

# **POLICE MISCONDUCT**

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**HEARINGS**  
BEFORE THE  
SUBCOMMITTEE ON CRIMINAL JUSTICE  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
NINETY-EIGHTH CONGRESS  
FIRST SESSION  
ON  
POLICE MISCONDUCT

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JUNE 16, JULY 18, SEPTEMBER 19, AND NOVEMBER 28, 1988

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**Part 2**

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**Serial No. 50**



Printed for the use of the Committee on the Judiciary

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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1984

37-501 O

A521-49

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## POLICE MISCONDUCT

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MONDAY, NOVEMBER 28, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CRIMINAL JUSTICE,  
COMMITTEE ON THE JUDICIARY,  
*Brooklyn, N.Y.*

The subcommittee met, pursuant to call, at 9:38 a.m., at U.S. Eastern District Courtroom, 225 Cadman Plaza, Brooklyn, N.Y., Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Berman, Rangel, Owens, and Towns.

Mr. CONYERS. The Subcommittee on Criminal Justice will come to order.

We are pleased to be in Brooklyn, N.Y., for a continuation of hearings in New York on police violence, which is in itself a continuation of hearings that have been held in Los Angeles, Washington, D.C., Miami, Fla., and will be continuing after New York.

If there are witnesses here, will they sit over in the chairs to my left, please, so that that will allow a maximum number of seats available for those who would wish to hear these proceedings.

We are very pleased to have the mayor of the city of New York, the Honorable Mayor Edward I. Koch, the former Congressman who is himself a lawyer, who is very familiar with the congressional proceedings. I would hasten to add that our staff is just arriving. There are members of the subcommittee that are en route, but in view of the press of time, with the mayor's indulgence, we are going to begin the proceedings at this point.

We welcome Mayor Koch, Police Commissioner Robert McGuire, and others who may be identified as the mayor proceeds.

We are also going to take his prepared statement. Your statement is ready for submission, without objection, it will be entered in full into the record, and then you may make your comments in any way that you prefer.

Welcome to these hearings, and good morning, Mayor Koch.

**TESTIMONY OF EDWARD I. KOCH, MAYOR, CITY OF NEW YORK; ROBERT McGUIRE, POLICE COMMISSIONER, CITY OF NEW YORK; WILLIAM BRACEY, FORMER CHIEF OF UNIFORMED FORCES, POLICE DEPARTMENT, NEW YORK CITY; KENNETH CONBOY, LEGAL COUNSEL, NEW YORK POLICE DEPARTMENT; CHARLES ADAMS, EXECUTIVE DIRECTOR OF THE CIVILIAN COMPLAINT REVIEW BOARD; AND FRITZ SCHWARTZ, CORPORATION COUNSEL, CITY OF NEW YORK**

Mayor KOCH. Thank you, Mr. Chairman. I would like to introduce my colleagues at the table. They are, beginning with Fritz Schwartz, corporation counsel; Ken Conboy, who is the legal officer for the NYPD, the New York City Police Department; the police commissioner, Bob McGuire; the former chief of uniformed personnel, Bill Bracy; and the executive director of the Civilian Complaint Board, Charles Adams.

Mr. CONYERS. Could you identify—

Mayor KOCH. Bill Bracy.

Mr. CONYERS. Mr. Schwartz, and Ken Conboy.

Mayor KOCH. Mr. Chairman, what I would like to do is read a very short statement, to have Bob McGuire, police commissioner, make his prepared statement, which is very brief, and Bill Bracy to do the same, and then to take your questions.

As I indicated to you today and earlier, before this week, the mayor of Peking is arriving at city hall at 11. I would like, if it is at all possible, to be there to welcome him.

Mr. CONYERS. Absolutely.

Mayor KOCH. It was a date that was set up months ago, and could not be changed.

Mr. CONYERS. That is quite all right.

#### **TESTIMONY OF EDWARD I. KOCH**

Mayor KOCH. Mr. Chairman, my formal written testimony was previously submitted to this subcommittee at its aborted hearing on July 18. Rather than repeat that statement, I should like to briefly summarize my testimony, describe the additional measures which have been undertaken by the city to address this issue since July, and then specifically respond to what I believe were certain unfortunate, premature and unjustified conclusions announced by you, Mr. Chairman, at the end of the initial hearings of the subcommittee on September 19.

In my testimony today, I intend to provide an overview of this administration's policy. The police officials who follow me will be available to answer questions which address the factual record at greater length.

Let me begin by stating in unequivocal terms that any abuse of authority by New York City police officers is not and will not be tolerated by this administration. Where charges of brutality are made, they will be thoroughly investigated. Where established, the guilty police officers will be punished.

As Commissioner Bob McGuire has described, the New York City Police Department has pioneered the creation of vigorous institutional checks on such misconduct, and, as a result, has achieved what is not only a commendable, but exemplary, record demon-

strating that police brutality is not present in any systemic or institutional sense. We will, however, continue to look for ways to improve our performance.

The issue of police behavior is highly emotional. People care very deeply about this issue. Therefore, all participants in the discussion should use great care with words. I have tried to do so and will try to continue to do so. Let me state briefly what I believe are the most relevant considerations by which the subject must be appreciated.

On the one hand, all New Yorkers should understand the perspective of the hardworking, honest, law-abiding cop who risks his or her life every day on the street. Police work is dangerous. We trust the police to protect us from criminals of whom, as we all know, there are far too many who are quite willing to harass, abuse and injure innocent civilians.

From this point of view, we must remember at least two things. First, as in any civilized society, the police have the right to use lawful, reasonable force in carrying out their job. Second, there will be times when accusations of unlawful force are false, put forward as a smokescreen by the guilty or as a slander by inveterate critics of the police who were not present, have no real idea of what happened, and who seek to undermine public trust.

On the other hand, having said this certainly does not mean that charges of illegal use of force by the police are unworthy of attention by responsible officials. The problem cannot be dismissed merely as one of perception. There doubtless are some police officers who abuse their trust and even one incident of brutality is too much. For any individual who is abused either physically or verbally, it is not enough to say we are better than before or better than elsewhere. We will and must continue to address this problem.

Well before these hearings were announced, for example, Commissioner McGuire informed me that he was particularly concerned about the reported increase in complaints about lack of courtesy and offensive language from our police officers. A small number of these complaints relate to racially offensive remarks. There may be explanation for this, but no explanation is satisfactory. I personally know that words do sting and words of prejudice sting worst of all. Any racial remark by an officer of the law is intolerable. I know Bob McGuire shares this view, and, accordingly, the most vigorous administrative, supervisory and disciplinary measures must be implemented to see to it that this problem is rooted out.

Some of these measures have already begun to be implemented. Under Commissioner McGuire's leadership, the police department has not only increased its training in racial sensitivity and community relations at the police academy, but has also instituted a program whereby weekly training sessions on these issues are being held in each of the city's police precincts. The staff of the department's civilian complaint review board has been increased significantly to investigate all future complaints.

A new procedure has also been instituted whereby CCRB complaints may be received at any of the city's 59 community boards as well as at any police department facility or by telephone. I know that these policies will continue to be developed under the steward-

ship of Commissioner Ward. It is our hope that the implementation of these and other measures will continue to improve the generally sound relationship between the police department and New York City's minority communities.

This process will not be assisted, however, by the loose publication of excessive, unsupported and irresponsible charges against the police department as an institution. This is unfortunately what I believe occurred at this subcommittee's earlier hearings on September 19.

The testimony which you heard that day can only be described as one side of a presentation of individual complaints against individual police officers. Despite our request, and contrary to customary practice for congressional hearings, none of the incidents were made known to the police department in advance so that it might make a fair response. None of the witnesses were sworn or subjected to even the most fundamental cross-examination or fair inquiry. None of the incidents received even rudimentary investigation by your committee staff.

In their haste to condemn the police department as an institution, many witnesses overlooked the fact that a number of the incidents of which they complained did not even involve the New York City police, but suburban police departments: many cases were up to 25 years old; many others involved white complainants, although they were represented to be black, and minority police officers, although they were implied to be white.

While any act of brutality is of concern whether or not it involves racial overtones, the point is that no one ever questioned these "facts" Similarly, at no time did anyone even ask whether any of the complaints involved incidents where crimes had been committed, where there were assaults upon police officers, or where guns, knives and other deadly weapons had been recovered at the scene. Had you done so, you would have discovered that the vast majority of incidents did arise under precisely such violent circumstances and thus presented no simple answer as to who was right and who was wrong.

Several complaints involved incidents where the person complaining expressly refused to come forward to present his or her grievance to the police department, to district attorneys, or to any other independent investigating body. In 24 of 25 cases which were investigated by grand juries or the Department of Justice, there were no findings of any criminal action on the part of the police. Perhaps one can differ as to the significance of these facts, Mr. Chairman, but no one can dispute that a fair judge needed to know the facts before reaching a conclusion.

The police department's written response to the earlier testimony was presented to this subcommittee earlier last month. I certainly do not contend that it shows police officers to be always in the right, or that there may not be quite legitimate questions as to the necessity of the police force used in any particular case. Indeed, several cases involved incidents, during my administration and others, where the officers involved were charged by the department, disciplined and fired, even after they may have been acquitted in a criminal court.

Taken as a whole, however, the report indicates the bankruptcy of drawing sweeping conclusions from a miniscule sample of over 10 million contacts which take place between the community and the police each year. As I am certain you will agree, Mr. Chairman, any responsible and fair analysis requires far, far more.

I must therefore unfortunately conclude, Mr. Chairman, by taking strong issue with what I believe were your own highly premature and unfair conclusions announced at the end of our hearing on September 19. Specifically, I refer to your statement that racially motivated police brutality is systemic within the New York City Police Department, thereby slandering not only the department's leadership, but each of the several thousand police officers who you presumably believe to have violated their public trust. Whatever your motivations may have been, Mr. Chairman, I believe that you knew then and must know now that these statements are unsupported by the facts.

I find even more unfortunate your conclusion that systemic, racially motivated brutality is condoned by leadership outside the department. If you were referring to me or to any other member of my administration, Mr. Chairman, I must challenge you—today while I am here before you—to produce so much as a scintilla of evidence to support the conclusion that we have ever condoned brutality racially motivated or otherwise.

I have indicated today, as I have stated time and time again both before and after these hearings, that I will stand behind police officers when they are right and condemn them when they are wrong. To suggest that the policy of this city is otherwise is false, inflammatory, and highly destructive of the critical confidence which must exist between the police and the community in any just and civilized society.

Accordingly, I ask you, today, to publicly withdraw your hasty conclusion and subject this issue to the kind of fair and objective analysis which it deserves, Mr. Chairman.

Putting your comments aside, I would like for a moment to speak directly to all New Yorkers. As I stated in my prepared statement last July, I believe that the record of the New York City Police Department clearly indicates that charges of systemic police brutality are false. I, at the same time, recognize, however, that there are honestly held concerns in the minority community about police policy and the exercise of police power. Some of this is rooted in experiences in other places where the police are not servants of the people but of oppressive or discriminatory governments. And some of this is an echo of the ugly history of racism in our own country. Neither our country, nor our city, has yet overcome this history. But we are going to keep on moving to do so.

So to those who share this concern, I say, let us find ways to deal with it together, first, by acquainting everyone with the facts, and then through the laborious process of building confidence and civic pride through mutual respect and understanding. The policeman on the beat and the citizen on the street cannot be safe without each other. The one cannot secure justice without the other. To sow division and to subvert this crucial alliance is wrong, it is dangerous, it can levy a terrible cost upon the community.

By any fair measurement, it must be said that relationships between the New York City Police Department and the minority community are generally sound and continue to improve. I welcome this improvement as I welcome our substantial recent improvement in fighting robbery and other violent crimes. But we must constantly raise our standards, constantly raise our expectations.

I, for one, will continue to do precisely that. This issue is far too important to allow polemics, procedural impropriety or politics to get in the way of the merits. I ask all New Yorkers, therefore to constructively participate, volunteer, recommend improvements and join me in our efforts to foster and not destroy a relationship of confidence between the police department and the community which it serves.

Mr. Chairman, I would ask your permission now to have the commissioner make his brief remarks and then Bill Bracy.

[Prepared statement of Mayor Koch follows:]

TESTIMONY OF EDWARD I. KOCH, MAYOR  
OF THE CITY OF NEW YORK, BEFORE THE  
SUBCOMMITTEE ON CRIMINAL JUSTICE OF  
THE HOUSE COMMITTEE ON THE JUDICIARY

NEW YORK CITY  
JULY 18, 1983

I WANT TO SPEAK TO YOU CANDIDLY ABOUT THE RELATIONS OF THE POLICE AND THE MINORITY COMMUNITIES OF THIS CITY. I WANT TO TELL YOU FLATLY THAT EVEN ONE INCIDENT OF POLICE BRUTALITY IS UTTERLY INTOLERABLE. I ALSO WANT TO SHARE WITH YOU MY PRIDE IN WHAT NEW YORK CITY HAS DONE AND IS DOING INSTITUTIONALLY TO KEEP OUR STANDARDS OF POLICE BEHAVIOR HIGH--AND TELL YOU FURTHER THAT WE ARE DOING BETTER THAN IS THE REST OF THE NATION. I WANT TO ASSURE OUR MINORITY CITIZENS THAT I FULLY UNDERSTAND THE REASONS FOR THEIR SPECIAL CONCERN WITH POLICE POWER. FINALLY, I HOPE THIS HEARING TODAY WILL BE USED NOT TO INFLAME, BUT TO HEAL. I BELIEVE THAT THE RECORD WILL DEMONSTRATE THAT WE ARE DOING WELL, BUT ALSO THAT WE CAN ALWAYS DO BETTER. FOR OUR FUTURE AS A CITY WE MUST BUILD UPON THE GOOD, AND I FOR ONE INTEND TO DO PRECISELY THAT.

IN MY COMMENTS TODAY I INTEND TO PROVIDE AN OVERVIEW OF THIS ADMINISTRATION'S POLICY. THE POLICE OFFICIALS WHO FOLLOW ME WILL ADDRESS THE STATISTICS AND THE FACTUAL RECORD AT GREATER LENGTH.

LET ME BEGIN BY SAYING MINORITY COMMUNITIES HAVE HAD A CENTRAL PLACE IN MY CONSTITUENCY AS A MEMBER OF THE CITY COUNCIL, A CONGRESSMAN AND MAYOR. CITIZENS IN THESE COMMUNITIES ARE AMONG THE MOST COURAGEOUS, RESILIENT AND CIVIC-MINDED IN NEW YORK. DISPROPORTIONATELY PLAGUED BY CRIME AND POVERTY, THESE ARE CITIZENS WHO, OFTEN IN THE FACE OF DEPRESSING AND DESTABILIZING CONDITIONS, RESOLUTELY AFFIRM RELIGIOUS FAITH, DEVOTION OF FAMILY, AND NEIGHBORHOOD PRIDE.

IN TURN, THE NEW YORK CITY POLICE DEPARTMENT IS WIDELY ADMIRER AS ONE OF THE FINEST LAW ENFORCEMENT INSTITUTIONS IN THE WORLD. BOB MCGUIRE, WHO IS A SYMBOL OF MY COMMITMENT TO EXCELLENCE, HAS ESTABLISHED A NATIONAL REPUTATION FOR INTEGRITY, INTELLIGENCE AND DECENCY THAT IS A SOURCE OF PRIDE FOR ME AND I TRUST FOR ALL NEW YORKERS. THE DEPARTMENT'S CURRENT PROFESSIONAL LEADERSHIP IS WITHOUT PEER IN AMERICA, AND MANY OF ITS FORMER MEMBERS HAVE BECOME OUTSTANDING COMMISSIONERS AND CHIEFS IN CITIES AND TOWNS ALL ACROSS THE NATION. THE OVERWHELMING MAJORITY OF THE RANK AND FILE MEN AND WOMEN OF OUR POLICE FORCE ARE CONSISTENTLY BRAVE AND HUMANE, OFTEN IN THE FACE OF THE MOST AWFUL AND DISTRESSING CONDITIONS OF LIFE.

~~REDACTED~~  
~~REDACTED~~ D. THIS IS NOT TO SAY THAT THERE IS NO FRICTION, NO RESENTMENT OR NO ABUSES THAT--COMING FROM EITHER DIRECTION--NECESSARILY AFFECT THE RELATIONSHIP. SUCH A POSITION WOULD BE NAIVE, GIVEN THE COMPLEXITY AND DIMENSION OF THE PROBLEMS WITH WHICH BOTH MUST CONTEND. BUT I REPEAT: THIS IS A PRODUCTIVE AND MUTUALLY DEPENDENT RELATIONSHIP WHICH IS VITAL TO THE CITY'S HARMONY, SAFETY AND GROWTH.

THE REASONS FOR THIS BASICALLY SOUND RELATIONSHIP ARE NOT HARD TO DISCOVER. TO START, ALL CITIZENS OF WHATEVER RACE OR RELIGION WELCOME THE POLICE IN TIMES OF TROUBLE, AND ALL LAW-ABIDING CITIZENS WANT FREEDOM FROM THE CURSE OF CRIME. IN ADDITION, THE DEPARTMENT HAS FOCUSED SPECIFICALLY

ON IMPROVING ITS RELATIONSHIP WITH MINORITIES AND SEEKS TO CONFRONT BOTH REAL DIFFICULTIES, AND THE PERCEPTION OF DIFFICULTIES. EFFORTS HAVE BEEN UNDERTAKEN TO MAKE PRECINCT HOUSES PLACES OF DIALOGUE AND COOPERATION IN OUR COMMUNITIES. THE DEPARTMENT HAS THE LARGEST, MOST COMPREHENSIVE AND BEST FUNDED COMMUNITY OUTREACH PROGRAM IN THE COUNTRY. THE DEPARTMENT HAS INCREASED ITS REPRESENTATION OF BLACKS AND HISPANICS. THE DEPARTMENT'S RESTRAINT IN THE USE OF FIREARMS IS SUPERIOR TO THAT OF EVERY MAJOR AMERICAN CITY. ~~REDACTED~~

~~TRAINING IN THE USE OF FIREARMS, GUNS OR OTHER WEAPONS, THROUGHOUT~~  
~~THE DEPARTMENT'S TRAINING PROGRAMS.~~

THE DEPARTMENT'S CIVILIAN COMPLAINT REVIEW BOARD, ALTHOUGH UNABLE, SINCE IT WAS CREATED IN THE 1960'S, TO SATISFY EVERYBODY'S CONCEPTION OF WHAT ITS STRUCTURE AND FUNCTIONS SHOULD BE, NONTHELESS PROVIDES ~~DIRECT PUBLIC~~  
~~ACCESS TO AN INVESTIGATIVE PROCESS SUPERVISED BY CIVILIANS~~  
 FEW CITIES PROVIDE EVEN THIS TYPE OF RECOURSE. THIS ADMINISTRATION HAS DEVISED MANY OTHER AUXILIARY PRECAUTIONS. THUS, THE POLICE ACADEMY NOW DEVOTES ALMOST HALF OF ITS CURRICULUM TO COURSES IN HUMAN RELATIONS AND LEGAL RIGHTS, WHICH INCLUDE SPECIAL ATTENTION TO RACIAL AND ETHNIC SENSITIVITY. UNDER BOB MCGUIRE, THE POLICE DEPARTMENT NOW HAS PSYCHOLOGICAL SCREENING PROCEDURES FOR RECRUITS, AND VIOLENCE-PRONE IDENTIFICATION MECHANISMS FOR THOSE ALREADY ON THE FORCE. BOTH ARE CRITICAL INSTRUMENTS FOR ENHANCING PUBLIC CONFIDENCE. AND THE ~~YEAR-LONG INCIDENT INVESTIGATION~~  
~~UNIT~~ CREATED IN 1980 AS THE FIRST PERMANENT POLICE

COMMAND OF ITS TYPE IN THE NATION, DEMONSTRATES THE ENERGETIC CONCERN OF THIS ADMINISTRATION, THAT EVERY CRIMINAL ACT BASED UPON RACIAL PREJUDICE OR RELIGIOUS BIGOTRY BE VIGOROUSLY INVESTIGATED AND PROSECUTED.

