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Protesting in Cincinnati, Ohio: Official Policy and Vs. Civilian Reality

January 1981

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A report of the Ohio Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the Ohio Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Policing in Cincinnati, Ohio: Official Policy ~~and~~ vs. Civilian Reality

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

ATTRIBUTION:

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

RIGHT OF RESPONSE:

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

LETTER OF TRANSMITTAL

Ohio Advisory Committee to the
U.S. Commission on Civil Rights
January 1981

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Louis Nuñez, Staff Director

Dear Commissioners:

The Ohio Advisory Committee to the U.S. Commission on Civil Rights submits this report, *Policing in Cincinnati, Ohio: Official Policy and vs. Civilian Reality*, as part of its responsibility to advise the Commission about civil rights problems within this State.

This report is a product of the continuing concern of the Ohio Advisory Committee with the administration of justice in Ohio. In particular, the Committee is concerned with how justice is administered to minorities, both racial and cultural, as well as to women and poor people.

The present study of the Cincinnati Police Division has focused on use of force, distribution of services, and employment of minorities and women. In addition, involvement of the State and Federal Government is reviewed along with selected national issues in policing and proposed solutions to current problems.

The Committee investigated the Cincinnati Police Division over an 18-month period. The Division itself provided a wealth of data covering official policies and procedures. In addition, the Committee held a two-day fact-finding meeting on June 28-29, 1979 at which civilians as individuals and as representatives of community organizations presented their concerns about police practices in Cincinnati. Police officials and officers, local and county enforcement personnel, city administrators and legislators, and the Mayor participated in the fact-finding meeting as well.

A review of all the data presented to the Committee leads inexorably to the conclusion that there exists a serious discrepancy between the official policy of the Cincinnati Police Division in regard to use of force, distribution of services, and nondiscrimination in employment and the experiences of minority civilians and police officers, including members of racial and cultural minorities, as well as poor people. A similar and equally serious discrepancy exists between official Federal policy in regard to nondiscrimination by recipients of Federal funds and the lack of action by Federal funding agencies to ensure compliance. One consequence of these discrepancies and the cynicism they engender will continue to exist as long as civilians are locked out of policy-making and review of police practices and procedures.

Based upon the extensive data available to the Committee, a number of findings have been drawn on which recommendations are made for closing the gap between official policy and actual practice, for increasing civilian participation in the

operation of the Cincinnati Police Division, and for eliminating unnecessary force. These recommendations are directed to local officials both within and without the Police Division, and to State and Federal officials.

The Committee is particularly concerned about the virtual lack of Federal efforts to ensure compliance of the Cincinnati Police Division with nondiscrimination requirements. In part, this problem exists because of a paucity of effective remedies available to the Federal funding agencies, in part, because of inadequate staff and data for monitoring the conduct of sub-grantees of Federal funds such as the Cincinnati Police Division, and in part, because Federal funding agencies have no jurisdiction over discrimination against the poor or against white Appalachians. As a result of these problems, the Committee has made specific recommendations directed to the Congress and to Federal funding and enforcement agencies to eliminate the gulf between declared national commitment to nondiscriminatory justice and the reality in minority and economically disadvantaged communities. The Ohio Advisory Committee requests that you support its recommendations by taking appropriate action toward the goal of ensuring the equitable and consensual administration of justice throughout the city of Cincinnati.

Sincerely,

Henrietta H. Looman
Chairperson

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Odella T. Welch
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William E. Wilson
Canton

Barry Zacks
Columbus

*Former Members

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The Ohio Advisory Committee wishes to thank the staff of the Commission's Midwestern Regional Office in Chicago, Illinois, for coordinating the study and preparing this report on the problems of policing in Cincinnati.

The study was the principal staff assignment of Valeska S. Hinton equal opportunity specialist. The report was written by Valeska S. Hinton and Ruthanne DeWolfe, regional attorney, who also provided legal counsel throughout the project. Hinton and DeWolfe also served as principal investigators. Editorial assistance was provided by Gregory Squires, research writer. Assistance was also provided by Carmelo Melendez and Frank Alford, equal opportunity specialists. Valuable assistance was also provide throughout the study by Delores Miller, Ada Williams and Mary Davis, support staff. This project was carried out under the supervision of Clark G. Roberts, Regional Director.

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

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Introduction

What brought the Ohio Advisory Committee to Cincinnati

The last two decades have seen unprecedented growth in the demands being made by minorities and women for their civil rights which are guaranteed by the Constitution. There is a marked difference, however, in establishing laws to ensure civil rights and the enforcement of those laws in such a way that true progress is made. In minority communities throughout the country, it is becoming increasingly evident that words on paper mean nothing if those words are not backed up by action.¹

This lack of equal rights or equal protection under the law was alleged in the many complaints received by the Ohio Advisory Committee and in the high degree of frustration of minorities being voiced by Cincinnatians. Those complaints which concerned the actions of police officers toward minorities have ranged from verbal abuse, harassment, false arrest, use of force, discrimination in hiring and promotions, to shootings which resulted in death.

The following excerpts from 1978 Cincinnati newspaper reports reveal the seriousness of problems which have occurred there:

A 44-year old Cincinnati highway maintenance employee, who officials later said was mentally disturbed, became upset at the city garage. Police were called and the man allegedly scuffled with one officer, taking his night stick from him. The officer then shot him in the stomach - he survived the shooting.

A 28-year old escaped mental patient from a hospital was confronted by an officer in a downtown Cincinnati hotel. When the man began to flee, the officer fired twice, hitting him in the head. The man survived.

An 18-year old wanted on theft and burglary charges was paralyzed from waist down when he was accidentally shot in the back by a pursuing officer. The officer said he slipped on the pavement and his gun discharged.

A recent incident involved a 17-year old Black car robbery suspect who was shot and killed while fleeing the police. This was the ninth person shot by local police officers in and around Cincinnati in 1978. This case is not the first to have caused questions about whether the police over reacted.²

Cincinnati, referred to as "the city of Seven Hills", the "Queen City" and the "Gateway to the South", was described by Sir Winston Churchill as "the most beautiful inland city in American".³ "Cincinnati is truly one of the most well-rounded, active, interesting and beautiful cities in the entire county!"⁴ states the *Hello' Welcome!* magazine. Timothy Kincade, in the *Ohio Magazine*, says,

Cincinnatians unashamedly love their city; citizens and tycoons, politicians and bankers, all share equally in the feeling they have for their city and so they should. Life wouldn't be more

¹ Ruben Sandoval and Douglas R. Martinze, "Police Brutality--the New Epidemic," *The Nation*, Sept./Oct. 1978, p. 14.

² Dave Krieger and Douglas Imbrogno, "Beasley's Death Makes 9 Police-Related Shootings," *Cincinnati Enquirer*, December 3, 1978.

³ *Hello Welcome Magazine*, February 1979, p. 6.

⁴ *Ibid.*

enjoyable than in Cincinnati. If God made anything better he kept it for Himself.⁵

Cincinnati was founded in 1788, chartered as a village in 1892, and incorporated as a city in 1819. It adopted the Council Manager form of government in 1925.⁶ As *Ohio Magazine* stated:

Cincinnati makes the national press with some regularity but not on a daily basis. Normally, it's only to announce that another federal committee or national foundation has selected Cincinnati as one of the 10 most liveable cities in the country or that the Cincinnati Reds topped the major league road attendance records. Pretty dull stuff, really. People living in a captivating city, relishing the charm which surrounds them, nourished by a rich and healthy cultural tradition, people like this don't generate the kind of copy that sells newspapers.⁷

What could have happened to turn Cincinnati into a city facing a crisis in police-community relations? This is one of the questions that the Ohio Advisory Committee attempted to answer in its investigation of law enforcement activities in Cincinnati.

In the fall of 1978, the Committee received numerous complaints, newspaper clippings and reports of conflict and concern from citizens and community groups about deteriorating police community relations in Cincinnati. The Committee and U.S. Commission on Civil Rights staff members were invited to a meeting of the Cincinnati Human Relations Commission (CHRC) on November 9, 1978, to discuss the situation. Cincinnatians related their experiences with police harassment and verbal abuse. The Committee also heard reports of problems pertaining to police conduct in the city, including allegations of discrimination in employment and in the provision of police services.

After this dialogue, the CHRC joined by the National Association for the Advancement of Colored People, the Ohio Black Political Assembly, the Urban Appalachian Council and other community groups made a request of the Committee to investigate city procedure for handling complaints against police offices. As Michael E. Maloney, Director of the Urban Appalachian Council concluded:

⁵ Timothy Kincaid, "Cincinnati Is Best of All," *Ohio Magazine*, May 1979, p. 41.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Appalachian Action Committee of the Urban Appalachian Council, "Critique of Citizen Complaint Process," October 1976, p. 1.

The police image has been harmed by recent publicity about corrupt practices by command level officers. It has been further damaged on the streets by degenerating police-community relations, especially in poor Black and Appalachian neighborhoods. This degeneration has been caused by a few officers who persist in harassing and abusing citizens living in these neighborhoods. It is a dangerous and intolerable situation for neighborhood residents and for the public service mission of the police division. This volatile condition can be defused in part by giving citizens a more effective redress of their grievances than now exists. The complaint process, as it now exists, is secretive, biased in some instances, and less than helpful in dealing with the deeper issue of citizens feeling frustrated and helpless when confronted by police abuse.⁸

With this background information, the Ohio Advisory Committee decided to conduct a study of the administration of justice, focusing on the role of the police in Cincinnati. A statement by Clark Roberts Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, reflects the feelings of the Committee, "One measure of good police-citizen relationships is whether or not the police department provides a place where a person can go to solve a problem, not just file a complaint".⁹

Problems and Perceptions— Viewpoints of Community and Police

The entire criminal justice system, including courts and corrections as well as the police, is charged with enforcing the law and maintaining order. What is distinctive about the responsibility of the police is that they are charged with performing these functions where all eyes are upon them and where the going is roughest, on the streets. Since this is a time of increasing crime, increasing social unrest and increasing public sensitivity to both, it is a time when police work is particularly important, complicated, conspicuous, and delicate.¹⁰

The police did not start and cannot stop the convulsive social changes that are taking place in America. They do not enact laws that they are required to enforce, nor do they dispose of the

⁹ Statement before the Ohio Advisory Committee and Cincinnati Human Relations Commission meeting, Cincinnati, Ohio, Nov. 9, 1978.

¹⁰ U.S. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report*, p. 1.

criminal they arrest. The police are only one part of the justice system, the justice system is only one part of the government, and the government is only one part of society.¹¹

It is when the police attempt to solve problems that arise from the community's social and economic failures that policing is least effective and most frustrating. On the whole, police must accept society as it is—a society in which many parents fail to raise their children as law-abiding citizens, in which schools fail to educate them to assume adult roles, and in which the economy is not geared to provide them with jobs.¹²

This frustration was clearly expressed in the testimony of David D'Erminio, Police Specialist-Cincinnati Police Division:

I think society demands too much of the policeman. Not only are we expected to enforce the law with restrictions, but we're expected to be curbside psychiatrists, marriage counselors, social workers, even doctors and ministers—and those crucial choices and the time frame of seconds rather than days, to shoot or not to shoot, to arrest or not to arrest, to give chase or to let go.¹³

Sgt. Danny O'Malley, who resigned in September 1979, told Jim Greenfield of the *Cincinnati Enquirer*:

Things are as bad as they seem at the Cincinnati Police Division. There is no way my son will ever become a police officer if I have anything to say about it. I love this job but I feel I've outlived a lot of things. Times have changed, attitude have changed. I guess people have changed.¹⁴

Jim Greenfield concluded: "So have the Cincinnati police changed from a proud, disciplined paramilitary force once recognized nationally for its quality, to a harried uncertain unit bludgeoned by history and labor strife and confronted by constant challenge—from within as well as from without".¹⁵

The rank and file morale is at its lowest ebb in memory, and police community relations is suffering as well. The prestige of the police division began to drop with the indictment of a former police chief in

¹¹ Ibid.

¹² *Task Force Report*, p. 2.

¹³ Testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights, Cincinnati, Ohio, June 28-29, 1979, Transcript (hereafter cited as Transcript), p. 608.

¹⁴ Jim Greenfield, "Cincinnati Police—The Embittered Force," *Cincinnati Enquirer*, December 12, 1979 (hereafter cited as Greenfield Series).

1975 and plunged further down with the layoff of 94 officers during the city's financial crisis of December 1976. Feeling protected by the civil service system, the police who thought they had a secure, prestigious career, found through the layoffs that their jobs were subject to municipal finance and political decisions. The long pay dispute between the Fraternal Order of Police and the city, with the officers having no contract for over a year, has not helped morale. The image cracked again when the Ohio 1st District Court of Appeals upheld the requirement that Cincinnati employees live within city limits.¹⁶

The police feel that they are all alone and no one cares.¹⁷ The black police officers have the same problems as other officers but with an added dimension. In a city whose population is one-third black, the fact that only seven percent of the police force is black is a bone of contention with the black officers and members of the black community.¹⁸ Wendell Young, Police officer and president of the Sentinels Police Association, testified that:

Cincinnati has a problem because the Police Division in the black community isn't viewed as an organization that protects people. It's viewed as an organization that protects property, which is left behind by the white merchant when he goes home to another part of the city and must leave his place unguarded.

There is a double standard in policing, In the black community, policing attempts to control crime, in the white community, policing attempts to eradicate it. If we had a police department that was representative of all the people it served, I think that then the response to policing in the black community would be the kind of response that black people would feel they could trust. If we had at least one assistant police chief who was black, if we had several captains who were black, we would have black officers in the command making areas in the police division.¹⁹

If these are adequate statements of the police's perception of their own image, what does the community think of the police image? In the testimony of the Metropolitan Area Religious Coalition (MARC) of Cincinnati it was stated:

¹⁵ Ibid.

¹⁶ *Buckley v. Cincinnati*, No. C-790212 (Ohio Ct. App., Aug. 29, 1979).

¹⁷ Greenfield Series.

¹⁸ Ibid.

¹⁹ Transcript, pp. 189-190.

We feel that perceptions of a large segment of the community are as important as what really exists. We do believe that underpolicing is as big of a problem as over-policing and we feel that one of the great problems is that many citizens in the poorer inner-city communities feel that they do not get adequate protection and there is as much need for improved policing as there is for less harassment.²⁰

Sentiment in the black community, today, closely parallels virulent anti-police feelings in the predominantly Appalachian community. Michael E. Maloney says, "It's the same problem, having some police officers who are either unqualified by reason of training or attitude and who commit acts of brutality. It's the same problem of the community not having an avenue of redress."²¹

"All poor people are pretty much in the same powerless disadvantaged position", says University of Cincinnati Vice President Lawrence Hawkins, Chairman of the Mayor's Community Relations Panel.²² Present Mayor Kenneth Blackwell does not find surprising the antagonism that police say they encounter. This is an era in which those without power are challenging institutions, government, lawyers, and the press as well as police. Mayor Blackwell has also said that people who do not feel they share in the system view the policeman as the protector of the status quo. The policeman as the point man is the first to realize the challenge to authority, to the legitimacy of the system.²³

Mr. J.C. Johnson, President of the Cincinnati Chapter of the N.A.A.C.P. testified that:

When this situation started to unfold, I was under the impression that this was completely. . . a result of racism on behalf of members of the police division. . . after having sat through numerous nights of testimony from Cincinnati citizens, I no longer believe that is the only rationale. . . there is a very heavy degree of classism involved in the problem here. . . I say this because, I find that not only blacks are having problems when dealing with the Cincinnati police, there are certain members of the poor white community that are having these same types of problems. A two-fold problem has emerged in Cincinnati. First is a series of perceptions held by significant segments of the population that they are not adequately served

by the police division, second is the fact that there is no mechanism in place to resolve police-community conflicts in which these segments have confidence.²⁴

Mr. Simon Leis, Hamilton County Prosecutor, offered a different opinion. He expressed his hope that the Commission not lose sight of the fact that many of the incidents being investigated in which police misconduct has been alleged would not have occurred in the first place if it were not for the crimes that were committed and which necessitated police action.²⁵ It is clear that where people live or work and the nature of their personal involvement in the community have an effect on their perceptions of the police. Of the many people interviewed and the letters received, it became evident that something is wrong. The first question that arises is, what is the problem? The second is, what can we do about it?

Farnsley Peters, Executive Vice President, Greater Cincinnati Chamber of Commerce, stated:

There is no doubt about the fact that there is great uneasiness in Cincinnati today. Police officers and their families are frightened by the possibility of future killings. The minority community is concerned that they will bear the brunt of overreactions to the situation. And the community at large is dismayed at what appears to be the loss of the community safety in which they have so long taken for granted in Cincinnati.

Mr. Peters concluded:

We have to face the current situation with realism and understanding, we have to work together as a community to restore mutual confidence and trust between all elements of the community. It seems to me our immediate solution is twofold; first we must make sure that the Cincinnati Police is properly trained and equipped to carry out their mission; second, we must assure the minority community that justice will prevail in our city.²⁶

The heart of the law enforcement function, as experts are fond of pointing out, is one of legitimacy. To carry out effectively any of their various assignments, the authority of the police must be generally accepted by the public. The crux of the American

²⁰ Transcript, pp. 538-541.

²¹ Greenfield Series.

²² Greenfield Series.

²³ Greenfield Series.

²⁴ Transcript pp. 126-129.

²⁵ Ibid., p. 154.

²⁶ Ibid., pp. 713, 715.

police problem has long been the fact that the legitimacy of the police is often challenged rather than accepted. From this issue alone stems some of the most serious and long-standing problems in American policing.

Precisely because they are essentially a political institutions, and have been perceived as such by the public, American police have not enjoyed widespread acceptance by the public. Police officers, have historically been subjected to an enormous amount of ridicule and outright hostility. The Cincinnati chief of police complained in 1887 that “a policeman’s life is one of continual danger. . . He is considered fair sport for every gang of roughs and hoodlums who choose to assail him. . . .”²⁷

Former Police Commissioner of New York City, Patrick Murphy writes in his book, *Commissioners*:

Municipal politics and bad management are two main reasons why the struggle of the honest effective police officers to do good work in an heroic one. . . [T]he most honest television portrayal of police work is not perhaps “Kojak” or even “Police Story” but “Barney Miller”. . . In its essential form, even without the debilitating and often demoralizing accountments of managerial stupidity, the job of the American police officer is a terribly emotional one. Nerves are on edge for very moment the officer is an display. . . In the police role as a sort of grand mop-up operation, the police often see society for what it is at its worst—not as society likes to see itself.²⁸

Former Captain Anthony Bouza, 44th Precinct, Bronx, N.Y. in 1977 stated:

Aristotle did say 2500 years ago that poverty is the parent of revolution and crime. It is still true. . . . America attacks the problems that it sees. It doesn’t see these problems. They are now under the rug. They are being more ignored now than they ever have been. There hasn’t been a significant redistribution of income in this nation for 30 years. . . To the degree that I succeed in keeping the ghetto cool—to the degree that I can be effective, to that degree, fundamentally, am I deflecting America’s attention from discovering this cancer?. . . Maybe I’d be better off not being as effective as I presume myself to be. . . And that

²⁷ Samuel Walker, *A Critical History of Police Reform*, (Lexington, Mass: Lexington Books 1977), p. 14.

²⁸ Excerpts from Patrick Murphy’s book, *Commissioners* as printed in the *Chicago Tribune*, Sunday, April 22, 1979. Murphy formerly was police commissioner in New York City, Detroit, Washington, D.C., and Syracuse. He now heads the Police Foundation in Washington, D.C.

way American would be confronting the problem as it had to do during the urban riots of the 60’s and so on. The fact of the matter is that we are manufacturing criminals and brutality out there. We are very efficiently creating a very volatile and dangerous sub-element of our society. . . .

We are doing it simply because we don’t want to face the burdens, the problems, and the responsibilities that their existence imposes on any society with conscience. So rather than awaken your conscience to the problem, you are far better off just ignoring it. And that’s what we are doing. I am very well paid, almost, to be the commander of an occupation in the ghetto. So that’s where my sense of defeat and frustration comes from.²⁹

All of these pressures and points of conflict no doubt contribute at least in part, to the problems in Cincinnati. In order to develop a more comprehensive understanding of police/community relations, the Ohio Advisory Committee launches an investigation, the findings of which are reported in the following pages. Interviews were conducted with the city officials and police administrative officials to gather information about their polices and procedures regarding use of force, employment and promotion, training and education, complaint processing, and related issues under their jurisdiction. Police, community groups, civic and religious organizations, civil rights leaders, and individuals were also interviewed to obtain a cross-sectional perspective of the police - community relations aspect of the crisis. A variety of documentation was collected and analyzed, including written policies, annual reports, previous studies, statistical data, and other relevant materials. The Committee held a fact-finding meeting in June 28, 29, 1979 to receive further data to be used to supplement that gathered through the preliminary investigative process.

This introductory chapter has given some background of incidents, complaints, and frustration that existed in Cincinnati as they relate to the Police Division and its operation. The following sections of the report will analyze the extensive materials submitted to the Ohio Advisory Committee and will offer recommendations to increase civilian participa-

²⁹ Captain Bouza, 44th Precinct, Bronx, New York, excerpts from WNET/TV, *The PoliceTapes*, January 3, 1977. He is now police chief of Minneapolis, Minnesota.

tion in the development and review of police policies and practices in Cincinnati.

Use of Force

Considerations of Law and Policy

What is Force?

Analyzing the use of force by police personnel against civilians involves three threshold considerations. First, what was the goal of the police officer and the perception of that goal by the civilian? Related to this first consideration are whether or not the goal was a legitimate goal of law enforcement, order maintenance, or service within the parameters of the officer's responsibilities and whether or not the goal was clearly communicated to the civilian. The Ohio Advisory Committee, for example, has received a number of complaints that Cincinnati police officers at times have advised civilians to do things for no legitimate or stated reason such as ordering a small and peaceful group of youngsters to disperse without explanation.¹ Cincinnati residents have also stated that officers questioned as to their purposes in ordering civilians to do or refrain from doing something, frequently refuse to answer. The Reverend Fred Shuttlesworth of the Cincinnati Ministerial Coalition reported to the Ohio Advisory

Committee that civilians, frequently ask police who arrest them "well, what have I done?" because they honestly do not know how their conduct has violated the law, only to receive no response or some high-handed answer such as "we'll think of something".² Other civilians have alleged to the Committee,³ to the Mayor's Community Relations Panel,⁴ and to other community groups⁵ that police officers regularly refuse to explain their orders, inferring that they sometimes have no legitimate purpose for their orders. To civilians, this kind of police conduct reportedly constitutes abuse, harassment, and a misuse of force.⁶

Secondly, in analyzing use of force by police, it is necessary to look at whether the civilian was resisting police orders. What was the nature of the perceived resistance? Was he or she physically or verbally refusing to obey the officer or was the civilian merely questioning the officer's conduct, asking for an explanation, or asserting his or her civil rights? It has often been pointed out that police officers may perceive such behavior as resistance,⁷ or even as a kind of assault, albeit a "symbolic

¹ See e.g., Rev. James W. Jones, Ministerial Coalition of Cincinnati, Ohio, testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights, Cincinnati, Ohio, June 28-29, 1979, transcript, (hereafter cited as Transcript), p. 197.

² Transcript, p. 205.

³ Ann Martin, Transcript, p. 233; J.C. Johnson, President, Cincinnati Branch, N.A.A.C.P., "Statement by J.C. Johnson On Behalf of the Cincinnati N.A.A.C.P.," May 17, 1979.

⁴ *Report of the Mayor's Community Relations Panel to the Council of the City of Cincinnati*, Cincinnati, Ohio, July 5, 1979 (hereafter cited as *Mayor's Panel*), pp. III-4-5.

⁵ Arthur Slater, Cincinnati Human Relations Commission, Transcript, pp. 340-341; Community For Our Protection, "Update", June 1979.

⁶ See e.g., Sydney J. Harris, "Police Brutality Scars the Psyche As Often

As It Bashes Heads", (Chicago) Sun-Times, Oct. 8, 1979, p. 41. The former Mayor of Cincinnati, Bobbie Sterne, testified before the Ohio State Advisory Committee that there is some police brutality in Cincinnati but assessing the extent of that brutality is a very difficult problem. Transcript, p. 33.

⁷ The National Advisory Commission on Criminal Justice Standards and Goals has urged that a suspect's "lack of cooperation or antagonistic attitude" should not be a factor as such in a decision to arrest. *Police*, Washington, D.C.: Government Printing Office (1973) (hereafter cited as *Police*) p. 24. The Rev. Fred Shuttlesworth, Cincinnati Ministerial Coalition, reported to the Ohio Advisory Committee that civilians often do not know how or why their behavior constitutes resistance to a police officer. Transcript, p. 208-211.

assault", requiring an aggressive response by the officer.⁸

The Ohio State Advisory Committee has received a number of reports concerning civilians who have been physically restrained or threatened by officers where no actual resistance was offered. For example, the Assistant Director of the Cincinnati Metropolitan Housing Authority, Virgil V. Ashley,⁹ reported an incident involving white officers and black civilian in which the arresting officers used "vile and abusive" language and threatened the civilians who were passively submitting to their arrests. The Reverend James W. Jones of the Cincinnati Ministerial Coalition¹⁰ stated that it is a common occurrence for police to use actual and threatened physical force and the threat of legal sanctions (usually for disorderly conduct) against civilian who questions the reasons for detaining them. The use of physical and other forms of force to overcome nonexistent or exaggerated resistance appears to civilians as abuse, harassment, and brutality.¹¹

Thirdly, and the issue on which the remainder of this section will focus, is the nature and extent of the force used by the police to overcome alleged civilian resistance. Was the *kind* of force appropriate? In addition, was the *amount* of force reasonable? The term "force" is often limited to the actual application of *physical* coercion or restraint. That is how the Ohio criminal code¹² and Cincinnati Police Division define the term. To the Police Division, "force" means only the actual use of physical means (including chemical agents) "beyond what is necessary to restrain someone by handcuffing him behind his back"¹³ To civilians, however, "force" is probably much broader and includes a range of threatened sanctions.¹⁴

Civilians are aware that police officers possess the power to use physical coercion including in some circumstances fatal force to accomplish their goals.¹⁵ Many civilians particularly the poor and members of minority communities who as groups have the largest number of adverse police-citizens contacts, fear that power.¹⁶ Consequently, civilians often infer that force has been used to coerce their behavior when an officer orders him or her to do or refrain from doing an act, when the officer threatens physical or legal sanctions, when the officer draws his or her gun, as well as when the officer applies actual physical restraint or coercion against the civilian.¹⁷

Many of the complaints received by the Ohio Advisory Committee and the Mayor's Community Relations Panel indicate that Cincinnati civilians do equate the use of authoritarian behavior control techniques by police with "force".¹⁸ The Cincinnati Police Division, on the contrary, views "force" only as actual physical coercion or restraint and does not recognize symbolic or threatened force.¹⁹ Police personnel apparently have failed to understand that because they possess the power to use physical force including deadly weapons and chemical agents, civilians respond to police actions as "force" far earlier in the interaction than do the police themselves. For civilians, the dichotomy generally is between "persuasion" and "force." Civilian perceptions in this regard accord with the British policy which dichotomizes "force" on the one hand and "persuasion, diplomacy and salesmanship" on the other.²⁰ For the Cincinnati police, the critical distinction is between "physical force" and "all other techniques of behavior control". Tension and alienation between civilians and police are natural by-products of such distinctions.²¹

⁸ The concept of the civilian "symbolic assailant" was introduced by Jerome H. Skolnick in *Justice Without Trial* (New York: John Wiley & Sons, 1966) (hereafter cited as *Justice Without Trial*). According to Skolnick, the nature of police work which requires continuous preoccupation with potential violence, causes officers to develop a "preceptual shorthand" through which they "identify certain kinds of people as symbolic assailants, that is, as persons who use gesture, language, and attire that the policeman has come to recognize as a prelude to violence". (p. 45) Skolnick believes that officers perceive the threat of violence to be diminished by docile civilian behavior and increased by assertive behavior which does not indicate "acceptance of the policeman's authority". (p. 105).

⁹ Ohio Advisory Committee, hearing in Cincinnati, Ohio, June 28-29, 1979, Exhibit 28 (hereafter cited as Hearing Exhibit 28).

¹⁰ Transcript, p. 195.

¹¹ *Mayor's Panel*, pp. III-1, 6; Exhibit 28; Michael Maloney, Executive Director, Urban Appalachian Council, Transcript, pp. 130-131.

¹² "Force" means any violence, compulsion, or constraint physically

exerted by any means upon or against a person or thing". Ohio Rev. Code Ann. §2901.01(A) (Page 1975).

¹³ Captain Joseph Crawford, Commander, Internal Investigations Section, Cincinnati Police Division, telephone interview December 3, 1979. (hereafter cited as Crawford Telephone Interview of Dec. 3, 1979).

¹⁴ In ordinary discourse, compulsion or restraint by intellectual, moral, or physical means is tantamount to "force". *Webster's Third New International Dictionary* (Springfield, Mass: G. & C. Merriam Company, 1971).

¹⁵ See e.g. *Police*, p. 18.

¹⁶ *Mayor's Panel*, p. III-4; Jean Mabry, Transcript, p. 726; Wendell Young, President, Sentinels Police Association; Transcript, p. 549.

¹⁷ Stan Hirtle, Attorney, National Lawyer's Guild, Transcript, p. 297; Lester Gaines, Attorney, Transcript, pp. 246-47.

¹⁸ See e.g., Rev. Fred Shuttlesworth, Transcript, p. 204.

¹⁹ Crawford Telephone Interview of Dec. 3, 1979.

²⁰ Edward M. Davis, *Staff One: A Perspective on Effective Police Management* (Englewood Cliffs, N.J.: Prentice-Hall, 1978), pp. 17, 30.

²¹ See e.g., Ann Martin, Transcript, p. 229.

A further problem created by the Cincinnati police dichotomy in regard to force involves the way civilian complaints of police misconduct are classified and handled by the Cincinnati Police Division, Internal Investigation Section (IIS). The IIS uses nine categories for classifying complaints.²² Only two categories are germane to the present discussion. Category 1 is titled 'discourtesy'²³ Category 3 is called "excessive force".²⁴ These are the two principal categories into which civilian complaints of verbal or physical "force", "abuse", "brutality", or "harassment" are placed. Category 3, "excessive force", is limited to instances where actual physical force has allegedly been used against the civilian.²⁵ On the other hand, Category 1, "discourtesy", is used for complaints of unwarranted verbal threats, both of physical force and legal sanctions, such as threats to arrest for disorderly conduct.²⁶ Allegations that police officers have used racial epithets and harassing techniques such as unfounded automobile pull-overs or on-the-streets stops for questioning are also placed in Category 1.²⁷ Lumping abusive and threatening behavior together with rudeness into this one category can obscure the extent to which police personnel may act arbitrarily in coercing compliance with legitimate police goals.

It is virtually impossible to determine the effectiveness of the IIS procedures to deal fairly with civilian complaints. The IIS regularly sustains less than 10 percent of the complaints filed under either Category 1 or 3²⁸ and its files are not open to any outside agency.²⁹ Thus, no outside agency including the Ohio Advisory Committee can review the step-by-step decision making process of IIS investigators. However, the Mayor's Community Relations Panel

as well as other groups and individuals have reported that the public currently has little confidence in the internal investigation process.³⁰

Not only does the elimination of orders and threats of physical or legal sanctions from the category of "force" obscure the degree to which authoritarian techniques may be unnecessarily utilized by police officers but, in addition, the latter conduct is consequently not subject to Police Division regulations on "use of force".³¹ Removing all authoritarian police technique other than physical force "beyond what is necessary to restrain someone by handcuffing him behind his back"³² from the category of "force" removes those techniques from the governing policy on use of force.

The Cincinnati Police Division regulation governing use of force, (other than deadly force), Regulation 12.145, sets forth no policy statement that force should be used only as a last resort after persuasive techniques have failed.³³ As a matter of express policy, officers are not officially required to attempt non-authoritarian, persuasive techniques before resorting to physical force or other forms of coercion. The regulation instead requires each officer, by default of governing regulations, to decide for himself when force is necessary, with or without resistance by the civilian. As discussed in Chapter 5,³⁴ the "gut" feelings of officers making on-the-spot decisions are often distorted by irrelevant and unfairly discriminatory factors such as the race, socio-economic status, or sex of the civilian or the anxiety of the officer. These factors are inappropriate grounds for electing authoritarian instead of persuasive techniques of behavior control.

²² These categories are 1) Discourtesy, 2) Ethical conduct, 3) Excessive force, 4) Shots fired, 5) Improper police procedures, 6) Lack of proper police service, 7) Law violations by officers, 8) Off-duty conduct, 9) Other or miscellaneous. City of Cincinnati: Cincinnati Police Division, Internal Investigation Complaint Procedure," (hereafter cited as "Complaint Procedure"), *Procedure Manual*, Jan. 1, 1976, (hereafter cited as *Procedure Manual*) and Internal Investigation Reports dated May 3, 1979 and June 27, 1979, Cincinnati Police Division.

²³ "1. Discourtesy (includes verbal abuse, harassment, etc.)." "Complaint Procedure," *Procedure Manual*.

²⁴ No parenthetical definition is set out for category 3. "Complaint Procedure," *Procedure Manual*.

²⁵ To the Cincinnati Police Division, only physical force beyond what is necessary to handcuff an individual behind his or her back for purposes of restraint constitutes "force". Therefore, complaint category #3, "Excessive force", is reserved for civilian complaints that such extreme physical force was applied without justification. Crawford Telephone Interview of Dec. 3, 1979.

²⁶ Crawford Telephone Interview of Dec. 3, 1979.

²⁷ Ibid.

²⁸ Internal Investigation Section Summaries dated Jan. 9, 1975, Jan. 7, 1976, Jan. 12, 1977, Jan. 9, 1978, and Jan. 8, 1979. In 1974, 12 percent of the

"excessive force" complaints were sustained, 7 percent in 1975, 8 percent in 1976, 3 percent in 1977, and 9 percent in 1978. In 1974, 11 percent of the "discourtesy" complaints were sustained 6 percent in 1975, 4 percent in 1976, 10 percent in 1977, and 11 percent in 1978.

²⁹ Only the City Manager, the Safety Director, the Police Chief, the Inspection Services Bureau Commander, and the Personnel of the Internal Investigation Section has access to internal investigation files. "Complaint Procedure," (D)(3) *Procedure Manual*.

³⁰ *Mayor's Panel*, III-2; Kenneth Blackwell, member of the City Council and currently Mayor of Cincinnati, Transcript, p. 81; Wendell Young, Transcript, p. 542.

³¹ Procedure No. 12,145, *Procedure Manual*.

³² Crawford Telephone Interview of Dec. 3, 1979.

³³ The statement of policy for Regulation 12.145 is:

Whenever it becomes necessary to use force (includes chemical mace) against any person in order to overcome resistance to arrest, to ward off a physical attack, or for any other reason, subject of such force will be taken to the station or office of the arresting unit accompanied by the arresting officer. An investigation shall be conducted. An official report will be submitted to the Police Chief. *Procedure Manual*.

³⁴ See also, Michael Maloney, Hearing Transcript, p. 132.

The failure to recognize force to be the opposite of persuasion and to provide better limitations on the use of both physical and non-physical coercive techniques reportedly have serious consequences for police-civilian confrontations. Experts are in agreement that, for example, most violence occurs in confrontations when the self-respect of one or both is perceived as being undermined by the other.³⁵ Authoritarian techniques ordinarily create resistance in the target individual because they imply a superior over inferior status diminishing his or her self-respect.³⁶ Where civilians anticipate that in a police-civilian confrontation, the police will utilize coercive and demeaning authoritarian techniques to assert their superiority, the civilian is set to respond in a self-protective, resistant manner even without immediate provocation.³⁷ The potential for civilian-police violence is thereby enhanced.

