as provided in subsection (f), a person who has been directed by a peace officer to assist him to effect an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer's direction.

(f) A person who has been directed to assist a peace officer under circumstances specified in subsection (e) may use deadly physical force to effect an arrest or to prevent an escape only when:

(1) He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

(2) He is authorized by the peace officer to use deadly physical force and does not know that the peace officer himself is not authorized to use deadly physical force under the circumstances.

(g) A private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person whom he reasonably believes has committed a felony and who in fact has committed that felony, but he is justified in using deadly physical force for the purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

(h) A guard or peace officer employed in a detention facility is justified:

(1) In using deadly physical force when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner accused or convicted of a felony from any detention facility, or from armed escort or guard;

(2) In using physical force, but not deadly physical force, in all other circumstances when and to extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner from a detention facility.

(3) "Detention facility" means any place used for the confinement, pursuant to law, of a person:

- a. Charged with or convicted of an offense; or
- b. Charged with being or adjudicated a youthful offender, a neglected minor or juvenile delinquent; or
- c. Held for extradition; or
- d. Otherwise confined pursuant to an order of a criminal court. (Acts 1977, No. 607, p. 812, § 630; Acts 1979, No. 79-599, p. 1060, § 1.)

Cross references. — As to use of force in defense of a person, see § 13A-3-23. As to refusing to aid peace officer, see § 13A-10-5. As to escape and related offenses, see § 13A-10-30 et seq. As to arrests by peace officers, see § 15-10-3. As to arrests by private persons, see § 15-10-7.

Constitutionality. — To the extent that this section purports to authorize the use of deadly force in situations where the use of such force is not necessary to prevent imminent, or at least a substantial likelihood of, death or bodily harm it is unconstitutional. *Ayler v. Hopper*, 532 F Supp 198 (M D Ala 1981).

Collateral references. — 6A C.J.S. Arrest, §§ 49, 58, 611-615. 6A C.J.S. Assault and Battery, § 97.

6 Am Jur. 2d. Assault and Battery, § 79

Degree of force that may be employed in arresting one charged with a misdemeanor. 3 ALR 1170, 42 ALR 1200

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify. 18 ALR 1368, 61 ALR 321

Right of self defense by officer attempting illegal arrest. 46 ALR 904

Private person's authority, in making arrest for felony, to shoot or kill alleged felon. 32 ALR3d 1078

Right of peace officer to use deadly force in attempting to arrest fleeing felon. 83 ALR2d 174.



OFFICE OF THE MAYOR

MONTGOMERY, ALABAMA

EMORY FOLMAR
MAYOR

June 20, 1985

Mr. Bobby D. Doctor, Regional Director
United States Commission on Civil Rights
Southern Regional Office
Citizens Trust Company Bank Building
75 Piedmont Avenue, Room 362
Atlanta, Georgia 30303

Dear Mr. Doctor:

The factual information contained in your draft report is replete with inaccuracy and gross exaggerations by individuals who openly oppose the City Administration and all its efforts to assure good community relations. The draft contains many interviews with avowed radicals who deem it their mission to never agree with any effort of the City to foster good racial relations. I will not critique the entire draft page by page for to do so would dignify a biased and slanted editorialization of distorted facts.

You state that the primary concern is that the factual information is accurate. It is not accurate and I believe you know it is not accurate. The judgment that you say is based on research is slanted and biased. The material in footnotes 9 through 13 of Number I of the draft are based on newspaper articles of the New York Times and a local newspaper which has a history of bias against City officials. Neither you nor the New York Times' article mentioned that the police were answering a

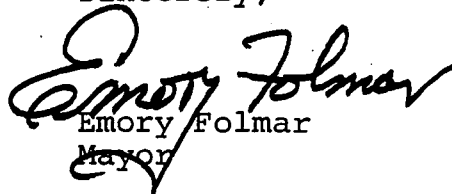
Mr. Bobby Doctor
Page Two
June 20, 1985

call for a missing person, or that the "Todd Road" family members pleaded guilty to assaulting the officers and later made full restitution for all damages done to the shot and beaten officers. Further, no evidence was ever brought out that the "Todd Road" family was beaten while in police custody. The material subject to footnote 10 failed to mention that a grand jury and the FBI found no evidence of any wrongdoing on the part of the officer involved. The materials subject to footnote 11 failed to mention that the black man shot by the black female officer was attacking the officer at the time of the shooting and that the jury that heard the case found no evidence of wrongdoing on the part of the black female officer. The material subject to footnote 12 failed to mention that the black man shot had terrorized the community and shot at several people and was in the process of pointing his weapon at the police officer when he fired. The material subject to footnote 13 fails to mention that the police officer involved shot a burglar in self defense as the burglar jumped from his place of hiding, and said officer was cleared by the grand jury.

Please find enclosed four letters from persons who refute your versions of their interviews.

We do not deem your draft report as accurate nor do we agree with this interpretation.

Sincerely,


Emory Folmar
Mayor

EF:rw

Enclosures (4)

cc: Chief C. E. Swindall
Montgomery Police Dept.
Mr. Bobby Black, Attorney
Hill, Hill, Carter, Franco,
Cole and Black

APPENDIX E

Response of the Alabama Advisory Committee to a letter received from Mayor Emory Folmar:

Mayor Folmar dismissed the entire report as biased and inaccurate, and then cited the listing of some 5 violent incidents summarized on page 2, which occurred as a result of a confrontation between police officers and members of the black community, as a misrepresentation of the events.

The report qualified citing of the incidents by stating that the Advisory Committee "takes no position with respect to the appropriateness of the actions taken by the police officers...."

In the Todd Road incident, Mayor Folmar writes:

The "Todd Road" family members pleaded guilty to assaulting the officers and later made full restitution for all damages done to the shot and beaten officers. Further no evidence was ever brought out that the "Todd Road" family was beaten while in police custody.

In further clarification thereof, the following facts are of record:

The trial of one of the family members accused of attempted murder, kidnapping and robbery ended in a mistrial. (Advertiser, November 28, 1983, p. A-1.) Charges were subsequently dropped against all but 4 of the 11 defendants. Prior to going to trial, the four entered into a plea bargain in which they pleaded guilty to misdemeanor assault charges. They were put on probation and agreed to pay a total of \$11,000 to the 2 officers involved. (Advertiser, February 4, 1984, p. A-1.) The city paid all of Officer Lee Brown's hospital bills which the mayor characterized as reaching "gigantic proportions." He further stated, "I think the restitution was small." (Journal-Advertiser, February 5, p. A-1.)

Advertiser news articles of April 13, 1983 and April 18, 1983 reported a city councilman and a television reporter had been given information on the beatings of the Todd Road defendants by a number of police officers. Two of the officers refused to testify under 5th Amendment protection when questioned about the incident during a court hearing.