THE POLICE HAVE ALSO SUBSTANTIALLY REDUCED VIOLENT CRIME IN THE MINORITY NEIGHBORHOODS OF THE CITY. WE ARE REBUILDING THE POLICE FORCE, AFTER THE HARD TIMES OF FISCAL AUSTERITY AND THE SERIOUS EROSION OF POLICE PRESENCE IN THE STREETS, THE PARKS AND PUBLIC PLACES OF OUR NEIGHBORHOODS. WE HAVE SIGNIFICANT NUMBERS OF COPS BACK ON THE BEAT IN THIS CITY, AND DRAMATIC INCREASES IN QUALITY-OF-LIFE ENFORCEMENT IN EVERYTHING FROM STREET PUSHERS OF MARIJUANA TO RED LIGHT RUNNERS. DIRECT CONTACT OF YOUNGER AND MORE ENERGETIC POLICE OFFICERS WITH THE PUBLIC IS EXPANDING ENORMOUSLY.

\* \* \* \*

TURNING NOW TO THE SPECIFIC QUESTIONS OF POLICE MISCONDUCT, LET ME SAY AT THE OUTSET THAT ~~I HAVE BEEN IMPRESSED TO SEE AN INCREASE IN COMPLAINTS ABOUT LACK OF COURTESY AND OFFENSIVE LANGUAGE FROM OUR POLICE OFFICERS,~~ SOME OF THESE COMPLAINTS RELATE TO RACIALLY OFFENSIVE REMARKS. THERE MAY BE EXPLANATIONS FOR THIS, BUT NO EXPLANATION IS SATISFACTORY. I PERSONALLY KNOW THAT WORDS DO STING AND WORDS OF PREJUDICE STING WORST OF ALL. ANY RACIAL REMARK BY AN OFFICER OF THE LAW IS INTOLERABLE. I KNOW BOB MCGUIRE SHARES THIS VIEW, AND ACCORDINGLY THE MOST VIGOROUS ADMINISTRATIVE, SUPERVISORY AND DISCIPLINARY MEASURES MUST BE IMPLEMENTED TO SEE TO IT THAT THIS PROBLEM IS ROOTED OUT.

LET ME TURN NOW TO THE SUBJECT OF THE USE OF EXCESSIVE FORCE BY THE POLICE. BOB MCGUIRE WILL DEAL WITH THE STATISTICS. FOR MY PART, I WANT TO MAKE CLEAR THAT -- WHATEVER THE STATISTICS -- EVEN ONE INCIDENT IS TOO MANY.

LET IT PLAINLY BE SAID THAT INEVITABLY SOME POLICEMEN WILL ABUSE THEIR POWERS. SUCH DEEDS ARE THE DEEDS OF INDIVIDUAL MEN OR WOMEN, WHICH MUST BE ROOTED OUT, CONDEMNED, AND PUNISHED BY THE DEPARTMENT. I HAVE REPEATEDLY EXPRESSED THE VIEW THAT SUCH DEVIATIONS FROM DECENT, PROFESSIONAL, AND LAW-ABIDING BEHAVIOR WILL NOT BE TOLERATED. AS MAYOR OF THE CITY IT IS MY RESPONSIBILITY TO ENSURE THAT ABUSIVE, BRUTAL OR CORRUPT ACTS OF POLICE OFFICERS BE INVESTIGATED, EXPOSED AND SEVERELY PUNISHED. AS LONG AS I AM MAYOR, THE LAW WILL BE RIGOROUSLY OBSERVED AND ENFORCED IN NEW YORK CITY WITH RESPECT TO OFFICERS AND CITIZENS ALIKE. I KNOW THAT THE CITY OFFICIALS WHO ARE WITH ME HERE TODAY CARE DEEPLY ABOUT THIS.

CRITICAL TO PUBLIC CONFIDENCE THAT JUSTICE WILL BE DONE IN CASES OF QUESTIONABLE SHOOTINGS OR OTHER USE OF EXCESSIVE FORCE BY POLICE, IS THE ESTABLISHMENT OF PROCEDURES THAT ENSURE INDEPENDENT AND OBJECTIVE FACT-FINDING OF EQUAL IMPORTANCE IS THE APPEARANCE OF FAIRNESS AND OBJECTIVITY IN SUCH INVESTIGATIONS. AS MADISON TAUGHT US, OUR WHOLE THEORY OF GOVERNMENT IS BUILT UPON THE RECOGNITION THAT MEN ARE NOT ANGELS. AND BECAUSE THEY ARE NOT, WE MUST DEVISE AND DAILY NURTURE PROCEDURAL PROTECTIONS. THE HISTORY OF LIBERTY IS THE HISTORY OF PROCEDURAL SAFEGUARDS, AND THE INTEGRITY OF PROCEDURE IS AT THE VITAL CENTER OF THE LAWFUL EXERCISE OF

THE POLICE POWER IN ANY ENLIGHTENED STATE.

IN NEW YORK CITY, THE INTERNAL PROCEDURES OF THE POLICE DEPARTMENT, THE OFFICES OF THE DISTRICT ATTORNEYS AND THE SPECIAL PROSECUTOR, THE UNITED STATES ATTORNEYS AND THE CRIMINAL UNIT OF THE CIVIL RIGHTS DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE, CONSTITUTE A THREE-TIERED, MUTUALLY INDEPENDENT, AND BROADLY RESPECTED JUDICIAL PROCESS. IN ADDITION, INDIVIDUAL CITIZENS HAVE FULL ACCESS TO THE COURTS THROUGH CIVIL LAW SUITS.

OVER THE YEARS INDICTMENTS HAVE BEEN RETURNED FOR THE EXCESSIVE USE OF FORCE BY SOME POLICE OFFICERS. IN CERTAIN OF THESE CASES, OFFICERS WERE CONVICTED, AND IN OTHER CASES OFFICERS WERE EXONERATED. IN SOME CASES WHERE THERE WERE EXONERATIONS IN THE COURTS, THE POLICE DEPARTMENT, UNDER A LESS STRINGENT BURDEN OF PROOF, HAS FIRED OFFICERS FOR ACTS OF MISCONDUCT.

ALTHOUGH I HAVE GENERALLY DEFERRED REFERENCE TO SPECIFIC FACTS TO THE TESTIMONY OF THE POLICE COMMISSIONER, I BELIEVE THAT THE DEPARTMENT'S RECORD HERE IS SUFFICIENTLY IMPORTANT TO WARRANT SOME SPECIFICS. IN FOUR CASES IN MY ADMINISTRATION, POLICE OFFICERS HAVE BEEN INDICTED FOR HOMICIDE BUT THEN EXONERATED BY THE COURT BUT, NEVERTHELESS, THE DEPARTMENT PURSUED DISCIPLINARY PROCEEDINGS AND DISMISSED THE OFFICER IN QUESTION.

WHAT IS CRITICAL IN A CONTROVERSIAL CASE IS FOR THOSE WHO HAVE A COMPLAINT TO TAKE PART IN THE PROCESS AND NOT TO

AVOID IT. MERELY TO ACCUSE IS NOT RESPONSIBLE. TO REFUSE TO PARTICIPATE IS TO CONSCIOUSLY INJURE THE FRAGILE EQUILIBRIUM SO VITAL TO MUNICIPAL HARMONY. WHAT IS CALLED FOR IS NOT GENERALIZED RHETORIC DESIGNED TO CONVINCE A COMMUNITY THAT IT HAS BEEN BETRAYED BY ITS INSTITUTIONS OF JUSTICE. BUT A SYSTEMATIC ANALYSIS THOUGHTFULLY CARRIED OUT OF THE FACTS OF EVERY CONTROVERSY, AND -- MOST FUNDAMENTALLY -- OF THE INSTITUTIONS IN PLACE TO DEAL WITH THE PROBLEM.

\*            \*            \*            \*

WHEN DEALING WITH A PROBLEM AS COMPLEX AND CRITICAL AS THAT BEFORE US, WE MUST PROCEED BEYOND THE REALITY, WHICH I BELIEVE IS BEING HONESTLY AND COMPREHENSIVELY ADDRESSED, AND CONFRONT THE PERCEPTION. I KNOW THAT THERE ARE UNDERSTANDABLE AND HONESTLY HELD FEARS IN THE MINORITY COMMUNITY ABOUT POLICE POLICY AND THE EXERCISE OF POLICE POWER. SOME OF THIS IS ROOTED IN EXPERIENCES IN OTHER PLACES WHERE THE POLICE ARE NOT SERVANTS OF THE PEOPLE BUT OF OPPRESSIVE OR DISCRIMINATORY GOVERNMENTS. AND SOME OF THIS IS AN ECHO OF THE UGLY HISTORY OF RACISM IN OUR OWN COUNTRY. NEITHER OUR COUNTRY, NOR OUR CITY, HAS YET OVERCOME THIS HISTORY. BUT WE ARE GOING TO KEEP ON MOVING TO DO SO.

SO TO THOSE WHO SHARE THIS PERCEPTION, I SAY, LET'S FIND WAYS TO DEAL WITH THIS TOGETHER, FIRST, BY ACQUAINTING EVERYONE WITH THE FACTS, AND THEN THROUGH THE LABORIOUS PROCESS OF BUILDING CONFIDENCE AND CIVIC PRIDE THROUGH MUTUAL RESPECT AND UNDERSTANDING. THE POLICEMAN ON THE BEAT AND THE CITIZEN ON THE STREET CANNOT BE SAFE WITHOUT EACH

OTHER. THE ONE CANNOT SECURE JUSTICE WITHOUT THE OTHER. TO  
 SOW DIVISION AND TO SUBVERT THIS CRUCIAL ALLIANCE IS WRONG,  
 IT IS DANGEROUS, IT CAN LEVY A TERRIBLE COST UPON THE  
 COMMUNITY.

~~I BELIEVE, AND I BELIEVE MOST NEW YORKERS BELIEVE, THAT~~  
~~THERE IS LESS POLICE BRUTALITY HERE NOW THAN THERE WAS 20~~  
~~YEARS~~ OR 10 YEARS AGO, OR 50 OR A HUNDRED YEARS AGO. I  
 WELCOME THIS IMPROVEMENT AS I WELCOME OUR SUBSTANTIAL RECENT  
 IMPROVEMENT IN FIGHTING ROBBERY AND OTHER VIOLENT CRIMES.  
 BUT WE MUST CONSTANTLY RAISE OUR STANDARDS, CONSTANTLY RAISE  
 OUR EXPECTATIONS.

\* \* \* \* \*

NOW TO CONCLUDE. I AM 58 YEARS OLD AND GOD HAS BLESSED  
 ME WITH OPPORTUNITIES THAT FEW WILL RECEIVE DURING THEIR  
 LIFETIME, THE MOST IMPORTANT ONE OF WHICH IS BEING THE MAYOR  
 OF THIS EXTRAORDINARY CITY.

I HAVE ONLY ONE GOAL, AND THAT IS TO STRIVE TO BE THE  
 BEST MAYOR THIS CITY HAS EVER HAD. HOW CLOSE I COME TO THAT  
 GOAL IS A JUDGMENT FOR FUTURE HISTORIANS. BUT IN SEEKING  
 THAT GOAL, I HAVE ALWAYS BELIEVED THAT PUBLIC SERVICE IS THE  
 NOBLEST OF PROFESSIONS IF IT IS DONE HONESTLY AND IF IT IS  
 DONE WELL. MY HONESTY IS NOT UNDER ATTACK, AND EVEN MY  
 BITTEREST OPPONENTS CONCEDE ME THAT. SO LET ME TALK ABOUT  
 DOING THE JOB WELL.

THERE IS NO OTHER JOB THAT BRINGS YOU SO CLOSE TO PEOPLE  
 EACH AND EVERY DAY. IN THE COURSE OF A YEAR, I TOUCH HANDS  
 WITH EVERY SEGMENT OF OUR POPULATION -- WHITES AND BLACKS,  
 HISPANICS AND ASIANS. I HAVE AS MY CREDO THAT ETHIC OF MY

FATHERS WHICH IS: "JUSTICE, JUSTICE SHALT THOU RENDER." JUSTICE FOR ME, IN THE WORDS OF A UNITED STATES SUPREME COURT JUSTICE, MUST BE COLOR-BLIND. AND THAT IS HOW I MANAGE MY PERSONAL AND PROFESSIONAL LIFE.

I BELIEVE THAT ALL CITIZENS HAVE A RIGHT TO BE SAFE IN THEIR HOMES AND ON THE STREETS. AND I ALSO BELIEVE THAT THEY HAVE EVERY RIGHT TO LOOK AT A POLICE OFFICER AND EXPECT NOT ONLY PROTECTION BUT RESTRAINT, PROFESSIONALISM AND COURTESY. I HAVE SAID TO THE POLICE OFFICERS GRADUATING FROM THE ACADEMY, "I WILL STAND UP AND SUPPORT YOU WHEN YOU ARE RIGHT AND I WILL DENOUNCE YOU WHEN YOU ARE WRONG." I HAVE ALSO SAID TO THOSE GRADUATING, "THERE ARE SOME ROTTEN APPLES AMONGST YOU NOW WHO WILL DISGRACE US WITH CORRUPTION OR BRUTALITY." AND I HAVE SAID TO THEM, "WHEN WE DISCOVER THAT BAD APPLE AND HE OR SHE AFTER DUE PROCESS IS FOUND GUILTY, WE WILL DISCIPLINE YOU, SUSPEND YOU, AND FIRE YOU." IF THAT MESSAGE FOR WHATEVER REASON HAS NOT BEEN SUFFICIENTLY KNOWN TO CITIZENS, THEN LET ME ASSURE YOU THAT I WILL EMPHASIZE IT ON EVERY OCCASION.

THIS IS A REMARKABLE CITY. THERE IS NONE LIKE IT IN THE WORLD. AND ITS UNIQUENESS STEMS FROM THE DIVERSITY OF ITS PEOPLE -- THE RACES, THE RELIGIONS, THE ETHNIC BACKGROUNDS AND THE NATIONALITIES, ALL OF WHICH MAKE UP THE MOSAIC OF THIS CITY AND ALL OF WHICH MUST BE RESPECTED. THERE ARE UNDOUBTEDLY SOME WHO BELIEVE THAT I HAVE NOT SUFFICIENTLY ARTICULATED THIS PHILOSOPHY. IF I HAVE OFFENDED THEM I AM TRULY SORRY. I HAVE TRIED TO HAVE THAT MESSAGE RING LOUD AND CLEAR THROUGHOUT THIS CITY AND WILL CONTINUE TO DO SO.

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Mr. CONYERS. Thank you, Mr. Mayor. Commissioner Robert McGuire, welcome to the hearing.

Commissioner MCGUIRE. Thank you, Mr. Chairman.

Mr. CONYERS. You are free to proceed. Do you have a copy of your statement available for the committee?

Commissioner MCGUIRE. Yes, we do.

Mayor KOCH. We will get that to you, Mr. Chairman.

[Prepared statement of Robert McGuire follows:]

STATEMENT OF ROBERT J. MCGUIRE AT POLICE HEARINGS

MR. CHAIRMAN, the Subcommittee has already received my comprehensive testimony on the matter under review, and the Department's official report and analysis with respect to ninety-eight specific cases raised at the previous hearing on September 19, 1983. I believe these two exhibits conclusively refute the allegation that systemic and pervasive brutality is a characteristic of policing in New York City. On the contrary, I believe that a fair appraisal of both the public record and the daily performance of the overwhelming majority of New York's police force demonstrates beyond question professional restraint in the use of force and racial sensitivity in dealing with all sections of the public. In those cases where individual officers have not lived up to these high standards of professional conduct, they have been aggressively and appropriately disciplined.

I regret that the Subcommittee has not conducted its proceedings in a responsible manner. Your premature and politically motivated judgment of the issue, Mr. Chairman, has recklessly injured the reputation of the Department. It may have polarized our City. It has diverted the attention and energies of all of us from the real and constant source of fear in all of our neighborhoods, especially our minority neighborhoods, the fear of violent crime. It may have injured the solidarity between our police officers and those

who live and work in these neighborhoods, a relationship which has been a source of civic strength and pride.

When I leave office shortly, however, I will do so with the conviction that the strength of the decency and good will of both our police officers and all the citizens they serve is superior to the destructive consequences of these proceedings.

I am prepared to answer any questions you may have after Chief Bracy makes a brief statement.

TESTIMONY OF  
ROBERT J. MCGUIRE,  
POLICE COMMISSIONER  
OF THE CITY OF NEW YORK,  
BEFORE THE SUBCOMMITTEE, ON CRIMINAL JUSTICE  
OF THE HOUSE COMMITTEE ON THE JUDICIARY

New York City  
July 18, 1983

When I became New York City's Police Commissioner in 1978, I accepted charge of one of the world's great law enforcement institutions. It had achieved international eminence because of the excellence of its professional work. Its facility for dealing with and resolving problems of vast scale, had given it a primacy in the work of policing. But more than anything else, its public policy, its philosophy of policing, its attitude toward police power, marked it as a progressive institution worthy of the people of New York City.