Police personnel³⁸ and police wives³⁹ with whom the Ohio Advisory Committee discussed problems of self-respect have indicated some confusion over the need for and the consequences of authoritarian police behavior. These individuals and others⁴⁰ have stressed only that community members must respect the authority of police officers and be sympathetic to the difficult jobs they are required to perform. Of course, many civilians do offer that respect and many have positive feelings about the Division.⁴¹ Many Cincinnati civilians, however, reportedly distrust and despise the police.⁴² To the extent that a demand for community respect contains a hidden message that civilians should fear the power of police officers or should accord them superior status

or should obey their commands without question, a request for respect may be expected to lead to destructive confrontations in which neither party is able to behave in a conciliatory manner or resolve disputes amicably.⁴³

Police officers initiate the vast majority of police-civilian interactions in which the former wishes to control the behavior of the latter.⁴⁴ As a result, how a police officer elects to accomplish his or her goal is a choice within the officer's control from the moment the contact is initiated. It is the police officer, supposedly well-trained in human motivation and personality development who is considered to be responsible for avoiding arbitrary and authoritarian conduct which may provoke civilian resistance.⁴⁵ It is the officer who is responsible for attempting to persuade the civilian to act or not act as he or she has deemed necessary, who is responsible for preventing a power struggle, and who is responsible for de-escalating a potentially explosive situation. Experts agree that police need a better understanding of how broadly civilians perceive use of force by police, how the police use of coercion to accomplish their goals leads to fear, and how fear leads to confrontations over nothing more substantive than preservation of self-respect.⁴⁶

Use of deadly force

At common law, law enforcement officers were privileged to use deadly force to effect the arrest of a person suspected of committing a felony.⁴⁷ The

³⁵ Catherine H. Milton, Jeanne Wohl Halleck, James Landner, Gary L. Albrecht, *Police Use of Deadly Force*. (Washington, D.C.: The Police Foundation, 1977), p. 5.

³⁶ Franklin W. Neff and Bernard Lubin, "Observations in Power and Authority From a Training Program for Police Managers", in *Power and Authority in Law Enforcement*, eds. Terry R. Armstrong and Kenneth M. Cinnamon (Springfield, Ill.: Charles C. Thomas, 1976), p. 119.

³⁷ Speaking as a poor and black civilian about police misconduct, Ms. Jean Mabry stated to the Ohio Advisory Committee the police "are going to hurt us, and we got a brand new generation coming up that no longer accepts promises of freedom, but demands freedom or-the-right to die as they want to die. . . ." Transcript pp. 730-731, 222, 226, 229.

³⁸ E.g., Captain Robert Morgan, Lieutenant Arthur Harmon, Sgt. Charles Horstman, Officer Terry Schock, Cincinnati Police Division, interviews in Cincinnati, Ohio, June 7, 1979.

³⁹ E.g., Connie Smith, Dorothy Jordan, Mary Jane Newman and Bonnie Arkenau, United for Police and Community Safety, an *ad hoc* organization of police officer's wives. Transcript, pp. 260-287.

⁴⁰ See e.g., *Mayor's Panel*, III-2, 7.

⁴¹ *Mayor's Panel*, III-2; According to a survey conducted by the Institute of Governmental Relations dated June 1978 and supplied to the Ohio Advisory Committee as an appendix to a letter to that Committee by Police Chief Myron J. Leistler, Cincinnati Police Division, June 27, 1979, 85% of the Cincinnati respondents indicated that they were satisfied with the "overall services of the Division of Police."

⁴² See E.G., Wendell Young, Transcript, pp. 541-542; *Mayor's Panel*, III-1-2.

⁴³ Hans Toch, *Peacekeeping: Police, Prisons, and Violence*. (Lexington, Mass.: D.C. Heath, 1975), (hereafter cited as *Peacekeeping*), p. 28. Elmer Dunaway, President, Federation of Police Cincinnati, Ohio has stated that the question of "who's boss (police or civilian) is based on weapons." Interview in Cincinnati, Ohio, April 6, 1979 (hereafter cited as Dunaway Interview).

⁴⁴ A study of civilian - police interaction in Los Angeles, California revealed that one-third of all police interventions were promoted by aggressive civilian behavior, often between family members. Doris Jacobson, William Craven, and Susan Kushner, "A Study of Police Referral of Allegedly Mentally-Ill Persons to a Psychiatric Unit," in *The Urban Policeman in Transition*, eds. John R. Snibbe and Homa M. Snibbe (Springfield, Ill.: Charles C. Thomas, 1973), p. 545.

⁴⁵ It has often been pointed out that the insensitivity or ignorance of police officers to the cross-cultural meanings of verbal and non-verbal communications is responsible for a great deal of police-civilian conflict. See e.g., Donald W. McEvay, *The Police and Their Many Publics*, (Metuchen, N.J.: Scarecrow Press, 1976), pp. 68-73. See also Terry Schock, Police Officer, Cincinnati Police Division, who pointed out that adjusting to other cultural values, an essential aspect of impartial and fair police work, is a necessary and stressful learning process. Transcript, pp. 614, 628.

⁴⁶ See, *Peacekeeping*, pp. 25-29.

⁴⁷ Ohio v. Foster, No. 78-CR-07-1621 (C.P. Franklin County, Ohio Feb. 1, 1979), p. 22.

common law privilege did not extend to the arrest of suspected misdemeanants.⁴⁸ At common law, while all felonies were punishable by death, misdemeanors were not.⁴⁹ Thus, the peace officer privilege to use deadly force to prevent the escape of a felon but not of a misdemeanor might be historically justified. Under modern criminal law, however, not all felonies are punishable by death. In Ohio, for example, only for aggravated murder may the death penalty be imposed.⁵⁰ All other offenses are punishable by fines and/or incarceration.⁵¹

Recognizing the modern shift from death to incarceration as punishment for most felonies, a number of states have limited the peace officer privilege to use deadly force against civilians to forcible felonies which involve the use or threatened use of physical force.⁵² The Model Penal Code promulgated by the American Law Institute recommends restricting the privilege to occasions where the crime for which the arrest is being made involved the use or threatened use of deadly force or situations where delay in the arrest of the escaping felon would create "a substantial risk that the person. . . will cause death or serious bodily harm."⁵³

The President's Commission on Law Enforcement and Administration of Justice agrees with the Model Penal Code as to the restriction of deadly force to the arrest of individuals who used or threatened deadly force during the commission of the offense or where delay in arrest would create a substantial risk of death or great bodily harm.⁵⁴ However, where the Model Penal Code affords the privilege to a peace officer who "believes" that either of the foregoing situations exists, the Presi-

dent's Commission guidelines require either that the police officer have witnessed the commission of the offense involving the use or threatened use of deadly force or "have sufficient information to know, as a virtual certainty" that the suspect committed such offense.⁵⁵ The "virtual certainty" standard in the 1976 Commission guidelines is much more demanding than the (reasonable) "belief" standard set forward by the 1962 Model Penal Code.⁵⁶

In 1972, the Federal Bureau of Investigation (FBI) promulgated guidelines for its agents in regard to the use of firearms, the principal weapon of deadly force.⁵⁷ Under the 1972 FBI policy which controls current practices, agents are not permitted "to shoot any person except, when necessary, in self-defense."

By self-defense, the FBI means the right of the agent to defend himself or another from what he "reasonably perceives as an immediate danger of death or grievous bodily harm".⁵⁸ The FBI has thus gone even further than the Model Penal Code or the Presidents' Commission in restricting the use of deadly force by officers to immediately as opposed to remotely life endangering situations.

For many years, the national trend at the State and Federal levels has been to modify the harshness of the common law by restricting the police officer's privilege to use deadly force against civilians.⁵⁹ Ohio, on the other hand, continues to follow common law and is one of only eight states which has enacted no general statute limiting the use of deadly force by peace officers.⁶⁰ A number of attempts have been made in the Ohio legislature to enact such a statute.⁶¹ All have been defeated except

⁴⁸ Id.

⁴⁹ Samuel Chapman, in Arthur L. Kobler, "Police Homicide in a Democracy," *J. Soc Issues*, vol. 31, no. 1 (1975), (hereafter cited as *Police Homicide in a Democracy*), p. 168.

⁵⁰ Ohio Rev. Code Ann. §2929.02(A) (Page 1975).

⁵¹ Ohio Rev. Code Ann. §2929.02(B), 2929.11(A) (Page 1975).

⁵² *Ohio v. Foster*, No. 78-CR-07-1621 (C.P. Franklin County, Ohio Feb. 1, 1979), p. 22. See generally, Ill. Rev. Stat ch. 38, §2-8 (1979) where a forcible felony is defined as "treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery and any other felony which involves the use or threat of physical force or violence against any individual." Ohio defines "force" as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." Ohio Rev. Code Ann. §2901.01(A) (Page 1975).

⁵³ *Model Penal Code* (Philadelphia, Pa.: American Law Institute, 1962) (hereafter cited as *Model Penal Code*), §3.07.

⁵⁴ U.S., President's Commission on Law Enforcement and Administration of Justice, *Task Force Report* (1967) (hereafter cited as *Task Force Report*, p. 189.

⁵⁵ *Ibid.* However, an officer who "believes" that the person sought "will cause death or great bodily harm if his apprehension is delayed is privileged to use deadly force under the President's Commission guidelines.

⁵⁶ At common law, the mere "suspicion" that the person sought had

committed a felony was sufficient to justify the use of deadly force to secure his arrest. *Task Force Report*, p. 189.

⁵⁷ Kenneth E. Joseph, Assistant Director, Federal Bureau of Investigation, FBI Academy, letter to Clark Roberts, Regional Director, MWRO, U.S. Commission on Civil Rights, November 14, 1979 with attachment "Re: Use of Firearms By FBI Agents" (hereafter cited as *Use of Firearms BY FBI Agents*).

⁵⁸ *Use of Firearms By FBI Agents*, p. 1.

⁵⁹ *Ohio v. Foster*, No. 78-CR-07-1621 (C.P. Franklin County, Ohio Feb. 1, 1979), p. 22. In October of 1979, the Law Enforcement Assistance Administration of the Department of Justice awarded \$816,232 to the University of California at Irvine, the National Urban League, New York City, and the International Association of Chiefs of Police, Gaithersburg, Md. to study use of deadly force by peace officers nationwide preparatory to establishing national standards to guide local law enforcement agencies. The use of "deadly force" will be studied from both minority and law enforcement perspectives." Department of Justice, *LEAA News Release*, Friday, Oct. 5, 1979.

⁶⁰ State of Ohio, Michael Burns, Legislature Service Commission, *Use of Deadly Force In Law Enforcement: Background For Senate Bill 61*, Apr. 25, 1979, p. 2.

⁶¹ *Ohio v. Foster* No. 78-CR-07-1621 (C.P. Franklin County, Ohio Feb. 1, 1979), p. 24.

for a bill now pending before the Ohio General Assembly⁶² which would allow a peace officer to use deadly force only where a civilian has committed or attempted to commit a forcible felony by means of a dangerous weapon, is currently creating a substantial risk of serious physical harm to another, and, in addition, only where deadly force is *necessary* to protect the life of the officer or another person.⁶³ In other words, deadly force could only be used as a last resort. Opposition to this bill has come from several sources, in particular from the Fraternal Order of Police.⁶⁴

The Cincinnati Police Division has since 1940 provided express guidelines for the use of force including deadly force by police officers in its Division Rules and Regulations Manual and in its correlative Procedures Manual.⁶⁵ The Manual of Rules and Regulations currently provides that the use of physical force and the discharge of weapons shall be in accord with law and Division procedures.⁶⁶ The Division Procedure Manual specifies in Regulation 12.160 that firearms are not to be fired nor is any other kind of deadly force to be used except where necessary, i.e., after all reasonable means to prevent the escape of fleeing felons have been exhausted. Deadly force may be used to thwart the escape of such a felon only where the offense in question is aggravated murder, murder, rape, aggravated arson, aggravated robbery, aggravated burglary, or complicity in any of those offenses.⁶⁷ Division policy is far more restrictive than the Ohio state law discussed above.

In accord with the recommendations of the President's Commission on Law Enforcement and Administration of Justice,⁶⁸ Division procedures permit a Cincinnati police officer to use deadly force to prevent the escape of an individual fleeing from one of the above felonies only if the officer has witnessed the offense or knows "beyond a reasonable doubt that the suspect or suspects did commit

the offense".⁶⁹ The controlling regulation does not in either of its prongs require that the officer himself have witnessed the civilian against whom the deadly force is used commit the offense. The officer is, however, held to a reasonable doubt standard, the standard of proof required in conviction of a criminal act.⁷⁰ The standard used by the Division thus complies with the national "majority rule" standard that extends the privilege only where the target of the deadly force is a "felon in fact."⁷¹

In addition to the use of deadly force to prevent escape of individuals who have committed one of the six enumerated forcible felonies, such force may be used by a Cincinnati police officer under Procedure 12.160 to protect himself or another "from loss of life or great bodily harm". The basis for determining that deadly force is necessary is "an apprehension of real or immediate danger based on an overt and or constructive act by another".⁷² Procedure 12.160 clearly intends to give police officers only so much discretion as is necessary, to make a critical decision, under great stress, in a crisis situation, with potentially fatal consequences for the officer or for a civilian. However, it fails to provide the tight control which is intended. For example, under the language of Procedure 12.160, how does "real" danger differ from "immediate" danger? Could an officer shoot a civilian he believed might seriously injure himself or another at some future time? What is a "constructive act" which alone justifies fatal force? Who is the "another" whose "constructive act" is a sufficient trigger? And whose must be the "apprehension" of danger?

To many civilians, justifications for using fatal force do not matter. The use of fatal force by police against a civilian is seen as tantamount to summary execution, a death penalty imposed without the due

⁶² S.B. 61, 113th Gen. Assembly, Regular Sess. (1979-1980).

⁶³ *Id.*

⁶⁴ Jerome E. Friedman, Legislature Aide to Senator Michael Schwartzwalder, State of Ohio, telephone interview, Dec. 20, 1979. The Buckeye Sheriffs Association, the Ohio Chiefs of Police and the *ad hoc* group of Cincinnati police officers wives, United for Police and Community Safety, have also opposed S.B. 61. The National Lawyers Guild, the ACLU, the Ohio Black Political Assembly, the Urban League, the NAACP, the Metro-Ministry, a representative of the Black Studies Department, Ohio State University, and several citizens have all testified in support of S.B. 61.

⁶⁵ City of Cincinnati; Cincinnati Police Division, *Manual of Rules and Regulations*, (hereafter cited as *Manual of Rules and Regulations*), No. 345 (eff. May 1, 1940).

⁶⁶ *Manual of Rules and Regulations*, No. 152, Jan. 1, 1976.

⁶⁷ *Procedure Manual*, No. 12.160(B)(2).

⁶⁸ *Task Force Report*, p. 189.

⁶⁹ *Procedure Manual*, No. 12.160.

⁷⁰ "Reasonable doubt" is the highest standard of proof. Lesser standards are "preponderance of the evidence" and "clear and convincing evidence." 30 Am. Jur. 2d *Evidence* §1170, 1163, 1166 (1967). Under Ohio law, "proof beyond a reasonable doubt" is proof of such a character that an ordinary person would be willing to rely and act upon it in the most important of his affairs." Ohio Rev. Code Ann. §2901.05(D) (Page Supp. 1979).

⁷¹ *Ohio v. Foster*, No. 78-CR-07-1621 (C.P. Franklin County, Ohio Feb. 1, 1979), p. 13. An officer's reasonable mistake as to whether someone against whom he has used deadly force did in fact commit a felony i.e., is a "felon in fact," will not withdraw the protection the privilege affords. Thomas A. Leubbers, former City Solicitor, Cincinnati Ohio, interview in Cincinnati, Ohio, Jan. 25, 1980.

⁷² *Procedure Manual*, 12.160(B)(1)(a).

process of a criminal trial and without a determination of guilt.⁷³ It is essential to ensure that the way in which police use fatal force does not unwittingly validate these perceptions through conduct which by intent is proscribed but which language fails to forbid.

Simon Leis, Hamilton County Prosecutor, who is responsible for prosecuting police officers accused of unlawfully killing civilians, has stated to the Ohio Advisory Committee that the mere existence of Division policy which differs from Ohio law "leads to confusion".⁷⁴ According to Leis, "sometimes an officer doesn't know whether or not he can or should or should not use his firearms."⁷⁵ Elmer Dunaway, President of the Federation of Police (FOP) Cincinnati Ohio has also opposed the more restrictive Division policy on the use of deadly force.⁷⁶ On the other hand, Police Chief Myron J. Leistler supports the restrictive Division policy and has stated that it has been "extremely effective" in reducing the use of firearms by police officers.⁷⁷

Division procedural regulations require that when shots fired by an officer actually strike a civilian, the officer must immediately notify his or her supervisor who in turn notifies the Unit Commander.⁷⁸ The Criminal Investigation Section is then informed and an investigation is conducted by the Homicide Squad.⁷⁹ That squad makes a report to the Safety Director through the Criminal Investigation Section.⁸⁰ A committee consisting of the Safety Director, the City Solicitor, and an Assistant City Manager must then review the facts and make recommendations for action to the City Manager.⁸¹ The Police Division itself may convene a Firearms Use Committee consisting of three sworn members of the Division to review any shooting incident, whether the shots take effect or not, and report their findings to the Police Chief.⁸²

Where shots are fired and do not strike a person, an investigation is conducted at the local level by the officer's supervisor with a report to the Unit Commander.⁸³ The applicable regulation specifically states that during none of these investigative procedures is the officer granted immunity from subsequent criminal prosecution.⁸⁴ During formal disciplinary hearings immunity is granted and the officer is required to answer questions narrowly related to his performance as a police officer.⁸⁵

Since 1940, the Cincinnati Police Division regulations concerning the use of deadly force have become increasingly restrictive in keeping with the national trend.⁸⁶ Since 1969, the yearly number of shots fired by police officers at civilians has generally been diminishing. For example, in 1969, 52 shots were fired at 67 civilians, approximately 72 percent of whom were black.⁸⁷ In 1978, 15 shots were fired at 13 civilians, approximately 62 percent of whom were black.⁸⁸ Between 1969 and 1978, the data show a definite trend toward fewer shots fired at fewer civilians with the ratio of black to white generally decreasing from a 1969 ratio of 2.53 to 1 to a 1978 ratio of 1.60 to 1.⁸⁹

Notwithstanding the general effectiveness of Division policy and the trend toward fewer shootings of blacks, 1978 and early 1979 represented a period of serious trend reversal. During that period, four black civilians were shot and killed by white police officers.⁹⁰ During the same period, four white police officers were shot and killed by three black civilians.⁹¹ Of the civilians who shot the police officers, one was killed by return fire, one was convicted of aggravated murder, and one is currently in a mental hospital having been declared unfit to stand trial.⁹² None of the police officers who shot and killed the civilians were indicted by the Grand Jury nor otherwise criminally prosecuted.⁹³ In one case,

⁷³ See "Police Homicide in a Democracy," p. 168.

⁷⁴ Transcript, p. 149.

⁷⁵ *Ibid.*, p. 150.

⁷⁶ Dunaway Interview.

⁷⁷ Hearing Transcript, pp. 457-58.

⁷⁸ *Procedure Manual*, No. 12.160(C)(1).

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Thomas A. Leubbers, Transcript, p. 143.

⁸² *Procedure Manual* 12.160(C)(4).

⁸³ *Ibid.*, No. 12.160(1).

⁸⁴ *Ibid.*, No. 12.160(D).

⁸⁵ See discussion, Chapter 5.

⁸⁶ *Manual of Rules and Regulations*, revisions dated May 1, 1940, May 28, 1958, July 1, 1966, July 1, 1970, May 16, 1971, February 3, 1974, January 1, 1976.

⁸⁷ Data prepared by the Program Management Bureau, Cincinnati Police Division, June 27, 1979 and supplied to the Ohio Advisory Committee by Police Chief Myron J. Leistler, June 28, 1979 (hereafter cited as Management Bureau Data), Figures 1 and 2.

⁸⁸ *Ibid.*

⁸⁹ Management Bureau Data, Figure 4.

⁹⁰ "Incidents of Serious Injury and Death to Civilians by Police," report from Captain Donald L. Slaughter, Criminal Investigation Section Commander to Colonel Myron J. Leistler, Police Chief, dated Feb. 23, 1979, and supplied by Leistler to the Ohio Advisory Committee, June 28, 1979.

⁹¹ Data supplied by Police Chief Myron J. Leistler to the Ohio Advisory Committee, June 28, 1979.

⁹² Simon Leis, telephone interview December 21, 1979.

⁹³ *Ibid.*

disciplinary charges were placed against an officer who had shot and killed a 17 year old boy.⁹⁴ Following a hearing at which the officer's self defense argument was rejected, Police Chief Myron J. Leistler found the officer in violation of the departmental use of force and discharge of firearms regulations.⁹⁵ The officer was required to work 10 days without pay. This was the first time during Leistler's tenure that a police officer was administratively disciplined for violating the Division use of force and firearms policy.⁹⁶

The result of these eight deaths of civilians and police was a city of angry, confused, and frightened civilians and police officers.⁹⁷ Civilians, police officers and an *ad hoc* group of police wives reported to the Ohio Advisory Committee, to the Mayor's Community Relations Panel, and to other community groups that they were afraid of retaliation and needed more protection and respect from the other sector.⁹⁸ In response, a Safety Task Force consisting of eight sworn Police Division employees and the Safety Director was established by the City Council to research the technical problems and policy considerations associated with the proposed equipment changes.⁹⁹ The Safety Task Force "conducted long investigations into handgun and ammunition with the primary thought in mind of citizen and officer safety".¹⁰⁰ The result of its investigations was a report supporting the .357 caliber handgun and the controlled expansion bullet.¹⁰¹ According to the Safety Task Force report, "the aforementioned handgun and ammunition is being utilized by Federal agencies and many modern, up-to-date urban police departments".¹⁰² The Task Force report went on to say:

The final and most important part of the handgun and ammunition recommendation is that prior to any police personnel being supplied with either the recommended handgun or ammunition, that he or she will have to qualify

with the recommended handgun and ammunition.

The Cincinnati Police Division views sidearms with the utmost seriousness, and considers them deadly weapons to be used only as a last resort. The Cincinnati Police Division believes that no ammunition can be justified unless the use of the firearms was justified in the first place.¹⁰³

In addition, the report urged that any officer who cannot qualify on the firing range with the new weapon and ammunition should be relieved of street duty until he can so qualify with the sanction for continuing failure either suspension or dismissal.¹⁰⁴

Following the recommendation of the Safety Task Force, Chief of Police Myron J. Leistler decided to seek authorization of the 357 handgun and the .38 special, controlled expansion cartridge.¹⁰⁵ Unlike the ammunition then in use in Cincinnati, the expanding bullets flatten on impact and remain in the target rather than passing through.¹⁰⁶ According to Leistler, the proposed ammunition has a "high level of shocking power", and, because it will remain in the target, and shatters on striking a hard surface, it will not pass through the individual who has been shot nor ricochet off an object to strike an innocent person.¹⁰⁷

The FOP President, Elmer Dunaway, also demanded greater fire power, including a demand for shotguns, not to be kept in the trunk of the police vehicle as was the current practice but instead mounted on police vehicle dashboards. Dunaway urged that officers be authorized to carry their shotguns with them each time they left their vehicles to interact with civilians.¹⁰⁸ Some police officers, and the *ad hoc* group of police wives, United for Police and Community Safety, also supported the on-dash mounting of shotguns.¹⁰⁹ The Safety Task Force report supported this position by recommend-

⁹⁴ *The Cincinnati Post*, Dec. 1, 1979, p. 31.

⁹⁵ *Ibid.*

⁹⁶ "Summary of Disciplinary Action for Five Year Period, 1974, 1978," report from Captain Joe L. Crawford, Acting Inspectional Services Bureau Commander, Cincinnati Police Division, to Colonel Myron J. Leistler, Police Chief, dated June 27, 1979, and data supplied by the Cincinnati Police Division entitled "Disciplinary Action Taken on Sworn Police Personnel-1978," dated Dec. 14, 1979.

⁹⁷ Gayle Harden, "A Question of Trust," *Cincinnati Post*, Aug. 11, 1979, p. 1.

⁹⁸ See e.g., Hearing Transcript p. 226, 232; *Mayor's Panel*, p. III-4.

⁹⁹ Safety Task Force, *Preliminary Report and Recommendations*, Cincinnati, Ohio, May 14, 1979 (hereafter cited as *Safety Task Force Report*).

¹⁰⁰ *Ibid.*, p. 2.

¹⁰¹ *Ibid.*, p. 1.

¹⁰² *Ibid.*, p. 2.

¹⁰³ *Ibid.*, p. 5.

¹⁰⁴ *Ibid.*, p. 5, 7.

¹⁰⁵ Chief Myron J. Leistler, Cincinnati Police Division, "Letter To The Citizens of Cincinnati," June 28, 1979 (hereafter cited as Leistler letter To The Citizens of Cincinnati), p. 1.

¹⁰⁶ Leistler Letter To The Citizens of Cincinnati, p. 2.

¹⁰⁷ *Ibid.*

¹⁰⁸ Dunaway Interview.

¹⁰⁹ Sharon Moloney, "Shotguns Stalled in Council," *Cincinnati Post*, May 29, 1979, p. 1.

ing that shotguns be specially mounted in the front seat of all marked police vehicles.¹¹⁰

The City Council Safety Committee studied the firearms issue and determined by a two (black) to one (white) vote that a shift to the .357 caliber weapon and controlled expansion bullets and the mounting of shotguns inside police vehicles were unnecessary and undesirable.¹¹¹ The Committee majority explained that the reasons for their votes against the recommendations of the Safety Task Force were, first, none of the officers who had been killed would have been saved by the proposed equipment and, second, such a shift to more firearm power would obscure the real cause of those police deaths, i.e., "poor defensive maneuvering" which would be eliminated only by better defensive training including "survival training".¹¹²

As tensions within the community mounted with police and civilians increasingly fearing and anticipating retaliatory violence from the other, the Cincinnati Human Relations Commission requested the conciliation services of the Community Relations Service (CRS) of the Department of Justice.¹¹³ CRS agreed to work with the city toward developing workable solutions to its police/community problems.¹¹⁴ One of the recommendations of CRS was for the Cincinnati City Council to provide a forum for civilians to discuss their concerns about the Police Division.¹¹⁵ City Council cooperated by establishing the Mayor's Panel on Police Community Relations.¹¹⁶ The Mayor's Panel heard a great deal of testimony from civilians on the firearms issue such as "the new firearms will escalate hostility and distrust and increase the problems" and "moving the shotguns is capable of arousing the most resentment".¹¹⁷ However, because the panel had not been specifically asked by City Council to look at

the firearms issue, the final report which offered many recommendations for improving police community relations offered no suggestions in regard to deadly force policy or procedure.¹¹⁸

The failure of the Mayor's Panel to address the weapons related issues, however, was mooted by the City Council in June of 1979 when the members voted to authorize the .357 caliber weapon, leaving to Chief Leistler the determination of appropriate ammunition.¹¹⁹ He had indicated earlier on that he would purchase .38 controlled expansion bullets.¹²⁰ The Council also decided that none of the new firearms would be issued to an officer without prior training in their use. Training began on January 3, 1980 and consists of an 8 hour community perceptions workshop and 4 hours of training in the actual use of the weapon.¹²¹ At the same time the City Council authorized a shift to a .357 caliber weapon, they expressly delayed voting on the placement of shotguns and by May of 1980 had not yet decided the issue.¹²²

Testimony received by the Ohio Advisory Committee and by the Mayor's Panel suggests that many Cincinnati civilians, particularly the economically disadvantaged and members of cultural or racial minorities,¹²³ view the Cincinnati Police Division as an occupying force often acting against their personal and community interests.¹²⁴ The request for more powerful weapons and ammunition apparently increased their distrust and fear of the police. Since 92.5 percent of the Cincinnati Police Division is white non-Appalachian while over 40 percent of the city itself is black and Appalachian and, in addition, many of the police officers who patrol and control Cincinnati communities live outside the city the sense of division and alienation is increased.¹²⁵

¹¹⁰ *Safety Task Force Report*, pp. 49, 53.

¹¹¹ Tecumseh X Graham, former Chairman of the Safety Committee and former member of City Council, interview in Cincinnati, Ohio, June 7, 1979. (hereafter cited as Graham interview)

¹¹² Kenneth Blackwell, former Vice Chairman of the Safety Committee, member of City Council, and current Mayor of Cincinnati, Transcript, pp. 61-62.

¹¹³ Richard Salem, Midwest Regional Director, Community Relations Service, Department of Justice, letter to Clark Roberts, November 20, 1979.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Mayor's Panel*, p. III-17. It is interesting to note that the Soviet Union experienced a significant rise in street crime and organized inter-urban crime in the 1960s. To combat these problems, Soviet police officers were given greater authority and broad discretionary powers. This increase in police power was effective in reducing organized inter-urban crime but had no appreciable effect on the incidence of street crime, e.g., burglary, assault, theft, vandalism. Robert W. Clawson and David L. Norrgard,

"National Responses to Urban Crime," in *Police in Urban Society*, ed. Harlan Hahn (Beverly Hills, Calif.: Sage Publications, 1970), pp. 88-91.

¹¹⁸ *Mayor's Panel*, p. I-1.

¹¹⁹ City Council Proceedings, June 6, 1979. The vote in favor of the .357 caliber weapons was six to two. Councilmen Blackwell and Graham, members of the Safety Committee, cast the negative votes.

¹²⁰ Graham interview.

¹²¹ Lt. Colonel Lawrence E. Whalen, Assistant Chief of Police, Inspectional Services Bureau and Captain Joseph Crawford, Internal Investigation Section, Cincinnati Police Division, interviews in Cincinnati, Ohio, Jan. 25, 1980.

¹²² *Ibid.*

¹²³ See e.g., Michael E. Maloney, *The Social Needs of Cincinnati* (Cincinnati Human Relations Commission, Jan. 1974).

¹²⁴ See *Mayor's Panel*, p. III-2.

¹²⁵ *Mayor's Panel*, pp. III-9-11. See discussion of the disparity between the racial composition of the Cincinnati Community and the Cincinnati Police Division and discussion of the Cincinnati residency law for public employees including police in chapters 3 and 5, respectively.

Table 1**Academic Achievement of Cincinnati Police Personnel**

Dr.'s (2 0.2%)	Master's (23 2.4%)	Bachelor's (111 11.5%)	Four Years of College (22 2.3%)
Three Years of College (58 .06%)	Associate's (106 11%)	Two Years of College (90 9.4%)	One Year of College (66 6.9%)
Less Than One Year of College (138 14.4%)	High School Graduates (253 26.3%)	G.E.D. (35 3.6%)	Three Years and/or Less of High School (57 5.9%)

Source: Report from Captain G. MacDonald, Personnel Section Commander to Colonel Myron J. Leistler, Police Chief, June 26, 1979.

Training and Education**General Considerations**

It has often been stated that policing a community is personal service of the highest order requiring sterling qualities in those who perform it.¹²⁶ Officers are compelled to make instantaneous decisions — often without clearcut guidance from a legislature, the judiciary, or from departmental policy and mistakes in judgment could cause irreparable harm to citizens, or even to the community.¹²⁷ One incompetent officer can trigger a riot, permanently damage the reputation of a citizen, or alienate a community against a police department. It is essential, therefore, that the requirements to serve in law enforcement reflect the awesome responsibility facing the personnel that are selected.¹²⁸

The quality of police service will not significantly improve until higher education requirements are established for its personnel.¹²⁹ The complexity of the police task is as great as that of any other profession. The performance of this task requires more than physical prowess and common sense. Quinn Tamm, in a "A Change for the Better" wrote:

It is nonsense to state or to assume that the enforcement of the law is so simple that it can be done best by those unencumbered by a study of the liberal arts. The man who goes into our

streets in hopes of regulating, directing or controlling human behavior must be armed with more than a gun and the ability to perform mechanical movements in response to a situation. Such men as these engage in the difficult, complex and important business of human behavior. Their intellectual armament—so long restricted to the minimum—must be no less than their physical prowess and protection.¹³⁰

The Cincinnati Police Division provided an opportunity for police personnel to further their academic training. Even though it is not mandated, it is apparent from the data below that some have continued their education. What is not reflected in the data are the fields of study they have pursued. The figures in Table 1 represent academic achievements in the Police Division as of December 31, 1977.

Just as advanced education and above average intelligence are fundamental requisites for law enforcement personnel, so are emotional stability, common sense, and integrity.¹³¹ In addition, the law enforcement officer must be free of prejudices which might interfere with the proper carrying out of his responsibilities. As reported by the President's Commission on Law Enforcement and Administration of Justice:

The police are frequently confronted with emotion-charged situations that tempt strong

¹²⁶ Leonard V. Harrison, *Police Administration in Boston*, vol. II (Cambridge: Harvard University Press, 1934) p. 28.

¹²⁷ U.S., President's Commission on Law Enforcement and Administration of Justice, *Task Force Report* (1967) (hereafter cited as *Task Force Report*), p. 125.

¹²⁸ *Task Force Report*, p. 126.

¹²⁹ *Task Force Report*, p. 126.

¹³⁰ Quinn Tamm, "A Change for the Better" in *The Police Chief* (Washington: I.A.P., 1962), p. 5.

¹³¹ *Task Force Report*, p. 128.

responses from them. Important to success in dealing with such situations is a stability imperious to work-related and other emotional stresses and unhampered by prejudices and undesirable attitudes in getting along with people under trying circumstances. . . .Police service affords unusual opportunities and temptations to accept graft, to indulge in other forms of dishonesty, immorality, and excesses and to wreak vengeance on persons who have offended. Successful police service is predicated on the integrity, morality, and fairness of the members of the force.¹³²

No person, regardless of his individual qualifications, is prepared to perform police work on native ability alone. Aside from individual intelligence, prior education, judgment, and emotional fitness, an officer must receive extensive vocational training before he or she can understand the police task and learn how to fulfill it. A 1962 consultant report to the President's Commission on Law Enforcement and Administration of Justice noted that the need for such training, however, was not fully recognized until the decade prior to World War II, and concluded:

In years gone by, it was an opinion among both police and public that any man of general ability could learn to "police" by doing it. Consequently, the then prevailing "training" philosophy was one of providing the recruit with a uniform and badge; arming him with a baton, revolver, and handcuffs; assuring his geographical orientation by issuing him a local street map; and instructing him to "hit the street" and enforce the Ten Commandments. This philosophy conforms conveniently with that which proclaims "there is more justice and law in the end of a night stick than is to be found in all law books."¹³³

Cincinnati's Mayor Kenneth Blackwell believes that the entire police force needs more training and testified that:

Our Chief of Police is a nationally renowned expert on survival training. Yet, Cincinnati's Police Division has no survival training course. We must make the capital investment required to set up a survival range and accept the operating cost for officers to spend a substantial amount of their working time on it. . . .This

may be the most significant step we can take in saving the lives of police officers and it has the pay off in citizens' safety as well, for it is specifically directed at training officers to make the right level decision in the use of deadly force.¹³⁴

Many organizations and individuals have raised the issue of adequate training programs to prepare Cincinnati police officers to respond to crisis situations. These concerns escalated after the shooting on March 3, 1978 of Joseph Thomas, an alleged emotionally disturbed person. In response, on May 8, 1978, former City Manager William V. Donaldson appointed a Special Police Training Study Team. The Team's general task was to review the adequacy of current training and training-related activities for preparing police officers to respond to crisis situations.¹³⁵

The report's definition of training, in its clearest sense, refers to all of the activities in an organization which instruct and maintain behavior. This includes formal classroom and on-job training programs designed to impart knowledge and/or skill.¹³⁶

The report concludes:

We must note that physical arrest is a serious interpersonal conflict for both the citizen and the police officer. In a number of arrests, force must be used to overcome resistance and the threat of harm to citizens and the officer. However, community reaction to police use of force by police is frequently conditioned by value judgments which fall on all sides of the conflict. When a community experiences or perceives incidents of excessive force by police during the process of apprehension or after an arrestee is in custody, there is obvious need for continued, intensive efforts to eliminate such incidents and to improve police-community communications. These kinds of efforts require organizational, management and training interventions. Structural, formal programs at the police academy, no matter how well conceived or delivered, will not suffice.¹³⁷

It remains doubtful whether even the majority of training programs provide recruits with an ample understanding of the police task. Arthur Niederhoffer says:

¹³² Ibid., p. 128.