There are three fundamental components of this public policy: restraint in the use of force because of a respect for human life; the treatment of all citizens on an even-handed basis; and the imposition of uncompromising standards of probity and discipline upon officers of the law, because abuse of authority is repugnant to the social order.

Given the size and scope of our Department, there will always be officers who might not live up to their oaths. I have repeatedly asserted, in the most unambiguous and uncompromising terms, my intolerance of any deviation from the high standards of conduct and fairness required of a New York City police officer.

With reference to the use of excessive force or brutality, I regard it as the most egregious violation of a police officer's oath.

Let me share with you some of the results of our efforts to prevent misconduct. Since the adoption of stringent control mechanisms in 1973, the total number of yearly shootings by police officers has dropped by 39.2%. In 1982, the number of complaints to the Police Department of excessive force involving injury dropped by 31.4%. Studies of police shootings across the country reveal that New York City has the lowest incidence of police shootings of any major American city. At the same time, the number of arrests is up, while the incidence of violent crimes is significantly down.

I believe that these positive figures are largely the result of an institutional commitment by the Police Department to actively promote racial understanding, community outreach and a police force representative of New York's diverse population. This direction is evident in the current composition of the Police Force and the measures which we have taken to train all officers in the proper, use of force.

#### HIRING AND COMPOSITION OF THE POLICE FORCE

Over 8,000 new, young officers have been hired by this Administration. Since 1978, minority membership in New York's police force has risen by almost 50%, from 2729 to 4077. As a percentage of the force, we have increased minority participation from 11.1% to 17.6%. In part, this increase is due to court-ordered quotas imposed in 1979. More recent hirings, however, have not been pursuant to any quota and have still reflected increased minority hiring. I believe part of the reason lies in the changed

perception of the Police Department as a good place for blacks and Hispanics to be employed. We have actively encouraged this perception through an aggressive affirmative action program.

The Department conducted extensive publicity campaigns in minority areas and expended almost a quarter-of-a-million dollars to set up and conduct tutorial classes at decentralized locations across the City in connection with civil service examinations in 1979, 81 and 82. This enabled us to assist over 18,000 minority candidates in preparing for the qualifying examinations. Partly as a result of these efforts, the most recent examination, conducted last year, has resulted in a passing "pool" including over 30% black and Hispanic candidates.

I have also appointed during my administration three minority Deputy Commissioners, one minority Bureau Chief, one minority borough chief, three minority deputy chiefs, and seven minority inspectors and deputy inspectors. I also appointed a minority as the Department's Chief Surgeon. These appointments represent a welcome increase of influence for blacks and Hispanics in the command structure of the Department. I believe that this increased representation of minorities in all ranks will and should continue. Meanwhile, our Civilianization Program has placed more than 3,000 black and Hispanic civilians in stationhouses and other police facilities throughout the City.

#### SCREENING OF POLICE OFFICERS

The training and selection of these new officers has been rigorously designed to insure that we have the most capable,

racially sensitive and professional officers on the street. When the Department resumed large scale recruiting in 1977 after the City's hard times of fiscal austerity, it became one of the few police agencies in the nation to screen recruits not only for physical and intellectual fitness, but for psychological fitness to exercise the sensitive public authority inherent in police power. A Candidate Fitness Review Board, was established to carefully review the overall fitness of new applicants. Our procedures, which have withstood repeated court challenges, have since 1979 identified and weeded out unqualified recruits. We regard this screening process as a responsible step to insulate the public from the potential hazards of police power in the hands of persons fundamentally unsuitable to be trusted with it.

I have also instituted an ongoing review of the fitness of our present force. In October 1981, I established the Violence Prone Officer Review Committee, thereby placing directly upon the Department's First Deputy Commissioner the responsibility for removing from public contact officers with personality difficulties that might give rise to violent behavior, even though no established or provable violent conduct had occurred. Many of the officers identified by this program have been referred to our respected Psychological Services Counseling Unit.

#### ACADEMY AND ONGOING TRAINING

The recruit training program in our Department is another example of the importance accorded to human relations sensitivity in policing. Almost half of the five-month training

curriculum in the Police Academy is devoted to courses in psychology and human rights. Every recruit receives instruction on the evils of racial and religious bigotry. All recruits also receive thorough training in the proper use of firearms and non-lethal force. Special emphasis is also given to the Department's strong intolerance of police abuse of any kind, including discourtesy and verbal abuse.

One area of police procedural reform of particular relevance to this hearing is in the method with which officers deal with emotionally disturbed persons, who often figure in violent or potentially violent situations.

Field procedures for dealing with emotionally disturbed persons were broadly revised in April of 1981 to ensure safe and humane treatment of such persons. First units arriving on the scene are required to send for and await a superior officer before attempting any physical contact with the individual in question. The use of mace, tear gas, restraining instruments, baton and all alternatives to deadly force must be pursued. Only where there is imminent danger of death to the officer or others in the vicinity is deadly force authorized.

In 1982 police officers removed 10,678 emotionally disturbed persons to hospitals, without loss of life either to those aided or to police officers.

#### POLICY AND RESTRAINT IN THE USE OF FIREARMS AND OTHER DEADLY FORCE

The most relevant measure of respect for human life in the New York City Police Department is, I believe, its record and

procedures regarding restraint in the use of firearms. In 1973, the Police Department adopted an exhaustive series of "Guidelines" for the discharge of weapons. These Guidelines, which went far beyond the Penal Code of New York State, provide that an officer may fire his weapon only to defend his own life, or the life of another. He may not fire at a fleeing suspect or automobile. Indeed, even warning shots are prohibited.

In 1973, the Department created its Firearms Discharge Review Board, a three-tiered investigative, assessment and disciplinary process under which every shot fired by a New York City police officer, is formally investigated be it accidental or intentional, whether a bullet hits someone or not. The investigation begins at the precinct or squad level, then by a Borough Board comprised of both senior and junior officers, and finally by a Headquarters Board of the most senior and responsible service and civilian officials of the Department. This procedure administers the formal firearms discharge guidelines of the Department, and determines whether each firing was acceptable under the guidelines. In the case of violators, it orders retraining of the officer or the filing of formal disciplinary charges against him. As I indicated earlier, since the creation of the Firearms guidelines and the Review Board in 1973, shooting incidents involving New York City Police have declined by 39.2%.

The firearms discharge, control and disciplinary mechanism of the Department has been the subject of wide commentary in the professional journals. Professor James Fyfe of American

University has done extensive research in this area. The primary conclusion of his study of New York police shooting patterns, which was concurred in by Professor James Q. Wilson of Harvard in a 1981 article, was that racial antagonism plays no part in the record of police shooting incidents in New York City. The geographical distribution of shootings across the City was found to be directly related to those areas in which there is a high incidence of violent crime. In addition, Fyfe also concluded that the guidelines have resulted in a significant reduction in overall police shootings.

In 1980, a nationally televised documentary highlighted the conclusions of a study commissioned by the United States Department of Justice. That documentary, which compared police shootings of unarmed persons who had not assaulted officers and were fleeing, concluded that Philadelphia police shot at a rate 34 times higher than New York police. In overall shootings, their rate was 50% higher.

Consistent with these findings, a study commissioned by the International Association of Chiefs of Police and released in 1982 found that New York City was a leader in firearms restraint among 54 major metropolitan police departments. Among its conclusions are the following, some of which are graphically illustrated on a set of charts to which I direct your attention.

The rate of police homicide per  
100,000 population is at least 50%  
lower in New York than in Chicago,

Los Angeles and Philadelphia, 100% lower in New York than in Cleveland, Washington, Baltimore and Houston, 150% lower in New York than in Detroit, and 200% lower in New York than in New Orleans.

The rate of police homicide per number of violent crimes, demonstrated that police in Los Angeles, Chicago, Philadelphia and Detroit fire their weapons at least 2½ times the frequency of New York police.

In Houston the rate is six times higher.

The rate of homicide per 100 police officers further showed that the individual Los Angeles officer is 2½ times, the individual Detroit officer three times and the individual New Orleans officer five times as likely to have killed a citizen as an individual New York officer.

As measured by these indicators, therefore, it is apparent that the number of deaths resulting from police shootings within the City of New York is substantially less than that of

other comparable major American Cities.

Finally, it must be noted that the absolute as well as the comparative number of police shooting incidents has dramatically declined in recent years. The Firearms Discharge Review Board's annual report for 1982 shows a 23.2% reduction in shooting incidents over 1981, a 32% reduction in violations of the Guidelines, and a 19.4% decrease in the number of members involved in shooting incidents. These results were achieved in spite of a significant increase in injuries to officers and weapons recovered from offenders involved in these incidents. The reductions have further occurred despite the fact that, during my service as Police Commissioner, 27 officers have been killed and 113 wounded by offenders in the course of commission of crimes.

*Appendix A*

I now direct your attention to a chart which summarizes, for the period 1970-1973, the period 1974-1978 and the period 1978 to the present, shooting homicides by Police. In overall shooting homicides, you will note that during the years 1978-1983 there was a 46.3% decrease on an annual average basis when compared to the 1970-73 period. And virtually no change when compared to the 1974-77 period.

With respect to shooting homicides of Blacks, there was an 18.9% decrease during the period 1978 to the present when compared with the period 1974-1977.

With respect to shooting homicides of all minorities, during the period 1978 to the present, there has been a 5.8% decrease when compared to the period 1974-1977.

CIVILIAN COMPLAINT REVIEW BOARD

Another valuable institutional innovation for the restraint and inhibition of improper police conduct is the Department's Civilian Complaint Review Board, which provides our citizens with complaint access to an investigative process supervised by civilians. Many American cities provide their citizens with no such machinery of this type. The Board's Director, Assistant Commissioner Charles Adams, is here with us today. Let me say that this Board is not in all respects satisfactory to all those with differing and understandable interests in its function and operation. There are many people who believe that the Board's disciplinary authority should be independent of the Police Department. That is a political

judgment, however, which has previously been passed upon by the voters of New York City. The seven member Board includes three minority persons. All members are civilian employees of the Department entirely outside the membership and command structure of the police force, and as long as I have been Police Commissioner, I have not heard or received any complaint questioning their integrity, diligence or objectivity. The Board has been increasingly utilized by citizens over the past several years, in part, I believe, as the result of our distribution in 1981 of 300,000 pamphlets describing its location and function.

In functional and practical terms, this is what the Board does: it receives complaints directly from the public and initiates investigations of police misconduct. In many cases, the Board is able to conciliate complaints in an informal manner. The Board also serves as a vital identifier of problem officers who may have difficulties in dealing with the public. It provides pertinent information where patterns of questionable behavior suggest that social or psychological counseling may be necessary. I want to emphasize that this may occur even in cases where complaints against an officer may be unsubstantiated because of lack of evidence, or failure of complainants to press their complaints.

A critical role of the Civilian Complaint Review Board is thus to provide yet another layer of control, monitoring and investigation of alleged police misconduct. Like other measurements I have referred to, the number and analysis of cases

prosecuted by the Board indicates that the Department has been generally successful in this area, although some problems remain.

The 1982 statistics, for example, show a disturbing overall increase of 33% in complaints filed. The increase, has come predominantly in the category of discourtesy and offensive ethnic, racial or obscene language of these there were 115 ethnic or racial slur complaints. However, allegations of force where some injury is claimed have dropped by 31.4% from 1296 to 869.

Of course, 869 incidents of excessive force, if proven, are far too many. But it must be borne in mind that 664 of these cases, or 80%, involved cases where there was no documented injury. Furthermore, of the 869 cases filed, 393 of the complainants did not choose to follow through, or formally withdrew their complaints. Another 125 cases were conciliated by the parties.

The primary mechanism for maintaining discipline in the Department in these and other similar cases in the Advocates Office, which brings charges and specifications before Trial Commissioners against any officer who is found to have violated the Rules and Procedures of the Department. Final disciplinary and penalty authority rests with me. I have made it unmistakably clear to all members of the Department that excessive force will be met with severe punishment.

Indeed, during the past 5½ years, 54 police officers were arrested for a variety of assault-related crimes, including homicide, assault and reckless endangerment. Nine of these

officers were convicted in the criminal courts and dismissed from the police service by the Department. Four other police officers who were acquitted in the criminal courts were nonetheless dismissed from the Department. Six of these cases are still pending in the criminal courts. Furthermore, in 64 other cases involving allegations of unnecessary force, but no criminal proceedings, five officers were fired and 59 officers were disciplined with penalties including suspensions or fines.

Beyond the internal, investigative and disciplinary mechanisms of the Police Department, there are numerous external governmental entities that monitor and punish police misconduct. The five District Attorneys Offices, Grand Juries, the United States Attorneys offices, and the United States Justice Department play critical roles in this area.

However, no mechanism, internal or external, can effectively serve the public if those who have complaints refuse to submit to lawful and systematic procedures designed to assess such complaints. In one recently celebrated case, the Reverend Lee Johnson refused to submit himself to the formal processes of the Civilian Complaint Review Board, the District Attorney, or the FBI. While the Department has instituted its own complaint and investigation in this case, our efforts have been stymied by Rev. Johnson's failure to cooperate.

#### THE INCREASED EFFECTIVENESS OF POLICE ACTIVITY

As Police Commissioner, I believe that any complaints of police misconduct are cause for concern. However, in evaluating

the number of complaints, it must be borne in mind that the 24,000 New York City Police Officers have many millions of documented contacts with the public. Indeed, if one compares the total number of complaints of police misconduct against the approximately one million arrests made and summonses issued, the approximately one million moving violations in traffic incidents, the approximately three million responses to 911 calls, and the many millions of daily contacts, the rate of complaint is placed in some perspective. The increase in some of our activities in these areas is illustrated on another chart to which I direct your attention.

Beyond the sheer size of the police effort in 1982, the central point is that at the same time that force complaints and shooting incidents were down, violent crime in this city was vigorously attacked and substantially reduced. This reduction has been accomplished with a minimum of force. In 1982, for example, the police seized 9,864 handguns from individuals without shots being fired by anyone. This reflects the professional restraint of New York City officers even when they are at risk.

While these results against violent crime were being achieved, a broad-based campaign was undertaken to win back the streets, the parks and the public areas of our neighborhoods for their residents. As Harvard Professor James Q. Wilson noted in the March, 1982 issue of The Atlantic, when visible police street presence and patrols disappear from the public life of the City, the whole range of petty offenders from red light runners and marijuana pushers, to prostitutes, derelicts and disorderly youths

will seize the streets. No one can deny this happened to the quality of life in many sections of our City as the Police Force dwindled, by 30%, in the lean years of the late 1970's. New Yorkers became accustomed to ignoring quality of life laws because there was so little enforcement. That long ordeal, for the Department and for the City, has come to an end. The rebuilding of the Force is underway. Overall, the number of arrests for narcotics, prostitution, disorderly conduct and gambling has increased by over 50% during the past two years.

This substantial effort was not made without a clash of wills between police officers and the loiterers, disorderly teenagers and traffic offenders. I believe that this increased activity with respect to both major and minor offenses, when combined with the relative youth and unquestionable zeal of our new officers, is at least one of the causes for the increase in "discourtesy" complaints at the Civilian Complaint Review Board. This is a problem which we can and must address through additional training, close supervision and, where necessary, appropriate discipline.

#### COMMUNITY OUTREACH

Finally, I would like to describe the specific community outreach programs which we have created to directly improve the Department's relationship with the public.

The comprehensive community relations program maintained

by the Department reinforces the strong policy encouraging racial sensitivity and community understanding. In sheer size and scope, the community outreach program of this Department has no equal in the country. Our community relations operations have an annual budget of \$16.9 million. The full-time staff involved in these efforts is 399 persons. New York City's budget and staff commitment are larger than those of Los Angeles, Chicago, Detroit, Baltimore and Houston combined. We have a Deputy Commissioner, William Perry, whose responsibilities are exclusively devoted to hearing and assisting the communities and neighborhoods of the City as they struggle to deal with crime and its consequences. His direct contacts with almost all major community organizations in the City, through visits, telephone conversations and letters, number in the thousands each year.

Parenthetically, it has been suggested that I have personally been unavailable to community groups and leaders. This is not true. Since assuming office, I have had over 200 formal meetings with such groups, and my door remains open.

We have during the past five years doubled the size of the Auxiliary Police, to the imposing number of 8,000 members, over 50% of whom are minority citizens. The participation of these officers has brought enormous mutual benefits to all City neighborhoods and the members of the regular police force.

Our community youth programs are large and diverse. Eight hundred eighty-five disadvantaged youths have been provided with jobs in the Police Department this summer. Our Youth

Dialogue Program, which seeks to put concerned officers and minority boys and girls together for constructive discussion about self-improvement, the value of education and the importance of community service, involves approximately 4,000 young people and 350 police officers. The Summer Youth Recreation Program has ongoing sports, crafts and day trips for over 43,000 youngsters, three-quarters of whom are from minority families.

Our Model Block Program in the minority neighborhoods of northern Brooklyn is a joint police-community program to reduce crime and eliminate destabilizing features of inner city life. .

In every precinct of our City we foster dialogue and involvement with the police through our community councils. Our files are full of letters from neighborhood merchants, businessmen, parents, teachers and young people praising our commanders and our patrol officers for their bravery, their courtesy and their concern for the neighborhoods they protect. These expressions of support come no less from minority communities than from other neighborhoods.

One of the most innovative programs which we have created to preserve good community relations and effective law enforcement is the Bias Incident Investigation Unit established in 1980. To my knowledge, it is the first permanently staffed, single mission command of its type in the nation. Since its creation it has successfully investigated numerous incidents of racial, ethnic or religiously biased criminal behavior. The BIAS Unit is a concrete manifestation of this Administration's

commitment to racial, ethnic and religious harmony in this city.

This has been a long statement on a very serious subject. I would like to close with a quotation from a speech I gave this Spring to over 1,600 new police recruits in a graduation ceremony held at Madison Square Garden:

You are members of the finest police department in the world, which provides key services in the most complicated city in the world, with the most diverse population of any city in the history of the world. As such, you are the personal representative of your department in your everyday relationship with our citizens and with visitors to our city. It is essential that you always remember, whether you are on or off duty, that you are a police officer. You have taken an oath to enforce the law, Equally important and implicit in your oath is the obligation to obey the law in your own lives. You will be held to a

higher standard of conduct than your fellow citizens, and by the Department, and this is how it must be. For you alone have been given the legal authority backed up by a shield and a gun to enforce the law, to arrest people and, if necessary to take a life in the performance of your duties. No other group in our society has that power and it is an awesome responsibility. Thus it is perfectly appropriate for your fellow citizens to demand that their police officers demonstrate, both in their public and private lives, good judgment, restraint in the use of force, the highest level of integrity, and respect for the law and for legal process. How can we ask the public to place its confidence in a police officer who is either unwilling or

unable to live up to these high standards. How can we ask our fellow citizens to support a police officer who violates the narcotics laws or the vehicle and traffic laws, or uses excessive or unnecessary force in the execution of his or her duties; who is unable to control the use of alcohol, or is rude and vulgar, or engages in the use of ethnic or racial slurs. Make no mistake about it, you will be held to very high standards, and the reason for this is clear. You are the law enforcers and the peace keepers in our society and your fellow citizens are willing to trust you with that power only so long as you demonstrate that you are capable of handling it properly and with professional restraint.

Thank you for your attention.

Exhibit to the testimony of Robert J. McGuire, House Committee  
on the Judiciary, Subcommittee on Criminal Justice, July 18, 1983

TOTAL FIREARM DISCHARGES BY POLICE

PERIOD 1970 - 1973

1970 - 634

1971 - 810

1972 - 994

1973 - 665

3103

776 annual average

PERIOD 1974 - 1978

1974 - 526

1975 - 454

1976 - 378

1977 - 434

1792

448 annual average

PERIOD 1978 - Present

1978 - 418

1979 - 394

1980 - 425

1981 - 452

1982 - 375

1983 - \* \*

2064

413 annual average

decline of 46.8% from 1970 - 1973 average

decline of 7.8% from 1974 - 1978

\*. 1983 statistics unavailable

Source: New York City Police Department

SHOOTING HOMICIDES OF MINORITIES (Blacks & Hispanics) \*PERIOD 1974 - 1978

1974	-	40
1975	-	37
1976	-	22
1977	-	<u>23</u>

122

Annual average 30.5

PERIOD 1978 - Present

1978	-	30
1979	-	32
1980	-	24
1981	-	27
1982	-	30

(to date)

1983 - 15

158

Annual average 28.72

5.8% decrease from 1974-78

\* Statistics on race of shooting opponents unavailable prior to 1974.

SHOOTING HOMICIDES BY POLICE:PERIOD 1970 - 1973

1970	--	50
1971	-	93
1972	-	66
1973	-	<u>58</u>

267            66.7 annual average

PERIOD 1974 - 1978

1974	-	43
1975	-	42
1976	-	27
1977	-	<u>30</u>

142            35.5 annual average

PERIOD 1978 - Present

1978	-	40
1979	-	36
1980	-	28
1981	-	36
1982	-	39
to date) 1983	-	<u>18</u>

197            35.8 annual average

46.3% decrease from 1970 - 73 average

0.8% increase from 1974 - 78 average

SHOOTING HOMICIDE OF BLACKS BY POLICE (Hispanics excluded) \*PERIOD 1974 - 1978

1974	-	26
1975	-	25
1976	-	14
1977	-	<u>14</u>

79

Annual average 19.75

PERIOD 1978 - Present

1978	-	18
1979	-	18
1980	-	19
1981	-	13
1982	-	10

(to date)

1983 - 10

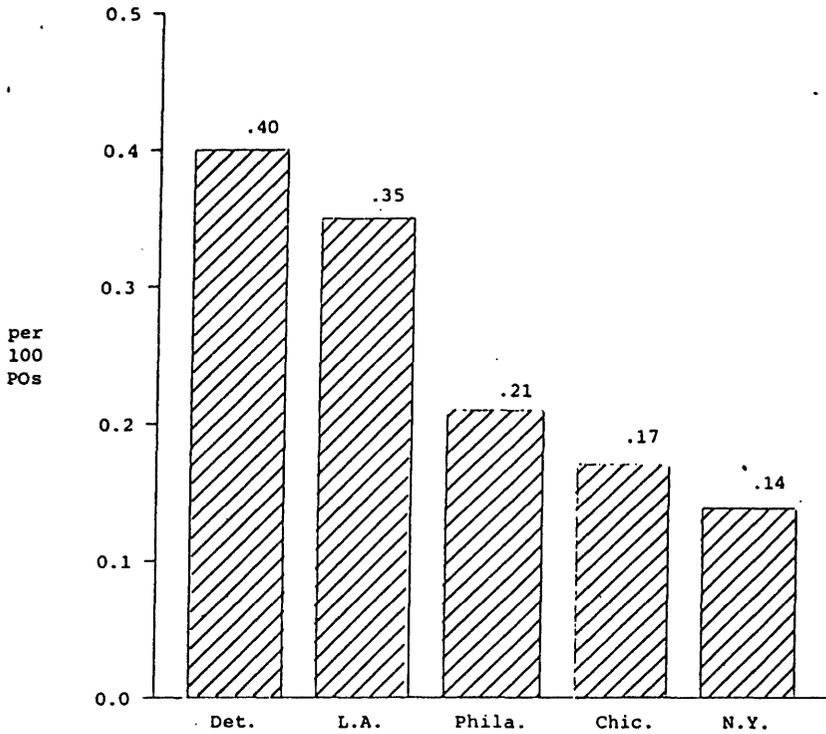
88

Annual average 16.0

18.9% decrease from 1974-78

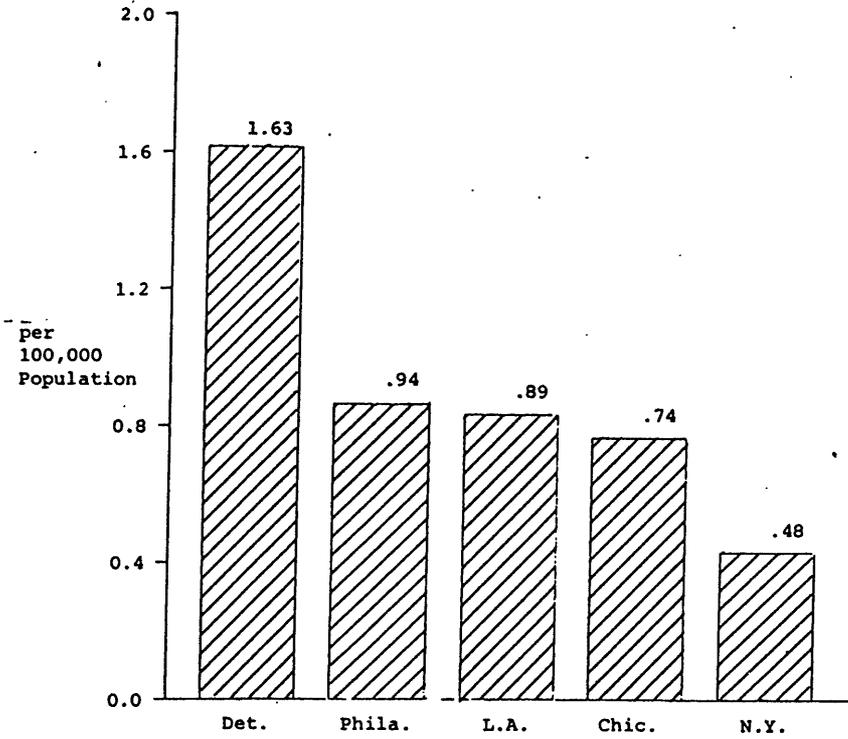
\* Statistics on race of shooting opponents unavailable prior to 1974.

## RATE OF HOMICIDE BY POLICE



Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

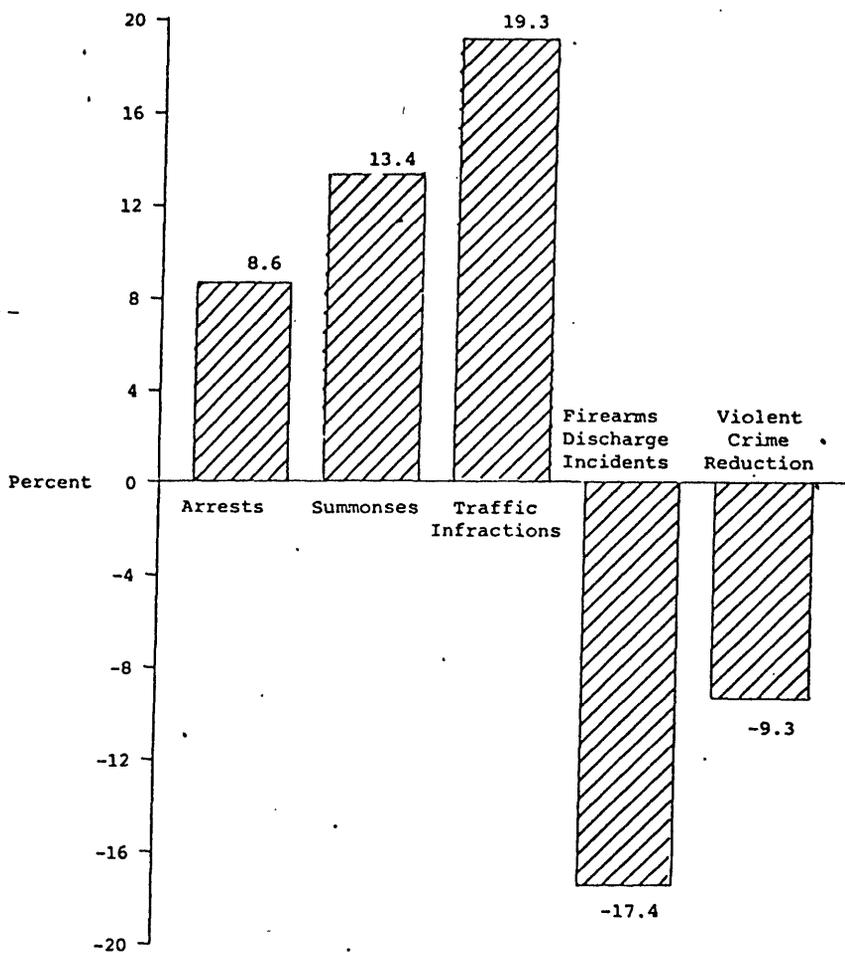
## RATE OF HOMICIDE BY POLICE



Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

N.Y.P.D. ENFORCEMENT ACTIVITY

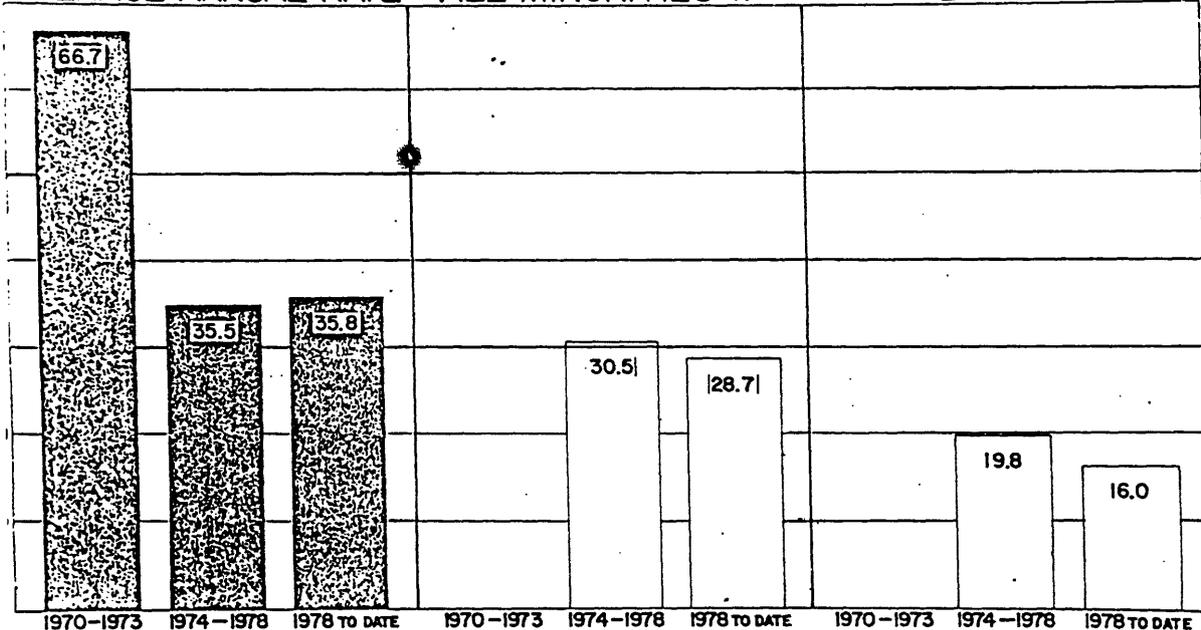
Change from 1981 to 1982



# HOMICIDES BY POLICE

AVERAGE ANNUAL RATE ALL MINORITIES \*

BLACKS \*



PRIOR TO 1974, DATA ON RACE OF PERSONS KILLED BY POLICE NOT AVAILABLE.

SOURCE: NEW YORK POLICE DEPARTMENT





UNION THEOLOGICAL SEMINARY • 3041 BROADWAY AT KENNEDY MEMORIAL PLACE, NEW YORK CITY 10027 • TELEPHONE 212-14

FOR RELEASE May 5, 1983

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STATEMENT BY THE REVEREND DONALD W. SHRIVER, JR., PRESIDENT,  
UNION THEOLOGICAL SEMINARY, NEW YORK

I am Donald Shriver, the President of Union Theological Seminary in the City of New York.

I am speaking to you today as head of Union Seminary, an institution of higher learning whose life and history have been intertwined with those of New York City for nearly 150 years. I am speaking also as a teacher and pastor. In all three of these ways I have very central responsibilities toward Union's students. And I am speaking, too, as a citizen of this city.

Early last Saturday evening, a first-year graduate student at Union Theological Seminary, the Reverend Lee Johnson, was stopped by two New York City police officers as he, accompanied by two friends, was driving his car on Lenox Avenue.

One of the police officers approached the Reverend Mr. Johnson's stopped car and requested his driver's license, registration, and insurance card. Mr. Johnson asked to be allowed to get out of the car in order to get at the documents; the request was denied and the officer locked the car door. Mr. Johnson asked why he had been stopped; his question received only profanity in response. Mr. Johnson identified himself as a clergyman and remarked that the officer must be inexperienced if he addressed any citizen in that way.

The officer unlocked and opened the car door, attempted to strike Mr. Johnson in the face, then struck him repeatedly on the leg with a flashlight, and ultimately pulled him from the car.

A second officer joined the first. Mr. Johnson was handcuffed and, while handcuffed, was repeatedly struck with a nightstick and thrown against the car.

He was put into the front seat of a police van and told that he was under arrest. He was not told his offense.

At the 28th Precinct Mr. Johnson was attacked verbally, both with explicit racial epithets such as "nigger" and with disparaging remarks about his religious beliefs and affiliations ("I don't believe in that shit anyway, Reverend" and "You don't pay no taxes anyway").

He was removed to a stairwell and then taken upstairs to a room containing a cell; in both places, while handcuffed, he was again beaten, choked, and kicked by the same two officers who had arrested him. He was told, "I am going to teach you a lesson, nigger" and "When you open your mouth, nigger, you had better say Sir."

Mr. Johnson was released by the police at about 9:30 that evening. As far as he knows, he is not charged with any crime. He was, however, given three summonses for motor vehicle violations.

Mr. Johnson was then able to return to his apartment at Union Seminary and to his wife and baby daughter. Accompanied by a Seminary security guard, he then sought and received treatment of his injuries at the emergency room at St. Luke's Hospital.

I hardly know how to express to you the degree of outrage, shame and despair that I feel as I recount these events..

I feel outrage that this young man was threatened, insulted, humiliated and beaten by the police of this city.

I feel shame that my institution, which had invited this young man to join its community, is unable to assure him of protection by the police, protection of life and limb and of dignity. Shame, too,



# NAACP report hits violence by policemen

New Orleans (UPI)—Police violence and killing of blacks is increasing because of racism, poor police training and refusal of federal authorities to prosecute officers, an NAACP official said yesterday.

"Policemen feel they have the authority to execute street justice," said general counsel Thomas Atkins.

"They make a determination a person is guilty and needs to be punished. And sometimes the punishment results in death."

Atkins released the results of a major NAACP study that concluded that nonwhite Americans comprised 47% to 50% of persons who were killed by police.

"THE INCIDENCE of police violence has been growing around the country," he said. "A disproportionate percentage of those victimized by police violence are minorities and the highest proportion are black males."

Officials said the study was based on federal crime reports, research and interviews with victims and local officials in each of the NAACP's seven regions.

Atkins said vestiges of traditional racism, poor training procedures and ineffective leadership by police chiefs contributed to the growing problem of police violence toward citizens.

The federal government's decision not to prosecute officers involved in shootings has exacerbated the problem, Atkins said.

THE STUDY recommends that police be prevented from shooting at fleeing felons and discontinue the policy of shooting at speeding cars, which sometimes results in injuries to innocent bystanders.

Atkins called for firm state laws, local ordinances and departmental policies "to provide incentive for policemen to think rather than shoot, talk rather than choke and reason with people rather than to harass, intimidate and engage in other forms of street justice."

Atkins singled out Milwaukee and New York as particular problems.

He accused New York's Mavor Koch of "shooting off his mouth without the facts" when he dismissed statistics showing increased police violence against blacks.

In Milwaukee, Atkins said, the problem is severe because the police chief serves for life and a poor attitude exists among department leaders.

COMPARISON OF THE NAACP'S MODEL POLICY ON USE OF  
DEADLY FORCE WITH NEW YORK CITY POLICE DEPARTMENT  
GUIDELINES

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On page 36 of its manual on policy citizen violence, the Association lists 20 features that ought to characterize a governing policy of a police agency with respect to the use of deadly force and the use of firearms.

Of these 20 characteristics, 18 are incorporated in the New York City Police Department's pioneering procedures in this area. Indeed, the Department's leadership in this regard is acknowledged by the manual on pages 65-66.

The Association's 2 characteristics that are "not incorporated in the Department's procedures:

- (a) Require all officers who discharge firearms to attend post-shooting psychological counselling. New York procedures include such counselling as one of a range of possible measures in cases where officers have been found to have violated the guidelines; and
- (b) Require the Police Chief or Commissioner to act upon the recommendations of the Firearms Discharge Review Board. In New York, the City Charter places sole disciplinary authority upon the Police Commissioner, who may not legally share it with the Firearms Board, or indeed any other component of the Department. However, the present Police

Commissioner cannot recall a single instance where he rejected a recommendation of the Department's Firearms Control Board.

EXHIBIT TO TESTIMONY OF ROBERT J. MCGUIRE, House Committee on  
the Judiciary, Subcommittee on Criminal Justice; July 18, 1983

RE: NAACP COMMENTS ON POLICE MISCONDUCT

"On Thursday, July 14 United Press International reported that the NAACP General Counsel Thomas I. Atkins had given a speech to the NAACP Convention in New Orleans decrying an increase in police brutality. Mr. Atkins reportedly singled out New York and Milwaukee "particular problems" and stated that Mayor Koch had exacerbated the problem by "shooting off his mouth without the facts."