¹³³ Ibid., p. 137.

¹³⁴ Transcript, p. 58.

¹³⁵ City Manager's Special Police Training Team Report, January 1979, (hereafter cited as Training Study Team Report), p. 4.

¹³⁶ Ibid.

¹³⁷ Ibid., p. 5.

The new patrolman must resolve the dilemma of choosing between the professional ideal of police work he has learned at the academy and the pragmatic precinct approach. In the academy, where professionalism is accented, the orientation is toward that of the social sciences as opposed to the lock-them-up philosophy, but in the precinct the patrolman is measured by his arrest record. Thus, the new man is needed when he shows signs of diffidence in arresting or asserting his authority. Over and over again, well-meaning old timers reiterate, "Ya gotta be tough kid, or you'll never last."¹³⁸

Specific Training

In an interview in April 1980, Captain Thomas Amann, Regional Police Academy Director, Cincinnati Police Division, discussed the actual training that was provided police officers.¹³⁹ According to Amann, both recruit training and in-service training have included courses in the proper use of force, both policy and practice. However, there have been no recruit classes since 1975 due to the budget cuts that prevented the hiring of more police officers.

The specific training courses given recruits at the Regional Police Academy on use of force include:

1. *Firearms Training* —44 hours. The student must demonstrate proficiency in the use of the official side arm; and the moral aspects, legal provisions, safety precautions and restrictions covering the use of the firearm, shotgun, and tear gas are included.
2. *Physical Conditioning* —A generalized introduction to physical conditioning; protection against persons armed with dangerous and deadly weapons; demonstration and drill in a limited number of holds and come alongs; restraint of prisoners and the mentally ill; fundamental use of the baton.
3. *Rules and Regulations* —Rules and regulations of the Police Division are stressed to the trainee so that he will act within the guidelines of Division policy, both on and off duty.
4. *Legal Procedures* —A course which embraces the mechanics of arrest, from the early history of law to the modern techniques of arrest. Special instructions are imparted in the handling and arrest of felons, misdemeanors witnessed by offi-

cers and those not witnessed by officers. Criminal law, including history, structure, and pertinent statutes; rules of evidence; City Ordinances and other regulatory measures. New procedures and latest court decisions concerning Search and Seizures, Civil Rights, Civil Liberties, and Constitutional Guarantees are discussed.

5. *Patrol Tactics* —The course includes classroom discussion and practical field application of the theories of patrol. The subjects in this field range from the basic topic of maintenance of the uniform to the complexities that could occur in handling of suspicious persons. The officer is inculcated with the vast techniques of day-time-nighttime patrolling on foot and in an automobile. He is exposed to the multiplicity of problems inherent in dealing with civil complaints; the security of business places; fire scenes, disaster scenes, and unlawful gatherings. The new trainee is tutored in the responsibilities of handling crime prevention procedures and the methods of attaining this important law enforcement function.¹⁴⁰

The last recruit class was held in 1975. However, in-service training has continued and additional programs have been integrated into the regular training curriculum including the following:

Officer Survival Training Program —This program was developed to make the officer more aware of the hazards he was likely to encounter on his beat. The training included the types of activity most likely to result in serious injury to themselves and to the individuals with whom they are in contact. Training for 803 officers took place from July 1976 to March 1977.¹⁴¹ No training reported after 1977.

Model Rules Training —The Police Foundation sponsored a project to formulate a set of model rules to guide police officers in the performance of their duties. The rules do not have the effect of rules and regulations to which officers must adhere, but serve as a source material for training in the area of criminal procedure.

871 officers attended an eight-hour one day session.

"Stop and Frisk" Training —This program covered the areas of the basis for stopping people,

¹³⁸ Arthur Niederhoffer, *Behind the Shield*, (Garden City, N.Y.: Doubleday, 1967) pp. 52-53, cited in *The Police and The Community*, ed. Robert F. Steadman (Baltimore, MD: John Hopkins University Press, 1972), p. 23.

¹³⁹ Captain Amann, telephone interview, April 17, 1980.

¹⁴⁰ Basic Program in Police Science, Sixtieth Police Recruit Class, September 9, 1974-January 31, 1975. Cincinnati and Hamilton County Regional Police Training and Education Center.

¹⁴¹ Synopsis of Training Program Related to Police Response to Mental Health Disorders. Interdepartment correspondence sheet from Captain Thomas R. Amann, Regional Police Academy Director to Myron J. Leistler, Police Chief dated July 10, 1978.

their actions and appearances, polices conduct in these situations, use of physical force, the rights of the detained individuals, and the effect of their refusal to cooperate. "The Use and Abuse of Force" is shown that depicts situations in which officers find themselves everyday. The film also discusses the necessary use of force in accomplishing police objectives, and how the use of force can become abusive. It shows the officer how to avoid abusing the use of force.¹⁴² This program in 1977, was a one day, eight hour session and 871 officers attended.

The training programs that have been given both to recruits and veterans are well received by the officers that have taken them and serve the purpose for which they are intended.¹⁴³ However, there is no clear understanding of the phrase "use of force,"¹⁴⁴ and little formal training is offered in alternatives to the use of force.¹⁴⁵

What is needed

It is extremely difficult for a police officer to maintain composure in all street situations even though this is routinely expected and demanded of police. For example, the Law Enforcement Code of Ethics, which has been adopted by nearly all departments and police associations, requires the following:

I will***maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions***. I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence***.¹⁴⁶

But the capability of a police officer, and particularly one who works in a high crime rate or slum neighborhood, to act in a restrained manner is constantly tested. Even if the police office is of the highest quality his work and the people he has to deal with many cause him to become disillusioned or angry.¹⁴⁷ If he is not of the highest quality or if he has not been properly trained, if he is prejudiced or

hot headed, he may succumb to his anger or resentment and physically or verbally abuse someone who offends him.

If officers are abusive, insulting or condescending, the most insignificant contact can become an occasion which arouses hostility against the police.¹⁴⁸ On the other hand, if police officers are polite, forthright, respectful, and when appropriate, friendly, a field interrogation, a traffic ticket, or even an arrest can actually increase the respect of the citizen, as well as others who see the incident, for the police.

Reverend Fred Shutlesworth shared with the Ohio Advisory Committee his concern that the rights of civilians be protected against abusive police officers. He told of how he has been on the scene on more than one or two occasions where someone he knew was being stopped by the police:

I've said, 'Well, officer, is he being arrested? What's the charge?' The white officer says, 'That's none of your business,' and I say, 'How are things, is anything happening, officer?' He says, 'Nothing we can't handle,' No, you can't and several times people are not allowed to ask you to get a phone number. . . .¹⁴⁹

Unjustified use of force, like verbal abuse, cannot be tolerated in law enforcement. Many persons in Cincinnati, especially blacks and poor whites, believe that police officers frequently engage in excessive or unnecessary physical force. Stan Hirtle, Attorney, National Lawyers Guild, expressed his opinion of the use of force:

Our problem which is recurring is the separation of the police from the community and the feeling among the police that they are alone, that they help each other but no one helps them—it's us against them. I think that police should be educated with other citizens in regular, probably college programs rather than be isolated in a police academy which fosters again the "us against them" mentality.¹⁵⁰

Police officers have many responsibilities and opportunities to perform, but they measure their capacity to "do the job," and are judged by their colleagues, by their success in policing people. They must learn to control their fears and anxiety, they

¹⁴² Ibid.

¹⁴³ Police officers interview in Cincinnati Ohio, May 30, 1979 and June 7, 1979.

¹⁴⁴ The Sentinels: Thomas Reid, Clarence Williams, Wendell Young, Roland Harrison, and Cecil Thomas interview in Cincinnati, Ohio, January 26, 1979.

¹⁴⁵ Elmer Dunaway, President, F.O.P., interview in Cincinnati, Ohio, April 6, 1979.

¹⁴⁶ Law Enforcement Code of Ethics, Chapter 7, p. 213. *Task Force Report*.

¹⁴⁷ *Task Force Report*, p. 179.

¹⁴⁸ Ibid., p. 180.

¹⁴⁹ Transcript, p. 204.

¹⁵⁰ Ibid., p. 295, 297.

must learn to examine people for signs of resistance, flight, and threat. They must learn to use the powerful weapons they carry, so they will do what they are suppose to do and no more. They must learn how to establish and express authority by cajoling, requesting, negotiating to avoid using force.¹⁵¹

Unfortunately, this type of training is not given any special emphasis. It is included in some human relation courses, but to actually train police officers

in to force and how to use persuasion is nonexistent. There exist no guidelines, no specific range of objectives, no adequate limitations that instruct police officers in what they should do. Nor do there exist any criteria that allow external review of whether forceful intervention was necessary, desirable, or proper or whether persuasion was appropriate. The Cincinnati Police and City Administration are aware of these and other training problems and are attempting to address them.¹⁵²

¹⁵¹ Jonathan Rubenstein, "Cop's Rules," in *Police In America*, ed. Jerome H. Skolnick and Thomas C. Gray (Boston: Little, Brown & Co., 1975), p. 73.

¹⁵² Training Study Team Report, p. 14.

Distribution of Service

The first order of the police, legally sanctioned since the origins of policing in England, has been the preservation of the peace. James S. Campbell defines the peacekeeping role this way:

This duty is a broad most important mandate which involves the protection of lives and rights ranging from handling street corner brawls to the settlement of violent family disputes. In a word, it means maintaining public safety.¹

Perhaps the most important sources of police frustration and the most severe limitations under which they operate are the conflicting roles and demands involved in the order maintenance, community service, and crimefighting responsibilities of the police. Though the community calls mostly for community service and peace-keeping, police nevertheless consider the fundamental job, the “real guts” of policing, to be the apprehension of felons. Police are occupied with peace-keeping but preoccupied with crime fighting.

The Cincinnati Police Division and the Cincinnati community is experiencing this same frustration. As Richard A. Castellini, former Cincinnati Safety Director, stated:

The majority of the time is serviced to the community in a myriad of assignments, many of which are not directly assigned to the Police Division, but because there is no one else there the police agency is sort of the last port in the

storm and where people are directed to. The social agencies generally close at 5:00 p.m. and from that point until morning—or on Friday night until Monday morning—the police officer is the one that is called upon to solve a problem.²

In addition, the type and time of service needed varies from one neighborhood to another. This variance in service occasionally contributes to police-community tensions, as Castellini observed:

We are now faced with the situation of having to prioritize calls. Things like a dog bite, which is not a life and death matter, but if it is your child bit by the dog, it is very important to you. We are forced now many times to be 45 minutes to an hour, even an hour and a half to respond to your house.³

The time delay factor in answering calls was not the only complaint the Ohio Advisory Committee received of police performance in servicing the community. The conduct and attitude of the responding police was also of great concern. Mr. Virgil V. Ashley, Cincinnati Metropolitan Housing Authority cited the following incident:

I received a call from one of our resident leaders that she had reported to the police a break-in at a West End business establishment on June 20, 1979. Six cars of police officers responded quickly and proceeded to arrest the two persons involved. She stated that the two arresting officers cursed the two persons being

¹ James S. Campbell et. al, *Law and Order Reconsidered: Report of the Task Force on Law and Law Enforcement to the National Commission on the Census and Prevention of Violence* (New York: Bantam Books, 1970), p. 286.

² Richard A. Castellini, former Cincinnati Safety Director, testimony

before the Ohio State Advisory Committee to the U.S. Commission on Civil Rights, hearing in Cincinnati, Ohio, June 28, 1979, transcript, (hereafter cited as Transcript) pp. 419–20.

³ *Ibid.*, p. 429.

arrested using very vile, abusive language. She observed that the persons being arrested seemed to offer no resistance at all, but the police officers threatened to shoot them.

She also reported to me that the abusive arresting officers were white and the two persons being arrested were black. The actions of the arresting officers were witnessed by many youth in the vicinity who began to harass the police as a result of their treatment of the two persons being arrested.⁴

This report Mr. Ashley received from his tenant was contrary to the relationship that had previously been established with the Cincinnati Police Division and the residents and staff of the Housing Authority. "Local beat patrolmen in districts one, three, four, and five have been extremely cooperative with our staff in an effort to eliminate areas of loitering, eliminating nuisances and in general crime control," concluded Mr. Ashley.⁵

Concern with maldistribution of service, and the attitude and conduct of police officers rendering the service was expressed in many of the statements submitted to the Mayor's Community Relations Panel. The Panel's report summarized some of these:

The perceived lack of concern on the part of official Cincinnati for disciplining police misconduct has contributed to an atmosphere of fear and distrust. The public questions whether or not the Police Division can police itself, and more seriously, whether elected officials and appointed officials are willing to control the police.

There is also a perception among some police and some citizens that neither group respects the other. In addition to racism, which many citizens feel is a part of the problem, others expressed concern about class prejudice. The Panel was told that some police officers treat the poor, both black or white, with contempt and disrespect. At the same time, the police feel isolated, unappreciated, and disrespected by parts of the community.

Citizens complain that police officers in their cars are isolated from the community and interact with the community very infrequently in other than crime related situations. To some segments of the community the police are symbols of a power structure which is per-

ceived to be prejudiced with regard to race and class. Police are seen as outsiders in many communities.⁶

Complaint Processing: Internal Investigation Section

The investigative process of the Cincinnati Police Division is one of the most controversial issues that faces the community. Many who have been through the process have no faith in it and see the process as an instrument to protect the police. Others who have not filed complaints against the police often cannot understand why there is so much distrust of the system.

Perhaps the most serious allegation a citizen can bring against a policeman is brutality. Since the police are authorized to use violence against certain civilians, indiscretion in that respect is a damaging charge, one to which the police are rightly sensitive. Yet brutality—excessive use of force—is very difficult to prove; indeed, no clear definition of brutality exists. The charge has been raised when the police used racial or ethnic slurs against members of minority groups as well as in cases where police officers have beaten citizens or even shot at them.

There have been many studies, proposals, statements, as well as verbal complaints about the operations of the internal investigative activities in the Cincinnati Police Division. Robert Newman of the Legal Aid Society, shared with the Committee his thoughts on the problems with the Internal Investigation Section:

First of all, there are several hundred claims made each year to both internal affairs and Cincinnati Commission on Human Relations of various sorts of police misconduct. Virtually none of these claims are fully and finally resolved, and as a result the complaining part and the members of his community are induced to believe that the complaint process is a ruse. From all that is known internal affairs, it may function very well. However, its scope is only to provide a confidential means of allowing the police department to discipline itself. Assuming it causes appropriate disciplinary action in the rare case of serious police misconduct, it does

⁴ Written statement of Virgil V. Ashley, Assistant Director/General Housing Manager, presented to the Ohio Advisory Committee June 28, 1979.

⁵ Ibid.

⁶ *Report of the Mayor's Community Relations Panel to the Cincinnati City Council, July 5, 1979 (hereafter cited as Mayor's Panel), p. III-2.*

not provide the victim with any assistance or recourse for his loss.⁷

In his statement to the Committee, Rev. James R. Jones offered:

In my opinion, the internal disciplinary system for the police department is woefully inadequate. No one knows what happens to complaints and they are simply dismissed. In cases of violators, nothing is done leaving the public to the conclusion that whatever the policeman does is okay.⁸

The police internal investigation process has been a topic of many discussions and grew into an issue of concern over a period of years. One of the problems is that there are many citizens who do not understand how it functions and many more that mistrust the process.

The disorders in the 60's brought so many complaints of police harrassment, brutality, and verbal abuse from the Cincinnati community that the city fathers felt some system had to be devised to receive and address these concerns. On August 5, 1970, the Internal Investigation Section was approved by City Council. It is referred to as Police Procedure Manual Section 14.300.⁹ The Internal Investigation Section which handles complaints of police misconduct is a part of the Inspectional Services Bureau.

If a citizen has a complaint concerning any police action or inaction that the citizen considers to be contrary to law, improper procedure or prejudicial to the citizen or community, he or she may complain to the officer's supervisor. The supervisor will instruct the complainant to fill out a citizen complaint form, which will be forwarded to the chief's office and the Internal Investigation Section the following day. If the citizen prefers to send a complaint by mail, the officer receiving the complaint turns the complaint over to his or her supervisor, enters it on the unit blotter, and forwards it to the chief's office and the Internal Investigation Section. If a citizen reports a complaint by telephone, the officer receiving the complaint attempts to have a supervisor accept the call who enters on a citizen complaint report all pertinent information

and forwards the report to the Internal Investigation Section.

Regardless of the method of receiving a citizen's complaint, the actions of the Internal Investigation Section are supposed to follow standard procedures.¹⁰ Upon receipt of a complaint it will be assigned to an investigator, who will contact the complainant before the close of the second work day. Upon completion of the investigation, the complainant will be notified of the outcome.

It is at this point that the lines of communication break down and the mistrust of the system begins. Some citizens have reported that they never received any report of the dispositions of their complaints and felt that it was useless to even lodge a complaint against the police. Some were afraid to complain because of anticipated retaliation and increased harassment from the police.¹¹

Michael E. Maloney of the Urban Appalachian Council stated to the Committee:

The range of complaints that have come to our attention include: improper use of firearms which led to the death of a young Appalachian, a police killing of a young man in Northside through a beating, and other beating incidents and there has been a pattern over the years of fear within the Appalachian community to complain, either through the Human Relations Commission or through the process of filing through the district police offices. There have been complaints of harrassment of those who file complaints and their witnesses.¹²

A review of the complaint statistics from the Cincinnati Police Division for the years 1974 through April 1979 revealed the following (see Table 2). There were 1,634 complaints filed during the five-year period: 517 by blacks, 582 by whites, and 535 by others. Of this number, only 489 complaints were sustained. The two categories Exonerated and Unfounded are combined in the summary of internal investigation activities. What effect the separation of these two categories would have had on the disposition of the complaints is unknow. However, it does raise a question of whether this system should be re-evaluated since of the 1,634 complaints received, 545 or 33 percent were disposed of as exonerated/unfounded. These

⁷ Robert Newman, Legal Aid Society Attorney written statement presented to the Ohio Advisory Committee June 28, 1979.

⁸ Written statement presented to the Ohio Committee on June 28, 1979.

⁹ Letter to the Ohio Advisory Committee from Chief Myron J. Leistler of Cincinnati Police Division June 27, 1979—attached was the Police Division *Procedure Manual*, (hereafter cited as *Procedure Manual*), Section 14,300.

¹⁰ "Citizen complaint process," *Procedure Manual*, Section 14,300, revised April, 1974.

¹¹ *Mayor's Panel*, p. III-2.

¹² Transcript, pp. 130-31.

TABLE 2**Summary
Disposition of Complaints 1974-1979**

Year	Not Sus.	Sus.	Exon. Unf.	Open	Total	Complaints by Race		
						White	Black	Other
1974	122	115	106	18	361	131	123	107
1975	86	92	168	19	365	156	127	82
1976	129	92	109	19	349	113	121	115
1977	81	74	79	13	247	92	65	90
1978	59	98	73	23	253	76	63	114
(as of May) 1979	9	18	10	22	59	14	18	27
4½ yr. Total	486	489	545	114	1,634	582	517	535

Source: "Police,"— *National Advisory Commission on Criminal Justice Standards and Goals*. This Commission was appointed by Jerris Leonard, Administrator of the Law Enforcement Assistance Administration (LEAA) on October 20, 1971, to formulate for the first time national criminal justice standards and goals for crime reduction and prevention at the State and local level. The report on police was released January 23, 1975 (hereafter cited as *Standards and Goals*).

Note: Standard 19.2 of the National Advisory Commission on Criminal Justice on Standards and Goals defines the categories as follows: *Not Sus.*—Not sustained indicates that the investigation produced insufficient information to prove clearly or disprove the allegation. *Sus.*—Sustained indicates that the accused employee committed all or part of the alleged acts of misconduct. *Exon. Unf.*—Exonerated, Unfounded—these two categories are combined in the Cincinnati Police Divisions summary of internal investigation activities. This combination of categories is confusing, to say the least, according to the definition cited in Standard 19.2—*Exonerated* denotes that the alleged act occurred but was justified, legal, and proper. *Unfounded* is used when the alleged act did not occur.¹⁴

facts, coupled with the fact that until recently there were no black police officers in the Internal Investigation Section, add to the feeling of at least some segments of the community that there is a bias which favors and protects the police.¹³

The lack of knowledge and real, open communication with the community and complainants of the nature and disposition of complaints is another serious problem. The nature of complaints and their disposition from December 1974 to May 3, 1979 are presented in Table 3. It is interesting to note that the number of complaints declined after 1976, from a total of 349 in that year to 253 in 1978. The total of 59 complaints from the first five months of 1979 seems to indicate a continuation of this trend. These findings suggest as Newman, Jones, and others have asserted, that substantial segments of the community may have lost faith in the internal investigation system.

Mrs. Bobbie Sterne, former Mayor of Cincinnati, expressed such a viewpoint when she testified at the fact-finding meeting of the Ohio Advisory Committee,

At present, the police, through their internal investigation unit, investigates all charges against the police. The community does not have confidence in this process because it lacks the objectivity that a separate investigate body can have.¹⁴

Police Chief Leistler has a different opinion of the community's confidence in the internal investigative process. He stated at the meeting of the Ohio Advisory Committee;

I have to disagree with the Mayor that the community does not have confidence in the entire investigation section process. Of course, there is some dissatisfaction even in due process type hearings as we see in our courts of justice.¹⁵

Assignment of Police Personnel

Most police activities are separated into line, staff, and auxiliary service operations. Patrol, traffic and detective line operations account for the largest part of the work of any police agency.¹⁶

¹³ *Ibid.*, p. 81.

¹⁴ Transcript p. 16.

¹⁵ *Ibid.*, p. 454.

¹⁶ *Standards and Goals*, p. 200.

TABLE 3**Disposition of Complaints 1974-1979****1974**

Nature of Complaints	Total Rec. (%)	Not Sus. (%/%)	Sus. (%/%)	Exon. Unf. (%/%)	Open (%/%)
Discourtesy	99 (27)	43 (35/43)*	11 (10/11)	38 (36/38)	7 (40/7)
Unethical Conduct	18 (5)	2 (2/11)	10 (9/56)	6 (6/33)	0
Excessive Force	77 (21)	33 (27/43)	9 (8/12)	28 (26/36)	7 (36/9)
Shots Fired	2	0	2 (2/100)	0	0
Improper Police Procedures	88 (24)	18 (15/20)	56 (49/64)	13 (12/15)	1
Lack of Proper Services	15 (4)	9 (7/60)	2 (2/13)	4 (4/27)	0
Law Violations by Officer	4 (1)	1 (0/25)	2 (2/50)	1	0
Off-duty Conduct	23 (6)	6 (5/26)	10 (9/44)	4 (4/17)	3 (17/13)
Miscellaneous	35 (10)	10 (8/29)	13 (11/37)	12 (11/34)	0
Total	361	122 (34)	115 (32)	106 (29)	18 (5)

1975

Nature of Complaints	Total Rec. (%)	Not Sus. (%)	Sus. (%)	Exon. Unf. (%)	Open (%)
Discourtesy	108 (30)	32 (37/30)	7 (8/6)	62 (40/57)	7 (37/6)
Unethical Conduct	52 (14)	5 (6/10)	27 (29/52)	17 (10/33)	3 (16/6)
Excessive Force	94 (26)	32 (37/34)	7 (8/7)	50 (30/53)	5 (26/5)
Shots Fired	2	0	0	2	0
Improper Police Procedures	51 (14)	2 (2/4)	38 (41/74)	9 (5/18)	2 (10/4)
Lack of Proper Services	9 (2)	3 (4/33)	1 (1/11)	5 (3/56)	0
Law Violations by Officer	22 (6)	5 (6/23)	6 (6/27)	10 (6/45)	1 (5/4)
Off-duty Conduct	19 (5)	5 (6/26)	5 (5/26)	8 (5/42)	1 (5/5)
Miscellaneous	8 (2)	2 (2/25)	1 (1/12)	5 (3/62)	0
Total	365	86 (24)	92 (25)	168 (46)	19 (5)

TABLE 3 (CONT'D)

1976

Nature of Complaints	Total Rec. (%)	Not Sus. (%)	Sus. (%)	Exon. Unf. (%)	Open (%)
Discourtesy	91 (26)	52 (40/57)	4 (4/4)	33 (30/36)	2 (10/2)
Unethical Conduct	43 (12)	11 (8/26)	20 (21/46)	12 (11/28)	0
Excessive Force	85 (24)	38 (29/45)	7 (8/8)	31 (28/36)	9 (47/11)
Shots Fired	4 (1)	3 (2/75)	1 (1/25)	0	0
Improper Police Procedures	58 (17)	5 (4/9)	42 (46/72)	10 (9/17)	1 (5/2)
Lack of Proper Services	5 (1)	2 (2/40)	0	3 (3/60)	0
Law Violations by Officer	27 (8)	9 (7/33)	7 (8/26)	9 (8/33)	2 (10/7)
Off-duty Conduct	27 (8)	9 (7/33)	8 (9/30)	7 (6/26)	3 (16/11)
Miscellaneous	9 (3)	0	3 (3/33)	4 (4/44)	2 (10/22)
Total	349	129 (37)	92 (26)	109 (31)	19 (5)

1977

Nature of Complaints	Total Rec. (%)	Not Sus. (%)	Sus. (%)	Exon. Unf. (%)	Open (%)
Discourtesy	48 (19)	20 (25/42)	5 (7/10)	22 (28/46)	1 (8/2)
Unethical Conduct	22 (9)	1 (1/5)	17 (23/77)	3 (4/14)	1 (8/5)
Excessive Force	69 (28)	39 (48/56)	2 (3/3)	25 (32/36)	3 (23/4)
Shots Fired	2 (1)	0	1 (2/50)	1 (1/50)	0
Improper Police Procedures	55 (22)	6 (7/11)	35 (47/64)	7 (9/13)	7 (54/13)
Lack of Proper Services	12 (5)	1 (1/6)	4 (33/5)	7 (9/41)	0
Law Violations by Officer	8 (3)	0	1 (1/12)	6 (8/75)	1 (8/12)
Off-duty Conduct	15 (6)	5 (6/33)	6 (8/40)	4 (5/27)	0
Miscellaneous	16 (6)	9 (11/56)	3 (4/19)	4 (5/25)	0
Total	247	81 (33)	74 (30)	79 (32)	13 (5)

TABLE 3 (CONT'D)**1978**

Nature of Complaints	Total Rec. (%)	Not Sus. (%)	Sus. (%)	Exon. Unf. (%)	Open (%)
Discourtesy	56 (22)	26 (44/46)	6 (6/11)	22 (30/39)	2 (9/4)
Unethical Conduct	33 (13)	2 (3/6)	17 (17/51)	9 (12/27)	5 (22/15)
Excessive Force	46 (18)	20 (34/43)	4 (4/9)	18 (25/31)	4 (7/9)
Shots Fired	1	0	0	0	1 (4/100)
Improper Police Procedures	77 (30)	2 (3/3)	62 (63/81)	7 (9/9)	6 (26/80)
Lack of Proper Services	6 (2)	0	2 (2/33)	4 (5/67)	0
Law Violations by Officer	15 (6)	5 (8/33)	2 (2/13)	7 (10/47)	1 (4/7)
Off-duty Conduct	11 (4)	4 (7/36)	2 (2/18)	3 (4/27)	2 (9/18)
Miscellaneous	8 (3)	0	3 (3/37)	3 (4/37)	2 (9/25)
Total	253	59 (25)	98 (39)	73 (29)	23 (9)

1979 (as of May)

Nature of Complaints	Total Rec. (%)	Not Sus. (%)	Sus. (%)	Exon. Unf. (%)	Open (%)
Discourtesy	15 (25)	3 (33/20)	1 (6/7)	5 (50/33)	6 (27/40)
Unethical Conduct	3 (5)	0	2 (11/67)	0	1 (4/33)
Excessive Force	6 (10)	2 (22/33)	0	0	4 (18/67)
Shots Fired	1 (2)	0	0	0	1 (4/0)
Improper Police Procedures	21 (36)	3 (33/14)	12 (67/57)	2 (20/10)	4 (18/19)
Lack of Proper Services	2 (3)	0	0	0	2 (9/11)
Law Violations by Officer	7 (12)	0	2 (11/29)	3 (30/43)	2 (9/29)
Off-duty Conduct	2 (3)	1 (11/50)	0	0	1 (4/50)
Miscellaneous	2 (3)	0	1 (6/50)	0	1 (4/50)
Total	59	9 (15)	18 (30)	10 (17)	22 (37)

(Total Disposition/Total Category)

Chief Leistler reported to the staff that the Cincinnati Police Division's criteria for police assignment is based on work load and service demand, and that race or ethnic background is not relevant to such assignments unless the assignment required a particular race in an undercover capacity.¹⁷

Officer Wendell Young stated to the Advisory Committee:

Black officers in Cincinnati work everywhere but our biggest concentration is in the black community. But there are less than seven percent of the total police force black. I think if there were more black officers we might find them assigned more frequently also to white areas. But the important areas of policing aren't in the streets. They are in the program management bureau; they're in the Chief's Office; they're in the Personnel Section, the training areas; they are those areas in the Police Department where policy is made, where budget is figured out, where manpower allocations are made and so forth. And in those areas, blacks are absent, and that becomes the crucial problem.¹⁸

The present Mayor Kenneth Blackwell stated:

Historically and presently the Internal Investigation Unit has been all white. One of the reasons that it has been all white is that the police division has decided those who serve on that unit should be of supervisory positions, meaning sergeants on up; as a consequence, we only have three black supervisors and they find themselves in a catch 22, people say, or it has been said, well, we can't take these folk out of direct supervisor or we will be criticized.

Blackwell concluded:

What I asked the chief and I will continue to ask the Police Division, is why that unit must be made up of all supervisors? One cannot tell me that if sergeants can investigate a police chief, a specialist or patrol officer can't investigate a sergeant or a captain or lieutenant, because the base line question is whether or not the skills of investigation that are needed to do a job are the property of a specialist and a patrolman, and the answer to that question by the chief is yes, that

there aren't any skills in that position that a patrolman or a specialist don't have.¹⁹

The perception of the part of some segments of the Cincinnati community that police services are not equally distributed has contributed to police-community tensions. And part of that perception is fueled by the fact that there are so few minorities and women among the sworn personnel, particularly at the policy making levels, thus, it is argued, leading to an insensitivity to the concerns of these particular groups.²⁰

Police Community Relations

According to an excerpt in the book *Issues in Police Administration*:

With social tensions mounting throughout the nation police agencies cannot preserve the public peace without the public participating in a positive way more fully than it now does. Poor community feelings does more than create social distance, it produces irrational responses to rational problems.²¹

A community relations program is not a public-relations program to "sell the police image" to the community. It is not a panacea which will tranquilize an angry neighborhood by suddenly promoting a few black or women officers in wake of a racial disturbance. It is a long-range, full-scale effort to acquaint the police and the community with each other's problems and to stimulate action aimed at solving those problems.

Community relations should not be the exclusive business of specialized units but rather the business of the entire department from the chief to the patrol-person. Community relations are not a matter of special programs but should encompass all aspects of police work from the selection, training, assignments, promotion of personnel field procedures, staff policy making and planning, departmental discipline, to the handling of citizens' complaints.²² A community's attitude toward the police is influenced by the actions of individual officers on the street and in public places.

¹⁷ Administration of Justice: City Police Department Survey, Cincinnati Police Division, Jan. 13, 1979.

¹⁸ Transcript p. 554-55.

¹⁹ Ibid., pp. 80-82. Recently one black officer was appointed.

²⁰ *Mayor's Panel*, p. III-t, 8, 14-15.

²¹ For an adequate presentation of this problem see: *Rights in Conflict*, the Walker Report to the National Commission on the cause and prevention of

violence (New York: Bantam Books, 1968); *Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books, 1968); and David Stahl et. al. (Eds). *The Community and Racial Crises* (New York: Practising Law Institute, 1966).

²² *The Challenge of Crime in a Free Society*, a Report by the President's Commission on Law Enforcement and Administration of Justice, (February, 1967), p. 100.

An incident that happened in Cincinnati's City Council Chambers on May 9, 1979 demonstrates how some police officers are often discourteous and hostile when dealing with members of the black community. Mrs. Marion Spencer described the incident in her statement to the Ohio Advisory Committee:

J.C. Johnson, President of the local branch of the NAACP, was offended by a sign, which had been posted to the right rear of the mayor's chair, which said, "Eliminate prison overcrowding, electrocute the killer bastards." He walked to the Mayor's podium and tore the sign down. As Mr. Johnson attempted to return to his seat, his move was blocked. In full view of hundreds of witnesses, news and T.V. cameras he was snatched by the tie by a police officer and pushed from behind, almost being brought to the floor.²³

The need for elimination of racially prejudicial attitudes at all levels of the police division was expressed by John H. Burlew, attorney:

For a long period of time, there was a picture of Les Gaines in one of the police stations with an Amos and Andy caricature, and a cigar in his mouth, with a big quote saying, "This looks like one of the cases for the kingfish." I've never heard a police captain do anything about it. The division tolerates this action and it goes on and on and on, and unless they do something affirmative they are part of the problem, as far as I'm concerned.²⁴

Officer Fred Stonestreet offered the following examples of insensitivity on the part of a policeman on the street.

When Stonestreet came to the police force in 1966, he was assigned a "Patrolman coach" whose job it was to teach the new officer the ropes. His coach was a 23 year old white officer from Mt. Washington.

One of their first calls came from a 70 year old black woman in the west end whose grandson's bike had been stolen. While questioning the woman, the white officer kept calling her by her first name Mary. Stonestreet was disturbed, "why couldn't he address her as Mrs. The way police officers talked to people bothered me when I was young and its still a problem."²⁵

On May 18, 1979, the Mayor of Cincinnati, Bobbie Sterne, created the Mayors' Community Relations Panel. The Panel was charged with holding public hearings to solicit comments and opinions from organizations, community groups and individual citizens about police/community tensions. The Panel was appointed following a series of incidents that was creating a crisis situation in Cincinnati.²⁶ The tensions built up from the killing of police officers and civilians, actions of the organization of police wives, and the one day strike by Cincinnati's Fraternal Order of Police (FOP). This pent up frustration spilled over at a meeting of the City Council on May 9, 1979, when hundreds of police officers, police wives, and inner city residents filled the Council Chambers and overflowed into hallways and stairs outside.²⁷ All three groups made speeches on the increasing incidents of police community violence and what Council should do about it. When it was over, members of Cincinnati City Council reacted generally with a cautious optimism that police anger can be diffused by enacting new safety measures and community reactions can be addressed by a deeper examination of police community tensions.

There are some police community relations programs going on in the city involving the participation of community groups, including the following:

Police/Youth Live-Ins —A summer three-day Live-In allows police officers and teenagers to know each other on a one-to-one basis to improve relations and understanding between the groups.

Police/Clergy Crisis Team —Over 30 concerned clergy are trained to serve on call with the Cincinnati police to go with them to assist in counseling emotionally distressed families for disputes, death notices, and lost children.

These two programs are sponsored by the National Conference of Christians and Jews and the Counsel of Christian Communions.²⁸

Victims of Crime—Witness Program —Funded through a grant from LEAA to Talbert House. This three year old program assists elderly victims of assault, homicides, robberies, and rape. Aids

²³ Transcript pp. 88-89.

²⁴ Ibid., p. 249.

²⁵ Sunday Magazine in *Cincinnati Enquirer*, July 29, 1979.

²⁶ Letter from former Mayor Bobbie Sterne to appointees to the Mayors' Community Relations Panel.

²⁷ Cincinnati Enquirer, May 10, 1979.