The actual NAACP report on which Mr. Atkins reportedly based his speech contradicts his statements with regard to New York. Rather than reporting on incidents of police violence, the NAACP project was merely and "organizing guide for community leaders" which, (1) in fact, contains no criticism whatsoever of New York City, and (2) indicates that New York City's procedures for the dealing with misconduct are in accordance with what NAACP would recommend. In particular:

1. The report implicitly recognizes the validity of New York City model by stating that "it is significant that data shows that a more restrictive deadly force policy does not lead to increased injuries to police officers. In New York City, average monthly injuries dropped 43% after the more restrictive deadly force policy was adopted." (p.8) The report further notes at a later point that shootings by New York City police officers dropped "dramatically" after the adoption of Firearms

Discharge Guidelines. (NAACP Report, p.66)

2. The report specifically chronicles three instances of effective changes in firearms policy. The first such example cited is New York City. (NAACP Report, p. 65)  
The two other examples of changes of policy were Kansas City and Seattle, both of which were headed by police commissioners who had gained their experience as veterans of the New York City Police Department.
3. The organizing guide sets forth 20 specific recommendations for a "model police department policy on use of deadly force and firearms." (NAACP Report, p.14)  
Eighteen of the 20 suggestions describe the existing policy utilized by the New York City Police Department and its firearms discharge control board.

Finally, it should be noted that the report gives instructions to NAACP officers on how to handle specific incidents of police misconduct which indicate that the comments made by Union Theological Seminary President Donald Shriver in response to the alleged beating of Reverend Johnson are precisely what should not be done. As it is stated in the report: "do not make declarative statements such as 'police officer John Doe murdered this boy'...for example you may say 'if it is shown that the incident was a deliberate action on the part of the police officer or if this is to be found an unnecessary shooting or crime that we insist that disciplinary action be taken'." The report emphasizes that anyone making statements should seek to "dispel rumors and

cause the legal rights of all parties to be respected." (NAACP Report, p. 16). The Rev. Shriver's categorical statements that Rev. Johnson was repeatedly struck, that he was verbally abused, and that "while handcuffed, he was again beaten, choked and kicked" in the 28th Precinct stationhouse unfortunately violated these precepts at every turn.

ATTACHMENTS:

- (1) NAACP Report, "Police-Citizen Violence: An Organizing Guide for Community Leaders," July, 1982.
- (2) Comparison of NAACP Model Policy with New York City Guidelines.
- (3) United Press International Wire story regarding Speech by Thomas Atkins, Esq., NAACP General Counsel, dated July 14, 1983.
- (4) Press Release by Rev. Donald W. Shriver, Jr., May 5, 1983.

Commissioner McGUIRE. Mr. Chairman, the subcommittee has already received my comprehensive testimony on the matter under review and the Department's official report and analysis with respect to 98 specific cases raised at the previous hearing on September 19, 1983.

Mr. CONYERS. Commissioner McGuire, are you referring to this document?

Commissioner McGUIRE. That is correct.

Mr. CONYERS. Without objection, it will be entered into the record.

Commissioner McGUIRE. Thank you.

[The official report and analysis follow:]

**REPORT ON CASES  
SUBMITTED DURING  
CONGRESSIONAL HEARINGS  
ON  
ALLEGED POLICE BRUTALITY**



**New York City Police Department**

**October 1983**

**Robert J. McGuire  
Police Commissioner**

## I N T R O D U C T I O N

On September 19, 1983, the Subcommittee on Criminal Justice of the United States House of Representatives Committee on the Judiciary, conducted a hearing on the subject of alleged racially motivated police brutality within the City of New York. Although no City witnesses appeared at this hearing for reasons previously made known to the Subcommittee, the New York City Police Department has advised both the Subcommittee, and the public that it would respond in detail to all allegations made during the course of the hearing.

### (1) Overview

Although this report does not attempt to repeat the Department's overall response to the allegations of systemic police brutality previously provided to the Congress in formal written testimony by the Police Commissioner and Mayor, a summary of that overall response is appropriate at the outset.

The number of weapons discharged has dropped dramatically since implementation of Departmental shooting guidelines. While crime has risen sharply and the number of officers killed and wounded has significantly increased, the number of police shootings resulting in death has remained virtually constant over the last decade. In studies of comparable major American cities, New York's Police Department has consistently, from 1975 to the present, ranked at the top of the list with the lowest incidence of weapons discharges resulting in death. The number of complaints to the Department of excessive force resulting in injury has fallen sharply. ~~Because of an overall increase in numbers of complaints, largely in the area of discourteous behavior, the staff of the Civilian Complaint Review Board has been augmented and procedures to facilitate public contact with the Board have been simplified.~~ Where charges of brutality have been established, offending officers have been firmly disciplined. Sensitivity training in the area of race relations has been expanded for the Force at large. In short, these and many other indices described in the Commissioner's testimony suggest the absence of endemic, pervasive or officially condoned and racially motivated brutality in the Department.

In contrast to these broad indicators, the Subcommittee on September 19 heard a series of witnesses who mentioned 98 particular incidents of alleged police brutality or misconduct extending back over a period of twenty-five years. Not one of these witnesses was cross-examined on his or her claims. Despite the City's requests, no information with regard to any of these incidents was made known to the Department prior to the hearing.

The Subcommittee did not attempt either at the hearing or before to obtain a full record of the facts with regard to even one of these incidents. Nevertheless, many witnesses asserted existence of a systemic and pervasive pattern of racially motivated misconduct in the New York City Police Department. Indeed, without having heard or considered more than one side of the story with regard to any incident - - let alone any analysis of the overall record of the Department - - Representative John Conyers of Michigan, announced his final judgment at the conclusion of the hearing that "police brutality systematic and racially motivated, is part of the underside of the City of New York that shames us all," that it is condoned by leadership outside the Police Department, and that federal intervention should be considered.

Even one incident of unjustified police brutality is, of course, one too many and an appropriate subject of concern. Nevertheless, an analysis of the cases heard by the Subcommittee dramatically demonstrates the dangers of conclusions reached and judgments made, upon one-sided, unsworn versions of events, selective fact presentations, and the indiscriminate crediting of statements made by persons not subject to cross-examination, adversarial challenge or even a reasonably objective forum. Even if the Subcommittee had done a professionally competent analysis of these claims, moreover, ninety-eight cases covering a period of twenty-five years in which tens of thousands of different officers have had literally tens of millions of public contacts could not possibly support the conclusions announced by the chairman. The public issue of the Department's policies and practices relating to the use of force must, in the end, be resolved upon an institutional and comprehensive basis, and not upon the ad hoc record of a tiny fraction of cases reviewed in isolation. In any event, a fair-minded appraisal of even this limited sample of incidents suggests that in these cases the officers involved acted properly and professionally.

## (2) Methodology

Despite the inherent limitations in the Subcommittee's approach, the Department has endeavored to accurately complete the record with regard to each of the 98 specifically alleged cases of brutality or misconduct heard by the Committee. The narratives set forth in this report are drawn from Police Department files and other governmental records, including the disposition of those cases that were reviewed by the District Attorney, Department of Justice, and Grand Juries. Where the accounts of witnesses significantly differ, the Department has attempted to indicate that conflict. Where no complaint was filed with the Department, the narrative is drawn from the account of the incident filed by the police officers and investigators involved. In the majority of cases, however, the record indicates no legitimate dispute as to certain essential facts - - such as the number of weapons and criminal activity

involved, the overall circumstances of the incidents, and review and disposition of brutality charges by Grand Juries and other neutral fact-finding agencies - - which were never heretofore presented to the Subcommittee. Where the narrative indicates that a matter remains under investigation, comments here do not necessarily constitute the final position of the Department.

Distinctions between cases which arose before and after 1978 are drawn solely in response to allegations that police misconduct has increased in recent years and in some manner been "encouraged" by the actions of City officials. Similarly, data with regard to the race of police officers and alleged brutality victims is provided specifically in response to allegations regarding the supposed racial motivation underlying these events.

The process of establishing the facts surrounding these cases has involved the securing of data and records from disparate sources, some inside and some outside the Department. Should further evidence come to our attention which significantly affects the assessment of any of these matters, the Department will issue a public statement with respect to it.

### (3) Synopsis

Of the 98 cases cited, five did not involve New York City police officers and occurred in jurisdictions other than the City of New York. Of the remaining 93 cases, the chronology ranged from 1958 through 1983. Thirty-four percent (32 cases) pre-date January 1, 1978. Indeed, of the pre-1978 cases, 19 even pre-dated the implementation of the Department's revised firearm discharge policies and guidelines in 1973.

Accordingly, there are 61 post-1978 cases that took place in New York City. Of these cases, four involved white persons, although witnesses at the hearing represented them to be minority persons; five of the cases involved black officers who were complained about, although witnesses at the hearing implied they were white. Therefore, of the 98 cases cited, 52 represent incidents involving confrontations between white police officers and minority persons since 1978.

Of these 52 cases, 25 involved death; 17 involved allegations of unnecessary force not resulting in death; 3 involved complaints of racial or ethnic discourtesy; 5 involved confrontations between black officers and white officers, and 2 cases cannot be categorized for lack of information.

\* Eight cases involved New York City Transit Police; 2 involved Housing Authority Police; 1 involved a retired New York City Police Department Detective; 1 involved a Correction Officer; and 81 cases involved members of the New York City Police Department.

(i) Cases involving death

With respect to the 25 post-1978 death cases, 21 (84%) involved the threat or use of a weapon against the police, and there were weapons recovered from the subject of the police action in 18 of these cases. Of the remaining four cases, one involved death as a result of a motor vehicle accident, one by drug related complications, one by fatal shooting of a burglar by the homeowner (an off-duty Correction Officer), and one case is still under review by the Medical Examiner. In 20 (80%) of these cases, the subject or a co-defendant had a prior criminal history. In 14 (56%) of these cases the police officer or the victim of a crime sustained documented physical injury. In these 25 post-1978 cases resulting in death, the Grand Jury or the District Attorney found no criminality by the police in 24 (96%) of the cases. In the one indictment case, a judge acquitted the officers. In 11 of the cases involving death, the United States Justice Department has concluded investigations without findings of wrongdoing by the police, with 2 other cases still pending.

(ii) Cases involving the Non-lethal Use of Force

With respect to the 17 cases cited at the hearing alleging unnecessary non-fatal use of force, 6 (35%) involved no claim of injury. Of the 12 (71%) cases involving a physical injury, 5 (29%) required medical treatment at a hospital. In the five cases requiring treatment of the complainant at a hospital, one involved facial contusions to both the police officer and the complainant; another involved bruised ribs and lacerations over the eye of the complainant and a slashed hand of the police officer, which was cut by the razor knife of the complainant; another involved a complainant who cut his head when he fell to the ground after he was tripped by the officer to prevent his flight; another involved contusions and abrasions to the face and hands of the complainant, after he knocked two officers to the ground causing them injuries; and the final case involved a melee at the Blues Bar in which three police officers and several patrons were injured. Of the 17 cases involving alleged unnecessary non-fatal use of force, four cases, (24%) involved threat or use of a weapon against the police, with weapons being recovered in all cases. In 2 cases (12%) the subject had a prior criminal history. In 9 (53%) of these cases, the police officer or the victim of a crime sustained a documented injury. In 3 cases involving complaints of unnecessary non-fatal use of force, the Justice Department has not concluded its review.

(iii) Other Allegations of Misconduct

Of the ten other post-1978 cases, 5 involved complaints by black officers of harassment or misconduct by white officers.

Three of these cases involved disputes between fellow workers with abrasive language or physical altercation. One case involved shots fired at (and missed) an off-duty black officer who was mistaken for an armed criminal. The remaining case involved the accidental wounding of a black officer by his white partner who was shooting at an armed robber, who had a gun, and who was thought to be threatening the life of the black officer.

Finally, the 3 remaining post-1978 cases involved allegations of racially motivated discourtesy.

During these years 1978-83, 29 police officers were killed, 124 wounded by gunfire and 503 other officers were shot at without being hit. There were 64,593 illegal handguns seized by the police and there were 589,395 felony arrests made during this period. A total of 20,248 fugitives were apprehended on felony warrants. The Department responded to over thirteen million radio run calls for assistance in these years, and dealt with 15,548 barricade situations, 1,067 of which involved armed, emotionally disturbed persons. Additionally, there were 100 hostage situations, all of which were successfully concluded without injury to hostages, hostage takers, bystanders or police.

The following is a detailed statement on the facts and circumstances surrounding each of the 98 cases cited at the hearing. When examined collectively and objectively, the record on even this limited number of incidents provides no indication that endemic or pervasive patterns of police brutality or racial bigotry exist in the New York City Police Department. Indeed, throughout the entire public discussion of this question, there has been no evidence developed that would support such a claim.

CASE OF EDWARD FONSECA (C. Vernon Mason)

White victim killed by white officer in Nassau County, NY.

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C. Vernon Mason, in his written testimony submitted to the Congressional Sub-Committee, included the case of Edward Fonseca as a black/Hispanic person killed by police in New York City.

In fact, Edward Fonseca was a 21 year old white man killed by a white police officer in Garden City, Nassau County, New York. The New York City Police Department was not involved in the case.

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CASE OF DARRYL WALKER (C. Vernon Mason)

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C. Vernon Mason, Esq., in his written testimony submitted to the Congressional Sub-Committee, included the case of Darryl Walker as being killed by police in New York City. Darryl Walker was in fact killed by local police in the town of Orange, New Jersey. The incident did not involve the New York City Police Department.

\* \* \* \* \*

CASE OF WALTER WILLIAMS (C. Vernon Mason)

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C. Vernon Mason in his written testimony submitted to the Congressional Sub-Committee, included the case of Walter Williams as being killed by New York City Police. In fact this case involved the Mt. Vernon Police Department, not the New York City Police Department.

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CASE OF EMORY ROBINSON (C. Vernon Mason)

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C. Vernon Mason, in his written testimony before the

Congressional Sub-Committee included the case of Emory Robinson as being killed by police in New York City. In fact, Mr. Robinson was killed by a New Rochelle police officer and the New York City Police Department was not involved.

\* \* \* \*

CASE OF JAY PARKER (C. Vernon Mason)

Fatal shooting by an on duty Nassau County Police Officer in the confines of the 105 Pct.

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C. Vernon Mason, in his written testimony submitted to the Congressional Sub-Committee, included the case of Jay Parker as being killed by New York City Police. Jay Parker was killed by Nassau County Police.

\* \* \* \*

CASE OF RALPH TARRANTINO (C. Vernon Mason)

White prisoner who died while in hospital.

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On August 24, 1980 at approximately 9:41 P.M. at 331 Ave. O, Brooklyn, N.Y., Ralph Tarrantino a 28 year old white man was arrested for Felonious Assault on an officer and other related crimes. Police Officers Ronald Jankowsky and Stephen Weinstein of the 61st Precinct responded to a signal 10-50 "dispute, person inside" at the above mentioned location. They were met by the first and second floor tenants. Ralph Tarrantino was the third floor tenant and was involved in an ongoing argument with the others. Earlier in the day a woman called 911 to complain that a man was throwing bottles out of the 3rd floor window of 331 Avenue O, and that "he is going to kill someone". Also earlier that day Tarrantino had damaged one of the tenant's auto with a pipe and had threatened him and the other tenant with a pipe. The police officers proceeded to the 3rd floor where they were met by Mr. Tarrantino who answered his door with a metal pipe in his hand. Mr. Tarrantino agreed to leave the pipe in his apartment and to accompany the officers downstairs in an attempt to settle the dispute. While on the front porch, Tarrantino once again became embroiled in an argument with approximately ten to fifteen bystanders. Tarrantino returned to his apartment while the two police officers attempted to restore calm. Tarrantino again appeared on the porch, this time with a pipe in hand. While the police officers tried to further calm the crowd and persuade Tarrantino to drop the pipe, an unknown man lunged at Tarrantino from the side of the porch causing him to fall to the front garden where he was attacked by several bystanders. Both police officers became involved in the struggle. Tarrantino refused to cease his conduct and drop his pipe, and after he lunged towards Police Officer Jankowsky, Police Officer Jankowsky struck Tarrantino once across the head with his night stick. A signal 10-13 was put out for additional assistance. Tarrantino continued to resist and fled to the first floor hallway where he was subdued by six police officers after a violent struggle. Some witnesses said that Tarrantino was dragged into the hallway by police, and was struck without provocation by the police. One police officer was struck about the face and body by Tarrantino, causing injury. Tarrantino was immediately transported to Coney Island Hospital. At the hospital, Tarrantino refused medical aid for approximately 24 hours. He was described in the hospital records as combative and uncooperative. Further medical findings showed Tarrantino

was under the influence of phencyclidine (PCP-Angel Dust) and suffered from a skull fracture and various contusions. At approximately 11:00 P.M. on August 25th Mr. Tarrantino died. The medical Examiner stated the immediate cause of death was Cardiac Arrest shortly following and resulting from a Thoracotomy with insertion of a drainage tube into the left chest as therapy for pneumothorax.

The case was presented to the Kings County Grand Jury during October and November of 1980 and after hearing 15 civilian witnesses, 2 doctors and 11 police officers, the Grand Jury voted No True Bill.

The Department of Justice also determined that no criminal violations occurred. CCRB, after extensive investigation, found no substantiation of any charges.

\* \* \* \*

CASE OF JOSEPH WOLANSKI (C. Vernon Mason)

White man killed while breaking into apartment after threatening to kill the occupants.

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On February 15, 1981 at 4:20 A.M., Police Officer Stuart Minsky and a Patrol Sergeant responded to a 911 radio call of a report that a man with a handgun was involved in a dispute at 181 India Street, Brooklyn. Upon arrival at the scene the officers were met by Christine Sudol and four adult members of her family, all of whom said that Joseph Wolanski, a 25 year old white man, had a gun and was threatening to kill the entire family. While the officers were inside the apartment, Joseph Wolanski attempted to gain access by kicking in a window adjacent to the fire escape. Simultaneous with the breaking glass there were at least 2 loud noises which all of the witnesses thought were gun shots. The officers assumed combat positions and Officer Minsky fired four rounds. The Sergeant didn't fire his weapon because Officer Minsky was in front of him. Mr. Wolanski sustained a fatal wound to the chest.

A subsequent investigation revealed that Joseph Wolanski did in fact make threats about killing the entire family and was known to have a handgun which was described as an "air pistol". No gun was found at the scene of the incident.