²⁸ National Conference of Christians and Jews, Brochure of activities and programs in Cincinnati during 1978.

call individuals off the offense sheet and offer to help or refer them to others.²⁹

Recently, City Council finally came to grips with the serious lack of an organized police community relations program and proceeded to take steps to improve this situation. On November 4, 1979, the Community Assistance Section became operational. This Section is headed by Lieutenant Thomas Burke and is located on the second floor of 310 Ezzard Charles Drive. Its functions will include the development of positive crime prevention programs; developing defined policies and procedures as related to Police Community relations; actively engaging

²⁹ Marilyn Logan, Project Director, interview in Cincinnati, Ohio, June 7, 1979.

in various projects and programs with civic groups, schools, etc., in developing and presenting programs; coordinating like programs in the Districts; assisting in arranging tours, speakers, etc.; developing programs for police recruits and in-service training; and providing liaison with community groups and other human relations organizations.³⁰

It remains to be seen if a separate section of the Police Division can resolve existing problems or whether it will ultimately be necessary to make this concern an integral part of each facet of the police division, from top to bottom.

³⁰ *Human Relations Newsletter*, vol. 12, no. 3 (Cincinnati Human Relations Commission, December 1979), p. 2.

Employment

Hiring

Members of the Cincinnati Police Division are classified civil service employees and are under the jurisdiction of the Cincinnati Civil Service Commission. The Commission derives its authority from Article V of the Charter of the city of Cincinnati, and administers the laws of the State of Ohio as set forth in the Ohio Revised Code, §124.40 (Page 1978).

The Civil Service Commission establishes qualifications for hiring applicants and announces, prepares, conducts, and grades examinations. Examination scores are ranked and candidates are selected on the basis of rank order. This rigid adherence to rank order stems from State civil service law. In his study of Cincinnati's Personnel Department, Dr. James L. Outtz, Professor at Howard University, stated, "Examinations are not validated prior to or in conjunction with their use. In most instances, no data exist which would indicate the validity of a given examination, or the manner in which examination scores should be used."¹

Selection of new employees as well as promotion of current employees are to be based upon merit and fitness. In order to select individuals who are best suited for a given position, there must be a clear understanding of: 1) what is done on the job; 2) the appropriate method of doing the job; and, 3) a performance appraisal system.² It is useless to attempt to select employees who can perform a job

well without a job description that identifies the important components of the job so that the needed knowledge, skills and ability can be ascertained.

The major problem is to develop a test which actually measures the knowledge, skills and abilities that have been identified. This test should be standardized before it is put into use.³ In Cincinnati, however, tests are simply constructed and then used. Written examinations as they are developed and used by the city of Cincinnati ensure the selection of test-wise, verbally fluent persons. At the same time, since few if any objective performance standards exist, these people are practically assured of being viewed as successful in their jobs.⁴

Title VII of the 1964 Civil Rights Act, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.⁵ The 1972 amendments broadened the scope of Title VII to include Federal, State, and local governments, in addition to the private sector. In Title VII, Congress authorized the use of professionally developed tests in employment selection as long as use of the test does not discriminate against minorities, women, and other protected classes.⁶

In 1966, the Equal Employment Opportunity Commission (EEOC) adopted a set of guidelines designed to help employers understand the requirements of the law.⁷ EEOC revised its guidelines several times, and in August 1978, uniform guidelines were adopted by EEOC, Civil Service Com-

¹ James Outtz, Ph.D., Howard University, "An Assessment of the Selection and Promotion Procedures of the City of Cincinnati," a study for the Personnel Department of Cincinnati, 1978 (hereafter cited as Outtz Report), p. 10.

² *Ibid.*, p. 3.

³ *Ibid.*, p. 8

⁴ *Ibid.*, p. 10.

⁵ 42 U.S.C. §§2000e-2000e-17 (1976).

⁶ 42 U.S.C. §2000e-2(h) (1976).

⁷ See discussion, 43 Fed. Reg. 38,290 (1976).

mission, Department of Labor, and Department of Justice.⁸ Basically, the guidelines embrace the principle of test validation. This principle dictates that use of a test which adversely affects (i.e., results in the disproportionate rejection of) members of protected classes must be justified on the basis of business necessity. Basically this means that there must be a clear relationship between test scores and job performance and that no suitable alternative with a lesser discriminatory impact is available.⁹

The strict Ohio civil service code, which requires that persons be hired on the basis of their performance on an examination, may have a restrictive influence on equal opportunity programs. At the same time, however, it has been used as an excuse for the poor affirmative action record in the Cincinnati Police Division.¹⁰ Recognizing this problem, State Senator William F. Bowen, (D-Cincinnati,) attached a rider to the massive 1979 State appropriation bill which allows a charter city to remove itself from State civil service provisions to comply with Federal equal opportunity laws.¹¹

The total sworn personnel of the Cincinnati Police Division, as of January 25, 1980, was 939, of which one was Oriental and 69 (7 percent) were black (67 males, 2 females).¹² The Cincinnati Civil Service Recruit List,¹³ dated February 7, 1980, showed the following:

The Police Division had a total of 1,223 applicants apply for the position of police recruit. Of these, 824 took the written exam.

After medical, physical and physical agility testing, background investigations, polygraph examinations, psychological examinations and personal interviews, 112 applicants remain in the process:

59 male whites, 13 female whites, 64.3% white

26 male blacks, 14 female blacks, 35.7% black

75.9% male, 24.1% female

⁸ 29 C.F.R. §§1607.1-1607.16 (1979).

⁹ 29 C.F.R. §§1607.3, 1607.5 (1979).

¹⁰ Outtz Report, p. 2.

¹¹ Ohio Rev. Code Ann. §124.90 (Page Supp. 1979). Known as "The Bowen Amendment," the City Council may by two-thirds vote adopt ordinances for purposes of complying with Federal equal employment laws in conflict with existing state civil service law.

¹² Richard Castellini, former Safety Director, letter with documents to Valeska S. Hinton, Equal Opportunity Specialist, MWRO, U.S. Commission on Civil Rights, Feb. 6, 1980.

When these 112 new recruits are added to the existing force of 939, the total police personnel will be 1,051. This total would include an increase of blacks from 69 to 109 or 7.4 percent to 10.4 percent. Though this represents genuine progress, if black representation in the police force were to increase by three percent each year, it would take ten years for the black representation in the police force to match that of the total population, assuming blacks remain at 33 percent of the population of Cincinnati.

Training

Most of the police officers interviewed, who testified at the fact-finding meeting of the Ohio Advisory Committee, felt that the training they received was adequate to good.¹⁴

Each recruit officer receives 880 hours of basic training after appointment. In-service training thereafter varies from year to year, dependent upon identified needs. Total in-service training hours for Cincinnati Police Division personnel in 1978 was 26,740. (Approximately) 1600 hours were didactic classroom instruction, the balance were devoted to field training. The officers average 28 in-service training hours per person, per year.¹⁵

The training calendar for 1978 had a variety of programs, seminars, and conferences as shown in Table 4. Members of the Police Division are receiving an 8-hour course entitled Community Perspective Workshop and a 4-hour course "Shooting Decision Workshop." As of February 1, 1980, over 800 officers have attended the 8-hour workshop. The 4-hour course will begin when the repair of the new weapons and the weather permit.¹⁶ The outline for the 8-hour community perspective workshop, as presented in the Status of Safety Task Force Recommendations, is as follows:

Civil Rights

A two-hour class identifying the inalienable civil rights of citizens. A discussion of abuses of civil rights, including Philadelphia and Detroit cases. How to avoid charges of abuse and the consequences of abuse.

¹³ Richard Castellini, letter with approved Civil Service Commission Recruit List, to Valeska S. Hinton, April 25, 1980.

¹⁴ Lt. Ted Schock, Cincinnati Police Division, testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights, hearing in Cincinnati, Ohio, June 28-29, 1979 (hereafter cited as Transcript), p. 513.

¹⁵ Administration of Justice: City Police Department Survey, Cincinnati Police Division, Cincinnati, Ohio, Jan. 13, 1979.

¹⁶ "Status of Safety Task Force Recommendations" sent to Valeska Hinton by Richard Castellini, former Safety Director, Feb. 6, 1979.

TABLE 4

Training Calendar 1978

Training Programs	No. of Hours	No. Attendees
Hostage Negotiations	8	11
Sign Language	24	51
Breathalyzer	40	40
Breathalyzer Retraining	8	75
Police Records Expungement	3	4
Strike Problems	5	2
Police/Clergy Orientation	16	15
Special Training & Conferences		
Crime Prevention Seminar	40	15
Liquor Law Conference	8	11
Honda Motorcycle Training	10	67
Firearms Instruction Course	40	4
Basic Fingerprint (conducted by FBI)	40	24
Advanced Fingerprint (conducted by FBI)	40	19
Drug Enforcement	20	17
Sergeants Training	24	11
Basic Search Warrants	4	29
Advanced Search Warrants	8	18
Instructors Workshop	40	5
Crime Prevention Theory & Practice	24	14
Ringmaster Training for School Resource Officers	1	7
Robbery Task Force	16	63
Automatic Weapons Seminar	8	15
Core Group Training for Police Training Officers	4	10
Management Training	8	348
Management Training	4	14
First Aid Training 2-day Program	16	171

Source: Cincinnati Police Division.

Community Makeup, Demography This one-hour class identifies ethnic community makeup, neighborhood population and education, the unemployment and welfare rate, along with the poverty level and educational level in the community.

Prejudice

A one-hour class identifying the origins of prejudices, how they are fostered and passed on from generation to generation. How to identify your personal prejudices, and how to cope with and control them.

Community Makeup, The Cultures

This two-hour class explores some aspects of the Black and Appalachia cultures, and a brief synopsis of the direction of homosexual activity

in Cincinnati. The class is designed to identify behavioral and communicative responses resulting in negative community contacts.

The Handling and Mishandling of Confrontations

A Two-hour class on conflict-reducing skills designed to improve communication techniques.

1. Handling Verbal Abuse
2. Body Language a. Minimizing Use of Threats b. Improving Non-verbal Communication
3. Use of Language as a Weapon
4. The Psychology of Using Psychology

Police Division personnel and making on-site visits on the West Coast to develop ideas for a stress management program. This program is to be operational by August 1, 1980. Survival training is scheduled to begin with the completion of the outdoor target range and each officer is expected to attend four 8-hour days each year. All new recruits will receive 30 hours of self defense training and 30 hours of physical education training. In-service classes for both of these programs for officers are being developed. The stress awareness program to make police officers more conscious of stress will be provided to all members of the division. A three-day program on investigative skills will begin as soon as Federal funds are awarded in late 1980 or early 1981. Training will begin in 1980 for sergeants and lieutenants in first line supervision. The program is designed to establish accountability and quality supervision at the field level. It will attempt to reinforce the field level supervisor's confidence in the administration, yet remind him of his responsibility and accountability for the actions of his men. This training was recommended by the Police Safety Task Force and is being implemented as funds are available.

The Mayor's Community Relations Panel recommended that the Police Academy training staff should include minorities and women.¹⁷ The full-time training staff currently consists of nine persons including two female clericals. There are no blacks on the full-time staff. The part-time staff is made up of other members of the police agency, other police agencies, and community resource people.¹⁸ According to the listed instructors in approved training, the only minorities to be involved in the training staff are in the two-hour class on "Community Makeup, The Cultures."

The Panel report also concluded:

While outside resources can be used to assist in training, responsibility is in the hierarchy of the Police Division and requires the active and visible support of the Chief and Assistant Chiefs. Training should not be one of the first items to be cut when there are budget reductions. To be successful, training must be reinforced. Training is linked to supervision and is reemphasized by supervisors who direct and motivate. What is taught should be what is expected and used in the field. Preferably,

training is voluntary. Reluctant learners do not learn well. Police training in dealing with various people and the community should have the same importance and priority as training in how to fill out a particular form or how to write a shots fired report. Much of the training in community relations must come from the officer who is already on the street. Human relations training is an area which the Police Division should reemphasize, not only occasionally but on a constant basis.¹⁹

Promotion

The promotion policy of police officers is based upon the rules and regulations of the Ohio Civil Service Law (Ohio Rev. Code Ann., §124.44, (page 1979)), and defined in the Charter of the city of Cincinnati, Article V, Section 5. Section 5 states:

The members of the police force engaged in police service, shall consist of the following ranks: Chief, Assistant Chief, Major, Captain, Lieutenant, Sergeant, Patrolman, Police Recruit. Within the ranks below that of assistant chief, the council shall establish such special positions having special duties with preferential pay as the council deems necessary; but the existence of such special positions shall not establish eligibility for promotion to the next higher rank. No special position established by council within the ranks below that of assistant chief shall be filled without promotional examination.

When an examination is held for any rank above patrolman, all incumbents of the next lower rank shall be eligible who meet the seniority and efficiency standards established by the civil service commission; provided, however, that the rank of major shall not be considered a rank for the purpose of eligibility in promotional examinations.

If no more than one incumbent of the next lower rank meets such requirements, the civil service commission shall be empowered to open the examination to incumbents of the second lower rank.

The rank of major may be used as a title by the present incumbents now holding said title until they are separated from the service, at which time said rank shall cease to exist.

¹⁷ Ibid.

¹⁸ *The Report of the Mayor's Community Relations Panel to the Council of the City of Cincinnati*, July 5, 1979 (hereafter cited as *Mayor's Panel*), p. IVB-3, Sec. 7.

¹⁹ Ibid.

This rigid rule has hampered the Police Division in complying with Federal rules for equal employment opportunity and upward mobility.²⁰ William Sheehan, Civil Service Commissioner, explained the process whereby promotional exams are developed and given:

Written promotional examinations are ranked and rated according to task. This is done by incumbents and supervisors. Using computer analysis for task ratings and rankings, knowledge, abilities and skills and personal characteristics are written up and then rated and ranked by subject matter experts. After the computer analysis, test questions are developed by Civil Service examiners. Only one person does this because of the emphasis on security.²¹

William Clark, Secretary of the Civil Service Commission concluded:

Because of allegations of stolen tests, circulated among officers, but not shared with minority officers, the Police Division's testing process has been changed for security reasons. The actual examination booklet is only prepared literally hours before the test is actually given.²²

Regardless of the reasons, the number of promotions of minority police officers is dismally low. According to the City Personnel Office, on December 31, 1978, there were 36 white lieutenants, one black; 128 white sergeants, two black; 168 white specialist, five black; 576 white patrolmen, and 62 black. Except for the single black lieutenant, there are no minority police officers above the rank of sergeant.²³

The Safety Task Force recommended to the City Manager the following procedures for promotional examinations: Limit promotional lists to one year. Provide copies of previous examinations and more specific study references to all officers. Grade, post, and provide answer sheets to all examinations within 48-hours.²⁴

The Mayor's Panel also recommended: 1) the police department should promote black and women police officers through provisional appointments, 2) city council should appoint a committee to study police hiring and promotion practices, and 3) city personnel department should conduct open pre-ex-

amination classes for all taking promotional examinations.²⁵

Arthur Crum, a 29-year veteran black police officer, summed up the feelings of frustration over promotions:

As a young officer, I had the aspiration to serve in some specialized units, like Homicide Squad, Robbery Squad, and Control Bureau, but these jobs were limited to only white officers. As the years went by, they did bring blacks into these jobs. However, it was always only two or even one. And you had to be a special kind of black person in order to get into these type of jobs. It was the kind of Uncle Tom syndrome that I think the Police Department required of you in order for you to reach this level. If you weren't the type of black person that they enjoyed or liked, then there was no chance for you ever to move up into these ranks.

Crum concluded:

It is very stressful for black police officers to watch some of our finest talent leave the Cincinnati Police Department because a lot of them couldn't move up in the ranks. We are seeing a period now (April, May 1979) where we have lost in the neighborhood of four to five black officers.²⁶

A report from the former Safety Director, Richard Castellini, showed that of 36 resignations in 1979, seven were black males (19.4 percent).²⁷ Some of these have taken jobs as security guards in private industry. Castellini stated to the Committee:

One of our major problems is we are losing good young black police officers like we're losing good female officers. We lose them because they are good. There is a job out there in industry where the rewards are greater. We just lost a couple of black police officers, very sharp young people, they are going out to Ford and General Electric and they start at \$3,000 to \$4,000 more than our highest paid patrolman.

Castellini concluded:

They are really jumping past the Specialist and Sergeant rank as they start with these firms. The industry is looking for minorities and women and we are supplying some of those. To

²⁰ Outtz Report.

²¹ Transcript, p. 492.

²² Ibid., pp. 490, 504, 505.

²³ William Garrett, Personnel Director, letter to Valeska S. Hinton, Feb. 1979.

²⁴ *Safety Task Force Report*, to the Cincinnati City Manager, Feb. 1979.

²⁵ Summary of *Mayor's Panel* recommendations, supplied by the Metropolitan Area Religious Coalition of Cincinnati, July 18, 1979.

²⁶ Transcript, pp. 621, 622, 623, 624.

²⁷ Richard Castellini, letter to Valeska S. Hinton, Feb. 6, 1980.

some degree, its gratifying that people think enough of our people, but it's difficult for us to keep people under these circumstances.²⁸

The Fraternal Order of Police (FOP) has not addressed the hiring and promotion policy. FOP President Elmer Dunaway stated that the FOP has not looked at civil service testing problems because it has been too busy protecting the job rights and benefits it has already secured for its members.²⁹

There has been considerable controversy about the leadership of the FOP. According to Wendell Young, President of the Sentinels, "The Sentinels, a black police officers organization, has a very strong gripe with the present FOP leadership in this city, and we feel that this kind of leadership has probably taken this city back 10 years in its police-community relations effort."³⁰

Police Chief Myron J. Leistler offered this observation to the Ohio Advisory Committee, "My personal thoughts are that there has never been anything more destructive to police professionalism in the city of Cincinnati than the blatant unionism exhibited by the FOP, personified by Elmer Dunaway, and I cannot subscribe, nor will I support, such activities as he advocates."³¹ The specific activity to which Leistler referred was the "Stress Day" walk-out of the police officers on May 8, 1979, which was a reaction to the shooting death of a police officer. The union had been involved in a slowdown in writing traffic and parking tickets from January to May 1979 in protest of the breakdown in contract

negotiations. Six veteran police supervisors resigned from the FOP because of the Stress Day strike.³²

Members of the black community believe that the FOP was taking over the Police Division and running a police State.³³ This view was shared by some members of the Cincinnati police supervisors association when they issued a statement highly critical of the way the FOP's leadership handled the walkout. One supervisor, who did not resign said: "Somehow or other there has to be a change [in the FOP], either from within or without. "An officer can't effect that change," he said, "by resigning from the organization."³⁴

There are recent signs of a breakthrough of the restrictions placed on hiring of minorities for the Police Division. Senator Bowen's amendment permitting state civil service laws to be waived for purposes of achieving equal employment opportunity discussed above, and the increased number of black recruits that have passed the entrance exams are steps in the right direction. If the recommendation of the Mayor's Panel, that the city council appoint a committee to study all components of the police hiring and promotional process, including the civil service system, for adverse impact upon hiring, retention, and promotion of minority and female police officers,³⁵ is put into place, and such adverse impact eliminated, then the Police Division will move closer to the goal of hiring and promoting officers solely on the basis of merit and fitness.

²⁸ Transcript, pp. 434, 435.

²⁹ Elmer Dunaway, FOP President, interview in Cincinnati, Ohio, April 6, 1979.

³⁰ Transcript p. 567.

³¹ *Ibid.*, p. 481.

³² *The Cincinnati Post*, May 10, 1979, p. 2.

³³ Transcript, p. 212.

³⁴ *The Cincinnati Post*, May 19, 1979.

³⁵ *Mayor's Panel*, p. IVC-1, No. 4.

External Oversight

Several government agencies at the local, State, and Federal levels have varying degrees of oversight authority pertaining to the Cincinnati Police Division. This chapter briefly reviews the specific jurisdiction and enforcement activity of these agencies as they relate to civil rights considerations in the areas of use of force, distribution of services, and employment. In addition to summarizing what the law requires as established by legislation, litigation, and regulation, the following pages review the complaints which have been filed with these agencies and their on-going monitoring efforts.

City and County Involvement

Office of the Cincinnati City Solicitor

The City Solicitor is the chief law officer for the City of Cincinnati.¹ Within the Office of the City Solicitor, the municipal prosecutor is responsible for prosecuting violations of all Cincinnati ordinances and, in addition, of Ohio State criminal laws where the alleged offense is a misdemeanor occurring within Cincinnati.² In addition, the municipal prosecutor represents the State of Ohio at local preliminary hearings of individuals alleged to have committed felonies.³

¹ Thomas A. Leubbers, former City Solicitor, City of Cincinnati, testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights, hearing, June 28–29, 1979 (hereafter cited as Transcript), p. 140; The Cincinnati Administrative Code as amended March 1980, art. III, §2.

² Thomas A. Leubbers, Transcript, p. 140; The Cincinnati Administrative Code, as amended, March 1980, Art. III, §3.

³ Thomas A. Leubbers, Transcript, p. 140.

⁴ Ohio Rev. Code Ann. §§2903.13, 2903.14 (Page 1975).

⁵ Ohio Rev. Code Ann. §2903.13 (Page 1975).

⁶ Ohio Rev. Code Ann. §2903.14 (Page 1975). Under Ohio Law, a dangerous weapon is “any instrument, device, or thing capable of

Under Ohio law, assault is a misdemeanor.⁴ Therefore, if a police officer “assaults” a civilian, the officer is subject to criminal prosecution. Assault is defined as knowingly causing or attempting to cause physical harm to another or recklessly causing serious physical harm to another.⁵ Negligent assault, also a misdemeanor, is assault with a deadly weapon such as a gun.⁶

While the misuse of physical force by a police officer against a civilian could constitute an assault or a negligent assault, misdemeanors under Ohio law, Cincinnati has never instituted criminal proceedings against police officers for engaging in such conduct while on duty.⁷ In addition, no local prosecutions have been brought against police officers in the deaths of civilians because in each such case either a determination was made that the officer acted in accord with State law concerning a peace officer’s allowable use of deadly force or else the County Prosecutor’s Office handled the case as a felony.⁸

Since 1974, there have been a number of private civil suits filed against Cincinnati police officers for alleged excessive use of force against civilians.⁹ These suits have been filed in the Federal District

inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.” Ohio Rev. Code Ann. §2923.11 (A) (Page 1975).

⁷ Thomas A. Leubbers, interview in Cincinnati, Ohio, Jan. 25, 1980 (hereafter cited as Leubbers Interview). Misdemeanors committed within Cincinnati proper are prosecuted by the City Solicitor’s office.

⁸ Leubbers Interview. See discussion of Ohio peace officers’ privilege to use force including deadly force, Chapter 1.

⁹ Thomas A. Leubbers, memorandum to Techemseh X. Graham, Cincinnati City Council, Aug. 9, 1979 (hereafter cited as Leubbers memorandum).

Court and have alleged a violation of the aggrieved civilian's federally protected constitutional rights.¹⁰ In such civil rights suits, the City Solicitor's office routinely defends the defendant police officers where the allegedly wrongful conduct occurred within the scope of their employment responsibilities, was not willful, wanton, or malicious, and was undertaken in good faith.¹¹ The City Solicitor's office has defended all but two of the defendant police officers who were sued civilly for excessive use of force.¹²

Since 1974, 15 cases against the city or individual police officers have been filed alleging excessive use of force.¹³ Six are pending at this time.¹⁴ Nine additional cases have been closed.¹⁵ The total amount paid to the plaintiffs by the city in these cases is \$475.¹⁶ Three of the nine cases were tried to a jury which in each case found for the city and against the civilian plaintiff.¹⁷

A police officer's use of force may also violate Division rules and procedures.¹⁸ Where a police officer is terminated, suspended, or reduced in pay for violating Police Division policy, including use of force policy, and appeals to the Civil Service Commission, the City Solicitor routinely represents the Police Division against the police officer.¹⁹ Civil Service generally has sustained the few appeals which have been taken from disciplinary sanctions imposed by the Police Chief.²⁰

The role of the City Solicitor's office in regard to the Police Division is indeed complex. For example, a police officer who misuses physical force against a civilian may be in violation of Division rules and procedures,²¹ and of Ohio State law.²² If the Police Chief terminates, suspends, or reduces the pay of the officer as discipline and the officer appeals,²³ the City Solicitor represents the Division against the

officer. In addition, based on the same conduct, the City Solicitor could institute a criminal prosecution against the officer for the violation of Ohio law. But if the officer were to be sued civilly for damages by the victim of his abuse, the City Solicitor could be required to defend the officer in his capacity as the city's chief law officer.

This potential conflict has been at least partially resolved by the policy of requiring police officers who are defendants in civil suits to retain private attorneys where the City Solicitor has appeared against them on behalf of the city administration in prior legal proceedings.²⁴ In such cases, however, the city would pay the attorney's fees where the City Solicitor had determined the conduct to be in the scope of employment, undertaken in good faith, and was not willful, wanton, or malicious.²⁵ In almost all cases, however, the City Solicitor has defended police officers in civil actions against them where excessive force was alleged. Whether the City Solicitor's failure to represent an officer in a civil suit would provide unwitting but effective notice to the Court that the Solicitor had already determined that the officer had acted improperly thus potentially prejudicing the defendant officer's case is an issue which the former City Solicitor recognized but determined to be irremediable.²⁶

Office of the Hamilton County Prosecutor

Simon Leis, Hamilton County Prosecutor, is responsible for prosecuting all felonies which are committed within Cincinnati.²⁷ Such felonies include felonious and aggravated assault,²⁸ murder,²⁹ and attempted murder.³⁰ If a police officer uses deadly force against a civilian and that conduct is not within the purview of Ohio State law concerning the

¹⁰ Ibid.; Thomas A. Leubbers, Transcript, pp. 157-158.

¹¹ Leubbers Interview; Cincinnati Municipal Code, as amended March 1980, §§109-12.

¹² Ibid.

¹³ Leubbers Memorandum.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ As discussed in Chapter 1, the Cincinnati Police Division use of force policy is far more restrictive than Ohio State law governing a peace officer's use of force including deadly force.

¹⁹ Thomas A. Leubbers, Transcript, pp. 141-42.

²⁰ Data supplied by the Cincinnati Police Division, entitled "Disciplinary Action Taken on Sworn Police Personnel—1977" and "Disciplinary Action Taken on Sworn Police Personnel—1978," dated Dec. 14, 1979.

²¹ City of Cincinnati, Cincinnati Police Division, *Procedure Manual*, Jan. 1, 1976 (hereafter cited as *Procedure Manual*), Nos. 12, 145.

²² Ohio Rev. Code Ann. §2903.11 (felonious assault), §2903.12 (aggravated

assault), §2903.13 (assault), §2903.14 (negligent assault), §2903.01 (aggravated murder), §2903.02 (murder), & 2903.03 (voluntary manslaughter), §2903.04 (involuntary manslaughter), §2903.05 (negligent homicide) (Page 1975).

²³ All reductions in pay, suspensions, and terminations of police officers are appealable to the Civil Service Commission. With other municipal employees, only suspensions over three days, reductions in pay, and terminations may be appealed. Ohio Rev. Code Ann. §124.34 (Page Supp. 1979).

²⁴ Leubbers Interview.

²⁵ Ibid.

²⁶ Ibid.

²⁷ See Ohio Rules Crim. Pro., 2, 7 (Page 1975 and Supp. 1979). The County Prosecutor prosecutes all felonies committed inside the Cincinnati city limits. Misdemeanors occurring within Cincinnati are prosecuted by the Cincinnati City Solicitor's office.

²⁸ Ohio Rev. Code Ann. §§2903.11 and 2903.12 (Page 1975).

²⁹ Ohio Rev. Code Ann. §§2903.01 and 2903.02 (Page 1975).

³⁰ Ohio Rev. Code Ann. &2923.02(E) (Page 1975).

permissible use of deadly force by police officers, the officer may be prosecuted for a violation of the relevant State criminal law.³¹

In the nine years that Leis has been with the County Prosecutor's office, no Cincinnati police officer has been tried for a criminal offense arising out of his or her use or misuse of force while on duty.³² Of the use of force cases Leis has reviewed, he has independently determined in almost all cases that the officer acted properly in accord with State law.³³ Of the approximately four cases which Leis has sent to the grand jury, none has been returned with an indictment.³⁴

State Involvement

Ohio Civil Rights Commission

The Ohio Civil Rights Commission is the principle State agency responsible for preventing race and sex discrimination in employment.³⁵ The Commission's authority extends both to private and public employers.³⁶ Under its mandate, the Commission is empowered to receive complaints of unlawful discrimination, to investigate those complaints, and upon a finding of probable liability, to seek enforcement and disciplinary proceedings against the offending employer.³⁷ Formal enforcement proceedings against an employer are conducted by the Ohio Attorney General.³⁸ The Commission does not have jurisdiction to investigate complaints of excessive use of force or discrimination in the provision of police services even if the alleged discrimination is based upon race or sex.³⁹

The Ohio Civil Rights Commission has received complaints of unlawful employment discrimination and has recently initiated charges of employment discrimination against the Cincinnati Police Division.⁴⁰ These charges which allege system-wide racial discrimination in policies and practices are

currently being investigated by the Ohio Attorney General.⁴¹ A final decision on future proceedings against the Division has not yet been made.⁴²

Office of Criminal Justice

The State of Ohio, Office of Criminal Justice, Department of Economic and Community Development, is the State planning agency through which Law Enforcement Assistance Administration (LEAA) funds are principally channeled to municipal police departments including the Cincinnati Police Division.⁴³ That Office is empowered to accept and distribute Federal as well as State monies to law enforcement agencies.⁴⁴ The Office of Criminal Justice is statutorily required to administer all funds in accord with the laws of Ohio as well as with Federal law.⁴⁵ Because Ohio statutes include nondiscrimination in employment laws, the Office of Criminal Justice could require police departments practicing race or sex based discrimination in employment to alter their practices as a condition of continued funding. However, according to the Metropolitan Supervisor of the Office of Criminal Justice, Horst Gienapp, complaints of discrimination would be referred to the Ohio Civil Rights Commission or to LEAA for action rather than be investigated directly by the one-person Civil Rights Division of his office.⁴⁶ Gienapp has stated that his Office has actually received no complaints of discrimination in employment, no complaints of excessive use of force, and no complaints of inequitable distribution of police services arising from the operations of the Cincinnati Police Division.⁴⁷ According to Gienapp, few people are even aware of the civil rights jurisdiction of his Office.⁴⁸ Since that Office has received no complaints and has no independent evidence of race or sex based discrimination, no investigation of the Cincinnati Police Division is contemplated at this time.⁴⁹

³¹ See discussion of State law concerning the privilege of Ohio peace officers to use force including deadly force in Chapter 1.

³² Simon Leis, interview in Cincinnati, Ohio, Jan. 25, 1980 (Hereafter cited as Leis Interview); Simon Leis, Transcript, p. 153. According to Leis, one officer was successfully prosecuted for rape committed while on duty.

³³ Ibid.

³⁴ Leis Interview.

³⁵ The Commission's jurisdiction also extends to discrimination based on color, religion, national origin, handicap, age, and ancestry in public accommodations, housing and credit. Discrimination in credit based on marital status is also prohibited. Ohio Rev. Code Ann. §§4112.02(A)-(H) (Page Supp. 1979); §§4112.03, 4112.04 (Page Supp. 1979).

³⁶ Ohio Rev. Code Ann. §4112.02(A) (Page Supp. 1979).

³⁷ Ohio Rev. Code Ann. §4112.04 (Page Supp. 1979).

³⁸ Ohio Rev. Code Ann. §4112.04(B) (Page Supp. 1979).

³⁹ Ray O. Paul, Regional Director, Ohio Civil Rights Commission,

interview in Cincinnati, Ohio, April 5, 1979 (hereafter cited as Paul Interview).

⁴⁰ Paul Interview. Carla Moore, Assistant Attorney General, Civil Rights Division, Office of the Attorney General, State of Ohio, letter to Clark G. Roberts, Regional Director, MWRO, U.S. Commission on Civil Rights, Oct. 10, 1979 (hereafter cited as Moore letter).

⁴¹ Moore letter.

⁴² Ibid.

⁴³ See Ohio Rev. Code Ann. §§122.02 (Page 1978).

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Telephone interview, Jan. 11, 1980.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

State Training Council

Ohio has established a State Training Council which sets minimum training standards for local law enforcement agencies.⁵⁰ Ohio has not created a State board of performance standards for municipal law enforcement agencies as some other States have. Minnesota, for example, has recently created a State Peace Officer Standards and Training Board which includes both functions: setting uniform standards for training and for conduct for Minnesota law enforcement officers.⁵¹ The Minnesota Board possesses the power to independently license local peace officers and, in appropriate circumstances, to revoke or refuse to renew their licenses.⁵²

Past attempts to establish State control over selection standards for municipal law enforcement agencies in Ohio have met with strenuous opposition.⁵³ While the Executive Director of the Ohio Training Council, Wilfred Goodwin, has recommended that the powers of the Council be expanded to enable it to set minimum standards for personnel selection such as educational requirements, he questions the need for State control over police performance including State licensure.⁵⁴

Goodwin believes that the present process of internal discipline with review by civil service and appeal to the courts should be sufficient to maintain high standards of performance within local police departments, including the Cincinnati Police Division. Goodwin has stated, however, that there would be some benefit to requiring uniform standards of conduct across the State.⁵⁵ Such uniformity would be possible only if a State standards board were established.

According to Goodwin, the training standards of the Cincinnati Police Division exceed State requirements.⁵⁶ In addition, the Training Council has received no complaints that officers have suffered race or sex based discrimination in the training they received from the Cincinnati Police Division.⁵⁷ As a

result, no investigation of Cincinnati training practices and procedures has taken place or is contemplated by the Training Council.⁵⁸

Federal Involvement

Funding agencies

The Cincinnati Police Division receives funds from several Federal agencies under a variety of programs. First, the Office of Revenue Sharing, (ORS) Department of the Treasury, disburses funds to the Division under the Fiscal Assistance to State and Local Governments Act.⁵⁹ That Act requires city recipients to hold at least one public hearing on the proposed expenditure of Federal revenue sharing funds no less than seven days before the city budget is presented to city council for approval.⁶⁰ A second hearing on the final proposed budget including allocation of the revenue sharing funds to specific budgetary items is also required.⁶¹ In addition, the Act requires that the city submit to the Secretary of the Treasury and make available to the public for inspection a yearly accounting of how the revenue sharing funds have actually been expended.⁶² Public participation in deciding the most appropriate uses for the revenue sharing funds is expressly encouraged in the Act.⁶³

According to the Assistant City Manager, Director of Research, Evaluation, and Budget, Michael Bierman, Cincinnati complies with the Federal requirement that citizens be permitted to participate in the decision-making process concerning the expenditure of Federal funds.⁶⁴ An initial public hearing prior to the preparation of the city budget is held to elicit citizen input in regard to the revenue sharing funds.⁶⁵ Subsequent to that hearing, the Assistant City Manager, Director of Research, Evaluation, and Budget prepares the annual budget

⁵⁰ Ohio Rev. Code. Ann. §§109.71-109.79 (Page 1975 and Page Supp. 1979).

⁵¹ Minn. Stat. §§626.84-626.852 (1978).

⁵² Minn. Stat. §626.845, Subd. 1(d) (1978).

⁵³ Wilfred Goodwin, Executive Director, Ohio Peace Officer Training Council, telephone interview, Dec. 3, 1979 (hereafter cited as Goodwin Interview).

⁵⁴ Goodwin Interview. The Minnesota Peace Officer Standards and Training Act now exempts entering peace officers who have completed an approved post-secondary course in law enforcement from the training requirements of the Act. Minn. Stat. §626.846, Subd. 4 (1978).

⁵⁵ Goodwin Interview.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ 31 U.S.C. §§1221-1265 (1976).

⁶⁰ 31 U.S.C. §1241 (b)(1) (1976).

⁶¹ 31 U.S.C. §1241 (b)(2) (1976).

⁶² 31 U.S.C. §1241 (a) (1976).

⁶³ Recipient units of government may obtain waivers from the initial seven day advance hearing on proposed uses of the funds if the cost of such a hearing is "unreasonably burdensome" in relation to the funds received. A waiver from the final budget hearing is available if the recipient unit of government is otherwise legally required to invite public attendance and participation at a public hearing on the entire budget. 31 U.S.C. §1241 (3)(1976).

⁶⁴ Telephone interview, January 9, 1980 (hereafter referred to as Bierman Interview).

⁶⁵ Ibid.

which is then submitted by the City Manager to the City Council for approval,⁶⁶ After the budget is reviewed by the City Council and finally approved, a second set of public hearings is held on the entire budget.⁶⁷ These public hearings are held to comply both with Federal requirements and with the established policy and practice of the Cincinnati City Council.⁶⁸

The Cincinnati Police Division regularly receives a significant amount of money under the revenue sharing program. In 1976, the Division received \$3.392 million.⁶⁹ In 1977 and 1978, the Division received \$3.032 million and \$2.762 million respectively.⁷⁰ In 1979, ORS disbursed \$2.95 million to the Division under the revenue sharing program.⁷¹

Federal funds were also distributed to the Cincinnati Police Division through ORS under the Antirecession Provisions.⁷² These provisions were enacted in 1976 to assist State and local governments overcome their fiscal difficulties and remedy problems caused by necessary budgetary constrictions.⁷³ No public hearings were mandated in regard to deciding the disposition of these funds. Reports to the Secretary of the Treasury through ORS by Cincinnati and all other recipients as to the expenditure of those funds were, of course, required.⁷⁴ In addition, a number of assurances had to be filed by the recipient with the Secretary before funds were disbursed under this authority, in particular an assurance that the funds would be used to maintain levels of public employment and basic services ordinarily provided by the recipient.⁷⁵

No funds were distributed under the Antirecession Provisions during 1976 to the Cincinnati Police Division. In 1977, \$1.452 million were granted the

Division.⁷⁶ In 1978, the Division received \$3.090 million.⁷⁷ The Antirecession program was terminated in 1978, eliminating this source of funds.⁷⁸

The Law Enforcement Assistance Administration (LEAA) of the Department of Justice which is currently being phased out⁷⁹ also distributes funds to the Cincinnati Police Division under the Justice System Improvement Act of 1979, an expansion of an earlier funding authority.⁸⁰ Under these provisions, LEAA distributes funds to cities for a variety of programs including comprehensive law enforcement planning, training, education, research, development of law enforcement techniques, and crime prevention.⁸¹ While funds may be awarded directly to the city of Cincinnati or the Cincinnati Police Division by LEAA, most of the funds have been awarded through the State of Ohio criminal justice planning council entitled the Office of Criminal Justice Services, Department of Economic and Community Development.⁸²

Like the Federal revenue sharing program,⁸³ there is now a statutory requirement that local public opinion be obtained on any proposed expenditure of LEAA funds.⁸⁴ In addition, public hearings have been regularly required by the State criminal justice planning agency.⁸⁵ To the extent that the final Cincinnati city budget is subject to public hearing, the line items for which the LEAA funds are expended are subject to local public scrutiny.⁸⁶ The LEAA Act does, of course, require that all recipients of LEAA funds maintain adequate records for purposes of LEAA audit.⁸⁷ Funds which were

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Martin Walsh, former Acting City Manager, Transcript, p. 25.

⁶⁹ Data supplied in a letter from Police Chief Myron J. Liestler to Valeska S. Hinton, MWRO, U.S. Commission on Civil Rights, Dec. 14, 1979 (hereafter cited as Liestler Data).

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² 42 U.S.C. §§6721-6735 (1976).

⁷³ 42 U.S.C. §6721 (1976).

⁷⁴ 42 U.S.C. §6733 required the Secretary to report yearly to the Congress the purposes for which recipients expended the antirecession funds.

⁷⁵ 42 U.S.C. §6725 (1) (1976).

⁷⁶ Liestler Data.

⁷⁷ Ibid.

⁷⁸ The Antirecession Act expired at the end of fiscal year 1978. Intergovernmental Antirecession Assistance Act of 1977, Pub. L. No. 95-30, Title VI, §602, 91 Stat. 164.

⁷⁹ No further funds are being distributed by LEAA during the phase out. However, 11 staff persons will continue to monitor existing programs through FY'82. Wilbur Brantley, Director, Office of Civil Rights Compliance, LEAA, telephone interview, August 5, 1980.

⁸⁰ Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167. The former statutory authority governing the expenditure of these LEAA funds was the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §§ 3701-3796c (1976). That Act was amended at the end of 1979. Regulations enacted under the earlier statute continue in effect. Justice System Improvement Act of 1979 Pub. L. No. 96-157 §1301(a), 93 Stat. 1167.

⁸¹ Justice System Improvement Act of 1979, Pub. L. No. 96-157, §401, 93 Stat. 1167.

⁸² See e.g., Justice System Improvement Act of 1979, Pub. L. No. 96-157 §§401, 601, 93 Stat. 1167.

⁸³ 31 U.S.C. §1241(b)(1)(1976).

⁸⁴ Justice System Improvement Act of 1979, Pub. L. No. 96-157, §404(a), 93 Stat. 1167.

⁸⁵ Horst Gienapp, Metropolitan Supervisor, State of Ohio, Office of Criminal Justice Services, Department of Economic and Community Development, telephone interview Jan. 11, 1980. These meetings are regularly held in Columbus and Cincinnati, Ohio.

⁸⁶ A series of hearings on the budget which are open to the public are regularly held in December. Bierman interview.

⁸⁷ Justice System Improvement Act of 1979, Pub. L. No. 96-157, §817, 93 Stat. 1167.

distributed to the Cincinnati Police Division from LEAA in 1976 totalled \$362,000.⁸⁸ In 1977 and 1978 respectively, \$128,250 and \$132,118 were awarded.⁸⁹ In 1979, LEAA disbursed \$240,107 to the Division.⁹⁰

In 1973 Congress enacted The Comprehensive Employment and Training Act (CETA).⁹¹ The purpose of the Act is to provide training and to enlarge employment opportunities for economically disadvantaged individuals who are undereducated and underemployed.⁹² Since 1977, the Cincinnati Police Division through the Safety Department has been receiving funds under CETA.⁹³ However, none of those funds has been utilized to train or employ sworn police personnel.⁹⁴ All of the CETA funds expended by the Police Division have been used to train and employ civilian employees such as custodians, secretaries, and school crossing guards.⁹⁵ At the present time, the Police Division is currently spending CETA funds for school crossing guards and supplementing, civilian salaries.⁹⁶

Since January 1, 1976, the Cincinnati Police Division has received a total of \$3.5 million in CETA funds with all but \$3,192 being used to subsidize the salaries of civilian employees.⁹⁷ According to the former Safety Director, Richard Castellini, several of the 1978 amendments to CETA which have limited eligibility to individuals from families with incomes below the poverty level or from families receiving public assistance make locating qualified CETA trainees for the Cincinnati Police Division virtually impossible.⁹⁸ C. Thomas Ross, Regional Administrator, Employment and Training Administration, (ETA), Department of Labor, agrees that the 1978 enactment in changing certain of the CETA eligibility requirements and maximum wage limitations does "make it difficult to hire police personnel due to the high wages in those jobs."⁹⁹

During the years 1976 through 1979, the Cincinnati Police Division received approximately \$21.0

million from the Federal government. During the same approximate period,¹⁰⁰ the Division received \$67.01 million from the city¹⁰¹ and \$734,032 from the State of Ohio.¹⁰² During that four year period, 1976-1979, the Division received and expended over \$88.8 million for law enforcement and law enforcement-related activities. The expenditure of local revenues by the Police Division represents between 14 and 19 percent of the total city budgets in those four years.¹⁰³ Law enforcement is indeed costly.

Enforcement of civil rights

Misuse of force

As discussed above, the Ohio Advisory Committee has received a number of complaints that some members of the Cincinnati community have been subjected to unnecessary or excessive force because of their race, economic status, or cultural background by Cincinnati police personnel. These complaints were largely responsible for triggering the Committee's initial investigation into the policies and practices of the Cincinnati Police Division.

A number of Federal civil and criminal statutes forbid police personnel from misusing force against civilians. For example, recipients of Federal funds are precluded from discriminating against beneficiaries on the basis of race, color, or national origin.¹⁰⁴ The widespread misuse of force against members of racial minorities because of their race by police officers has been determined to constitute forbidden discrimination.¹⁰⁵ However, recipients of Federal funds are not expressly precluded from discrimination based on economic status or cultural background (as distinguished from national origin). Thus, Cincinnati civilians abused by police for reasons of poverty or Appalachian origin are not protected under these fundings statutes.

Federal statutes criminalizing excessive force by police personnel in certain circumstances differ both

are limited to a maximum wage of \$11,090. Police salaries significantly exceed this amount.

¹⁰⁰ The Federal government operates on an October 1-September 30 fiscal year, (31 U.S.C. §1020 (1976), Ohio on a July 1-June 30 fiscal year, and Cincinnati on a calendar (January 1-December 31) fiscal year, (Ohio Rev. Code Ann. §115.08 (Page 1978).

¹⁰¹ Leistler Data.

¹⁰² Ibid.

¹⁰³ Based upon the *Tentative Annual Operating Budget of the City of Cincinnati, Ohio for the Fiscal year 1979*, submitted to the City Council by former City Manager William V. Donaldson, June 14, 1978. Leistler Data. Bierman Interview.

¹⁰⁴ See e.g., 42 U.S.C. §2000d (1976).

¹⁰⁵ See discussion this chapter.

⁸⁸ Leistler Data.

⁸⁹ Horst Gienapp, telephone interview January 7, 1980.

⁹⁰ Ibid.

⁹¹ 29 U.S.C. §§ 801-992 (1976).

⁹² 29 U.S.C. §801 (1976); Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §2, 92 Stat. 1912.

⁹³ Richard A. Castellini, former Director, Department of Safety, City of Cincinnati, Ohio, letter to Ruthanne DeWolfe, Regional Attorney, MWRO, U.S. Commission on Civil Rights, February 22, 1980.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Richard A. Castellini, letter to Ruthanne DeWolfe, April 1, 1980.

⁹⁷ Ibid.

⁹⁸ Richard Castellini, telephone interview February 11, 1980.

⁹⁹ Letter to Clark Roberts, July 17, 1980. In Cincinnati, CETA participants

as to the protected classes of persons and whether a racial basis for the infliction of that force is required to trigger the operation of the statute.¹⁰⁶ These are other problems with the Federal criminal civil rights statutes are discussed below.

All Federal agencies which provide Federal funds to recipients including law enforcement agencies such as the Cincinnati Police Division are responsible for ensuring that no person is subjected to discrimination because of race, color, or national origin under the funded program or activity.¹⁰⁷ The primary responsibility in regard to protecting the civil rights of the ultimate beneficiaries of Federal funds is imposed on Federal agencies through Title VI of the Civil Rights Act of 1964,¹⁰⁸ by Presidential Executive Order,¹⁰⁹ and under guidelines promulgated by the Department of Justice.¹¹⁰ Under these legal mandates, Federal funding agencies may obtain compliance of recalcitrant recipients through fund termination or denial in accord with established administrative procedures.¹¹¹ Alternatively, the agency may refer the case to the Department of Justice for judicial enforcement if compliance cannot be obtained voluntarily or through administrative proceedings.¹¹²

While each Federal funding agency is responsible for ensuring that recipients of its funds comply with nondiscrimination requirements of Title VI, the Department of Justice is responsible for coordinating enforcement efforts by the funding agencies and for developing standards and procedures to implement Title VI.¹¹³ The Department has promulgated such standards and procedures through regulations and guidelines.¹¹⁴ Under these extensive regulations, for example, every recipient of Federal funds must as a condition of funding provide an assurance that it will comply with the nondiscrimination requirements of Title VI.¹¹⁵ If the assurance appears to be "untrue or is not being honored" by the recipient,

the guidelines provide for investigation and, if necessary, an administrative hearing or judicial proceeding to secure compliance or to terminate funding.¹¹⁶ The regulations also provide for consolidated hearings in certain circumstances where two or more Federal agencies are funding a single recipient who is allegedly in noncompliance with Title VI.¹¹⁷

Title VI could be an appropriate vehicle for ensuring that Cincinnati civilians are not victimized by unnecessary or excessive force by their police officers for racial reasons. However, the Federal agencies which fund the Cincinnati Police Division (either directly or indirectly through the city or State) have their own unique statutory requirements in regard to nondiscrimination. In each case, revenue sharing,¹¹⁸ antirecession,¹¹⁹ LEAA,¹²⁰ and CETA,¹²¹ the enabling statute was enacted subsequent to Title VI and embodies the nondiscrimination provisions of that earlier act. Therefore, the Federal funding agencies which administer these funds have determined that they will proceed under their own statutory authority in regard to nondiscrimination requirements rather than under the general provisions of Title VI and its implementing regulations and guidelines.¹²²

The Office of Revenue Sharing (ORS) is responsible for distributing Fiscal Assistance to State and Local Governments (Revenue Sharing Act) funds to recipient units of government.¹²³ ORS disburses approximately \$3 million dollars annually, to the Cincinnati Police Division.¹²⁴ The Division is therefore subject to the nondiscrimination provisions on which these revenue sharing funds are contingent.¹²⁵ As with Title VI, a city which receives revenue sharing funds may not exclude from participation or deny benefits to or subject a beneficiary to discrimination for reasons of race under any program or activity maintained by that city.¹²⁶ The Act does

¹⁰⁶ Compare 18 U.S.C. §241, 18 U.S.C. §242, and 18 U.S.C. §245 (1976).

¹⁰⁷ 42 U.S.C. §2000d (1976).

¹⁰⁸ 42 U.S.C. §2000d-1 (1976).

¹⁰⁹ Exec. Order No. 11,764, 39 F.R. §2575 (1974), reprinted in 42 U.S.C. §2000d-1 (1976).

¹¹⁰ 28 C.F.R. §§42.401-42.415, 50.3 (1979).

¹¹¹ 42 U.S.C. §2000d-1 (1976); 28 C.F.R. §§42.411, 50.3(c) (I)(A) (1979).

¹¹² 28 C.F.R. §§42.412(b), 50.3(c) (I)(B) (1979).

¹¹³ Exec. Order No. 11,764, 39 F.R. §2575 (1974), reprinted in 42 U.S.C. §2000d-1 (1976); 28 C.F.R. §§42.401-42.415 (1979).

¹¹⁴ 28 C.F.R. §§42.401-42.415 and §50.3 (1979).

¹¹⁵ 28 C.F.R. §42.407(b) (1979).

¹¹⁶ 28 C.F.R. §50.3(c) (II) (1) (2) (1979).

¹¹⁷ 28 C.F.R. §42.109(e) (1979).

¹¹⁸ 31 U.S.C. §§ 1221-1265 (1976).

¹¹⁹ 42 U.S.C. §6721-6735 (1976).

¹²⁰ Justice System Improvement Act of 1979, Pub. L. No. 96-157, §815 (c)(1), 93 Stat. 1167.

¹²¹ Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, 92 Stat. 1912 (to be codified at 29 U.S.C. §§801-999).

¹²² Winifred Dunton, Attorney Advisory, Office of Civil Rights Compliance, Office of Justice Assistance, Research, and Statistics, telephone interview Jan. 8, 1980.

¹²³ 31 U.S.C. §§1221-1265 (1976).

¹²⁴ Data provided by Carl A. Lind, Cincinnati Program Management Bureau Director through Myron J. Leistler, Cincinnati Chief of Police, Nov. 27, 1979.

¹²⁵ 31 U.S.C. §1242(a)(1) (1976). In addition to racial discrimination, discrimination based on color, national origin, sex, age, handicap, or religion is also prohibited.

¹²⁶ 31 U.S.C. §1242(a) (1976).

permit the city to defend itself against charges of prohibited discrimination by showing that the offending program or activity was not funded at all by revenue sharing funds.¹²⁷ The regulations promulgated by ORS in 1977 suggested that the language “program or activity” was to be read narrowly as “specific activity.”¹²⁸ Such an interpretation would allow a recipient operating in bad faith to channel Federal funds into programs which were operated in a nondiscriminatory manner while discriminating with impunity in other programs funded with non-Federal monies.

In April of 1979, in accord with case law, the express statutory authority encouraging interagency cooperation, and the interpretation of comparable language by its sister agency, the Law Enforcement Assistance Administration (LEAA), ORS amended its definition of “program or activity” to mean “the operations of the agency or organizational unit of the government receiving or substantially benefiting from entitlement funds, e.g., a police department; department of corrections; health department.”¹²⁹ What ORS has effectively done through this amendment is to close the loophole which would allow a recipient to allocate funds in such a way that it could practice racial discrimination in violation of the intent of the Revenue Sharing Act while being in technical compliance. Thus, ORS now looks at the ultimate beneficiaries of funds flowing to the recipient. If the recipient is denying benefits or discriminating against the ultimate beneficiaries because of their race in any activity under its authority, the nexus between prohibited discrimination and funding is sufficiently close to provide ORS with jurisdiction to enforce compliance with the nondiscrimination provisions or, alternately, to terminate funding.¹³⁰ Experts agree that police departments exist to benefit the communities which employ them.¹³¹ It is the civilian community which is the ultimate beneficiary of police services. No police department receiving ORS funds may discriminate against civilian members of racial minorities in any of its programs and still comply with the Revenue

Sharing Act and its concomitant regulations. However, in order to hold an entire police department, i.e., the department itself, liable for racial discrimination because of the excessive use of force against minorities it would be necessary to prove that the department officials knew about the conduct, that they could have but failed to correct the misconduct, and that the misconduct represented not merely infrequent and sporadic occurrences but rather a substantial and systemic problem.¹³² Absent these strict legal requirements, injunctive or other relief such as fund termination against the department as a whole would not be granted.

During its brief life, Antirecession Provisions Act funds were also distributed by ORS.¹³³ That program also precluded racial discrimination by recipients comparable to Title VI and the Revenue Sharing Act.¹³⁴ Under the Antirecession Provisions Act, enforcement of the nondiscrimination provisions was expressly to accord with the Title VI enforcement provisions.¹³⁵ In addition, a private right of action was provided just as under the Revenue Sharing Act.¹³⁶ Both the Antirecession Act and the Revenue Sharing Act contemplated judicial enforcement by the Attorney General.¹³⁷ The same problems with holding the entire police department liable for racially motivated excessive force by police officers as exists under the Revenue Sharing Act also would have existed under the Antirecession Provisions.¹³⁸

In regard to the Cincinnati Police Division, the Office of Revenue Sharing has not received any complaints that excessive force is being inflicted upon civilians by police personnel for racial or for any other reason.¹³⁹ ORS has not self-initiated monitoring of the Cincinnati Police Division’s compliance with the nondiscrimination requirements of either the Revenue Sharing Act or the Antirecession Provisions beyond reviewing the required assurances that funds distributed to the Cincinnati Police Division under the Revenue Sharing Act by the City

¹²⁷ 31 U.S.C. §1242 (2)(A) (1976); 31 C.F.R. §51.52(c)(1) (1979).

¹²⁸ 31 C.F.R. §51.51 (i) (1979).

¹²⁹ 44 Fed. Reg. 19,191 (1979) (to be codified in 31 C.F.R. §51.51) and cases cited therein.

¹³⁰ *Id.*

¹³¹ See discussion chapter 5.

¹³² See e.g., *Rizzo v. Goode*, 423 U.S. 362 (1976); *Lewis v. Hyland*, 554 F.2d 93(3rd Cir. 1977), *cert. denied*, 434 U.S. 931 (1977).

¹³³ 42 U.S.C. §§6721–6735 (1976).

¹³⁴ 42 U.S.C. §6727(a) (1976).

¹³⁵ 42 U.S.C. §6727(b)(1) (1976).

¹³⁶ 42 U.S.C. §6727(d)(1)(2) (1976); 31 U.S.C. §1244 (a) (1976).

¹³⁷ 42 U.S.C. §6727(b)(2) (1976); 31 U.S.C. §1242 (g) (1976).

¹³⁸ See e.g., *Rizzo v. Goode*, 423 U.S. 362 (1976) and *Lewis v. Hyland*, 554 F. 2d 93 (3rd Cir. 1977), *cert denied*, 434 U.S. 931 (1977).

¹³⁹ Treadwell O. Phillips, Manager, Civil Rights Division, Office of Revenue Sharing, Letter to Clark G. Roberts, Regional Director, MWRO, U.S. Commission on Civil Rights, Oct. 3, 1979 (hereafter cited as Phillips Letter); Treadwell O. Phillips, telephone interview Jan. 3, 1980 (hereafter cited as Phillips Telephone Interview).

of Cincinnati will not be used in a racially discriminatory manner.¹⁴⁰ If complaints of racially motivated excessive force were received by ORS, the Manager of the Civil Rights Division of ORS, Treadwell O. Phillips, has indicated that his office would investigate those complaints to determine whether a "strong statistical pattern and practice of complaints against the police department by members of the minority community" existed to justify further proceedings.¹⁴¹ Phillips has determined that ORS does have the jurisdiction and the responsibility to pursue such complaints should they arise.¹⁴² At the present time, however, ORS has no plans to instigate an investigation of excessive use of force by Cincinnati police personnel.¹⁴³

The Law Enforcement Assistance Administration (LEAA), Department of Justice, extends funds to local police departments usually through a State criminal justice planning agency.¹⁴⁴ Racial discrimination by recipients against beneficiaries of those funds is prohibited.¹⁴⁵ Under its authority, LEAA has enacted regulations implementing statutory nondiscrimination requirements.¹⁴⁶ These regulations are comparable to those of ORS discussed above, including the requirement that assurances of compliance with nondiscrimination provisions be filed by the recipient as a condition of funding.¹⁴⁷

LEAA has determined that it has jurisdiction over recipients who discriminate against racial minorities by inflicting excessive force upon them.¹⁴⁸ Under their authority, an amendment to existing regulations has been proposed which will expressly prohibit physical abuse of any individual by a recipient of LEAA funds.¹⁴⁹ The problem with imputing culpability to an entire police department in order to

intervene in internal policy (as opposed to holding a few "bad apples" responsible for the misconduct) discussed above had led to a decision that complaints of excessive use of force would be referred to the Attorney General for litigation under the criminal statutes whenever they allege racial or any other motivation for the misuse of force.¹⁵⁰ The proposed regulations recognize the validity of this alternative.¹⁵¹

Since the Office of Civil Rights Compliance, (OCRC), LEAA, was established in 1971, that agency has received no complaints of unlawful discrimination against Cincinnati police personnel.¹⁵² Other than reviewing the required assurances of compliance for conformity with the requirements of law and implementing regulations, OCRC has not conducted a civil rights compliance review of the Cincinnati Police Division.¹⁵³ Because of limited staff resources, OCRC does not launch investigations of law enforcement agencies such as the Cincinnati Police Division absent complaints of some reasonable basis to believe the recipient is not in compliance with applicable nondiscrimination requirements.¹⁵⁴

In keeping with many other Federal funding statutes enacted subsequent to the Civil Rights Act of 1964, the 1973 CETA enactment¹⁵⁵ prohibited discrimination in any CETA program or activity because of race, color, national origin, or sex.¹⁵⁶ Whenever a prime sponsor of a CETA program such as the City of Cincinnati failed to comply with the nondiscrimination provisions, the Secretary of Labor was empowered to seek compliance.¹⁵⁷ If the prime sponsor, e.g., a unit of government such as a city, refused to alter its practices to bring itself into

¹⁴⁰ Ibid.

¹⁴¹ Testimony before the U.S. Commission on Civil Rights, *Police Practices and the Preservation of Civil Rights*, Consultation held in Washington, D.C. Dec. 12-13, 1978 (hereafter cited as *Police Practices Consultation*), p. 151.

¹⁴² Ibid.; Phillips Telephone Interview.

¹⁴³ Phillips Telephone Interview.

¹⁴⁴ Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167. Prior to the 1979 reorganization, funds were also distributed by LEAA. 42 U.S.C. §§3711, 3731 (1976). LEAA is currently being phased out. Existing programs will continue to be monitored through FY'82. Wilbur Brantley, Director, Office of Civil Rights Compliance, LEAA, telephone interview, August 25, 1980.

¹⁴⁵ Justice System Improvement Act of 1979, Pub. L. No. 96-157 §815(c)(1), 93 Stat. 1167. In addition to race, discrimination based on color, religion, national origin, or sex is prohibited. Discrimination was also prohibited under the earlier LEAA Act. See 42 U.S.C. §3766(c) (1976).

¹⁴⁶ 28 C.F.R. §§42.201-41.217 (1979) as amended at 45 Fed. Reg. 28704-28712 (1980).

¹⁴⁷ 28 C.F.R. §42.204 (1979).

¹⁴⁸ Lewis W. Taylor, former Director, Office of Civil Rights Compliance, LEAA, *Police Practices Consultation*, p. 145.

¹⁴⁹ 45 Fed. Reg. 33,652 (1980).

¹⁵⁰ David Tevelin, Attorney Advisor, Office of General Counsel, LEAA, telephone interview Dec. 27, 1979; Lewis A. Taylor, former Director, Office of Civil Rights Compliance, LEAA, *Police Practices Consultation*, p. 145.

¹⁵¹ 45 Fed. Reg. 33,652 (1980).

¹⁵² Henry S. Dogin, former Administrator, LEAA, letter to Clark G. Roberts, July 6, 1979 (hereafter cited as Dogin Letter).

¹⁵³ Ibid.

¹⁵⁴ Robert Burkhardt, former Assistant Director, Office of Civil Rights Compliance, LEAA, telephone interview June 13, 1979. According to Burkhardt, the Civil Rights Compliance office has consisted of a staff of five investigators who are responsible for monitoring the compliance of over 20,000 law enforcement agency recipients with LEAA nondiscrimination provisions. According to regulations promulgated by the Attorney General under its Title VI authority, "Sufficient personnel shall be assigned. . . to ensure effective enforcement of Title VI." 28 C.F.R. §42.414 (1979). Under the 1979 LEAA reorganization, the civil rights division was to have been enlarged.

¹⁵⁵ 29 U.S.C. §§801-992 (1976).

¹⁵⁶ 29 U.S.C. §991(a) (1976).

¹⁵⁷ 29 U.S.C. §991(b) (1976). "Secretary" means Secretary of Labor. 29 U.S.C. §981(a)(8) (1976).

compliance with CETA nondiscrimination requirements, the Secretary of Labor was authorized to refer the matter to the Department of Justice for enforcement or to proceed directly under Title VI to an administrative hearing in order to terminate funding.¹⁵⁸

The provisions discussed above have remained essentially intact under the 1978 amendments to CETA.¹⁵⁹ According to the regulations enacted by the Department of Labor under its CETA responsibilities, every application for CETA funding must be accompanied by assurances that the recipient will comply with the nondiscrimination requirements discussed above.¹⁶⁰ In addition, the regulations provide for periodic compliance reviews by the Department of Labor.¹⁶¹ If a recipient is found to be engaging in unlawful discriminatory conduct and conciliation efforts do not succeed in bringing the recipient into compliance, funds may be terminated but only after a formal administrative hearing determines the recipient's culpability.¹⁶²

The Employment and Training Administration (ETA) of the Department of Labor is responsible for monitoring compliance with CETA requirements.¹⁶³ The ETA has received no complaints of discrimination under the Cincinnati CETA program.¹⁶⁴ If complaints of unlawful discrimination based on excessive force or brutality were received, however, ETA has determined that it would refer the matter to the Department of Justice for review and enforcement.¹⁶⁵

The Attorney General, Department of Justice, is authorized to bring criminal actions against certain individuals who deprive other persons of their civil rights under a number of statutes. Under one authority, 18 U.S.C. §241 (1976), the Attorney General may institute criminal proceedings against persons who conspire to injure any *citizen* in the exercise of his constitutional or other federally secured legal rights. Under a second statute, 18 U.S.C. §242 (1976), the Attorney General may bring

a criminal action against State and local public employees including peace officers who willfully deprive an *inhabitant of a State* of his or her constitutional or otherwise federally protective rights. In addition, the Attorney General may bring a criminal action under 18 U.S.C. §245 (1976) against anyone who willfully injures or attempts to injure *any person* because of his race who is exercising a federally protected right. Of these three potential jurisdictional bases for criminal action against a police officer who brutalizes a civilian, the Attorney General ordinarily proceeds under §242.¹⁶⁶ According to the Criminal Section, Department of Justice, §245 would not be appropriate for litigating the misuse of force by police personnel.¹⁶⁷

Both 18 U.S.C. §241 and 242 require for a finding of guilt that the defendant must have specifically intended to deprive the citizen or inhabitant of the State of a constitutionally or otherwise federally protected right. In *Screws v. United States* which expressly established this principle, a young black man was arrested and then beaten to death by peace officers.¹⁶⁸ The Supreme Court determined that only if the defendant peace officers had specifically intended to deprive the victim of a Federally protected right, in this case his Sixth Amendment right to be tried by a jury rather than by ordeal i.e., by a beating, could they be found guilty.¹⁶⁹ This specific intent requirement has reportedly severely hampered the ability of the Attorney General to protect the rights of civilians against the excessive use of force by police officers.¹⁷⁰ However, under a proposed revision of the criminal code, the requirement of specific intent would be eliminated.¹⁷¹

A further impediment to the ability of the Attorney General to protect civilians against the excessive use of force by police personnel is State use of force policy.¹⁷² As discussed in Chapter 1, Ohio follows the common law which permits a peace officer to use force including deadly force to effect the arrest of an escaping felon, as well as when he believes it is

¹⁵⁸ Ibid. The Attorney General, Department of Justice was specifically authorized to take judicial action against prime sponsors engaging in a pattern or practice of unlawful discrimination. 29 U.S.C. §991(c) (1976).

¹⁵⁹ However, the protected classes have been expanded to prohibit discrimination based on religion, age, handicap, citizenship, and political affiliation as well as race, color, sex, and national origin. Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §2, 92 Stat. 1912 (to be codified at 29 U.S.C. §834).

¹⁶⁰ 29 C.F.R. §98.21(a) (1979).

¹⁶¹ 29 C.F.R. §98.32 (1979).

¹⁶² 29 C.F.R. §§98.21(c), 98.46 (1979).

¹⁶³ C. Thompson Ross, Regional Administrator, Employment and Training Administration, Department of Labor, letter to Clark G. Roberts, (hereafter cited as Ross Letter).

¹⁶⁴ Ibid.

¹⁶⁵ Charles C. Kane, Executive Assistant to the Regional Administrator, Employment and Training Administration, U.S. Department of Labor, telephone interview, Feb. 15, 1980.

¹⁶⁶ Bruce Berger, Staff Attorney, Criminal Section, Civil Rights Division, U.S. Department of Justice, telephone interview Jan. 10, 1980.

¹⁶⁷ Ibid.

¹⁶⁸ *Screws v. United States*, 325 U.S. 91, 92-93 (1945).

¹⁶⁹ *Screws v. United States*, 325 U.S. 91, 107 (1945).

¹⁷⁰ Drew S. Days III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, *Police Practices Consultation*, p. 143.

¹⁷¹ S.B. 1722, 96th Cong., 1st sess. §1502 (1979).

¹⁷² Drew S. Days III, *Police Practices Consultation*, p. 142.

necessary in defense of self or others. To the extent that the use of deadly force can be justified by a peace officer under State law, the officer is apparently immune from Federal criminal prosecution.¹⁷³

The Attorney General has received a number of complaints concerning the excessive use of force by Cincinnati police personnel against civilians.¹⁷⁴ A number of these complaints have been forwarded from the Federal Bureau of Investigation, Cincinnati Office.¹⁷⁵ That Office has received 31 complaints of excessive use of force by Cincinnati police officers over the last five years including four complaints of the misuse of deadly force.¹⁷⁶ However, none of these complaints has resulted in criminal prosecutions¹⁷⁷ or in a request for the U.S. Attorney to impanel a grand jury. However, four active investigations are still in progress by the Attorney General.¹⁷⁸ Given the difficulty caused by the present "specific intent" requirement and the relatively broad discretion granted to Ohio police officers to use force including deadly force under State law as discussed above, it is unlikely that criminal prosecutions will result from the current investigations.

Discrimination in the allocation of services

The Ohio Advisory Committee has received a number of complaints from black, poor, and Appalachian civilians that their needs and requests for police services are not receiving the same concern as are Cincinnati communities composed of more affluent white residents. These complaints are discussed above in Chapter 2.

The responsibility of various Federal funding agencies to ensure that the ultimate beneficiaries of their funds are not denied a fair share of those benefits for reasons of race, sex, or national origin are discussed above.¹⁷⁹ Where allegations that police services and benefits are being inequitably distributed based on economic or cultural factors, however,

those Federal funding agencies do not have jurisdiction to require that police departments alter their policies toward even-handed service delivery.¹⁸⁰

The Department of Justice has not received any complaints of racial discrimination in violation of Title VI.¹⁸¹ ORS,¹⁸² LEAA,¹⁸³ and the Employment and Training Administration,¹⁸⁴ Department of Labor, which monitors CETA funds have also received no complaints under their specific statutory civil rights responsibilities in regard to the services dispensed to beneficiaries. Therefore, no investigations nor compliance monitoring is currently in process for the Cincinnati Police Division by any of the foregoing Federal agencies.

Employment discrimination

Under its authority to ensure that recipients do not discriminate against beneficiaries on the basis of race and sex, ORS has promulgated regulations prohibiting employment discrimination whether in hiring, promotion, benefits, training, or other employment related events.¹⁸⁵ Those regulations were enacted to accord with the requirements of Title VII¹⁸⁶ and its implementing regulations and guidelines.¹⁸⁷ Part of the ORS regulations require assurances from recipients that they will not discriminate in employment or in any other activity on the basis of race or sex.¹⁸⁸ In addition, ORS is required to initiate compliance reviews "from time to time."¹⁸⁹ Those reviews in regard to civil rights compliance are triggered by civilian complaints in addition to the regulatory trigger of "significant disparity" between the recipient's work force and the potential labor market work force.¹⁹⁰ Treadwell O. Phillips, Manager of the Civil Rights Division, Office of Revenue Sharing, has stated that ORS has not received any complaints of employment discrimination from Cincinnati civilians or police personnel.¹⁹¹ As a result, ORS has not monitored the compliance

¹⁷³ See e.g., Thomas P. Sullivan, United States Attorney, Northern District of Illinois, "Information Release," Oct. 17, 1978, pp.4, 7, 8, 12.

¹⁷⁴ Drew S. Days III, letter to Clark G. Roberts, Aug. 30, 1979 (hereafter cited as Days Letter).

¹⁷⁵ Joseph Yablonsky, Special Agent in Charge, Cincinnati Office, Federal Bureau of Investigation, U.S. Department of Justice, letter to Clark G. Roberts Aug. 24, 1979.

¹⁷⁶ Ibid.

¹⁷⁷ James C. Cissell, U.S. Attorney, U.S. Department of Justice, interview in Cincinnati, Ohio, April 6, 1979.

¹⁷⁸ Days Letter.

¹⁷⁹ See also the regulations of ORS which provide in pertinent part, "Recipient governments are encouraged to take action with entitlement funds to ameliorate an imbalance in services . . . provided to any geographic area or specific group in order to overcome the effects of prior discriminatory practice or usage." If an imbalance of services is discovered,

the recipient government must ameliorate that imbalance. 31 C.F.R. §51.52(b) (5) (1979).

¹⁸⁰ See discussion this chapter.

¹⁸¹ Days Letter of Aug. 22, 1979.

¹⁸² Phillips Letter.

¹⁸³ Dogin Letter.

¹⁸⁴ Ross Letter.

¹⁸⁵ 31 C.F.R. §§51.52, 51.53, 51.54 (1979).

¹⁸⁶ 42 U.S.C. §§2000e-2000e-17 (1976).

¹⁸⁷ 29 C.F.R. §§1602.1-1608 (1979).

¹⁸⁸ 31 C.F.R. §51.58 (1979). In addition, discrimination based on color, national origin, religion, age, or handicap is also prohibited. 31 C.F.R. §51.52 (1979).

¹⁸⁹ 31 C.F.R. §51.60(a) (1979).

¹⁹⁰ 31 C.F.R. §§51.53(e), 51.61(b) (1979).