No CCRB complaint was filed. The Firearms Discharge Review Board found the shooting to be within Department Guidelines. The Brooklyn Grand Jury after reviewing the case returned No True Bill.

\* \* \* \*

CASE OF MICHAEL SIMS (C. Vernon Mason)

A white man shot and killed by an officer as he fled from what was believed to be an armed robbery.

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On June 27, 1958 at 8:45 P.M., Michael Sims, a 19 yr. old white man was shot and killed by Police Officer William Hoard.

Police Officer Hoard, off duty and in civilian clothes, had left his residence to purchase some soda in a neighborhood grocery store located on Hicks Street in Brooklyn. When he arrived at the store he observed

Mrs. Scamparino, the owner of the store, with her hands in the air. Standing behind her was Michael Sims, a 19 year old white youth who was holding an object in his hand. The object was later identified as the gum-ball machine which had been on the counter of the store. Police Officer Hoard also noticed two other youths in the rear of the store. Thinking a robbery was taking place, Officer Hoard displayed his shield and announced that he was a policeman. The three youths rushed at him, knocked him to the ground and fled down the street. Officer Hoard gave chase. As he left the store he heard a woman yell "look out, they have a gun". At this point he fired two warning shots. As the youths continued to flee, Officer Hoard fired one more shot at the group. The bullet struck Michael Sims in the back, killing him.

Investigation of this matter revealed that eight youths had assaulted a member of a rival gang and Manual Ramos on the street. Ramos had run into the grocery store for refuge, pursued by 3 members of the group. In the store, Ramos was kicked and punched by Sims and two others. At one point during the altercation, Michael Sims had thrown a stick at Ramos, but the stick struck Mrs. Scamparino, the grocery store owner.

Five arrests were made in connection with this incident - all of those arrested were members of the same gang as Sims.

The Kings County Grand Jury reviewed the officers' conduct and voted No True Bill.

\* \* \* \*

CASE OF ROBERT OWENS (C. Vernon Mason)

White man killed by an off duty police officer after they were involved in a Bar fight.

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On September 18, 1964, at about 4:15 A.M. off duty Police Officer Edward Ryan, a white man, became involved in a fight with Robert Owens, also white, and three other men in a bar and grill in Bronx County. The fight continued outside of the bar at which time Officer Ryan shot Mr. Owens, killing him.

The officer was indicted by a Grand Jury, and convicted of Manslaughter after a trial.

He was dismissed from the Department upon his Felony conviction.

\* \* \* \*

CASE OF GEORGE FOLEY (C. Vernon Mason)

A 16 year old white youth shot and killed by an officer while fleeing from a stolen auto.

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At about 11:00 P.M. on November 27, 1965, Radio Motor Patrol officers Octavio Alvarez and Edward Melmore observed a 1964 Buick, being operated by two white men, pass a red signal light. The officers pursued the auto, which passed another red signal light, and then went south on a one way street against traffic. In front of 1598 Townsend Avenue, the occupants of the auto fled on foot. One of the suspects entered 1598 Townsend Avenue, pursued by P.O. Alvarez, who ordered him to stop. When his order went unheeded, Officer Alvarez fired 1 shot in the air.

P.O. Alvarez pursued his suspect to the roof of the building where he fired another shot from his revolver, hitting the suspect in the back, killing him. The deceased was subsequently identified as George Foley, a 16 year old white youth.

The Bronx Grand Jury reviewed the officers' conduct and returned No True Bill.

\* \* \* \*

CASE OF JOSEPH FITZPATRICK (C. Vernon Mason)

White man killed while threatening an off duty officer with a bottle during the course of an assault.

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The officer was asleep at his home in Suffolk County, N.Y., on June 22, 1979, when at about 1:10 A.M. he heard a commotion in the street in front of his home. His two daughters came and told him that his son was being beaten with sticks and bottles by four men. The son had previously gone into the street to break up a commotion and fight in front of his house.

The officer clad in his pajamas and carrying his holstered off duty gun, went to the aid of his son. On the street he saw his son being beaten with a bottle and bleeding from his face and both sides of his head. He also observed Mr. Fitzpatrick holding a wine bottle over his head and about to strike a blow to his son's head. The officer yelled that he was a police officer. Mr. Fitzpatrick turned and started for the officer, cursing and swinging the bottle at the officer, who stepped back and when Mr. Fitzpatrick was within two feet, discharged one round from his off duty revolver which killed his assailant. The witnesses corroborated the officer's statement. The Suffolk County Grand Jury found No True Bill and the officer's actions were upheld by the Firearms Discharge Review Board.

\* \* \* \*

CASE OF ROBERT ENDERSBEE (C. Vernon Mason)

White man killed while assaulting an officer with a tree branch.

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Police Officer William Baker was off duty and on his way home on March 28, 1981 at 2:30 A.M. when his car was struck by another car which then left the scene. The officer followed the vehicle into a desolate area of Van Cortlandt Park. After requesting a citizen to call the police, the officer drove into the area where the vehicle was parked. He approached the car on foot and requested the driver to produce a license and registration. The officer had his shield in his left hand and his gun in his right hand, held at his side. He identified himself as a police officer to the driver and two passengers. The three men left their car and began harassing the officer. Robert Endersbee picked up a limb of a tree, (3½ feet long and 4 inches in diameter) approached the officer and struck him on the arm. His two friends then proceeded to attack the officer with Karate kicks. The officer backed away until he reached a wall. As Endersbee raised the branch to strike him, the officer fired one shot, hitting him in the chest and killing him.

The two witnesses corroborated that the officer identified himself, that Mr. Endersbee struck the officer with the tree limb and was about to strike him again when he was shot.

The officer was indicted by a Bronx Grand Jury for Criminal Negligent Homicide and was acquitted after a non-jury trial. The Firearms Discharge Review Board found the shooting to be within Department Guidelines. After the arrest of Police Officer Baker the Department Advocate filed charges against the officer as is customary when an officer is arrested. Based on a finding of not guilty by the court and a thorough investigation by the Bronx FIAU, the charges against the officer were withdrawn.

Robert Endersbee had a prior history of 3 felony and 6 misdemeanor arrests.

\* \* \* \*

CASE OF RUSSELL CORLEY (C. Vernon Mason)

Killed in the course of escaping from custody and while assaulting police officer with a night stick.

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On August 17, 1958, at approximately 3:00 A.M. Police Officer Daniel O'Connor, while on patrol in the Bronx, received a complaint from Barbara Parks that approximately 15 minutes earlier she had been punched in the face and body by one Russell Corley.

Shortly thereafter, one block from the scene of the assault, Officer O'Connor apprehended and arrested Russell Corley. However, Corley attempted to escape. After punching Officer O'Connor in the face and body, Corley grabbed the officer's night stick and attempted to strike him. Although O'Connor drew his service revolver and fired one warning shot, Corley continued to advance toward the officer while menacing him with the night stick. Officer O'Connor fired once at Corley, striking him in the hip. Corley died shortly thereafter.

The Bronx County District Attorney investigated the circumstances of the shooting and presented the matter to a Grand Jury. The Grand Jury returned a final disposition of No True Bill.

Neither the Civilian Complaint Review Board nor the Firearms Discharge Review Board was in existence at the time of this incident.

Russell Corley who was 18 years of age, had been arrested previously in (1957) for Murder, Felonious Assault and Criminal Possession of a dangerous weapon. He was acquitted of that charge.

\* \* \* \*

CASE OF RAYMOND GANNAWAY (C. Vernon Mason)

Accidentally killed when officers shot at fleeing felon.

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On April 2, 1960 at approximately 12:40 A.M., Police Officers McHugh and Carillo, while attempting to effect the arrest of Heywood Bovian, accidentally shot and killed Raymond Gannaway.

Immediately prior to the shooting the Police Officers were attempting to arrest an unknown male black in front of 1089 Atlantic Avenue for disorderly conduct. A crowd had gathered and as Police Officer Carillo was dispersing the crowd, Heywood Bovian attacked him removed his nightstick and struck him with it. When Police Officer McHugh came to Police Officer Carillo's aid, Mr. Bovian fled. Both officers fired a warning shot in the air and ordered Bovian to halt. Upon Bovian's failure to halt, the officers fired four more shots in the direction of Bovian. Bovian was hit once in the right flank. Raymond Gannaway a 17 year old black youth who was walking in the area, was hit by one of the officer's shots. He later died of his wound.

On May 2, 1960 Heywood Bovian was indicted by the Kings County Grand Jury for Assault 2°. The same Grand Jury returned No True Bill as to the Officers in the death of Raymond Gannaway.

\* \* \* \*

CASE OF FRANK RODRIGUEZ (C. Vernon Mason)

Killed while assaulting a civilian and officer with a knife.

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On February 18, 1964 Probationary Police Officer Ronald Meszado, while off duty, observed Frank Rodriguez, an hispanic youth, 18 years of age, assaulting Lenny Bednarz with a knife on East 92nd Street in Manhattan.

Upon approaching the scene, the Officer ordered Rodriguez to drop the knife. Rodriguez turned on the officer who fired a warning shot and again ordered Rodriguez to drop the knife.

Rodriguez again refused and slashed at the officer cutting his coat. Meszado at that point fired two rounds at Rodriguez, killing him.

The Grand Jury returned No True Bill.

\* \* \* \*

CASE OF JAMES POWELL (C. Vernon Mason)

Killed while attacking a Police Officer with a knife.

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On July 16, 1964 at 9:30 A.M. the Superintendent of a building on East 76th Street, was watering plants and trees in front of his building. An altercation ensued between him and a group of black youths. The youths began cursing and throwing bottles, cans and garbage can covers at him. One of the youths, James Powell, went across the street to a friend and asked him for the "red knife" stating "I want to give it to the super". The friend stated he didn't have a knife. Powell then got a knife from a second friend, and went back across the street stating "I'm going to give it to that man".

Off duty Lieutenant Thomas Gilligan who was in the area had seen the youths throw a garbage can at the superintendent. When he saw a youth with a red shirt and a knife in his right hand go into the hallway after the superintendent, he shouted "I'm a Police Officer". Powell turned and came at the Lieutenant with his knife hand raised. Lieutenant Gilligan told Powell to "drop the knife" three times, but he kept coming. Lieutenant Gilligan fired one shot. Powell swung the knife striking the Lieutenant in the right hand, cutting his finger. Lieutenant Gilligan fired twice more killing Powell. The knife was recovered at the scene.

The Manhattan Grand Jury returned No True Bill.

\* \* \* \*

CASE OF DETECTIVE IRVING N. GILMORE (John Cousar)

Black Officer injured by other officers while engaged in riot control.

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Detective Irving N. Gilmore, in civilian clothes, was on

official police business on July 19, 1964, when at about 11:50 P.M. on 125th Street and 7th Avenue, he was struck on the head and right side of his body by two unknown police officers who were dispersing a large disorderly crowd. Other persons were injured during the disturbance. A crime complaint filed by Detective Gilmore indicated he lost his wallet, shield, and some U.S. currency while engaged in riot control at the time he was struck by the uniformed officers.

\* \* \* \*

CASE OF HARRY BOYNTON (C. Vernon Mason)

Killed by Police Officer while attempting to flee on foot from a stolen car.

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At 1:55 A.M. October 14, 1965, two police officers while on radio motor patrol, observed an auto which fit the description of a previously broadcast stolen car alarm. As the officers approached the vehicle, its occupants, three black men, sped away. The vehicle in question was in fact stolen, although it was not the same as described in the alarm. Two of the suspects were arrested by Officers Smart and Perovelli.

Police Officers Richard Collura and Alvin Hoehl arrived on the scene and pursued the third suspect. Police Officer Collura fired two warning shots in the air at the fleeing suspect and then three shots at the subject, one of which struck and killed him.

The Queens Grand Jury voted No True Bill.

CCRB and the Firearms Discharge Review Board were not in existence at this time. No disciplinary action was taken against the officers involved.

\* \* \* \*

CASE OF LARRY JACKSON (C. Vernon Mason)

Killed while fleeing from a purse snatch.

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On August 27, 1966, at approximately 7:30 A.M. Housing P.O. Daniel Valzano was a passenger on a bus on his way to

the 90th Precinct when a woman boarding the bus screamed that her purse had just been grabbed. Officer Valzano ran from the bus with his gun drawn and chased after the fleeing suspect, Larry Jackson, a 17 year old black youth. After chasing Jackson approximately 1 block Valzano ordered him to stop, firing two warning shots. When Jackson continued to flee, Valzano holstered his revolver and continued the chase. Valzano again ordered Jackson to halt, and again fired two warning shots. Jackson still continued to flee. At this point, Valzano commandeered an auto overtook Jackson, and for the third time ordered him to halt. However, Jackson turned around and started running in another direction. Valzano then fired his revolver once, striking Jackson in the back, killing him. Jackson was still in possession of the woman's purse.

Neither CCRB nor FDRB were in existence at the time of the incident.

The Kings County Grand Jury returned a final disposition of No True Bill.

Jackson had a prior conviction for Disorderly Conduct and a prior arrest for a pocketbook snatch.

\* \* \* \*

CASE OF RICHARD ROSS (C. Vernon Mason)

Shot and killed by a Detective during the commission of a Robbery.

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 On September 4, 1967, Richard Ross, a 15 year old black youth, was shot once in the head by Detective John Rattley.

Richard Ross and five accomplices were attempting to rob a 73 year old man. The victim was knocked to the ground and was being kicked and punched when Detective Rattley, Detective Michael Ochland and Police Officer Lambert Rissener observed what was taking place. As they approached the youths, someone yelled "cops". Detective Rattley shouted "hold it, Police", whereupon three or four of the youths separated from the others and advanced towards the Detectives. The detectives observed one of the youths with a knife. Detective Rattley then fired one shot from his revolver which struck Ross in the right side of the head. All the other youths then fled. A subsequent search of the area failed to disclose a knife.

Twenty three civilian witnesses testified before the Grand Jury, some of which indicated that the Detective fired at the youths as they were fleeing. However, after hearing all the testimony, the Kings County Grand Jury returned No True Bill.

\* \* \* \*

CASE OF OSCAR SOLES (C. Vernon Mason)

Killed while advancing on a police officer with a knife.

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At midnight, August 29, 1969, on 110th Street and 5th Avenue, about 15 black men approached plainclothes Police Officer Edward Wall. Four of the group grabbed him, put knives to his neck and stated, "Give me your money, Mother, or I'm going to cut your throat". Officer Walls' partner, also in plainclothes, observed the event and came to his partner's aid shouting, "Stop, I'm a Police Officer", while displaying his shield in his left hand and his gun in his right hand.

Several of the suspects went towards the officer. At the same time Police Officer Wall grabbed the knife hand of Timothy Stokley, forced it from his neck, drew his revolver and fired twice striking Stokley in the right buttocks. His partner, after warning the suspects approaching him to stop, fired one warning shot over their heads. When they failed to stop he fired three more times striking Oscar Soles, a 19 year old black man, who was coming at the officer with a knife. Both knives were recovered at the scene.

The Manhattan Grand Jury voted No True Bill and no disciplinary action was taken against either officer.

Timothy Stokley had 3 previous felony arrests.

\* \* \* \*

CASE OF LEMUEL BOOKER (Benjamin Chavis & John Cousar)

Off duty black Transit police officer killed after he shot uniformed officer in right arm.

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At approximately 11:15 P.M. on October 5, 1969, P.O. William Cooper and Sgt. Peter Reilly, while performing

patrol duty within the confines of the 76th Precinct were approached by Catherine Van Pelt, who informed them that she was a barmaid at Byrnes' Bar and Grill and that there was a customer in the bar who had a gun.

Officer Cooper and the Sergeant entered the Bar and approached the lone man who was at the bar. As the officers approached, the man pointed a gun in their direction. After the officers ordered him to drop the gun, he fired one shot which struck Officer Cooper in the right arm. Officer Cooper returned fire once striking the man in the head causing his death. The deceased was identified as Lemuel Booker, an off duty Transit Police Officer.

Prior to the shooting, the deceased had been drinking rye whiskey with ginger ale on the side. He had four triple shots.

The deceased had been suspended by the Transit Police Department on August 9, 1969 for being unfit for duty due to intoxication. He had been restored to duty on October 5, 1969, the date of this incident.

There was no CCRB case filed concerning this incident.

The Brooklyn District Attorney's Office found the shooting to be justifiably in self defense and did not present the case to the Grand Jury.

\* \* \* \*

CASE OF DETECTIVE ROBERT MAHONE (John Cousar)

Black detective shot in forearm by uniformed officers responding to a "shots fired" radio call.

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On October 27, 1970 at about 8:00 P.M. Detective Mahone, who was off duty, observed an unknown black man firing a revolver in the direction of a bar on West 116th Street in Manhattan, in the confines of the 28th Precinct.

Detective Mahone attempted to enter the bar and was confronted by a beserk man who came at him with two knives. The officer retreated out onto the street. He also believed the man to be armed with a gun.

At that time, Police Officers Stalker and Tardalo arrived at the scene in response to a radio call of "shots fired" at that location. Before they could get

out of their car they observed Detective Mahone running past the radio car, while he was drawing a .45 calibre automatic weapon. The officers shouted a warning for him to halt and fired through the rear window of the RMP when their order was ignored. They believed Detective Mahone to be the perpetrator of a crime involving the radio run of "shots fired". Detective Mahone was wounded in the forearm. He then immediately identified himself.

Detective Mahone stated that in his haste he did not notice the RMP nor hear the officer's warning.

The Firearms Discharge Review Board found the shooting to be within Department Guidelines and no disciplinary action was taken. No CCRB case was filed. The Grand Jury did not review this matter.

\* \* \* \*

CASE OF DETECTIVE EDWARD SINGLETON (John Cousar)

On duty black detective shot in the elbow by a uniformed officer responding to signal 10-13.

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At approximately 4:15 P.M. on April 23, 1971, Police Officer Richard Grabowski, and Police Officer Piechocuski responded to a signal 10-13 (assist police officer) at 1528 Hoe Avenue, Bronx, N.Y. The signal was transmitted by Melvin Temple, a black detective assigned to the 8th Division, Burglary/Larceny Squad. Upon arriving at the scene the officers were told by a pedestrian that three black men, were "shooting it out".

Police Officer Grabowski opened the outer door of the building located at 1528 Hoe Avenue and observed Detective Singleton in civilian clothes with a gun in hand, turn a corner at the end of the hallway and head in his direction. The officer directed him to "hold it" and then fired two shots, one of which struck Detective Singleton in the left elbow. Singleton identified himself immediately after being shot. He was taken to Lincoln Hospital and transferred to Einstein Hospital where he was admitted.

No disciplinary action or criminal action resulted from this shooting incident.