¹⁹¹ Phillips Letter.

of the Cincinnati Police Division with the civil rights requirements upon which revenue sharing funds are disbursed beyond a cursory review of the required nondiscrimination assurances.¹⁹²

The governing statute under which LEAA distributes funds to recipients contains an express prohibition against race or sex based employment discrimination.¹⁹³ Under its authority,¹⁹⁴ LEAA has enacted regulations and guidelines which detail prohibited racial and sex discrimination in employment related practices.¹⁹⁵ LEAA requires recipients to file an equal employment opportunity program¹⁹⁶ including a job classification breakdown, disciplinary actions taken, applications for employment, employment terminations, and the available local workforce by race, sex, and national origin, in addition to routine assurances¹⁹⁷ of compliance with the nondiscrimination requirements.

The Office of Civil Rights Compliance of LEAA has reviewed the Equal Employment Opportunity Programs (EEO) submissions from Cincinnati and has determined them to be in compliance with LEAA civil rights requirements.¹⁹⁸ Since, in addition, LEAA has received no complaints of unlawful employment discrimination from any Cincinnati department or agency, including the Cincinnati Police Division, it has not conducted a compliance review for that city.¹⁹⁹

The CETA program is principally designed to provide job training and employment to economically disadvantaged persons.²⁰⁰ The statute which mandates the CETA program forbids discrimination based on race, color, sex, or national origin, and further prohibits denying an otherwise qualified applicant employment on the same bases in any program or activity funded with CETA monies.²⁰¹

¹⁹² Ibid.

¹⁹³ Justice System Improvement Act of 1979, Pub. L. No. 96-157, § 815(c)(1), 93 Stat. 1167. Discrimination based on color, religion, or national origin is also forbidden.

¹⁹⁴ The former LEAA governing statute also prohibited employment discrimination based on race, color, religion, national origin, or sex. 42 U.S.C. §3766(c)(1) (1976). Regulations enacted under this earlier statute have continuing validity until a new set of regulations is enacted. Justice System Improvement Act of 1979, Pub. L. No. 96-157, §1301(a), 93 Stat. 1167 (1979).

¹⁹⁵ 28 C.F.R. §42.203(a) (1979). In addition to sex and racial discrimination, discrimination based on color, religion, or national origin is also prohibited.

¹⁹⁶ 28 C.F.R. § 42.304 (1979).

¹⁹⁷ 28 C.F.R. §42.204(a) (1979).

¹⁹⁸ Dogin Letter.

¹⁹⁹ Ibid.

²⁰⁰ Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §2, 92 Stat. 1912 (to be codified at 29 U.S.C. §801).

²⁰¹ Id. In addition to discrimination based on race, color, sex, or national origin, discrimination based on religion, age, handicap, political affiliation or belief, and citizenship is also prohibited under the 1978 amendments.

The accompanying regulations also prohibit such discrimination.²⁰² Therefore, if race or sex based employment discrimination is alleged, ETA has the authority and the duty to require a CETA fund recipient to bring its practices into compliance with the nondiscrimination requirements of CETA.²⁰³ If informal conciliation efforts fail, the Administration could refer the matter to the Department of Justice for appropriate judicial enforcement or proceed to an administrative hearing to seek fund termination.²⁰⁴ In fact, however, ETA has reviewed the assurances of the City of Cincinnati and has determined that the Police Division is not unlawfully discriminating in its use of CETA funds.²⁰⁵ In addition, ETA has not received any complaints of unfair discrimination in the use of CETA funds by the Cincinnati Police Division.²⁰⁶ As a result, no further compliance reviews of the Cincinnati Police Division are contemplated at this time.²⁰⁷

The Equal Employment Opportunity Commission (EEOC) is primarily responsible for enforcing Title VII which forbids employment discrimination based upon sex or race.²⁰⁸ Not only is discrimination in hiring prohibited under Title VII, but also discrimination in promotion, pay, assignment, and other terms and conditions of employment.²⁰⁹ EEOC receives complaints of unlawful discrimination, investigates those complaints, and attempts to conciliate disputes. If the offending employer is a State or local government and conciliation fails, EEOC refers the case to the Department of Justice for judicial enforcement.²¹⁰

In 1976, EEOC received three complaints of racial discrimination in promotion policies and procedures against the Cincinnati Police Division.²¹¹ In 1979, EEOC determined that the Police Division

²⁰² 29 C.F.R. §98.21 (1979).

²⁰³ Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, § 2, 92 Stat. 1912 (to be codified at 29 U.S.C. §834(b)); 29 C.F.R. §98.21(c) (1979).

²⁰⁴ Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, §2, 92 Stat. 1912 (to be codified at 29 U.S.C. §834(b)); 29 C.F.R. §98.21(c)-(e) (1979).

²⁰⁵ Ross Letter.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ 42 U.S.C. §2000e-5 (1976); President's Reorganization Plan No. 1, 3 C.F.R. §321 (1979), reprinted in 5 U.S.C.A., app. II, at 150-156 (Supp. 1980). In addition to race and sex, Title VII prohibits discrimination based on color, religion, and national origin. 42 U.S.C. §2000e-2 (1976).

²⁰⁹ 42 U.S.C. §§ 2000e-2, 2000e-3 (1976).

²¹⁰ 42 U.S.C. § 2000e-5(f) (1976).

²¹¹ Joel Kay, Compliance Manager, EEOC, Regional Office, Cleveland, Ohio, telephone interview Jan. 18, 1980 (hereafter cited as Kay Telephone Interview); Jeanne Mayfield, Equal Opportunity Specialist, EEOC, Area Office, Cincinnati, Ohio, interview in Cincinnati, Ohio, Jan. 25, 1980 (hereafter cited as Mayfield Interview). One additional complaint concern-

employment practices had violated the rights of the three complainants.²¹² Since that time, EEOC has been attempting to resolve the complaints through conciliation.²¹³ According to Joel Kay, Compliance Manager, EEOC Regional Office, Cleveland, Ohio, no time limit has been set for resolving the complaints.²¹⁴ Therefore, it is not possible to determine when or whether the complaints will be referred to the Department of Justice for further proceedings.

The Department of Justice is responsible for enforcing Title VII which prohibits employment discrimination based on race or sex where the employer is a governmental agency such as the Cincinnati Police Division and litigation is required.²¹⁵ The scope of Title VII is very broad as to which employment related practices are included within its protection. Not only hiring and recruitment practices but such factors as promotional criteria, specialized training, job assignment, and other "terms and conditions" of employment must be applied uniformly without racial or sex discrimination.²¹⁶

In October 1979 the Civil Rights Division of the Department of Justice launched an investigation into allegations of employment discrimination in the Cincinnati Police Division. A consent decree was obtained in July 1980 in which the city agreed to increase substantially the hiring and promotion of blacks and women in the Police Division. In its suit, the Justice Department charged the city with violations of Title VII of the Civil Rights Act of 1964 and the non-discrimination provisions of Revenue Sharing programs. Under the decree the city

ing discrimination in hiring based on race and sex was filed in 1975. The Department of Justice found probable cause in that case to believe that the policies and procedures of the Police Division were unlawfully discriminatory but did not find probable cause in the case of the individual complainant. She was issued a right to sue letter on Feb. 16, 1978 and has not pursued a private legal action against the Police Division. Mayfield Interview.

²¹² Mayfield Interview.

²¹³ Ibid.

agreed to a five-year goal in which the proportion of black and female police officers would equal their representation in the qualified city labor force. Specifically, the city is committed to filling 34 percent of police officer vacancies with blacks and 23 percent with women (their representation of the 1980 police recruit list) for each of the next five years. Blacks and women will receive 25 percent of all promotions for the positions of police specialist and sergeant with each group obtaining promotions in proportion to their representation in the eligible pool. For higher grades, qualified blacks and women will fill vacancies in proportion to their representation in the eligible pool for each grade. The city is required to report to the Justice Department on its progress twice each year.²¹⁷ Given the extensive investigation and findings of the Justice Department, it is surprising that neither LEAA nor ORS has been involved in any compliance monitoring of the Division nor is apparently aware that complaints against the Division have been filed.

This chapter has reviewed the authority of local, State, and Federal agencies to review the practices of the Cincinnati Police Division in regard to use of force, distribution of services and employment discrimination. In addition, the present monitoring and enforcement activities of these agencies has been discussed. The following and final chapter of the report will analyze various proposals for limiting police discretion, a frequent source of police-community conflict, and resolving police-civilian disputes and will compare the actual practices of the Cincinnati Police Division to those proposals.

²¹⁴ Kay Telephone Interview.

²¹⁵ 42 U.S.C. §2000e-5(f) (1), (2) (1976). Employment discrimination based upon race, color, religion, sex, or national origin is prohibited. 42 U.S.C. § 2000e-2 (1976).

²¹⁶ See 42 U.S.C. §§2000e-2, 2000e-3 (1976).

²¹⁷ U.S. Department of Justice, Press Release on consent decree pertaining to employment discrimination in the Cincinnati Police Division, July 14, 1980. Commission files.

Proposals for Guiding, Regulating, and Reviewing Police Conduct and Resolving Civilian-Police Disputes

Public Policy and Police Discretion

The role of police departments in democratic societies is the subject of increasing attention by scholars and concerned community members alike.¹ All agree that the police must be responsive and accountable to the public and to their elected representatives.² Although granted unique power and authority, police in other than totalitarian societies are an integral part of their communities, not superior and separate organizations.³

Police departments are public agencies which exist to carry out public policy.⁴ Unlike other public agencies, however, police departments throughout the country have traditionally operated largely independent of effective public and legislative over-

sight.⁵ Police officials acting alone, for example, determine the distribution of manpower resources within their communities.⁶ By deciding how and where personnel and equipment will be utilized, e.g., a large vice squad, an assignment of personnel to affluent residential areas disproportionate to the number of service calls, these officials in fact establish community priorities in law enforcement.⁷ Nonetheless, it is responsiveness to community priorities which differentiates a domestic from a military police force.⁸

Not only have civilians throughout the United States been effectively locked out of determining police policy, but to a significant extent that policy is

¹ See e.g., U.S. Commission on Civil Rights, *Police Practices and the Preservation of Civil Rights*, a consultation sponsored by the Commission December 12-13, 1979 (hereafter cited as *Police Practices Consultation*).

² V.A. Leonard and Harry W. Moore, Jr., *Police Organization and Management* (Mineola, N.Y.: Foundation Press, 5th ed. 1978) (hereafter cited as *Police Organization*), p. 68; G. Douglas Gourley, "Legislative Barriers," in *Effective Police Organization and Management*, submitted to the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: 1967) p. 1242.

³ Edward M. Davis, *Staff One: A Perspective on Effective Police Management* (Englewood Cliffs, N.J.: Prentice-Hall, 1978) (hereafter cited as *Staff One*), p. 17; W.A. Westley, *Violence and the Police: A Sociological Study of Law, Custom and Morality* (Boston: M.I.T. Press, 1970) (hereafter cited as *Violence and the Police*), p. xvii; *Police Organization*, p. 68; Jerome H. Skolnick, *Justice Without Trial* (New York: John Wiley and Sons, 2nd ed. 1975) (hereafter cited as *Justice*), p. 6. But see, James Q. Wilson, *Varieties of Police Behavior* (Cambridge, Mass.: Harvard University Press, 1968), pp. 278-84, for a discussion of the extent to which police personnel view themselves as set apart from the rest of society and possessing special skills learned only by experience.

⁴ Herman Goldstein, *Policing a Free Society* (Cambridge, Mass.: Bollinger, 1977) (hereafter cited as *Free Society*), p. 33.

⁵ National Advisory Commission on Criminal Justice Standards and Goals,

Police (Washington, D.C.: 1973) (hereafter cited as *Police*), p. 22. It is interesting to note that local autonomy over law enforcement policy and procedure is unique to the United States where there are over 40,000 independent law enforcement agencies. In other modern countries, a national or state police force exercises central control. Yong Hyo Cho, *Public Policy and Urban Crime* (Cambridge, Mass.: Bollinger Publishing Co., 1974) (hereafter cited as *Public Policy*), p. 47.

⁶ See e.g., Ohio Rev. Stat. §737.06 (Page 1976).

⁷ *Police*, pp. 22, 23.

⁸ Bernard L. Garmire, ed., *Local Government Police Management* (Washington, D.C.: The Internal City Management Association, 1977), p. 30; Joseph Fink and Lloyd G. Sealy, *The Community and the Police - Conflict or Cooperation?* (New York: John Wiley & Sons, 1974) (hereafter cited as *Conflict or Cooperation*), p. 162; *Staff One*, p. 30; National Commission on the Causes and Prevention of Violence, "The Police in Protest," in *Power and Authority in Law Enforcement*, eds. Terry R. Armstrong and Kenneth M. Cinnamon (Springfield, Ill.: Charles C. Thomas, 1976), p. 178. The quasi-military nature of police departments has been emphasized by many writers. See e.g., Arthur Niederhoffer, *A Study of Police Cynicism* (Ann Arbor, Mich.: University Microfilms, 1963) (hereafter cited as *Cynicism*) p. 314; James Baldwin, *Nobody Knows My Name* (New York: Dell, 1962), pp. 65-67.

reportedly not being made even by upper echelon police administrators.⁹ Rather, the lowest level of police personnel, the police officer, makes significant policy decisions in on-the-spot interactions with civilians.¹⁰ This unwitting delegation of policy-making to lower level police personnel occurs whenever decisions must be made for which there are no clear standards to guide the officer in the exercise of his or her discretion.¹¹ For example, police officers do not arrest every person who is involved in a fight, i.e., commits an assault or the offense of disorderly conduct.¹² If departmental policy demands strict enforcement of the criminal laws without guidelines for leniency, then a police officer coming upon a minor incident where only a few punches are exchanged will create his own *ad hoc* non-enforcement policy, i.e., that a public fight between two men who are both unarmed, where no person is seriously injured and where there is no immediate threat to the public order deserves only a casual warning.¹³

The creation of such on-the-spot policy might be reasonable if it were not for the extensive research which indicates that police officers no less than civilians are subject to various biases in decision-making associated particularly with sex, race, and economic status.¹⁴ Where these factors enter into the decision of the officer to arrest, to warn, or to ignore proscribed conduct, the ultimate decision is likely to be unfairly discriminatory. Indeed, one of the principal complaints received from Cincinnati citizens by the Ohio Advisory Committee has been the unfair

and unequal enforcement of the law in poorer and black neighborhoods, as opposed to affluent white neighborhoods.¹⁵

The routine granting of broad discretion to lower level personnel in police departments through default of upper echelon administrators is one of the most significant differences between policing and other occupational structures.¹⁶ In most other occupations, the extent of individual discretion varies directly with the level of the decisionmaker in the organization.¹⁷ The amount of freedom or latitude granted the decisionmaker in reaching a particular decision is ordinarily related directly to the degree of power and control he or she possesses within the organization.¹⁸ Police officers, on the other hand, continually interacting with civilians in a variety of situations where strict law enforcement is either impossible or undesirable and where neither statutes, administrative regulations, nor supervisory personnel effectively guide their judgments, exercise the greatest discretion.¹⁹ These judgments are usually made in situations with low visibility when both officer and civilian are under great stress.²⁰ Research has demonstrated that such stressful confrontations do not lead to rational problem solving. Instead, such confrontations are a principal cause of police officers' misperceptions that civilians are behaving in provocative and threatening ways, and represent a significant source of officer-civilian violence.²¹

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

¹⁰ *Police*, p. 23; *Police Discretion*, p. 38; Kenneth Culp Davis, *Administrative Law* (St. Paul: West Publishing Co., 1973), (hereafter cited as *Administrative Law*), p. 499.

¹¹ *Police*, pp. 22-23. Discretion refers to the amount of freedom available to an individual in reaching a particular decision. National Advisory Commission on Criminal Justice Standards and Goals, *Criminal Justice Research and Development Report of the Task Force on Criminal Justice Research and Development* (Washington, D.C.: 1976) (hereafter cited as *Task Force*), p. 128. Decision-making has three major elements: (1) a goal(s) the decision-maker is trying to accomplish, (2) alternative choices, and (3) information about the alternatives relevant to the goal(s) the decision-maker wishes to achieve. Don M. Gottredson, ed., *Decision-making in the Criminal Justice System: Reviews and Essays* (Washington, D.C.: Gov. Printing Office, 1975)(hereafter cited as *Decision-making*) p. vii.

¹² Ohio Rev. Code Ann. §§2917.11 and 2903.13 (Page 1975).

¹³ The officer's power not to enforce the law is sometimes turned into an affirmative weapon against civilians to force submission and compliance. See e.g., *Justice*, p. 109; David Muir Peterson, *The Police, Discretion and the Decision to Arrest* (Ann Arbor, Mich.: University Microfilms, 1968) (hereafter cited as *Decision to Arrest*), p. 320.

¹⁴ See e.g., Harold E. Pepinsky, "Police Decision-Making," in *Decision-making*, p. 38; *Decision to Arrest*, p. 320.

¹⁵ Ann Martin, testimony before the Ohio Advisory Committee to the United States Commission on Civil Rights, hearing in Cincinnati, Ohio,

June 28-29, 1979, transcript, (hereafter cited as Transcript), p. 228; Arthur Slater, Transcript, p. 340; Rev. James W. Jones, Transcript, p. 192; Michael, Maloney, Transcript, p. 130; Alam Jean Mabry, Transcript, pp. 222-26.

¹⁶ American Bar Association, *The Urban Police Function* (Chicago: A.B.A., 1972) (hereafter cited as *Police Function*), p. 163.

¹⁷ *Task Force*, p. 128.

¹⁸ *Ibid*.

¹⁹ *Police Discretion*, p. 38, *Task Force*, p. 128; *Police*, p. 22; *Police Organizations*, p. 473; It has often been pointed out of all groups with limited education and training only the police possess such broad "discretion in dealing with the lives and welfare of people." Robert M. Regoli and Donnell E. Jerome, "The Recruitment and Promotion of a Minority Group into an Established Institution: The Police." *J. Police Sci. & Adm.*, Vol. 3, (Dec. 1975) (hereafter cited as "Recruitment"), pp. 410-16.

²⁰ Anthony Amsterdam, "The Supreme Court and the Rights of Suspects in Criminal Cases," 45 *N.Y.L. Rev.* 785 (1970)(hereafter cited as "Rights of Suspects"), p. 812; *Cynicism*, p. 313.

²¹ Hans Toch, *Peacekeeping: Police, Prisons and Violence* (Lexington Mass.: D.C. Heath and Co., 1975) (hereafter cited as *Peacekeeping*, p. 28; Catherine H. Milton, Jeanne Wahl Halleck, James Lardner, Gary L. Abrecht, *Police Use of Deadly Force*, Washington, D.C.: The Police Foundation, 1977) (hereafter cited as *Deadly Force*), p. 5; Anthony V. Bouza, "Women in Policing," *Law Enforcement Bulletin*, (September 1975) (hereafter cited as "Women in Policing"), Stanley L. Brodsky, *Psychologists in the Criminal Justice System* (Chicago: University of Illinois Press, 1976) (hereafter cited as *Psychologists*), p. 104.

Police officers need firm and clear legislative and administrative guidelines for the proper exercise of their responsibilities to "serve and protect"²² their communities in an even-handed way. For example, if it is public policy that parks close at 11 p.m., then that policy should be applied uniformly regardless of the race or affluence of civilians. If, on the other hand, it is determined that on summer evenings the park closing hour will not be fully enforced, the limits of that decision should be determined at the official level, not by individual officers on the basis of "gut" feelings, who thereby create an uneven and unfairly discriminatory policy.

The young and least experienced police personnel, police officers, are required to make the day-to-day decisions concerning whether to embroil a civilian in the ponderous machinery of the criminal justice system through a decision to arrest or, on the other hand, to protect the individual from the serious consequences of that system by merely issuing an informal warning.²³ The need to provide officers with clear guidelines which reflect genuine public policy is obvious. Only with the imposition of realistic limitations upon the exercise of their law enforcement discretion derived from well considered policy determinations in turn reflecting the priorities of the community, can police officers be expected to discharge their responsibilities as public servants at the high level of "wisdom and skill" which is rightfully expected of them.²⁴

What stands in the way of establishing guidelines to control the policy-setting discretion of police officers is the almost universal pretense both by State legislatures and police department officials of full law enforcement.²⁵ Thus, questions of "what law to enforce, how much to enforce it, against whom, and on what occasion" are not questions that official

policy bodies have been willing to consider.²⁶ In Ohio, for example, police officers by law must enforce *all* ordinances and criminal laws of the State and of the United States.²⁷ Read narrowly, the governing statute sets forth a strict law enforcement standard. Police officers, however, do not in fact arrest every individual whose conduct constitutes a criminal offense but rather exercise discretion depending on the particular situation, including the perceived seriousness of the conduct. That perception is likely to be influenced by emotional, racial and economic factors, factors which do not contribute to rational even-handed law enforcement.²⁸

The first step in establishing effective limits to police officer discretion is the admission that broad discretion exists.²⁹ The National Advisory Commission on Criminal Justice Standards and Goals states in Standard 1.3:

Standard 1.3: "Every police agency should acknowledge the existence of the broad range of administrative and operational discretion that is exercised by all police agencies and individual officers. That acknowledgement should take the form of comprehensive policy statements that publicly establish the limits of discretion, that provide guidelines for its exercise within those limits, and that eliminate discriminatory enforcement of the law."³⁰

The Cincinnati Police Division differs in two respects from most police departments in regard to strict law enforcement, first in its formalized traffic enforcement policy, secondly, in initial officer training. While Cincinnati has enacted no ordinance concerning the duties of police officers, the Police Division Procedures Manual states that police personnel shall apply the traffic laws and ordinances

²² "Serve and Protect" is the motto of the Chicago Police Department. The Cincinnati Police Division has not adopted a motto. Presumably the Cincinnati Police Division would agree their duty is to serve and protect the Cincinnati community.

²³ *Police*, p. 22; James G. Link, "Some Dimensions of Police Discretion" in *The Police Community*, eds. Jack Goldsmith and Sharon S. Goldsmith (Pacific Palisades, Calif.: Palisades Publishers, 1974) (hereafter cited as "Dimensions"), p. 67; *Decision-making*, p. vi.

²⁴ Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: University of Chicago Press, 1970) (hereafter cited as *Politician's Guide*), p. 88-91; Jerome H. Skolnick, "The Police and the Urban Ghetto," in *Race, Crime and Justice*, eds. Charles E. Reasons and Jack L. Kuykendall (Pacific Palisades, Calif.: Goodyear Publishing Co., 1972) (hereafter cited as "Urban Ghetto"), p. 239.

²⁵ *Decision to Arrest*, p. 305. Problems caused by the unintended delegation of discretion to police officers and resulting from official adherence to a policy of full law enforcement is not unique to the United States. Both the United Kingdom and the Soviet Union among other countries officially maintain that no discretion in law enforcement exists while tolerating broad discretion among police officers in practice. In all cases, this discrepancy

between official and actual practice is reflected in community attitudes of police abuse. Robert W. Clawson and David L. Norrgard, "National Responses to Urban Crime," in *Police in Urban Society*, ed. Harlan Hahn (Beverly Hills, Calif.: Sage Publications, 1970) (hereafter cited as "National Responses"), p. 84.

²⁶ *Police Discretion*, p. 1.

²⁷ Ohio Rev. Code Ann. §737.11 (Page 1976). See also, *Clark v. Carney*, 71 Ohio App. 347, 348, 42 N.E. 2d 938 (Ohio Ct. App. 1942) which states "The statute law of this state makes it a mandatory duty upon the police officer to arrest a person found violating the law of the state." 42 N.E. 2d at 939.

²⁸ *Decision-making*, p. 38; *Decision to Arrest*, p. 320. For a particularly good discussion of Fourteenth Amendment implications of selective law enforcement, the reader is referred to Tieger, *Police Discretion and Discriminatory Enforcement*, 1971 *Duke L.J.* 717. Tieger states that courts generally agree that strict law enforcement is impractical even where required by State statute. *Id.* at 732.

²⁹ *Free Society*, p. 12.

³⁰ *Police*, p. 21.

with tolerance in a reasonable and meaningful manner to accomplish the objectives of those laws.³¹ In other than traffic enforcement, however, the Division, by failure to enact regulations and procedures based on official and express policy recognizing and then limiting deviation from strict law enforcement, tacitly supports the rigid State policy.³²

The discretion problem is heightened in Cincinnati because of a discrepancy between the initial training an officer receives in this matter and the published policy which guides his or her conduct on the job. During initial training, recruits are taught that good law enforcement is not the strict standard codified in the State law and reiterated in the Division rules and regulations but rather law enforcement tempered by reasonableness and meaningfulness. In other words, recruits are taught that good law enforcement involves tolerance and leniency where the application of those qualities will increase respect for the law at the same time such conduct accomplishes the purpose of the law which is protection of the public welfare.³³

Cincinnati police officers, therefore, are initially trained that strict law enforcement may in certain circumstances be neither necessary nor even desirable. They are thereby encouraged to use their judgment in how they apply the law. The Division Manual of Rules and Regulations and Procedures, however, is silent on the question. Instead of providing express guidance for the exercise of individual judgment, the Manual requires that police officers obey all the laws and ordinances they are obligated to enforce.³⁴ One of the laws they must obey is the State law obligating them to strict law enforcement.³⁵ As a result, a policy vacuum is created between the official requirement of strict

law enforcement and the unofficial policy encouraging only reasonable law enforcement. This vacuum must be filled by default of express official action by individual officers making idiosyncratic on-the-spot decisions on the basis of their own values and experience.³⁶ Consequently, individual officers must determine for themselves when and why, for example, a civilian driving a car looks suspicious and should be stopped or when or where a youngster walking along a street is "up to no good" and should be stopped and questioned.³⁷ To eliminate any effect of racial, economic, or other irrelevant factors, on these decisions,³⁸ express policy guidelines translated into rules and regulations governing the discretion of police personnel in such situations are essential.³⁹

These rules and regulations also should be readily available to the public, in for example, an appendix to the city municipal code. At the present time, Cincinnati publishes the rules of several boards and commissions in its municipal code but not the Police Division guidelines.⁴⁰ Thus the Cincinnati public is routinely denied substantive input in the establishment of police force policy and also lacks ready access to the policy itself. Further, when disputes between Cincinnati police personnel and civilians arise in regard to the application of law enforcement techniques, the determination of what occurred and who was at fault is entirely an internal matter within the Internal Investigation Section of the Police Division.⁴¹ The affected civilian receives only an ultimate determination of whether the complaint was sustained or not, unaccompanied by specific reasons for the determination.⁴² Consequently, the public is locked-out even of the process of reviewing police-civilian disputes.

³¹ Procedure 12. 565 (B)(8). The fundamental objectives of the traffic laws are to keep traffic moving and prevent accidents.

³² See Ohio Rev. Code Ann. §737.11 (Page 1976).

³³ Captain Joseph Crawford, Commander, Internal Investigation Section, Cincinnati Police Division, telephone interview December 12, 1979 (hereafter cited as Crawford Telephone Interview of Dec. 12, 1979).

³⁴ City of Cincinnati, Cincinnati Police Division, *Manual of Rule and Regulations* (hereafter cited as *Manual of Rules and Regulations*), Jan. 1, 1976, No. 1.04.

³⁵ Ohio Rev. Code Ann. §737.11 (Page 1976).

³⁶ The National Commission on Criminal Justice Standards and Goals has recommended that police officials should identify situations where arrest would be unreasonable. In such cases, alternatives to arrest should be expressly set forth in guidelines to limit and control the discretion of individual officers. The Commission further urges that both situations and crimes be identified in determining such guidelines. *Police*, p. 24.

³⁷ Dewey C. Fuller, Director of the Urban League of Greater Cincinnati reported to the Ohio Advisory Committee that he had been stopped by police while driving through a white area "purely and simply because I was

black going across that section of town," Transcript, p. 119; Ann Martin, Transcript, p. 233-34.

³⁸ *Decision-making*, p. 30. To the extent that law enforcement decisions by state or local peace officers are based on the race or ethnicity of the civilian, such decisions would violate the Fourteenth Amendments to the United States Constitution. The Equal Protection clause of the Fourteenth Amendment requires equal justice. See, *Police*, p. 24; Yick Wo V. Hopkins, 118 U.S. 356 (1886).

³⁹ Paul Whisenand and R. Fred Ferguson, "Controlling the Use of Authority, Power, and Influence," in *Power and Authority in Law Enforcement*, eds. Terry R. Armstrong and Kenneth M. Cinnamon (Springfield, Ill.: Charles C. Thomas, 1976) (hereafter cited as "Authority, Power and Influence"), pp. 57-60.

⁴⁰ Cincinnati Administrative Code, as amended (March 1980).

⁴¹ See discussion this chapter.

⁴² City of Cincinnati, Cincinnati Police Division, *Procedure Manual*, (hereafter cited as *Procedure Manual*), Jan. 1, 1976, Citizen Complaints, §14.300 B.7.c.

Guiding and Regulating Police Discretion

Administrative rule-making

Police departments are administrative agencies.⁴³ In recent years, there has been a significant trend at both the Federal and State levels to provide for greater citizen input in the development of policy by administrative agencies through administrative rule-making procedures.⁴⁴ Kenneth Culp Davis, an early and vigorous proponent of administrative rule-making for police departments, has often expressed concern over the absence of clear rules to guide police discretion.⁴⁵ Davis has also been concerned with maximizing civilian contributions to police policy formulation.⁴⁶ He has suggested that by requiring municipalities to adopt the provisions of the Federal Administrative Procedure Act,⁴⁷ in regard to rule-making by their police departments, communities would have the opportunity to review and comment on proposed rules and rule changes. The procedure for determining policy and codifying that policy in rules and regulations would thus become a visible public process potentially involving the entire community not merely designated *ad hoc* community leaders.⁴⁸

Administrative rule-making procedures also permit the continuous and systematic input of outside experts on both technical and policy issues as well as departmental police personnel.⁴⁹ To Davis and other scholars, policy decisions should be made by upper echelon personnel only after consultation with community members, including experts, and should be uniformly followed by all police personnel.⁵⁰ The alternative is unequal justice which develops when individual officers create different policies through different on-the-spot decisions about the same conduct.⁵¹

Ohio has enacted an Administrative Procedure Act which governs the rule-making of some agencies of State government.⁵² The law enforcement activities of police departments are not currently within the ambit of the Act. Those agencies which are subject to the Act are required to provide the public with 30-days advance notice in a local newspaper of any proposed rule adoption or change including a statement of the agency's intent to take action, the date of the required hearing at which oral and written evidence may be presented, and a synopsis of the proposed rule change.⁵³ Only after a hearing following proper notice may the agency effect or alter a rule.⁵⁴

The Cincinnati Administrative Code provides that subject to the authority of the City Manager, the heads of departments and other offices may issue rules.⁵⁵ The police force in Cincinnati is an administrative division of the Safety Department.⁵⁶ Thus, the Safety Director and the Police Chief may prescribe rules for the operation of the Cincinnati police force subject to the approval of the City Manager.⁵⁷ The City Manager is himself empowered to issue general rules for the Police Division "as he may deem necessary or expedient for the general conduct of administrative agencies subject to his authority."⁵⁸ The Cincinnati Administrative Code which is part of the city's Municipal Code does not require civilian input into rule-making for the Police Division.⁵⁹ Indeed, there is no requirement that the public be informed that a proposed rule or rule change is to be effected.

The Cincinnati Police Division manuals of rules and regulations and procedures are extensive compendia of purposes, policies, and procedures designed to accomplish what Davis and others enthusiastically endorse, i.e., the limitation of discretion by police officers.⁶⁰ However, the manuals have been prepared without the level of citizen input which is

⁴³ Kenneth Culp Davis has pointed out that the police are administrators, i.e., governmental authorities outside the judicial and legislative branches of government, which affect the legal rights of private persons through a variety of formal and informal judicial and legislative procedures. *Administrative Law*, pp. 1, 497. *Free Society*, p. 33.

⁴⁴ See e.g., The (Federal) Administration Procedure Act, 5 U.S.C. §§551-559 (1976); The (Ohio) Administrative Procedure Act, §§119.01-119.13 (Page 1979).

⁴⁵ *Police Discretion*, p. 98.

⁴⁶ *Ibid.*, pp. 113-19.

⁴⁷ 5 U.S.C. §§551-559 (1976).

⁴⁸ *Staff One*, pp. 70-71.

⁴⁹ Judge Carl McGowan, "Rulemaking and the Police." 70 *Mich. L.Rev.* 659 (1972) (hereafter cited as "Rulemaking"), pp. 676-89, 693-94.

⁵⁰ See e.g., *Police Discretion*, pp. 113-119.

⁵¹ *Administrative Law*, p. 499.

⁵² Ohio Rev. Code Ann. §§119.01-119.13 (Page Supp. 1979).

⁵³ Ohio Rev. Code Ann. § 119.03 (Page Supp. 1979).

⁵⁴ Ohio Rev. Code Ann. §119.03(D) (Page Supp. 1979).

⁵⁵ Cincinnati Administrative Code, as amended, art. I, §7 (March 1980).

⁵⁶ Cincinnati Administrative Code, as amended, art. IV, §3 (March 1980).

⁵⁷ Cincinnati Administrative Code, as amended, art. I, §7, (March 1980).

⁵⁸ *Id.*

⁵⁹ Cincinnati Administrative Code, as amended (March 1980).

⁶⁰ *Police Discretion*, p.98.

desirable in a domestic police force.⁶¹ In addition, the existing rules, regulations, and procedures do not adequately address the need for a formal expression of official limits on the exercise of law enforcement discretion.

The official public commitment to an impossible standard of strict law enforcement coupled with the absence of citizen input prior to the establishment of departmental rules and regulations means that some police policy which is imposed upon Cincinnati civilians, has been developed by senior Division personnel, most has been created by individual officers on an *ad hoc* basis and none has been derived from direct pre-enactment community opinion. The distinction between a military and a domestic police force thus becomes blurred in Cincinnati as elsewhere because of the failure to submit departmental policy to prior review and comment by the residents of Cincinnati, not just "community leaders" on an occasional basis⁶² but rather all the residents on a continuing basis.

Neighborhood advisory committees

Citizen input into the development of police policy including law enforcement priorities has also been encouraged through on-going neighborhood advisory committees.⁶³ While "blue ribbon" citizens' panels consisting of community "leaders" appointed during periods of crisis are often not in touch with real concerns of neighborhoods, a continuing advisory committee which is made up of a cross section of neighborhood residents can provide assistance to the police department both in developing appropriate police policy and in helping to resolve conflicts between civilians and police.⁶⁴

⁶¹ The Cincinnati Administrative Code does not require any citizen input in rule-making by an administrative agency. See also, "Rulemaking," pp. 676-89; *Police Function*, p. 167. Herman Goldstein points out that the International Association of Chiefs of Police (IACP) support the concept of administrative rule-making for police departments. See *Free Society*, p. 116.

⁶² Cincinnati has from time to time established special task forces and "blue ribbon" citizen groups to advise the City Council and the city administration. What is recommended by criminal justice authorities is a process of on-going not merely *ad hoc* comment and review for routine citizen input into policy determinations and rule development. See e.g., *The Report and Recommendations of the Safety Task Force to the City Manager*, May 14, 1979 and *The Report of the Mayor's Community Relations Panel to the Council of the City of Cincinnati*, July 5, 1979. See also *Politician's Guide*, pp. 88-91; "Rulemaking," pp. 676-89; *Police Function*, p. 167.

⁶³ *Conflict or Cooperation*, p. 89.

⁶⁴ See e.g., *Conflict or Cooperation*, p. 88-90 Staff One, pp. 70-71.

⁶⁵ The issue of citizen participation in the development of police department policy has been said to be a moral issue: "the powerless should have a share of power." Paul W. Whisenand and R. Ferguson, §§ *The Managing of Police Organizations* (Englewood Cliffs, N.J.: Prentice-Hall, 1978 (hereafter cited as *Managing*, pp. 77-78. See also *Conflict*.

⁶⁶ "Team policing" originated in Aberdeen, Scotland in 1948 as a technique

Neighborhood advisory committees permit civilians to have a voice in the development of police policy and to evaluate the adequacy of police services being administered in their particular communities. Such committees are not intended to be passive recipients of imposed police practices, nor passive groups on which police policy established elsewhere is merely explained and justified. Rather, such groups are intended to be active participants in the development and review of police practices.⁶⁵

Neighborhood advisory groups are in integral part of decentralized team policing.⁶⁶ These groups are necessary to provide the police force with information about community sentiments, to ensure that the police are responsive to the needs of the neighborhoods, and to improve communication between police and civilians.⁶⁷ It is of course, imperative that police personnel attend the neighborhood meetings if the advisory groups are to accomplish their fundamental purpose. Cincinnati consists of 44 neighborhood organizations⁶⁸ which could provide input into the development of police policy in accord with the team policing program Cincinnati established in 1972.⁶⁹

According to the former City Manager of Cincinnati, William v. Donaldson, a member of the Cincinnati Police Division attends every neighborhood group meeting.⁷⁰ According to members of various neighborhood councils, however, police do not attend the meetings on a regular basis, particularly of those organizations representing poorer and minority neighborhoods.⁷¹ As a result, the Police Division does not receive the input of the various

for reducing the isolation of the police and increasing community participation in law enforcement activities. In 1966 Great Britain introduced "unit beat policing" which also stressed public-police cooperation. *Police*, p. 154. See also *Managing*, p. 78; Jesse G. Rubin, "Police Identity and the Police Role," in *The Police Community*, eds. Jack Goldsmith and Sharon S. Goldsmith (Pacific Palisades, Calif.: Palisades Publishers, 1974), p. 145; *Conflict or Cooperation*, pp. 162-64; *Staff One*, p. 228.

⁶⁷ *Conflict or Cooperation*, p. 89-90; *Violence and the Police*, p. xvii.

⁶⁸ Michael E. Maloney, *The Social Areas of Cincinnati: Toward an Analysis of Social Needs* (Cincinnati Human Relations Commission, January 1974), p. 83.

⁶⁹ Cincinnati has substantially curtailed its team-policing program because of severe financial constraints. Richard Castellini, former Safety Director, Transcript, p. 424; Mryon J. Leistler, Chief of Police, Transcript, p. 462.

⁷⁰ Interview in Cincinnati, Ohio, January 25, 1979.

⁷¹ Robert Martinek, East End Community Council, testimony before the City Council Task Force, hearing, Cincinnati, Ohio, June 6, 1979; *Report of the Mayor's Community Relations Panels to the Council of the City of Cincinnati*, Cincinnati, Ohio, July 5, 1979 (hereafter cited as *Mayor's Panel*), pp. III-2, 3, 13. But see (Cincinnati Police Division, Field Units Community Meetings April 1978/1979, dated May 4, 1979, submitted to MRWO Staff by Mryon J. Leistler, which lists a total of 76 meetings in 1978 and 54 meetings in 1979 attended by police personnel.

communities where in fact most confrontations between police and civilians occur.⁷² In addition, the neighborhood groups established in Cincinnati are not even potentially as strong a source of Division policy as they would be if they were constituted as neighborhood advisory councils whose sole function was to advise the Police Division on policy and procedures as opposed to serving a variety of other community interests.

Police often fear that a strong citizen's advisory board will diminish their authority.⁷³ The Cincinnati police are probably no different in this regard from their professional brethren employed elsewhere in the country in comparable departments.⁷⁴ However, a police force responsive to the needs of the community it serves, a police force genuinely integrated into that community would be less likely to provoke resistance and more likely to engender cooperation than a police force which operates on a strictly militaristic model imposing externally derived policy and practice through isolated and apprehensive officers.⁷⁵

Officer participation in the community

During 1979, Cincinnati seemed to become a polarized community.⁷⁶ Police and more affluent whites coalesced at one pole while poor and minority members could be identified at the other. In other polarized communities, reconciliation leading to community-wide civilian-police cooperation generally has occurred where the police were willing to take affirmative steps to elicit the confidence and genuine respect of alienated and angered civilians.⁷⁷ Shows of authoritarian force by police personnel may in the short run reduce the anxiety of officers working in hostile or high risk communities but they

reportedly are not likely to create a police force genuinely responsive to community concerns nor trusted by area residents.⁷⁸

One way in which police officers have lessened the "us against them" syndrome elsewhere is to participate in community activities.⁷⁹ Particularly where police are residents of the community which employs them, officers can diminish their adversary role through involvement in neighborhood organizations and programs.⁸⁰ In addition, positive civilian-police contacts help alleviate the cynicism which is endemic among police officers and seems to be a national occupational hazard.⁸¹

In Cincinnati, there appears to be minimal current involvement of police personnel in the on-going activities of the community other than as invited speakers at formal meetings.⁸² Several officers have, however, participated in special projects such as the Police Youth Campouts organized under the auspices of the Santa Maria Community Services in the East Price Hill community.⁸³ According to the Santa Maria project director, Stephen Lange, these campouts involving police officers, parents, and youngsters have contributed to greater understanding and mutual confidence between the police and the young people who have shared the camping experiences.⁸⁴

Participation in local events is minimized in Cincinnati by its currently uncertain residency ordinance.⁸⁵ The former Mayor of Cincinnati, Bobbie Sterne, supported a residency requirement for police personnel because "people who live in a city have a stake in that city, so to speak, and therefore are interested in their work."⁸⁶ The Chief of Police Myron J. Leistler, does not support a local residency requirement because he believes that police will not be less willing to do their jobs merely because they

⁷² Duane Holmes, Metropolitan Area Religious Council, Transcript, pp. 189-90; Rev. James W. Jones, Ministerial Coalition, Transcript, p. 192; Kenneth J. Blackwell, City Council Member and currently Mayor of Cincinnati, Transcript, p. 69; *Mayor's Panel*, p. I-1.

⁷³ Donald F. Cawley, "Managers Can Make a Difference," in *The Future of Policing*, ed. Alvin W. Cohn (Beverly Hills, Calif.: Sage Publications, 1978) (hereafter cited as "Managers"), p. 42; *Conflict or Cooperation*, p. 88.

⁷⁴ See e.g., Lt. Col. Lawrence E. Whalen, Assistant Police Chief, Cincinnati Police Division, Inspectional Services Bureau, Hearing Transcript, p. 390.

⁷⁵ Bernard L. Garmire, ed., *Local Government Police Management* (Washington, D.C.: The Internal City Management Association, 1977), pp. 15, 37; *Staff One*, pp. 30, 63; *Conflict or Cooperation*, p. 84; *Peacekeeping*, pp. 6-7.

⁷⁶ *Mayor's Panel*, pp. III-1; Kenneth J. Blackwell, Transcript, pp. 59-60.

⁷⁷ If police personnel are to be successful in reconciling with alienated civilians from other sub-cultures and life-styles, they must work at understanding and then avoiding behavior, including language, offensive to those civilians. See Donald W. McEvay, *The Police and Their Many Publics* (Metuchens, N.J.: Scarecrow Press, 1976), pp. 68, 73.

⁷⁸ *Conflict or Cooperation*, p. 84; *Urban Ghetto*, p. 252; *Peacekeeping*, p. 29.

⁷⁹ *Mayor Panel*, p. III-13; Kenneth J. Blackwell, Transcript, pp. 59-60.

⁸⁰ The police cannot operate effectively in a community with widespread distrust. In such a situation, civilians will not testify in criminal cases, victims will not report crimes, and law enforcement suffers generally. Bruce J. Ferris, "The Role of the Police," *The Annals*, November 1967, pp. 58, 61-62.

⁸¹ *Staff One*, p. 186; *Cynicism*, pp. 13, 321.

⁸² Public Appearance Report - April 1979, submitted to the Ohio Advisory Committee to the U.S. Commission on Civil Rights, June 27, 1979.

⁸³ Stephen Lange, Project Director, Santa Maria Community Services, Transcript, pp. 317-18.

⁸⁴ *Ibid.*

⁸⁵ Bobbie Sterne, member of City Council and former Mayor of Cincinnati, Transcript, p. 37.

⁸⁶ Bobbie Sterne, Transcript, p. 36; The National Advisory Commission on Criminal Justice Standards and Goals also supports a local residency requirement for police personnel. *Disorders and Terrorism: Report of the Task Force on Disorders and Terrorism* (Washington, D.C.: Gov. Printing Office, 1976) (hereafter *Disorder*), p. 125.

do not live in the community and do not "have a stake in the city you are serving."⁸⁷ Whether or not police personnel living within the city which employs them would or would not do a better job of enforcing the law or maintaining social order, those personnel living outside the city limits cannot be as actively involved in local affairs as those living within the limits. For example, nonresident police cannot participate in local PTA activities, vote in local elections, involve themselves in block parties, or work with others on issues of general community concerns as neighbors and families.

The controversy over a local residency requirement for police and other public employees is certainly not unique to Cincinnati.⁸⁸ In addition, as cities have expanded to include surrounding suburbs within a single urban unit of economic interdependence, arguments against a strict residency requirement have increased. To the extent that a strict residency requirement diminishes the well-documented isolation and alienation of police and integrates them into the community, however, such a requirement may be valid.

Reviewing Police Conduct and Resolving Civilian-Police Disputes

Internal investigation units

Police are public servants who are thus accountable to the public for their professional conduct.⁸⁹ According to the American Bar Association Standards for Criminal Justice:

Since a principal function of police is the safeguarding of democratic processes, if police fail to conform their conduct to the requirements of law, they subvert the democratic process and frustrate the achievement of a principal police function. It is for this reason that high priority must be given for ensuring that the police are made fully accountable to

their police administrator and to the public for their actions.⁹⁰

Internal affairs or investigation units were created to permit police departments to review the practices of police personnel to ensure compliance with applicable laws and standards of performance.⁹¹ One of their most significant functions is to accept complaints of police misconduct from civilians, to investigate those complaints with vigor, and when appropriate, to make recommendations to the chief administrative officer of the department for disciplinary action.⁹² Stressing the ultimate accountability of the chief administrative officer for the conduct of all police agency employees, the National Advisory Commission on Criminal Justice Standards and Goals has emphasized the importance of public participation to an effective internal discipline system.⁹³ Others have stated that it is the failure of the chief administrative police officer to accept this responsibility for the conduct of his subordinates and his failure to control abuses of authority by police personnel that has led to community pressure for external control through civilian review boards and other outside agencies.⁹⁴ That is, the confidence of the public in its police department is reportedly diminished to the extent effective internal discipline for police misconduct is not imposed and is not communicated to the public.⁹⁵

Because an internal investigation unit is composed of police whose responsibility it is to investigate fellow officers, personnel assigned to the unit have an onerous job. Internal investigation unit personnel have been found to suffer severe morale problems over time.⁹⁶ As a result, it has been suggested that officers be rotated out of the unit every eighteen months to two years to avoid problems with creeping bias and cynicism which make objectivity virtually impossible.⁹⁷

One of the ways in which an internal investigation unit can be utilized as a preventive as opposed to a

often been chastised for failing to understand the "constructive role of dissent in a democracy." See e.g., National Commission on the Causes and Prevention of Violence, "The Police in Protest," in *Power and Authority in Law Enforcement*, eds. Terry R. Armstrong and Kenneth M. Cinnamon (Springfield, Ill.: Charles C. Thomas, 1976), p. 178.

⁸⁷ *Staff One*, p. 173.

⁸⁸ *Managing*, p. 77.

⁸⁹ *Police*, pp. 477, 480; *Police Function*, 164.

⁹⁰ *Police Function*, p. 164; *Free Society*, p. 175.

⁹¹ *Police*, p. 477; *Police Function*, p. 11.

⁹² *Staff One*, p. 174.

⁹³ *Ibid.*; *Police*, Standard 19.3 p. 480.

⁸⁷ Transcript, p. 447.

⁸⁸ Chicago has engaged in considerable controversy and extended legal proceedings over the requirement that fire and police personnel (along with all other city employees in the classified civil service) must live within the city limits. The regulation is currently being strictly enforced. Municipal Code of the City of Chicago, ch. 25, §25-30 (1979).

⁸⁹ *Police Function*, p. 124.

⁹⁰ *Ibid.*, p. 9. See also, G. Douglas Gourley, "Legislative Barriers," in *Effective Police Organization and Management*, vol. iv, ch. xxiv, submitted to the President's Commission on Law Enforcement and Administration of Justice, 1967, p. 1242 for a discussion of the balance between delegated power and authority on the one hand and responsibility and accountability on the other; "Authority, Power, and Influence," p. 61. The police have

punitive agency is through its regular monitoring of the conduct of all departmental police personnel.⁹⁸ A complaint card on each officer is maintained which lists all complaints lodged against the officer and whether the complaint was ultimately held to be unfounded, exonerated, or sustained.⁹⁹ If a pattern of misconduct develops, the officer's captain is informed.¹⁰⁰ In turn, the captain engages in a counseling program with the officer in an effort to assist such officer alter his or her own behavior before punitive action is necessary. In one community, Los Angeles, California, such a monitoring and counseling program was effective in reducing complaints by fifty-eight percent.¹⁰¹ The Internal Investigation Section of the Cincinnati Police Division does maintain a separate file on complaints and shots fired by individual officers but does not recommend or require preventive counseling for officers whose history suggests increasing emotional and behavioral problems associated, for example, with stress.¹⁰²

Information about police misconduct comes not only from complaints filed by aggrieved civilians but also from fellow officers. However, the number of complaints filed against police by fellow officers is miniscule. In New York, for example, police officers are officially required to inform on each other if they witness a fellow officer violate a law or departmental regulation.¹⁰³ The rule is known informally as the "rat rule" and, according to Arthur Neiderhoffer,¹⁰⁴ criminal justice expert and former police officer, no one with "self respect" follows it. The failure of fellow officers to complain about each other's conduct¹⁰⁵ and the frequent situation in which only a police officer and a civilian are involved in a confrontation without witnesses often makes it difficult for the civilian to prevail where he or she

alleges police misconduct. Without corroboration, the civilian's burden to preponderate is virtually impossible to carry. In such cases, it has been suggested that the polygraph be used.¹⁰⁶ That is, in a low visibility one-on-one situation, the complainant would take a polygraph test. If the results of the polygraph test supported the complainant's allegations then the officer would also be required to take a polygraph and would be subject to disciplinary proceedings for refusal. To protect the officer from criminal consequences, and to preserve his constitutional privilege against self-incrimination, the results of the polygraph would be strictly limited to internal administrative proceedings.¹⁰⁷ The use of the polygraph may have merit at least in situations where the complainant cannot otherwise corroborate his account since complainants are ordinarily required to produce some evidentiary support for their allegations.¹⁰⁸ However, if a civilian's successful performance on a polygraph were to become a threshold requirement for an internal investigation unit to investigate the facts, it could become a shortcut for a lazy unit, a perversion of the responsibility of the internal investigation unit to thoroughly, impartially, and promptly investigate *all* complaints from the public.¹⁰⁹

As discussed above, the Cincinnati Police Division has maintained an Internal Investigation Section since 1970.¹¹⁰ The procedures for handling civilian complaints are codified in departmental regulations. The range of dispositions recommended by the National Advisory Commission on Criminal Justice Standards and Goals¹¹¹—sustained, not sustained, exonerated, or unfounded—are utilized by the Unit. But the problem with low visibility, e.g., one-on-one civilian-police confrontations and disputes is not

⁹⁸ Many police departments are moving toward maintaining in-house mental health specialists. See Stanley L. Brodsky, *Psychologists in the Criminal Justice System* (Chicago: University of Illinois Press, 1972), pp. 104–105. Cincinnati is trying to develop such a program. Myron J. Leistler, Transcript, pp. 473–74.

⁹⁹ *Staff One*, p. 177. In addition, charges placed against civilians for disorderly conduct, resisting arrest, and assault on an officer should be monitored as measures of violent confrontations potentially caused by officer misconduct. Cincinnati does not presently monitor such charges. Lt. Colonel Lawrence E. Whalen, Assistant Chief of Police, Inspectional Services Bureau, Cincinnati Police Division, Transcript, p. 386.

¹⁰⁰ *Staff One*, p. 177.

¹⁰¹ *Ibid.*

¹⁰² Colonel Lawrence E. Whalen, interview in Cincinnati, Ohio, Jan. 25, 1980.

¹⁰³ *Cynicism*, p. 301.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Free Society*, p. 165.

¹⁰⁶ *Staff One*, p. 175.

¹⁰⁷ *Ibid.*, p. 176; Through a series of cases, the Supreme Court has established the principle that, *inter alia*, a police officer may be required to

answer questions in an administrative proceeding "specifically, directly, and narrowly related to the performance of his official duties" which concern his alleged criminal conduct as long as the officer is granted use immunity by the prosecuting authority so that neither the testimony itself nor the fruits of that testimony is used in a subsequent criminal proceeding. *Gardner v. Broderick*, 392 U.S. 273, 278 (1968). See also *Spevack v. Klein* 385 U.S. 511 (1967); *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967); *Slochower v. Board of Education*, 350 U.S. 551, 554 (1956).

¹⁰⁸ In 1978, for example, 57 per cent of the citizen complaints filed with the Cincinnati Internal Investigation Section were dismissed for lack of evidence to support the complainant's allegations. See discussion, this chapter. For a general discussion of the issue of corroboration see 4 JONES, EVIDENCE §29:7, pp. 305–306 (6th ed. 1972); WIGMORE, EVIDENCE §§ 2056–2073, pp. 2054–2073 (3rd ed. 1940). See also 5 U.S.C. §556(d) of the Federal Administrative Procedure Act which requires that allegations be supported by "reliable, probative and substantial evidence" before sanctions may be imposed.

¹⁰⁹ Lt. Colonel Lawrence E. Whalen, Transcript, p. 371.

¹¹⁰ *Ibid.*, p. 370.

¹¹¹ *Police*, Standard 19.5 p. 487.

solved by these procedures. The category of "not sustained," for example, is imposed where "insufficient evidence exists to indicate clearly the innocence or the guilt of the accused."¹¹² The use of the phrase "clearly indicate" by the Inspectional Services Bureau (of which the Internal Investigation Section is a part)¹¹³ establishes an evidentiary standard which the complainant must meet in order to prevail. Without witnesses or other evidence to support his or her allegations, it is highly unlikely that an individual complainant can meet the "clearly indicate" standard.

While this evidentiary problem is by no means unique to Cincinnati, Cincinnati has apparently not established any mechanism for resolving the problem nor even considered that a problem exists. For example, in 1978, civilians filed 69 complaints against police personnel alleging excessive use of force.¹¹⁴ Of that number, 39 or 57 percent were determined by the Internal Investigation Section to be "not sustained," i.e., not supported by sufficient evidence to "clearly indicate" the guilt or innocence of the officer.¹¹⁵ Assuming the most vigorous investigation by the Section and a total dedication to its responsibilities, turning away over half the complainants solely because of insufficient evidence is unlikely to increase public confidence in the efficacy of an internal corrective process.

Public trust and respect for a police force is reportedly contingent on public accountability and internal discipline.¹¹⁶ According to the former Mayor of Cincinnati, Bobbie Sterne,¹¹⁷ the community does not have confidence in the internal investigative process because the Internal Investigation Section lacks objectivity. Kenneth J. Blackwell,¹¹⁸ currently Mayor of Cincinnati, member of the City Council, and Vice Chairperson of the Safety Committee, pointed out in 1979 that the Internal Investi-

gation Section had always been composed only of white police personnel while most complaints of abuse come from black citizens. Wendell Young, President of the Sentinels Police Association, composed of black police officers in Cincinnati, believes that the traditional absence of black police personnel from the Internal Investigation Section "reinforces the concept among black people that the entire criminal justice system cares nothing and knows nothing about black people, and that we are only processed as cattle in a packing plan when we come into that system."¹¹⁹

Civilian review boards

Civilian review boards have often been proposed as alternatives or supplements to internal review of police practices.¹²⁰ At least in the United States, the history of these boards has been dismal.¹²¹ Their failure has been attributed to a number of reasons. First, the chief administrative police officer cannot abdicate to any person or agency his ultimate authority and accountability for the conduct of his subordinates.¹²² Secondly, neither the public nor the police has supported such boards beyond the level of debate and recommendation.¹²³

In 1966, for example, then Mayor John Lindsey of New York City fulfilled a campaign promise to establish a seven-person civilian review board consisting of three police officers and four civilians.¹²⁴ The Patrolmen's Benevolent Association succeeded in placing the issue on a referendum and then campaigned vigorously against the establishment of the board emphasizing that "crime in the streets" would increase if the board was established.¹²⁵ The Association was successful in defeating the proposed civilian review board by a two-to-one margin thus

¹¹² Lt. Colonel Lawrence E. Whalen, Transcript, p. 375.

¹¹³ Ibid., pp. 369-370.

¹¹⁴ Ibid., p. 391.

¹¹⁵ Ibid. In addition, 25 complaints were "exonerated" or "unfounded" and only 2 (less than 3 percent) were "sustained," i.e., the complainants' allegations were valid and supportable. The Police Division reportedly attempts to counsel officers accused of misconduct "where culpability cannot be established but it is felt that the involved officer or officers would benefit from constructive critique of their actions" through an "administrative insight" process. Lt. Col. Lawrence E. Whalen, p. 376.

¹¹⁶ *Mayor's Panel*, p. IVE-1.

¹¹⁷ Transcript, p. 16.

¹¹⁸ Ibid., pp. 80-81.

¹¹⁹ Ibid., pp. 542-43. Recently, a single black officer was appointed to the Internal Investigation Section, Lt. Colonel Lawrence E. Whalen, interview in Cincinnati, Ohio, Jan. 25, 1980.

¹²⁰ See also Bruce J. Ferris, "The Role of the Police," *The Annals*,

November 1967, pp. 58. It has been pointed out that the mistrust of law enforcement personnel by minorities is an international problem. "National Responses," p. 80. "Any patrol force and particularly any urban patrol force that differs markedly in its makeup from the community it policies will be handicapped in gaining the confidence and cooperation of some segments of the community. And this is true no matter how good its training." *Disorders*, p. 125.

¹²¹ John H. Culver, "Policing the Police: Problems and Perspectives," in *J. Police Sci. and Adm.*, vol. 3, no. 2 (June 1975) pp. 134-35; *Urban Ghetto*, p. 254.

¹²² *Police*, p. 472; *Police Function*, p. 164.

¹²³ *Police*, p. 472; Louis A. Radelet, *The Police and the Community* (Beverly Hills, Calif.: Glencoe Press, 1973) (hereafter cited as *Police and the Community*), p. 351.

¹²⁴ "Authority, Power and Influence," p. 168.

¹²⁵ Ibid.; Nicholas Alex, *Black in Blue. A Study of the Negro Policeman* (New York: Meredith, 1969) (hereafter cited as *Black in Blue*), p. 209.

defending "the occupational autonomy of the police against all interference."¹²⁶ Similarly, an undated editorial prepared by the National Federation of Police entitled "Police Review Boards" claimed that civilian review boards "excude the obnoxious odor of communism."¹²⁷ The Federation cited as its authority the "Communist handbook" which says "police are the enemies of communism."¹²⁸

Minority groups which have often been the targets of abusive police practices have actively supported civilian review boards.¹²⁹ The extreme hostility of police to such boards has increased the mistrust of minorities in the police.¹³⁰ During the attempt to establish a civilian review board in New York, for example, the black community reviewed the board as a means of defending itself against police brutality.¹³¹ It is of interest to note that during the New York controversy, the Black Guardians, the association of black police officers, rejected the position of the Patrolmen's Benevolent Association.¹³² The conduct of the Black Guardians reportedly indicated their solidarity with the black community but it also suggested to non-black police personnel that they were an organized and disloyal group within the police department.¹³³

Cincinnati has never established a citizens' review board as such. However, the Cincinnati Human Relations Commission established by the City Council has attempted to fulfill some of the functions of such a board.¹³⁴ The response of the city administration to the attempts of the Commission to review police practices upon complaint of civilians often has been unfavorable. According to Arthur Slater, former staff representative of the Cincinnati Human Relations Commission, the former City Manager, William V. Donaldson, blamed the Commission "for the breakdown in police-community relations in the city."¹³⁵ In addition, the Police Division and the Safety Director have been critical of investigations conducted by the Commission and reportedly have been unwilling to cooperate with staff.¹³⁶ On the other hand, the head of the Internal Investigation Section, Lawrence E. Whalen, has stated that many

civilians are afraid to bring their complaints of police abuse to the police division directly but prefer instead to initiate complaints through the Human Relations Commission.¹³⁷

Since the Human Relations Commission does not have the authority to interview police personnel against whom complaints of abuse have been filed by civilians nor to review internal division files,¹³⁸ its ability to investigate complaints adequately is severely limited. While the City Council has recently limited the funds allocated to the Commission,¹³⁹ others, including Marion A. Spencer representing the Committee of 50 (a broad based community group representing black citizens of Cincinnati headed by former Mayor Theodore Berry), has advocated expanding the powers of the Commission.¹⁴⁰

Tecumseh X. Graham, former member of City Council and Chairman of the Safety Committee, has advocated the establishment of a citizens review board for the police division.¹⁴¹ Graham has recommended that such a board be composed of five members appointed by the Mayor with the consent of Council. The board would have the power to review all policies and practices of the police division and recommend changes to Council. In addition, the board would review complaints against the department and recommend techniques for improving police-community relations. Finally, the board would not have the direct power to discipline police officers but instead would transmit its findings to the police chief for action. Young, President of the Sentinels Police Association, also supports a civilian review board with the "confidence and the power to honestly and openly investigate police problems in this city."¹⁴² In addition, the Mayor's Community Relations Panel has recommended a "citizens complaints committee" to which a civilian who is dissatisfied with the final determination of the Internal Investigation Section may appeal.¹⁴³

At the present time, Cincinnati does not plan to establish a citizens review board as such or strengthen the powers of the Human Relations Commission

¹²⁶ *Black in Blue*, p. 208.

¹²⁷ "Authority, Power, and Influence," pp. 169-70.

¹²⁸ *Ibid.*

¹²⁹ *Black in Blue*, p. 208.

¹³⁰ "Authority, Power and Influence," p. 170.

¹³¹ *Black in Blue*, p. 208.

¹³² *Ibid.*, p. 209.

¹³³ *Ibid.*

¹³⁴ Arthur Slater, Transcript, p. 335.

¹³⁵ *Ibid.*, p. 344.

¹³⁶ Myron J. Leistler, Transcript, p. 455; Lt. Colonel Lawrence E. Whalen,

interview in Cincinnati, Ohio, Jan. 26, 1979 (hereafter cited as Whalen Interview); Donald Mooney, Chairman, Cincinnati Human Relations Commission, Transcript, p. 737.

¹³⁷ Whalen Interview.

¹³⁸ Arthur Slater, Transcript, p. 337.

¹³⁹ Donald Mooney, Transcript, pp. 736-37.

¹⁴⁰ Transcript, p. 91.

¹⁴¹ *Ibid.*, pp. 46-47.

¹⁴² *Ibid.*, p. 547.

¹⁴³ *Mayor's Panel*, IVE-2.

to investigate civilian complaints of police abuse. However, several elected officials,¹⁴⁴ the Mayor's Community Relations Panel,¹⁴⁵ the president of the black police officers' association,¹⁴⁶ and representatives of a number of community organizations along with other civilians¹⁴⁷ publicly concluded in 1979 that a significant proportion of the Cincinnati civilian population had lost confidence in the ability of the Internal Investigation Section to investigate properly allegations of police misconduct. In response to these problems, the Cincinnati City Council authorized the establishment of an Office of Municipal Investigations. When operational, the unit will be composed of independent, trained law enforcement investigators and will look into major complaints against the police.¹⁴⁸ The plan for the new unit has the approval of the Police Chief and the Safety Director, both of whom have firmly opposed all other forms of external administrative review of alleged police misconduct.¹⁴⁹

Peer review panels

Hans Toch, a criminologist who has worked with the Oakland Police Department to develop a program to curb violence by police officers against civilians,¹⁵⁰ believes it is imperative for police departments to control internally the excessive use of physical force by police personnel. In support of his position, Toch has cited a number of reasons including 1) officers possess extensive legal and physical powers to use force to accomplish their goals, 2) "free lance" police violence polarizes the community and destroys public confidence in government, and 3) the low visibility of police-civilian confrontations makes it difficult to subject police to external review and control.¹⁵¹ His efforts and the willingness of the Oakland Police Department to accept, first, that there was a serious if limited problem with police brutality in the department and, second, that the problem should and could be remedied have reportedly been successful in reduc-

ing the incidence of violence by police against civilians in that city.¹⁵²

In addition to working with individual officers with a history of violence, Toch implemented a peer review panel to assess the reasonableness of officers' conduct.¹⁵³ The panel consisted entirely of fellow police officers. Individual officers were referred to the panel either by their superiors or on the basis of having been involved in a predetermined number of violent incidents. The purpose of the panel was to help the officers understand and alter their conduct through peer pressure thus avoiding the disciplinary sanctions which would inevitably follow if the misconduct were not stopped.¹⁵⁴

Toch recommended that members rotate on a regular basis and that the panel include officers who had appeared before it earlier and subsequently eliminated their violent interactions with civilians.¹⁵⁵ By including on the panel police who had formerly committed violent acts against civilians but who had successfully changed their attitudes and behavior, troubled officers now in need of counsel were able to identify with and benefit from their successes.¹⁵⁶ As with certain programs for alcoholics, drug addicted persons, compulsive gamblers, and others who lack control over particular aspects of their behavior, utilizing individual officers who had successfully developed appropriate attitudes and controls to assist others alter their conduct reportedly diminished those moralistic and adversary qualities which militate against positive change.¹⁵⁷

The peer review panel implemented in Oakland, California has reportedly reduced significantly the number of violent incidents between police and civilians.¹⁵⁸ Other cities including Kansas City have also implemented such a panel.¹⁵⁹ As vehicles to influence deviant and abusive police officers, "without violating taboos of in-group loyalty,"¹⁶⁰ peer review panels have apparently been successful.

¹⁴⁴ Bobbie Sterne, Transcript, p. 16; Tecumseh X. Graham, Transcript, pp. 46-47.

¹⁴⁵ *Mayor's Panel*, p. IVE-1.

¹⁴⁶ Wendell Young, Transcript, p. 547.

¹⁴⁷ Marion Spencer, Transcript, p. 101; Michael E. Maloney, Transcript, p. 131; Damon J. Lynch; Ministerial Coalition, Transcript, p. 213; *Mayor's Panel*, pp. III-2, 3.

¹⁴⁸ Lt. Colonel Lawrence E. Whalen, Captain Joseph Crawford, Internal Investigation Section, Cincinnati Police Division, interview in Cincinnati, Ohio, Jan. 25, 1980.

¹⁴⁹ *Ibid.*

¹⁵⁰ Professor Toch has been affiliated with the State University of New York at Albany for many years as a professor of criminal justice.

¹⁵¹ *Peacekeeping*, p. 6.

¹⁵² *Ibid.*, p. 40.

¹⁵³ *Ibid.*, pp. 38-39.

¹⁵⁴ *Ibid.*, p. 39.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*, p. 40.

¹⁵⁷ *Ibid.*, pp. 39-40.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid.*, p. 40.

Ombudsman

An ombudsman is a governmental officer of high rank generally appointed by and responsible to the legislative branch of government who is empowered to evaluate the merits of citizens complaints about official conduct and publicly recommend action to correct misconduct or inefficiency.¹⁶¹ The concept of "ombudsman" goes back into the mists of European history.¹⁶² The first office of ombudsman was officially established by the King of Sweden in 1793.¹⁶³ Subsequently, the position became part of Sweden's democratic constitution of 1809.¹⁶⁴

A number of countries now have ombudsmen each of which has somewhat different powers and procedures.¹⁶⁵ For example, only the Swedish ombudsman has the power to institute disciplinary proceedings against officials.¹⁶⁶ The French Mediatour (ombudsman) may receive complaints only after administrative remedies have been exhausted and only from a Deputy or Senator.¹⁶⁷ The British Parliamentary Commission for Administration (ombudsman) may not investigate police matters.¹⁶⁸ Thus, each country has developed the concept of ombudsman in its own way but all share the same purpose which is to provide a competent official body external to executive agencies to review citizen complaints concerning the performance of those agencies to ensure compliance with applicable law, regulation, and standards of conduct.¹⁶⁹

The American Bar Association in 1969 adopted the recommendations of its Section on Administrative Law that state and local governments consider establishing ombudsmen "authorized to inquire into administrative action and to make public criticism."¹⁷⁰ Other authorities have also recommended establishing ombudsmen to review official conduct, including police practices, upon complaint of citizens.¹⁷¹ These writers generally emphasize that the ombudsman to be effective must be independent of the executive branch, impartial, an expert in government, universally accessible to citizens, and possess-

ing powers only to recommend corrective action and publicize its findings. Only when these conditions are met is it felt that the ombudsman can adequately perform its functions to resolve grievances, improve the performance of public officials, and aid elected representatives to oversee the conduct of executive agencies.¹⁷²

The office of ombudsman serves an appellate function.¹⁷³ That is, citizens may appeal improper decisions of administrative agencies, including their failure to act to that office. The office is most useful when it exists to review the actions of all public agencies, not merely one agency such as the police department which is thereby singled out for unusual scrutiny and criticism.¹⁷⁴ To the extent that all public agencies are self-protective, external review of practices and procedures is considered necessary to control misconduct.¹⁷⁵ A police department is merely one executive agency which needs external oversight to ensure high standards of conduct to which its personnel as public servants entrusted with law enforcement power and responsibility must conform.

Some experts have considered the office of ombudsman to be preferable to a civilian review board as an agency of external review. First, civilian review boards traditionally have generated such controversy that they have been effectively immobilized.¹⁷⁶ In addition, civilian review boards tend to reinforce controversy between the poor and public authority and increase polarization of the two interests.¹⁷⁷ In addition, the problems brought to the civilian review boards require upper level administrative action and such boards unlike ombudsmen do not have enough political power to secure necessary reform.¹⁷⁸ As a result, civilian review boards may placate complainants but have failed to obtain needed change in policy and procedure while the recommendations of ombudsmen tend to carry great weight.¹⁷⁹

¹⁶¹ *Police and the Community*, p. 349; American Bar Association, *Selection of Administrative Law Recommendation 1 and Report 1 of the Section of Administrative Law on the Establishment of an Ombudsman* (1969) (hereafter cited as *Report 1*), p. 250.

¹⁶² Stanley V. Anderson, *Ombudsman Papers: American Experience and Proposals* (Berkeley Calif.: Institute of Government Studies, 1969) (hereafter cited as *Ombudsman Papers*), p. 2.

¹⁶³ Frank Stacey, *Ombudsmen Compared* (Oxford, G.B.: Clarendon Press, 1978) (hereafter cited as *Ombudsmen Compared*), p. 1.

¹⁶⁴ *Ombudsman Papers*, p. 2.

¹⁶⁵ E.g., France, Great Britain, Sweden, *Ombudsmen Compared*, pp. 95, 122, 2. In addition, eight of the ten Canadian Provinces maintain an ombudsman. *Ombudsman Papers*, p. 51.

¹⁶⁶ *Ombudsmen Compared*, p. 4.

¹⁶⁷ *Ibid.*, pp. 95, 102.

¹⁶⁸ *Ibid.*, p. 126.

¹⁶⁹ *Ombudsman Papers*, p. 3; *Report 1*, pp. 250-51.

¹⁷⁰ *Report 1*, p. 250.

¹⁷¹ See e.g., *Free Society*, p. 178; *Urban Ghetto*, pp. 254-255; *Ombudsman Papers*, pp. 1-3.

¹⁷² *Ombudsman Papers*, p. 3.

¹⁷³ *Police and the Community*, pp. 349, 375; *Free Society*, p. 178.

¹⁷⁴ *Free Society*, p. 178; *Urban Ghetto*, p. 255.

¹⁷⁵ *Urban Ghetto*, p. 255.

¹⁷⁶ *Police and the Community*, p. 351.

¹⁷⁷ *Ibid.*, p. 352.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Police and the Community*, pp. 351-52.