\* \* \* \*

CASE OF JEROME GOOD (C. Vernon Mason)

Killed when he pointed an imitation pistol at officers.

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On December 4, 1971, at 5:45 A.M. Jerome Douglas Good, an 18 year old black man, was shot by P.O. Enrico Capponi and P.O. Thomas Ward at a gas station in the Bronx, NY.

Officers Capponi and Ward were assigned to RMP duty when they observed a suspicious white 1962 Chevrolet parked at the gas station. As a result of recent robberies in the neighborhood the officers began investigating the presence of the vehicle. Jerome Good and Tony Sween, a 17 year old black youth, were observed leaving the gas station office in a hasty manner. The officers directed Good and Sween to halt. Good turned in the direction of the officers and pointed a pistol at the officers who each discharged one shot, one of which struck Good.

After being shot, Good continued to flee. While running he discarded the pistol into some bushes. It was later recovered. Good continued to run about 200 feet where he collapsed from the gun shot. He later died at Jacobi Hospital. The gas station attendant stated that moments before the arrival of the police, Good and Sween had taken 25¢ from him at knifepoint, and \$175.00 from the cash register. A black imitation revolver was found by Good when he was looking through a desk drawer in the gas station office. He placed the gun into his waist band and they both left the office area and went toward their Chevrolet.

Franco identified the recovered pistol as the one which had been taken by Good.

There was no CCRB complaint filed.

The Bronx County Grand Jury returned No True Bill. After investigation the Police Department found the officers acted properly.

\* \* \* \*

CASE OF WILLIAM CAPERS (Benjamin F. Chavis & John Cousar)

Black detective in civilian clothes, while arresting a suspect at gunpoint, was shot and killed by uniformed white officer arriving at the scene.

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On April 3, 1972 at approximately 3:30 P.M. William Capers, a 52 year old black Detective, was working in civilian clothes in the Jamaica Shopping Area. Detective Capers with his partner Detective Godley stopped a car with 3 black men in

a parking lot adjoining a bank.

When the operator of vehicle was asked for identification, he handed a wallet to Detective Capers, jumped from the vehicle and fled. Detective Capers pursued on foot while his partner apprehended the other two men. The pursuit continued into a shoe store where a struggle ensued.

At this time a nearby uniformed white police officer was notified of a struggle between black men in a shoe store.

When the uniformed officer came upon the scene he observed a black man with a nickel plated gun in his hand, kneeling over another black man who was in the prone position.

As the officer entered the shoe store Detective Capers was switching gun from hand to hand, which at one point was partially pointing toward the officer.

The officer at that point fired one shot striking Capers in the right shoulder, killing him.

No CCRB complaint was filed. Firearms Discharge Review Board found the shooting to be in accordance with Department Guidelines.

Queens County Grand Jury after reviewing this case returned No True Bill.

The Grand Jury found that "Detached reflection cannot be expected of a uniformed policeman at whom a loaded gun is pointed. The ethnic background of the participants was not a factor in producing this tragedy."

\* \* \* \*

CASE OF RICKEY BODDEN (C. Vernon Mason)

Killed by an officer while fleeing on foot from a stolen vehicle following a car chase.

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On August 15, 1972 at 11:30 P.M. Rickey Bodden, an 11 year old hispanic youth was shot by P.O. Francis Ortolano in Staten Island, N.Y.

P.O. Ortolano and P.O. Richard Rivers were on RMP duty in the 120th Precinct, at about 11:30 P.M. when they began to follow a green and black Pontiac automobile.

The Pontiac gained speed and the officers pursued with flashing light and siren at speeds of 50-80 M.P.H.

A description of the Pontiac was transmitted by the officers and another RMP unit of the 120th Precinct assisted by establishing a roadblock in the path of the fleeing vehicle. The Pontiac passed the roadblock and in doing so barely missed striking one of the officers who was forced to jump onto the trunk of the RMP to avoid being struck. That officer's partner, P.O. Timothy Murphy, fired 6 shots at the speeding vehicle. (It was later determined that 2 of the 6 struck the vehicle, none striking the passengers).

The officers continued in pursuit and eventually caught up with the Pontiac when it stopped in the front of 48 Cassidy Place. The RMP was within a few feet of the Pontiac when both vehicles came to rest.

William Graham, the 14 year old driver of the Pontiac, exited on the driver's side and the other two occupants, Rickey Bodden and James Lewis, also a 14 year old black youth, exited on the passenger side. Officer Ortalano ordered them to halt. Graham turned toward Officer Ortalano and assumed a crouching position with his hand near his belt or trouser pocket. Civilian witnesses stated only that they saw the boys running away. Officer Ortalano fired three shots. As Officer Ortalano fired, Rickey Bodden ran across the path of fire. One bullet struck Bodden in the upper body, killing him.

Graham fled the scene. He was taken into custody at 12:30 A.M. on August 16, 1972 at St. Vincent's Hospital where he sought treatment for a back injury (minor abrasion, treated and released).

Two other youths, not involved in the auto chase, were injured by gun shots. Both were treated and released at St. Vincent's Hospital for knee injuries.

James Lewis was arrested at the scene of the shooting. Both he and Graham were placed on probation by Family Court as a result of this incident.

No weapons were recovered at the scene of the shooting. The Pontiac they had been riding in was a stolen auto.

The Staten Island Grand Jury returned No True Bill against the officers on September 14, 1972. Departmental charges were brought against Officer Ortalano who was found guilty of recklessly firing his service revolver. He was fined 20 vacation days and he was placed on one year disciplinary probation.

\* \* \* \*

CASE OF CHARLES WILLIAMS (C. Vernon Mason)

Killed during gun fight after he shot police officer five times.

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On November 1, 1972 at 1:55 P.M. Police Officers Friedman and Unger were on anti-crime patrol in civilian clothes, when they responded to a radio run of a "Burglary in Progress" at 992 Fox Street, Apt. 5E, Bronx, N.Y. Upon arriving at the apartment the officers observed that the door was damaged and ajar. They heard screams coming from the apartment. Upon entering the apartment hallway, they encountered a man with a gun who fired 5 shots at the officers from a distance of 5 feet. The Police Officers returned fire, killing their assailant.

The man was later identified as Charles Williams, a male black, 20 years of age, who lived in the apartment.

The officers were fired upon without challenge or warning and were given no time to identify themselves as officers. Officer Unger was shot five times.

The Bronx Grand Jury returned No True Bill.

Firearms Discharge Review Board found no violation of Department Guidelines.

A complaint was filed with the Civilian Complaint Review Board. Departmental investigation resulted in no disciplinary action against the officers.

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CASE OF POLICE OFFICER IRVING E. WRIGHT (Benjamin Chavis & John Cousar)

Black off duty Police Officer fatally shot by two uniformed Police Officers after he accidentally fired one round at them.

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On March 5, 1973 at 2:40 A.M., uniformed Police Officers Michael McShane and John Sether, both white, were in the vicinity of St. Nicholas Avenue in the 28th Precinct when they heard shots fired. As their radio car approached the area of the shooting, they observed off duty black Police Officer Irving E. Wright with a

revolver in his right hand running south on 7th Avenue. After attempting to cut him off with the radio car, both uniformed officers got out of the car, and from a distance of approximately 15 feet, commanded Officer Wright to halt.

When Officer Wright continued running, Officer McShane repeated the command. Officer Wright then turned towards the officers and as he did so, he accidentally discharged one round from his off duty revolver in their direction. Each of the uniformed officers fired six rounds from their service revolvers, wounding Officer Wright.

Officer Wright then shouted that he was a member of the Department. He was immediately transported by radio car to St. Luke's Hospital where he was pronounced dead on arrival.

It was later learned that Police Officer Wright was in pursuit of an armed robber who had held up a grocery store. This suspect was subsequently found hiding under a gypsy cab and arrested.

No CCRB complaint was filed.

The shooting was found to be within Department Guidelines.

The New York County Grand Jury returned No True Bill.

\* \* \* \*

CASE OF PHILIP SADLER (C. Vernon Mason)

Killed by accidental discharge of officer's weapon while violently resisting arrest.

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On March 29, 1973 at about 8:30 P.M. Detectives James Madden and Terrance Rasanen, went to an apartment on Nameoke Street, in Queens, to arrest Philip Sadler, a 17 year old black youth, for a past robbery. The detectives had credible information that Sadler had been responsible for breaking and entering the home of two women, 78 and 80 years old, knocking them to the floor (hospitalizing one) and stealing their T.V. set. The officers were aware that Sadler had a prior arrest record for felonious assault with a knife and for petit larceny and harassment. Philip Sadler's sister answered the door, and when the officers said they wanted to speak to her brother, she went to get her mother. When the mother Sarah Sadler came to the door, the detectives

identified themselves and told her they wanted to speak to her son. Mrs. Sadler led the detectives to a bedroom door about 30 feet down a hallway and called her son to the bedroom door. Det. Rasanen identified himself and told Philip Sadler that he was under arrest for robbery. He then advised Sadler of his rights. While Det. Madden was searching Sadler, Mrs. Sadler made a beckoning motion for Det. Rasanen and to follow her into the kitchen. At that point, Sadler gave Det. Madden a "karate chop" to the neck area, kneed him in the groin and attempted to grab his gun. Sadler then ran toward the front door. Hearing the commotion Det. Rasanen ran into the hallway and saw his partner pursuing Sadler down the hall. There was a struggle at the front door of the apartment and Sadler, using both hands, attempted to pull the gun from Det. Madden's right hand. Det. Madden then jerked the gun loose and as he and his prisoner both slipped upon a throw rug, the gun discharged striking Philip Sadler in the back, killing him.

The sister of the deceased filed a civilian complaint alleging the officer fired without giving her brother a warning to halt, and that the officer and her brother were four feet apart when the shot was fired. The investigation by CCRB resulted in departmental charges being brought against Det. Madden for negligently failing to safeguard his revolver, and for not utilizing all other reasonable means to effect the arrest before resorting to the use of his firearm.

The Firearms Discharge Review Board approved the charges. At the conclusion of the Departmental trial, the Deputy Commissioner of Trials found Det. Madden Not Guilty. The Trial Commissioner found that the discharge of the shot was accidental and that because of the deceased's criminal history, and the fact that he had attacked the officers, Det. Madden was justified in having drawn his weapon.

The Grand Jury investigated and returned NO True Bill.

\* \* \* \*

CASE OF JOHN BRABHAM (C. Vernon Mason)

Killed when he allegedly pointed a toy gun at an officer.

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On April 9, 1973 at 1:20 A.M., P.O. William Walker of the 81st Precinct and his partner pursued an automobile which was being operated without lights.

The chase ended when the car driven by John Brabham, a black man, crashed into a subway abutment. Brabham fled on foot with Officer Walker in pursuit. Walker's partner detained the three other occupants of the auto.

During the chase, Officer Walker discharged 2 shots from his service revolver, one of which fatally wounded Brabham. Officer Walker stated that during the chase Brabham had pointed a revolver at him. A cap gun was recovered at the scene. According to reports, there were no witnesses available who could testify as to the incident. Based upon the available information the Police Department concluded that Walker had acted properly. The Grand Jury returned "No True Bill".

As a result of a complaint filed by the brother of the deceased, alleging that the shooting was unjustified, CCRB continued to investigate and later identified two Police Officers who stated that they had seen Walker in possession of a "toy gun" on the night of the fatal shooting. Police Officer Walker thereafter made a statement to the Brooklyn District Attorney's Office indicating that prior to this incident he had taken a "toy gun" from a youth and put it in his locker, but that after this incident he threw it away, because it looked like the gun that the deceased had pointed at him.

The case was re-presented to the Grand Jury and Walker was indicted on 2 counts of Murder. On February 24, 1977, a jury returned a verdict of not guilty on the criminal charges.

Department charges were brought against P.O. Walker for wrongful discharge of his firearm and for falsely reporting that the deceased had been armed.

After a Department trial, P.O. Walker was dismissed from the Police Department on March 22, 1977.

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CASE OF CLIFFORD GLOVER (C. Vernon Mason & Rev. Daughtry)

Killed while attempting to flee from Officer after being stopped for questioning.

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On April 28, 1973, Police Officers Thomas Shea and Walter Scott, were assigned to Anti-Crime duty (plainclothes) in the 103rd Precinct. Prior to 5:00 A.M. on that date, a radio alarm was broadcast for 2 perpetrators of attempted assault and robbery in the 106th Precinct. At about 5:00 A.M. the two officers spotted Clifford Glover, an 11 year old black youth and his stepfather Add Armstead, a 50 year old black man, walking along New York Boulevard.

The officers stated that Armstead and Glover fit the description of the two perpetrators described in earlier radio alarm for Assault and Robbery, so they attempted to question them. The officers stated that after they identified themselves, Glover and Armstead ran into a vacant lot and the officers pursued them. The officers split up and Police Officer Shea ran into the vacant lot after Glover and Armstead, while his partner then attempted to cut off Glover with his police car. Police Officer Shea said that at one point during the chase Glover turned on him with a gun and that he then fired his weapon three times, fatally striking Glover once in the back. Police Officer Scott claimed to have witnessed this.

At about 2:00 P.M. on that date, Assistant District Attorney Martin Bracken, arrived on the scene and conducted an investigation which resulted in the arrest of Police Officer Shea for the homicide of Clifford Glover. On May 13, 1973 Police Officer Shea was indicted by a Queens County Grand Jury and charged with 2 counts of murder. Police Officer Scott was suspended from the Police Department for having made false statements to investigators of this Department and to members of the Queens District Attorney's Office. On June 12, 1974, Police Officer Shea was acquitted after trial in Queens Supreme Court.

Police Officer Shea was given charges and specifications for failing to use care in the handling and safeguarding of his gun and for wrongfully and without just cause firing at and fatally injuring Clifford Glover. Police Officer Scott was given charges and specifications for impeding an investigation into the death of Clifford Glover by giving false and misleading statements to investigators.

The Departmental trial resulted in both officers being found guilty of all charges. Both officers were dismissed from the Police Department on August 30, 1974. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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#### CASE OF DETECTIVE WILLIAM JAKES

Black detective shot and wounded by a uniformed officer while on stakeout duty in civilian clothes armed with a shotgun.

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On June 7, 1973, Detective Jakes and his two partners, all black officers, were on a roof top stakeout duty as

part of a City/FBI major case task force. The three detectives were equipped with a radio that received only FBI frequencies.

At about 10:50 A.M. a resident of the building involved in the stakeout called 911 when she saw the roof door ajar and heard voices on the roof.

Two uniformed officers responded and went up towards the roof where the stakeout detectives were located. When one of the officers attempted to push open the roof door, it resisted his push. At that time he observed the front of the shotgun barrel which was being held by Det. Jakes. As he pushed the door open further, and saw more of the barrel, he shouted "Police, Police". He then fired 3 shots apparently through the hinge side of the door, hitting Det. Jakes in the abdomen. Both the uniformed officer and Det. Jakes stated unequivocally that they did not see each other. The uniformed officer did not know the race of the person he believed to be an armed criminal threatening him with a shotgun.

The Firearms Discharge Review Board found the shooting to be within Department Guidelines.

The Brooklyn Grand Jury returned No True Bill.

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CASE OF POLICE OFFICER HAROLD BUTLER (John Cousar)

Black officer complains that a white officer assaulted him during his arrest and subsequent transport to the station house.

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On June 7, 1973, at about 12:15 A.M. Police Officer James L. Fazzini, Jr., and his radio car partner, responded to 1705 Lafayette Avenue, Bronx, New York in response to a radio run "dispute with a gun". When they arrived at the location, they were met by the complainant who alleged that Mr. Butler, a black man, (later identified as an off duty New York City Housing Authority police officer), had menaced him with a gun and that he wanted him arrested. When the officer attempted to place Mr. Butler under arrest, he protested and asked to call his Lieutenant. When efforts to contact Mr. Butler's supervisor failed, Officer Fazzini again attempted to place Mr. Butler under arrest. At this point, Mr. Butler kicked the officer

in the leg. He was finally subdued by the officer and his partner who rear cuffed him in the apartment and transported him by radio car to the station house for arrest processing.

Mr. Butler alleged that he was subjected to racial slurs and assaulted both in the apartment at the time of his arrest, and during the ride to the station house.

Supervisors from the Housing Authority Police responded to the station house and determined that Mr. Butler was intoxicated.

A complaint was filed with the Civilian Complaint Review Board which, after an investigatory hearing, recommended the service of Charges and Specifications against Officer Fazzini for assaulting Mr. Butler.

After a Departmental trial it was found that the officers used necessary force in arresting and rear cuffing the prisoner, and that photographs taken within twenty-four hours of the arrest failed to establish the injuries alleged by Mr. Butler when he was transported to the station house.

The allegation of racial slurs was also unsubstantiated. Mr. Butler was dismissed from the Housing Authority Police Department for misconduct arising out of this and another incident.

\* \* \* \*

CASE OF DETECTIVE JOHN WHITE (Benjamin Chavis & John Cousar)

White Detective shot black police officer believing him to be a person he was chasing.

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On December 1, 1973 at 10:20 P.M. John White, an off duty black police officer was shot by Harold Maxwell.

Detective Maxwell and his partner, Det. Ford, a black officer, were assigned to Anti-Crime Patrol and were performing duty in civilian clothes in a Department taxicab when they became involved in the case of an auto containing 5 suspicious black men. It was later learned that the auto had been stolen. After a chase through Queens streets, the vehicle crashed into a light pole at Main Street and the Van Wyck Expressway. The driver of the vehicle ran away with Det. Ford in pursuit.

Det. Maxwell remained with the other occupants of the vehicle.

During the chase, Det. Ford accidentally discharged one round from his revolver. No one was struck by this bullet. Det. Maxwell heard the shot but he did not know its source. He then saw the suspect run back toward his location and he took up the chase, leaving a winded Ford to watch the other occupants of the vehicle.

Police Officer White, on his way home from bowling, saw Detective Ford whom he knew. White stopped his vehicle and asked if he could be of assistance. Ford informed him that his partner was chasing a suspect. White returned to his car and joined in the pursuit. Upon observing a black man running down the street, White got out of his car with his gun drawn in order to question the individual. Det. Maxwell, who had been pursuing the suspect, came upon the scene of White's encounter with the suspect. Not knowing that White was an officer, he shouted "Police, Police, hold it". Officer White had his revolver in his hand at this time. P.O. White said he yelled that he was on the job and moved to get his police shield out of his pocket. This appeared to Maxwell, who did not hear White say he was an officer, to be a movement in his direction by an armed person. Maxwell then fired one shot which struck White in the right arm. White, after being struck, ran across the street. Maxwell fired three more times, and White fell to the ground. When Maxwell went to White's side, White identified himself as a police officer. Maxwell summoned assistance and White was taken to Jamaica Hospital.