By 1976, four States in the United States had established statewide offices of ombudsman: Alaska, Hawaii, Iowa, and Nebraska.¹⁸⁰ Minnesota has established an ombudsman throughout the executive branch to handle complaints from prison inmates.¹⁸¹ Other than Minnesota with its limited office, each State has empowered its ombudsman to investigate any department, agency, or officer which has allegedly failed to perform its official duties properly. None of the State ombudsmen is mandated to institute enforcement proceedings but rather must refer to other authorities for enforcement.¹⁸² The State officers routinely receive anywhere from 500 to 2,000 complaints a year.¹⁸³ Almost half of those complaints which have been fully investigated have been found to be justified.¹⁸⁴

Buffalo, New York instituted an ombudsman project in the 1960's which differed somewhat from the traditional ombudsman approach.¹⁸⁵ The Buffalo group decided that where police misconduct was alleged, it would present only the citizen's point of view to police administrators because the police officer's account was already readily accessible to officials within the department.¹⁸⁶ The group found that almost always where the civilian was alleging physical mistreatment, he had been charged with disorderly conduct or placed under arrest.¹⁸⁷ Often, the police had agreed to drop criminal charges if the civilian took no action in regard to the physical mistreatment. Review of civilian complaints by the Buffalo project did not supplant internal investigation nor was it intended as a criticism of the internal investigation unit.¹⁸⁸ Rather, the project provided civilians with an external administrative body where they could bring their complaints confident of a sympathetic audience. When those complaints were subsequently brought to the attention of the police department, they were reportedly fairly and objectively handled by the police administration.¹⁸⁹

Neither Ohio nor Cincinnati has established an office of ombudsman.¹⁹⁰ The Cincinnati Police Chief, Myron J. Leistler, has traditionally opposed all forms of external review of police misconduct because he believes the Internal Investigation Section has earned the trust of the public in the complaint process and believes in the ability of the Section to investigate complaints with the objectivity essential to a competent review process.¹⁹¹ While recognizing the importance of a *judicial* appellate procedure,¹⁹² Chief Leistler apparently has not considered an *administrative* appellate procedure, whereby a civilian who is dissatisfied with the conduct of police officers and with the internal investigation of his or her complaint may obtain review, to be necessary or desirable. The Office of Municipal Investigations, recently established in Cincinnati, however, has received Leistler's approval.¹⁹³ That unit would not serve an appellate role for civilian complaints and would investigate only major complaints against the police.¹⁹⁴ At the present time, this proposed unit has not progressed beyond the planning stage.¹⁹⁵

Michael Maloney,¹⁹⁶ Executive Director of the Urban Appalachian Council, Wendell Young,¹⁹⁷ President of the Sentinels Police Association and others have proposed that some system of external review of police practices and procedures, including procedures for complaint investigation, is essential to overcome the bias inherent in the police alone policing themselves and for purposes of public accountability. The office of ombudsman is one such form of external review which leaves intact the internal investigatory process of the police division while serving an appellate function upon completion of the internal process.

¹⁸⁰ Kent M. Weeks, *Ombudsmen Around the World: A Comparative Chart* (Nashville, Tenn.: Univ. of California, 1978), pp. 156-162.

¹⁸¹ Minn. Stat. §§241.41-241.45 (1978).

¹⁸² *Ombudsmen Around the World*, pp. 156-62.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Report 1*, pp. 207-10.

¹⁸⁶ *Ibid.*, p. 209.

¹⁸⁷ *Ibid.*, p. 210.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ However, the Director of the Ohio Department of Corrections did administratively create an office of ombudsman to review prisoner complaints. The ombudsman was responsible only to the Director. The position was abolished early in 1975. Ohio State Advisory Committee to the U.S. Commission on Civil Rights, *Protecting Inmate Rights: Prison*

Reform or Prison Replacement (Washington, D.C.: Gov. Printing Office, February 1976), p. 99.

¹⁹¹ Myron J. Leistler, Transcript, pp. 454-55. It is interesting to note that the Internal Investigation Section investigated 349 citizen complaints in 1976, 247 in 1977, and 249 in 1978. Myron J. Leistler, interview in Cincinnati, Ohio, Jan. 25, 1979. However, experts agree that as public confidence in an internal investigation unit increases, the number of complaints filed also increases at least in the short run. See e.g., *Police and the Community*, p. 359.

¹⁹² See also, *Police and the Community*, p. 454.

¹⁹³ Lt. Colonel Lawrence E. Whalen, interview in Cincinnati, Ohio, Jan. 25, 1980.

¹⁹⁴ *Ibid.*

¹⁹⁵ Captain Joseph Crawford, telephone interview, Dec. 3, 1979.

¹⁹⁶ Transcript, pp. 131, 135-36.

¹⁹⁷ Transcript, p. 547.

Arbitration

Arbitration and mediation as techniques of conflict resolution between police personnel and civilians have received very little attention in the United States.¹⁹⁸ Although arbitration and mediation have been used successfully in resolving a variety of problems including landlord-tenant disputes, minor criminal matters between defendants and victims, labor disputes, and grievances in correctional facilities between residents and staff, these well-established tools have not been utilized by communities in police-civilian disputes.¹⁹⁹ There is no reason, however, why these tools could not be used to settle grievances against police personnel.

Mediation and arbitration both utilize neutral third parties to assist in resolving disputes between persons who have attempted and failed to resolve those disputes themselves.²⁰⁰ Mediation and arbitration techniques differ in several ways. First, mediation involves the neutral third party acting as liaison between the disputants to assist each develop a new perspective about their own and the other party's position and goals.²⁰¹ The mediator is a harmonizer, an individual who helps disputants recognize their own basic interests and reconcile them with the basic interests of the opposing party.

Arbitration involves a hearing, with formal presentation of evidence, before an arbitrator who weighs that evidence, makes formal findings of fact, and determines the outcome of the dispute.²⁰² If binding arbitration is utilized, the determination of the arbitrator is binding on the parties.²⁰³ If voluntary arbitration is involved, then the arbitrator's determination acts as a persuasive recommendation only.²⁰⁴ Both voluntary and binding arbitration are used to resolve disputes arising in a variety of contracts throughout the country.²⁰⁵

Mediation or arbitration of individual civilian-police disputes could be utilized in Cincinnati. Such

a program would provide a neutral decision-maker at the appellate level.²⁰⁶ That is, the Internal Investigation Section would continue to investigate complaints of police misconduct by civilians. Only if the civilian were dissatisfied with the outcome would the matter be referred to a mediator or arbitrator. At the present time, an officer dissatisfied with a disciplinary decision of the police chief based on the investigation of the Internal Investigation Section may appeal to the Civil Service Commission before being forced to seek judicial remedies.²⁰⁷ No similar administrative appeal is available to complainants who are dissatisfied with the actions of the Internal Investigation Section and/or the police chief.

Unlike the Internal Investigation Section which aims at establishing the guilt or innocence of the officer who is the subject of the complaint, mediation and arbitration aim at providing appropriate resolution of the underlying grievance.²⁰⁸ It is possible, for example, that where a racial epithet has been used by an officer against a civilian, what the civilian wants is an apology and cares only secondarily whether the officer is officially reprimanded. If in a physically violent altercation between an officer and a civilian, the latter's coat is torn and the decision is that the officer behaved improperly, repair or replacement of the coat as recommended by the arbitrator or mediator may be more appropriate than a three-day suspension of the officer. In other words, mediation and arbitration aim at resolving the grievance rather than merely assessing blame, thereby leaving the aggrieved party without restitution.²⁰⁹

Professional organizations with considerable expertise are currently available to assist the Cincinnati Police Division establish and maintain a mediation/arbitration program. The Community Relations Service of the Department of Justice²¹⁰ for example, has worked as mediator in Cincinnati and elsewhere

¹⁹⁸ Robert Coulson, President, American Arbitration Association, telephone interview Nov. 9, 1979 (hereafter cited as Coulson Interview).

¹⁹⁹ Charles Bridge, Regional Director, Chicago, Illinois, American Arbitration Association, interview in Chicago, Illinois, Oct. 29, 1979 (hereafter cited as Bridge Interview).

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.; American Arbitration Association, "Commercial Arbitration Rules" (New York, 1979).

²⁰³ Bridge Interview.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Only after exhausting the internal complaint process would a complainant be able to invoke the mediation/arbitration process.

²⁰⁷ A police officer may appeal any suspension as well as a reduction in pay or a dismissal to the municipal civil service board. Other public servants

may only appeal a suspension in excess of three days, a reduction in pay, or a dismissal to their local civil service board. Ohio Rev. Code Ann. §124.34 (Page Supp. 1979).

²⁰⁸ Bridge Interview.

²⁰⁹ At the present time, an aggrieved civilian must file a claim for damages with the City Solicitor who is empowered to award compensation up to a total of \$3000,000 a year. Thomas A. Leubbers, former City Solicitor, Cincinnati, Ohio, interview in Cincinnati, Ohio, Jan. 25, 1980.

²¹⁰ See discussion Chapter 1. The Mayor's Community Relations Panel was established as a result of the efforts of the Community *supra*, was established as a result of the efforts of the Community Relations Service to assist Cincinnati in developing solutions to the critical problems facing that community in the Spring of 1979. Richard A. Salem, Midwest Regional Director, Community Relations Service, Department of Justice, letter to Clark G. Roberts, Regional Director, MWRD, U.S. Commission on Civil Rights, Nov. 20, 1979 (hereafter cited as Salem Letter).

on issues of community-wide concern where the police division and significant segments of the community have become polarized. The Service does not, however, routinely involve itself in the individual grievance process.²¹¹

On the other hand, the American Arbitration Association, a private non-profit organization founded in 1926 "to provide private dispute settlement services. . .[including] arbitration, mediation, elections, and other voluntary methods of conflict resolution,"²¹² does act as mediator and arbitrator in individual disputes. The Association has participated in a variety of programs to increase the use and the usefulness of arbitration in reconciling disputing parties through mediation and providing solutions to disputes through arbitration.²¹³ The Association provides training to mediators and arbitrators and selects or recommends specific mediators or arbitrators in specific cases.²¹⁴ The Association has indicated that it would be willing to become involved in a program in Cincinnati upon agreement of the police division.²¹⁵ Funding for the program could be obtained through the city or through a source like the Federal Law Enforcement Assistance Administration.²¹⁶ The Association would train sufficient community members in mediation and arbitration techniques to build an available cadre of experts in regard to police-civilian disputes.²¹⁷ Funds now authorized by City Council for payment of damage

claims against the police could potentially be transferred to such a project with Council approval.²¹⁸

In addition to training civilians in mediating and/or arbitrating disputes between police and civilians, the Association has also indicated its willingness to participate in the initial and in-service training of Cincinnati police officers in techniques of mediation.²¹⁹ A great deal of an officer's professional activities consists of mediating disputes between civilians, e.g., husband and wife or quarreling patrons of a bar.²²⁰ The better trained police officers are in mediation techniques, the better able they are to de-escalate potentially explosive situations.²²¹ Reliance on persuasive as opposed to authoritarian techniques is a desirable ability officers reportedly develop with professional maturity.²²² That process can probably be accelerated through initial and in-service training in mediation techniques.

This chapter has reviewed mechanisms for guiding, regulating, and reviewing police conduct and resolving disputes between civilians and police. The following chapter presents recommendations for limiting the use of force by police officers, ensuring evenhanded law enforcement and the equal distribution of police services throughout Cincinnati, expanding public participation in the development and review of police division policy and procedures, and increasing the numbers of minority and female officers and supervisory personnel in the Cincinnati Police Division.

²¹¹ Salem Letter. However, the jurisdiction of the Community Relations Service is broad enough to permit its involvement in the resolution of individual grievances which are based on race, color, or national origin. 42 U.S.C. §2000g-1 (1976).

²¹² American Arbitration Association, "Your Dispute Resolution Forum" (New York, undated).

²¹³ Bridge Interview.

²¹⁴ Ibid.

²¹⁵ Phillip S. Thompson, Regional Director, Cincinnati, Ohio, telephone interview Nov. 9, 1979 (hereafter cited as Thompson Interview).

²¹⁶ David Tevelin, Attorney Advisor, Office of the General Counsel, Law Enforcement Assistance Administration, telephone interview, Nov. 14, 1979; See also, Justice System Improvement Act of 1979, Pub. L. No. 96-157, §202, 93 Stat. 1167.

²¹⁷ Thompson Interview.

²¹⁸ At the present time, an aggrieved civilian must file a formal claim with the City Solicitor who has a yearly \$300,000 fund at his disposal. Thomas A Leubbers, Interview in Cincinnati, Ohio, Jan. 25, 1980.

²¹⁹ Thompson Interview.

²²⁰ That service and conflict resolution responsibilities rather than law enforcement duties occupy the majority of a police officer's on duty time has been noted by many experts. See e.g., *Public Policy*, p. 50; *Psychologists*, pp. 108-109; Doris Jacobson, William Craven, and Susan Kushner, 'A Study of Police Referral of Allegedly Mentally-Ill Persons to a Psychiatric Unit,' in *The Urban Policeman in Transition*, eds. John R. Snibbe and Homa M. Snibbe (Springfield, Ill.: Charles C. Thomas, 1973), p. 545.

²²¹ Anthony V. Bouza, "Women in Policing," *Law Enforcement Bulletin*, Federal Bureau of Investigation, September 1975.

²²² The use of "persuasion, diplomacy, and salesmanship by police officers" to "sell" a civilian on doing what he or she must do was a fundamental principle of Sir Robert Peel, founder of the British police force. *Staff One*, p. 30. See also Steve Van Meter, "Deadly Force." *J. Calif. Law Enforcement*, Vol. 12, No. 3 (January 1978), p. 116.

Summary of Investigation, Findings and Recommendations

Summary

During the last two years, a number of individuals and community groups in Cincinnati have complained to the Ohio Advisory Committee that police officers abuse their authority to use force against civilians, apply the law unevenly according to the race or cultural background of civilians, and that officials in the Police Division and the city administration are indifferent to these problems. In addition, the Committee became aware early in its investigation of the complaints of a substantial underemployment of women and minorities in the Police Division, a situation which a number of complainants alleged contributes to the continuing and serious police-civilian tensions.

At the request of a number of community organizations and individual Cincinnatians, the Committee undertook a study of the Cincinnati Police Division focusing on five major issues. First, the Committee evaluated the Police Division's use of force policy, including formal officer training and subsequent actual practice in the community. Second, the issue of whether all segments of the Cincinnati community were receiving their fair share of police services was analyzed. Third, the Committee reviewed the makeup of the workforce of the Police Division, in particular, the disparity between the racial and sexual composition of the sworn force and the Cincinnati population. Fourth, local, county, State, and Federal agencies with oversight responsibilities were examined. Finally, problems with controlling police discretion and proposals for resolving civilian-police disputes were evaluated.

The Ohio Advisory Committee found problems involving misuse of force by the police; inequitable distribution of police services; inadequate oversight and control by local, State, and Federal agencies; and abuse of discretion by police. However, the most glaring problem uncovered is the serious underrepresentation of blacks and females among police officers, particularly at the supervisory levels where blacks and females are virtually nonexistent. A recent consent decree agreed to by the U.S. Department of Justice and the city may lead to an eventual solution to this problem.

The following pages contain the specific findings and recommendations designed to remedy the problems identified in this investigation. The Committee intends to continue monitoring the policies and practices of the Cincinnati Police Division in cooperation with concerned community groups until the causes of unnecessary tensions between the Cincinnati police and the Cincinnati civilian community have been eliminated.

Findings

Use of Force

1. Cincinnati police officers frequently fail or refuse to provide civilians with the reasons for their actions and incorrectly perceive requests and demands for reasons as resistance. This conduct creates great resentment, fear, and distrust in civilians, and may ultimately create actual resistance.
2. Civilians, fearing the extensive powers of the police, perceive force as any coercive technique, both physical and verbal, including threats of legal sanctions. On the other hand, the Cincinnati Police

Division defines force only as extreme physical force while lesser physical force and verbal threats are categorized as discourtesy. The discrepancy between civilian and police definitions of "force" creates a significant communication problem and obscures the degree to which police officers use coercive as opposed to persuasive techniques in interactions with civilians.

3. Ohio is one of only eight States which has not enacted a statute governing the use of deadly force by police officers. Current Ohio law, which is derived from judicial decisions interpreting older common law, permits police officers to use deadly force against civilians where necessary to effect the arrest of any fleeing felon or in defense of self or another. Proposals to enact a statute which would restrict the use of deadly force by police officers have consistently been defeated in the Ohio legislature.

4. The express Police Division policy on use of deadly force is far more restrictive than Ohio law. This more restrictive policy has resulted in a general decline in the number of shots fired at civilians, particularly at black civilians.

5. The recent modernization of police equipment which has involved a shift from a .38 to a .357 caliber handgun and controlled expansion bullets which has been approved by the Chief of Police, a Safety Task Force appointed by the City Council, and the City Council itself, has been the source of considerable outrage and fear by Cincinnati civilians many of whom view the increased stopping power of the new equipment solely as a power game by the Police Division.

6. Many organizations and individuals have raised concerns about the adequacy of training in the area of response to crisis situations. In a number of arrest situations force must be used to overcome resistance and the threat of harm to citizens and the officer. However, there is no formal training given the Cincinnati police officers which provides an ample understanding of the proper use of force or alternatives to force in such situations.

7. Police officers have many responsibilities and opportunities to perform involving community service, maintaining order, and fighting crime. But they measure their capacity to "do the job", and are judged by their colleagues, by their success in policing people. This tradition has led to an "us against them" mentality resulting occasionally in the excessive use of force by police in cases where

other persuasive tactics would have been more appropriate. Unfortunately, the guidelines and instructions on use of force are inadequate for effectively informing officers of appropriate limits in the use of force or advising them on the use of other persuasive approaches to reduce tension and conflict.

Employment

1. The City of Cincinnati, the Cincinnati Police Division, and the Cincinnati Civil Service Commission have pursued policies and practices which have discriminated against blacks and women depriving them of equal employment opportunity in the Police Division.

2. The discriminatory practice of not recruiting, hiring, assigning, or promoting blacks and women as police officers on the same basis as white males has a detrimental affect on keeping good black and women police officers in the Police Division.

3. The Fraternal Order of Police (FOP) has not addressed the hiring and promotion policy in a manner conducive to the elimination of underutilization of minorities and women in the Cincinnati Police Division. In fact, the leadership of the FOP has been criticized for its lack of professionalism and insensitivity to the problem of discriminatory employment practices.

4. There is no formal structure to facilitate community input into the recruitment, hiring, promotion, and training policies and practices of the Police Division.

5. The U.S. Department of Justice and the City of Cincinnati have recently reached a consent decree in which the city agreed to specific numerical hiring goals that, if met, will eliminate underutilization of minorities and women in the Cincinnati Police Division. The City also agreed to promote minorities and women at a rate consistent with their representation in the pool of qualified candidates.

Distribution of Service

1. Cincinnati police officers experience frustration in attempting to meet frequently conflicting demands of maintaining order, providing community service, and fighting crime. The community calls for service and peace keeping, while police consider their fundamental job to be the apprehension of felons.

2. There is a perception among some police and some citizens that neither group respects the other.

Segments of the community are concerned with both racism and class prejudice because of what they view as demonstrable contempt and disrespect of police for both poor blacks and poor whites. At the same time many police feel isolated, unappreciated, and disrespected by some parts of the community.

3. Police officers and citizens interact with each other very infrequently in any way other than crime related situations. The reduction of personnel in the police division, underutilization of black officers and women, and lack of organized formal involvement in community life has contributed to the widening gap of misunderstanding and lack of communication between the police and the community.

4. The investigative process of the Cincinnati Internal Investigation Section is one of the most controversial issues that faces the community, primarily because of a virtual total lack of communication with the community and complainants about the disposition of the complaints.

5. Until very recently, there were no black police officers in the Internal Investigation Section which demonstrated a longstanding lack of sensitivity to the concerns of part of a significant the community.

6. Due to the fragmented approach and the absence of full support of the Police Division, from the chief to the officer on the street, community relations programs in the Police Division have failed to achieve their stated objectives.

External Oversight and Control of the Police Division

Local and County Agencies

1. City Solicitor

The involvement of the City Solicitor in issues of alleged police misconduct is complex and raises questions of potential conflicts of interest. The City Solicitor is responsible for all misdemeanors committed in Cincinnati including misdemeanor assault by a police officer on a civilian; defending police officers sued civilly by civilians for misconduct where the alleged misconduct occurs in the scope of the officers' employment duties, and representing the Police Division against police officers who have been administratively disciplined by the Police Chief and appeal their disciplinary sanctions to Civil Service.

The City Solicitor has attempted to resolve its conflicting responsibilities by authorizing officers to retain their own counsel, paid for by the city, in cases where the City Solicitor has earlier appeared in an adverse role and the alleged misconduct was not wanton or malicious.

The City Solicitor has never prosecuted a police officer for the excessive use of force against a civilian.

2. County Prosecutor

The County Prosecutor is responsible for prosecuting all felonies committed within Cincinnati, including felonious assault by a police officer on a civilian, after an indictment is returned by the Grand Jury. The County Prosecutor decides which cases of alleged police misconduct will be presented to the Grand Jury for their determination of whether an indictable offense has occurred.

In the last ten years, only four cases of alleged police misconduct grounded in the excessive use of force were submitted to the Grand Jury (which returned no indictments) because in all other cases the County Prosecutor independently determined that no criminal offense had been committed under State law governing use of force against a civilian.

State Agencies

1. Ohio Civil Rights Commission (OCRC)

The OCRC has jurisdiction over complaints of discrimination based on race, color, sex, religion, national origin, handicap, and ancestry in employment, housing, and credit but not in public services.

Because the OCRC does not have jurisdiction over discrimination in public services, it has no authority to investigate complaints of discrimination against a member of one of the protected categories in the form of excessive use of force or inequitable distribution of police services.

Because the OCRC does not have jurisdiction over complaints grounded in cultural background or economic class, it cannot protect poor white and white Appalachians from employment discrimination.

2. Ohio Office of Criminal Justice, Department of Economic and Community Development (OCJ)

The OCJ is responsible for ensuring that the recipients of State and Federal funds abide by applicable laws requiring nondiscrimination against beneficiaries. This responsibility includes jurisdiction over complaints of race or sex based employ-

ment discrimination, excessive use of force by police officers against civilians, and the inequitable distribution of police services.

The OCJ has determined that its civil rights enforcement staff is too small to permit it to investigate complaints of unlawful discrimination directly. Instead, all such complaints will be referred to other agencies including OCRC and the Law Enforcement Assistance Administration (LEAA) if and when received.

3. Ohio State Training Council

The Ohio State Training Council is responsible for promulgating minimum standards of training for State police academies including the Cincinnati Police Academy, but has no jurisdiction to set standards for the basic or continuing education or conduct of police officers. As a result:

—There are no uniform State standards for police officers education or conduct, and

—Municipal police officers are not licensed at the State level.

Federal Involvement

1. During the years 1976–1979, Federal funds flowing to the Cincinnati Police Division to support its \$88.8 million budget totaled \$21.0 million (24 percent). The city contributed \$67.01 million (75 percent), and the State \$734,032 (1 percent). Law enforcement related activities consume a considerable portion of the city budget. Expenditures of local revenues by the Police Division during those same years represented between 14 and 19 percent of the total municipal budgets.

2. Federal agencies which have funded Cincinnati since 1976 are the Office of Revenue Sharing (ORS), the Law Enforcement Assistance Administration (LEAA) (which is currently being phased out), and the Employment and Training Administration (ETA) of the Department of Labor which administers the Comprehensive Employment and Training Act (CETA). Each of these agencies has enacted its own set of regulations and investigative procedures. There is no express provision for coordinated enforcement activities, leading to unnecessary duplication of effort.

3. All Federal funding agencies are responsible for ensuring that the ultimate beneficiaries of their funds are not subjected to unlawful discrimination. However, the various enabling statutes of these agencies are not uniform in their classification of protected categories.

—Title VI prohibits discrimination based on race, color, or national origin.

—LEAA prohibits discrimination based on race, color, national origin, sex, or religion.

—ORS prohibits discrimination based on race, color, national origin, sex, religion, age, or handicap.

—CETA prohibits discrimination based on race, color, national origin, sex, religion, age, handicap, citizenship, or political affiliation.

4. This lack of uniformity in protected categories among the Federal funding agencies exists for no valid substantive reason and contributes to problems in uniformity and coordination of enforcement responsibilities.

5. No Federal agency providing funds to Cincinnati protects civilians from discrimination based on cultural background or economic class. Consequently, poor white and white Appalachian Cincinnatians may be subjected to invidious discrimination without fear of sanctions by those Federal agencies.

6. Regulations enacted by the various Federal funding agencies do not consistently require assurances of nondiscrimination from the ultimate individual municipal departmental recipients of Federal funds: only assurances and aggregate data from the city itself are usually required. As a result, in Cincinnati which is one-third black and in which the sworn police force is 92.5 percent white:

—ORS has not monitored the policies and practices of the Police Division although it is required to do so where there is a significant disparity between the actual and potential minority composition of the workforce, and

—LEAA has monitored the Equal Employment Opportunity Programs of the city and has found it to be in compliance with LEAA nondiscrimination requirements.

—The Department of Justice (DOJ) has determined that minorities and women are underemployed by the Cincinnati Police Division and has entered into a consent agreement with the city to rectify that underutilization.

7. All Federal agencies which have provided funds to the Police Division have jurisdiction over complaints of race or sex based discrimination arising from allegations of excessive use of force by police officers against civilians, inequitable distribution of police services, and employment within the Division. However:

—Few civilians or police officers are aware they may file complaints with these agencies;

—Unless the complaints allege a “pattern or practice” of unlawful discrimination, these agencies do not have jurisdiction to require that recipients modify their policies and practices as a condition of continued funding; and

—Difficulties in proving “pattern or practice” suits have led these agencies to decide to refer most complaints of unlawful discrimination to appropriate enforcement agencies which are the DOJ and the Equal Employment Opportunity Commission (EEOC).

8. The ability of the DOJ to prosecute police officers for the excessive use of force against civilians is severely hampered by existing law which requires that no officer may be found guilty of violating Federal criminal civil rights law unless he or she committed the alleged misconduct with specific intent to deprive the affected civilian of a constitutional or other federally protected right and acted outside the limits of State law governing use of force by police officers. As a result, no Cincinnati police officer has been criminally prosecuted by the DOJ for the excessive use of force against a civilian because:

—the specific intent standard is virtually impossible to meet, and

—Ohio law governing use of force including use of deadly force by police officers against civilians is sufficiently broad to provide virtual immunity from Federal prosecution.

9. No Federal funding or enforcement agency has or is now monitoring the policies and practices of the Cincinnati Police Division to determine whether each segment of the community is receiving its fair share of police services.

Proposals for Guiding, Regulating, and Reviewing Police Conduct and Resolving Civilian-Police Disputes

Guiding and Regulating Police Discretion

1. Police officers in Cincinnati, as elsewhere, with the least maturity and experience are the most often involved with civilians in potentially adverse interactions. In addition, these officers have inadequate official guidance in law enforcement related decision making. As a result:

—Officers must make ad hoc decisions based upon their individual judgments and standards which

are greatly influenced by collateral factors of race and economic class, and

—law enforcement in minority and majority and in poor and affluent communities is uneven.

2. The Police Chief in allocating resources, i.e., a large vice squad, geographic distribution of police officers, determines community priorities in law enforcement. There is inadequate civilian input from the Cincinnati community into determining law enforcement priorities.

3. There is inadequate public involvement in rulemaking for the Cincinnati Police Division:

—Unlike several other municipal subdivisions, the Cincinnati Police Division does not publish its rules and regulations as an appendix to the municipal code or make them otherwise readily available to the public.

—There is no requirement of public notice and opportunity for public comment before rules and regulations are adopted or amended. Thus, rules which regulate police conduct in interactions with civilians have been promulgated without participation by the very civilians who are affected by that conduct.

4. No on-going citizens’ advisory board or neighborhood council exists to provide regular input into the development of Police Division policy or to monitor the effectiveness of existing policies and practices. As a result, official communication between the Police Division and the community is sporadic and unrepresentative of the community as a whole.

5. A combination of the poorly enforced and uncertain residency requirement for Cincinnati police officers and the failure of the Police Division to provide officers with paid time-off to participate in community activities adds to the separation between civilians and police and contributes to the frequent perception that the Cincinnati police are a hostile and occupying force.

Reviewing Police Conduct and Resolving Civilian-Police Disputes

1. The Internal Investigation Section is not fully effective in reviewing police conduct:

—The Section maintains a separate file on each officer, listing complaints and shots fired, but does not monitor this file to identify officers who are developing a pattern of abusive conduct nor require them to obtain professional counseling

before the conduct reaches a point where disciplinary sanctions must be imposed.

—Police officers assigned to the Section are subject to unique stresses and severe moral problems which may hamper the effectiveness and professionalism of their investigations.

—Over half the complaints of excessive force are discourtesy filed with the Section are ultimately dismissed for lack of evidence. Public trust cannot be expected where those in control of gathering evidence and determining facts regularly fail to do so. In addition, no outside agency is permitted to review Internal Investigation Section files to ensure that adequate procedures have been followed and a proper evidentiary basis exists to support decisions of the Section and the Police Chief, significant contributing factor to lack of public confidence in the internal process.

2. Many Cincinnati residents who are afraid to file their complaints of police misconduct with the Internal Investigations Section bring them instead to the Cincinnati Human Relations Commission (CHRC). However, the ability of CHRC to investigate and resolve civilian-police disputes is severely hampered because investigators have no authority to interview police officers nor review Internal Investigation Section files.

3. Citizens' review boards have experienced a dismal history in the United States because they lack support from police departments and from civilians other than members of minority groups, those most often subject to police abuse of force.

4. Peer review panels composed of fellow officers to which officers are referred by their supervisors when a pattern of abusive conduct is first discerned have been successful in reducing the incidence of police misconduct.

5. Cincinnatians who are dissatisfied with the process and outcome of the internal investigations of their complaints have no administrative appeal whereas police officers who are administratively disciplined may appeal to Civil Service. A recent proposal to provide external administrative review is inadequate. That is:

—The Office of Municipal Investigations which has been established by the City Council will investigate only major complaints against the Police Division and other agencies and will not review the process or outcome of investigations of individual complaints.

—Cincinnati has not established an Office of Ombudsman with the authority to receive complaints from civilians dissatisfied with the internal investigation process and outcome and to review compliance of the Police Division with established policies and procedures.

—Cincinnati provides no mechanism whereby civilians who have been injured by the misconduct of police officers may seek restitution through an administrative process from the officer and no procedure for mediation or arbitration of civilian-police disputes.

Recommendations

To the Congress

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

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

3. Congress should enact legislation removing the specific intent requirement from Federal statutes which empower the DOJ to criminally prosecute police officers for brutalizing civilians.

4. Congress should allocate sufficient resources to permit the civil rights divisions of Federal funding agencies to carry out their responsibilities effectively.

To Federal Funding Agencies

1. In cooperation with the DOJ, the Federal agencies providing funds to the Cincinnati Police Division, ORS, ETA and if it continues in existence, LEAA, or its successor, should immediately develop a uniform system and set of standards for reviewing the compliance of individual municipal agencies with nondiscrimination requirements, including coordination procedures for investigations and administrative proceedings.

2. In cooperation with the DOJ, the Federal agencies providing funds to the Cincinnati Police Division, ORS, ETA, and, if it continues in existence, LEAA, or its successor, should immediately undertake an investigation of the Cincinnati Police Division to determine whether police services, including complaint investigation and disposition,

are being equitably distributed to Cincinnati civilians without regard to minority status.

To the Ohio Legislature

1. The Ohio legislature should enact legislation restricting the use of deadly force by police officers to those situations where such force is necessary to protect self or others from imminent death or great bodily harm.

2. The powers of the Ohio Civil Rights Commission (OCRC) should be expanded to include jurisdiction over complaints of discrimination in public services and complaints grounded in discrimination based upon cultural background and economic class.

3. Sufficient resources must be allocated to the Ohio Office of Criminal Justice, Department of Economic and Community Development to ensure that it will be able to carry out its civil rights responsibilities effectively in coordination with OCRC and LEAA.

4. The jurisdiction of the Ohio State Training Council should be expanded to include authority to establish minimum standards of education and conduct for police officers as well as to license municipal police officers.

5. The Ohio legislature should establish a State Office of Ombudsman to review and investigate complaints that State and municipal agencies, including the Cincinnati Police Division, are not complying with established policies and procedures and to recommend modifications of those policies and procedures.

To the County Prosecutor and the City Solicitor

1. All instances involving police use of force against civilians including the use of deadly force should be screened by a special prosecutor to determine if such conduct constitutes a probable violation of State or municipal law which requires further prosecutorial action.

2. The City Solicitor should vigorously enforce the Cincinnati residency requirement for Cincinnati police officers.

To the City Council

1. The City Council should establish formally the Mayor's Community Relations Panel to serve as the coordinator of special police community relation programs. These programs should include public education to increase community understanding of

the complexities of police work and police understanding of the diverse neighborhoods they are to serve and protect.

2. The City Council should establish formal administrative rulemaking procedures for the Police Division which require public notice and an opportunity for comment before any rule is adopted or amended.

3. The jurisdiction of the Cincinnati Human Relations Commission (CHRC) should be expanded to permit that agency to review whether the Internal Investigation Section has complied with established procedures for investigating the complaint of an aggrieved civilian. The expanded jurisdiction should permit CHRC to interview individual police officers and to review Internal Investigation Section files.

4. The City Council should establish a mechanism for mediating or arbitrating civilian-police disputes which permits civilians to obtain, where appropriate, restitution for damages to self or property.

To the Cincinnati Police Division

1. The Police Chief should strongly support the Community Assistance Section by specific directives from him concerning the section's function and responsibilities. The directives in turn must be effectively communicated through the ranks and to recruits.

2. Either the Police Chief should hold regular public meetings in various Cincinnati neighborhoods or neighborhood police advisory councils should be established for community participation in determining law enforcement priorities and reviewing the effectiveness of current law enforcement policies and practices.

3. The manual of Police Division rules and regulations should be readily available to the public as an appendix to the Municipal Code.

4. Current rules should be amended to expressly regulate the use of persuasive and coercive techniques by police officers and set forth standards for reasonable and purposeful law enforcement. The Cincinnati Police Division should amend its rules and regulations to limit use of deadly force by police personnel to situations where it is necessary to protect the officer or another from imminent death or great bodily harm. Training should be upgraded to provide officers clear guidelines on the appropriate use of force and other persuasive tactics.

5. The Internal Investigation Section must have sufficient staff to work effectively. Investigators should have special training in the conduct of internal investigations and be available on duty at times and places for public convenience.

6. The Internal Investigation Section should regularly monitor the complaint and shots fired history of each police officer such history should be available to the individual officer and to his captain.

7. The Police Division should establish a Peer Review Panel to which a supervisor of the Internal Investigation Section may refer officers manifesting growing loss of control over their aggression for assistance before the misconduct leads to disciplinary sanctions.

8. Police officers must be required by express Police Division rules and regulations to give reason for their actions to civilians except in emergency circumstances.

9. The citizens' complaints process and the disposition of complaints should be effectively communicated to the public so that the public can fully understand the process and the disposition of any and all complaints.

10. The Cincinnati Police Division should categorize complaints of verbal and physical threats and

of actual physical force which is less than extreme in a more realistic category than the present one called "discourtesy."

11. Minority and women's organizations should be involved in the formation and implementation of any recruit program.

12. If a reduction in the police force is contemplated, the Police Division should implement that reduction in a manner that does not hinder progress towards obtaining a representative police force.

13. The training staff should include greater representation of minority and women both from the police force itself and from the community.

14. There should be an inservice training program for police officers of all ranks to reinforce and further develop officers' understanding of and ability to communicate with the diverse segments of the Cincinnati community.

15. All officers promoted to supervisory positions should be given thorough management training prior to assuming his or her duties. Such training would give confidence to the officers being promoted, the unit he or she will supervise, and the community being served.

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