P.O. White was treated at Jamaica Hospital for bullet wounds of the back, neck, right side and right arm. The wounds were not characterized as serious by the treating physicians and White was discharged 5 days after the incident.

No criminal action was taken by the Queens County District Attorney. The case was not presented to the Grand Jury. The Firearms Discharge Review Board found this shooting to be in accordance with Department Guidelines.

\* \* \* \*

CASE OF CLAUDE REESE (C. Vernon Mason)

Killed by officer when, after fleeing from the officer, he turned toward him with an object that resembled a gun.

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On September 15, 1974, at approximately 9:15 P.M., Police Officer Frank Bosco and his partner, both of the

73 Precinct, while in uniform and on radio motor patrol, responded to a radio run "10-31 - Burglary in Progress" in the basement of premises on Powell Street, Brooklyn, NY. As the officers entered the dimly lit cellar of the premises, they saw a group of eight youths. When they identified themselves, some of the group began to run with the officers in pursuit. Officer Bosco sustained injuries when he was struck by a pipe thrown by one of the youths. Officer Bosco chased Claude Reese, a 14 year old black youth, who ran up a flight of stairs at the rear of the cellar. When the Officer got to the bottom of the staircase, Reese turned toward the officer with an object in his hand, which appeared to be a gun. The police officer then fired one shot which struck and killed Mr. Reese. The object was later identified as a keyhole saw with a pistol grip handle.

Officer Bosco was taken to Lutheran Hospital where he was treated for abrasions of his right leg.

Interviews of those youths who were identified and the building superintendent disclosed they were cleaning up the basement for a surprise birthday party without permission of the superintendent.

A CCRB complaint was filed, but upon investigation it was found to be unsubstantiated. The Firearms Discharge Review Board found the shooting to be in accordance with Department Guidelines.

The Kings County Grand Jury, after reviewing the case, returned No True Bill. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF PETER YEW (William Chong)

Alleges that he was falsely arrested and assaulted.

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On April 26, 1975 at about 2:45 P.M., Mr. Yew was part of an unruly crowd that gathered in front of the 5th Precinct as a result of an auto accident, (not involving Mr. Yew). The crowd had gathered around a car occupied by a non-oriental, which had been involved in an accident with an auto occupied by an oriental. Police Officers from the 5th Precinct, including Police Officers Ira Gottlieb and Richard Sichler, attempted to reach the occupant of the car that was besieged by the crowd.

When the officers cleared a path so that they could escort him into the station house, Mr. Yew objected to their tactics and a scuffle ensued. Thereafter, he was placed under arrest and charged with Felonious Assault and Resisting Arrest. The Chinese community protested the arrest and demanded that charges be dropped, and that the police officers be charged. On June 2, 1975 all charges against Mr. Yew were dropped by the Court. On June 3, 1975 Police Officers Gottlieb and Sichter were indicted for assault and official misconduct. Officer Sichter had been laid off in the interim, due to the City's austerity program.

On March 17, 1977 both officers were acquitted of all charges after a trial in New York County. On March 29, 1978 Officer Gottlieb was found not guilty of related department charges which had been brought as a result of a CCRB investigation. Officer Sichter was not rehired.

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CASE OF "FOUR MALE ORIENTALS" (William Chong)

Disturbance outside the 5th Precinct Station House.

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On June 30, 1975 at about 11:55 P.M., eight civilian orientals, and four police officers were injured in front of the 5th Precinct Station House.

At approximately 9:23 P.M., two uniform officers on Radio Motor Patrol within the confines of the 5th Precinct were directed to investigate 5 male orientals with guns in a dark brown auto located at East Broadway and Catherine Street. When the officers arrived at that location, they encountered four men who they frisked. After the frisk the officers went to the 5th Precinct Station House to prepare "Stop and Frisk" forms. No arrests had been made as a result of encounter.

After the officers entered the Station House, a large crowd began to gather outside. At the request of the Precinct's Commanding Officer, community leaders came to the Station House to discuss the incident.

During the discussions, one of the precinct radio cars approached the station house because its 4:00 P.M. -midnight tour-of duty was completed.

The RMP was blocked by the crowd, and bottles and garbage cans were thrown at it. A signal 10-13 (police officer needs assistance) was transmitted and units were requested from the 7th and 9th Precincts.

During the rescue of the surrounded RMP officers, four Police Officers and 8 civilians were injured. All of the injured were treated and released from Beekman Hospital.

A check with CCRB shows that none of the injured parties filed any complaint with CCRB. The officers involved were not found to have engaged in an improper conduct.

\* \* \* \*

CASE OF RANDOLPH EVANS (C. Vernon Mason & Rev. Daughtry)

Police Officer shoots and kills youth in unprovoked incident.

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This case involves the fatal shooting of a 15 year old black youth by Police Officer Frank Torsney. The shooting occurred at approximately 11:02 P.M. on Thanksgiving night, 1976, while Officer Torsney was on duty assigned with a partner to a radio motor patrol car in the 75th Precinct, Brooklyn, N.Y.

Six police officers including Officer Torsney and his partner, responded to a "man with a gun" alarm in apartment 2D, 515 Fountain Avenue, Brooklyn. When the officers arrived on the scene, it was determined that there was no "man with a gun". Rather, the matter was a family dispute. After resolving the matter, all six officers proceeded down the staircase and exited the building at staggered intervals. Officers Geocia, Ruiz and Tschupp were the first to exit the building and, at the moment of the shooting, were approximately 45-60 feet ahead of Officer Torsney. At the moment of the shooting, Officer Williams was just exiting the building and Officer Faitz was approaching within 15 feet of the location where Officer Torsney stood near a group of 5 black youths. Officers Faitz and Williams testified that they saw Officer Torsney point his service revolver in the general direction of the head of the victim and within 1 to 2 seconds saw and heard Officer Torsney discharge his weapon. Immediately after the firing of the weapon, the officers carried the victim to their patrol car and transported him to Brookdale Hospital where he died a short time later.

The four friends of the victim, testified that they had been walking around the neighborhood and were returning to the apartment where the victim lived. While approaching that building, the group noticed 3 police cars parked in front. They decided to wait near the front of the building

to see who the officers might have arrested. As the officers started to emerge from the building, the victim, Randolph Evans approached Officer Torsney and said either "I hope you didn't come from 7D" or "Did you come from 7D?". Officer Torsney responded either, "yeah, real" or "yeah, right", and immediately drew his revolver and shot the victim one time in the head.

Officer Torsney was arrested and charged with Murder, 2nd degree. Thereafter, Officer Torsney was indicted for Murder, 2nd Degree, but was ultimately found not guilty by reason of insanity at the time of the shooting. At a subsequent Department trial, Officer Torsney was found guilty of a violation of department procedures and was dismissed from the Department. A U.S. Justice Department investigation into this matter found no criminal liability.

\* \* \* \*

CASE OF FRANK THOMPSON (C. Vernon Mason)

Killed when he slashed with a knife at an officer.

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At about 11:00 P.M. on September 2, 1977, Police Officer Roger Scheid, while off duty and in civilian clothes, was travelling in an auto with his brother and two women they were dating, when one of the women recognized a black man on the street as having been disorderly in a store she worked in earlier in the day. He had taken her radio, throwing it to the floor damaging it.

After Miss Berman requested that Thompson be arrested, P.O. Scheid exited the vehicle and approached Mr. Thompson, an 18 year old black man. When the officer identified himself as a police officer, the suspect slashed at him with a spring loaded pushbutton knife, causing facial injuries. Mr. Thompson then fled on foot with the officer in pursuit. The officer fired between two and four rounds at Thompson during the pursuit.

Mr. Thompson then ran under the porch of an abandoned building. P.O. Scheid stated that as he approached him, Mr. Thompson lunged at the officer with a knife. P.O. Scheid discharged the remaining rounds in his firearm killing him. The knife was recovered at the scene by the Police Officer's brother.

Witnesses at the scene stated that the officer apprehended Mr. Thompson, placed him up against a wall and held a knife to his stomach. They further stated that Mr. Thompson shoved the officer and ran into an abandoned building. The officer was observed at that time to have a cut under his lip.

The officer then chased the suspect into the building. There was conflicting evidence as to whether Mr. Thompson lunged at the officer prior to being shot.

Police Officer Scheid was treated at Coney Island Hospital for a laceration and abrasions of the face, just below the lower lip.

Police Officer Scheid was indicted by a Kings County Grand Jury for Manslaughter in the 2nd Degree. On June 26, 1979, the officer was found Not Guilty of the criminal charges.

The Firearms Discharge Review Board found no violation of the Department Guidelines. The Department Advocates Office prosecuted P.O. Scheid. After trial the Police Officer was found not guilty. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF CHANG (William Chong)

Injured while resisting arrest and after biting a police officer's finger.

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On September 17, 1977 at approximately 3:10 P.M. in front of 200 Canal Street, a black New York City Police Officer, Thomas Pennie of the 5th Precinct, arrested one Pei Chang, a 47 year old oriental woman.

Prior to this arrest the officer had issued summonses to Mrs. Chang's husband for refusing to obey an instruction to move a double parked automobile, and for littering (throwing summonses to ground).

After the summonses were issued, Chang engaged P.O. Pennie in a loud argument. As the verbal argument became more heated, Mrs. Chang repeatedly struck the officer in the face with the summonses. Mrs. Chang then tried to slap the officer in the face. The officer grabbed her hand, whereupon she pulled the officer's restraining hand into her mouth and bit deeply into the officer's finger. At this point, P.O. Pennie struck Mrs. Chang in the left jaw, thereby freeing his hand and simultaneously causing her to fall to the ground in a semi-conscious state. Mr. Chang, then grabbed the officer's left wrist. The officer then unholstered his revolver and Mr. Chang released the

officer's wrist and disappeared into a crowd that had gathered. Mrs. Chang was arrested and taken to the station house. Mr. Chang was arrested later at the 5th Precinct when he came to inquire about his wife.

The District Attorney of Manhattan presented this case to a Grand Jury which directed the filing of a prosecutor's information charging Mrs. Chang with assault in the third degree.

The Criminal assault charge against Ms. Chang was later dismissed by the Criminal Court. While the court found Mrs. Chang had acted irrationally to the issuance of a summons and had assaulted the officer, and that the officer acted properly, the Court dismissed the charges in the interest of justice. The judge felt she had already suffered from the injuries she received, and that a conviction would mar her opportunity to gain a nurse's license and present serious obstacles to her becoming an American Citizen.

A CCRB complaint was filed alleging unnecessary force. Subsequent investigation determined it to be unsubstantiated.

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CASE OF CATHERINE WELLS (C. Vernon Mason)

Complains of unnecessary roughness by officer while issuing a traffic summons.

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On March 6, 1978 at 6:00 P.M. Police Officer Richard Santa Maria approached a vehicle driven by Catherine Wells, a forty year old black woman. Mrs. Wells had failed to stop at a stop sign and almost struck the officer as he was crossing the street. When the officer requested her license and registration she attempted to drive away, but was blocked by her husband's car which was stopped ahead of her auto. Officer Santa Maria ran up to her vehicle and reached in to remove her keys to prevent her from leaving. He then issued her a summons.

Mrs. Wells complained that the officer was rough and attempted to pull her out of the auto, bruising her chest. She was so disturbed she stated she sought treatment at Harlem Hospital's Emergency Room.

After repeated and unsuccessful attempts to contact the complainant, CCRB UNSUBSTANTIATED the complaint. A check of emergency room records of Harlem Hospital for March 6, 1978 and March 7, 1978 revealed no record of a Catherine Wells being treated.

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CASE OF ARTHUR MILLER (C. Vernon Mason)

Black man, after violently resisting arrest, died from asphyxia.

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At 5:35 P.M. on June 14, 1978, Police Officers Anthony Curcio and Christopher Schiebel, stopped Sam Miller's truck on Rogers Avenue in the 77th Precinct, in order to serve a summons for a previous littering infraction. The officers then noted several other violations. As the officers were preparing to issue summonses, Sam Miller left the location. Prior to his returning, a license check with Communications revealed it had been suspended five times by the Department of Motor Vehicles. Anticipating an arrest, the officers radioed for a supervisor.

Shortly thereafter, Sam Miller returned with his brothers, Arthur and Joseph. A discussion ensued about the license suspensions after which Sam was informed that he was being arrested for operating a vehicle with a suspended license. Sam Miller began to resist when Police Officer Curcio attempted to handcuff him and his brother, Arthur, attempted to assist Sam.

Sam Miller fled the scene chased by Police Officers Curcio and Schiebel. Out of the sight of Arthur Miller, Police Officer Curcio was injured when Sam Miller either pushed or threw a large metal table at him and when he upended a Dempsey Dumpster to avoid being arrested. Many witnesses described the falling of the table to the ground as sounding like a gunshot.

Witnesses stated that after the gunshot-like sound, Arthur Miller became more violent in protesting his brother's arrest. Sergeant Gatterup, with the assistance of Police Officer Schiebel, attempted to arrest Arthur Miller and Miller violently resisted efforts to handcuff him. Other officers came to the assistance of Gatterup and Schiebel. All witnesses agreed that a violent struggle took place, but witnesses disagreed as to whether Miller was struck by nightsticks, whether the police had headlocks on Miller, and whether a nightstick was ever locked on Arthur Miller's neck. During the struggle, Police Officer Schiebel noticed a gun and holster in the rear of Miller's pants. He took the gun, which was licensed by the New York City Police Department, and put it in his belt. Eventually, Miller was subdued and double cuffed. Sergeant Gatterup ordered Miller taken to the 77th Precinct.

Police Officer Jack Firreno, a white officer, and Police Officer Henry Goodman, a black officer, put Miller

in the back of Goodman's RMP. The officers said Miller was conscious and struggling, but some civilian witnesses said he appeared to be unconscious.

Police Officer Winston Johnson, a black officer, rode with Goodman to the 77th Precinct. At the precinct, Police Officer Johnson noticed that Miller did not look right, and had a white foam substance about his mouth. Miller was immediately taken to St. Mary's Hospital, a block and a half from the 77th Precinct, where attempts to revive him were unsuccessful, and he was pronounced DOA.

No complaint was filed at CCRB in this case, but the matter was investigated by the Kings County District Attorney's Office. After the investigation, seventy-seven witnesses testified before a Grand Jury, which voted, "No True Bill". This case generated so much community concern that the District Attorney's Office issued a press release at the conclusion of the Grand Jury's deliberation.

As a result of this investigation and the testimony before the Grand Jury, the District Attorney concluded:

- 1) Arthur Miller was not savagely beaten by anyone;
- 2) The police officers on the scene utilized uniformly recommended procedures to restrain Arthur Miller;
- 3) Arthur Miller died from "asphyxia", but the asphyxia was not the result of a criminal act; and
- 4) There is no indication that anyone acted recklessly or with criminal negligence toward Mr. Miller so as to cause his death.

The United States Attorney for the Eastern District conducted an investigation and reached essentially the same conclusion as the Brooklyn District Attorney's Office. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF TRANSIT POLICE OFFICER THOMAS WALKER (C. Vernon Mason & John Cousar)

Black off duty officer shot at by uniformed officers while he was pursuing a robbery suspect.

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On July 29, 1978 at approximately 3:48 A.M., Sgt. Richard Rodice of the 28th Precinct and his driver heard a shot fired and observed a large crowd running on West 125th Street between St. Nicholas Avenue and Eighth Avenue. The crowd parted and they observed a black man in civilian clothes with a gun in his hand chasing another black man in their direction.

They then heard another shot and observed a muzzle flash in their direction. They alighted from the RMP, took cover behind the vehicle and directed the man with the gun to freeze. When he failed to comply, Sgt. Rodice fired one shot from his service revolver and Police Officer Gorman fired two shots in the direction of the man with the gun.

The man with the gun then identified himself as a Police Officer by holding up his shield. Both the Sergeant and his partner ceased fire, emerged from cover and approached the subject.

It was then ascertained the man with a gun was off duty Transit Police Officer Thomas Walker. They discovered that the man Police Officer Walker was chasing, and who was lying on the ground with a gunshot wound of the buttock, had robbed Police Officer Walker and a female companion shortly before the shooting. Four robbery accomplices had managed to escape.

The suspect later died from the gunshot wound inflicted by Officer Walker.

The Firearms Discharge Review Board in its final report determined that the Sergeant and his operator had acted in accordance with Department policy.

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CASE OF DETECTIVE SQUIRE BOSWELL (C. Vernon Mason & John Cousar)

Black detective shot by his partner while struggling with an armed suspect.

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Anthony Ruffin, an 18 year old black man, came into the 28th Precinct station house at approximately 10:50 P.M. on August 18, 1978, telling Police Officer Sullivan that he had just been robbed at gunpoint at 116th Street and 8th Avenue by a man named Reed. He also told the officer that this same man had shot and seriously wounded his cousin 2 days earlier.

Police Officer Sullivan and Detective Boswell, who is black, took the complainant into an unmarked radio car and cruised the area. In the vicinity of Adam Clayton Powell Boulevard the complainant pointed out 2 men; one of whom had just robbed him. Detective Boswell, with his gun drawn, approached Reed, who was the robbery suspect, while Sullivan

confronted the other man. Detective Boswell grabbed Reed by his right wrist but Reed struggled and pulled away. Detective Boswell felt a gun in Reed's waistband. Stepping back 2-3 feet he called to his partner that Reed had a gun. Police Officer Sullivan stated that when he heard his partner call, he looked up and saw Reed with a gun in his hand and he shouted "Drop the gun." When Reed failed to drop the gun, Officer Sullivan stated he fired 4 shots in succession. Reed fell to the ground as did Detective Boswell who shouted that he had been shot.

Detective Boswell gave a different version of the facts at this point. He stated that Reed did not have the gun in his hand, that it was in his waistband, and that Sullivan fired 2 shots, at which point he called out that he was shot. He then came back into contact with Reed, whereupon Sullivan fired 2 more shots striking Reed. Detective Boswell later complained that he had the situation under control and that Police Officer Sullivan should not have fired the last 2 shots.

Police Officer Sullivan transmitted a call for assistance and responding officers were greeted by a large hostile crowd. In the confusion Reed and the other suspect managed to escape (although Reed was later arrested when he showed up at a hospital for treatment of gunshot wounds). A .22 calibre automatic pistol without a clip was recovered at the scene by a uniformed officer. Mr. Ruffin who witnessed this incident initially did not state to investigators whether or not he observed a gun in Reed's hand. However, at a subsequent re-interview, approximately 3 months later, while awaiting trial on robbery charges in New Jersey, he stated that at the time of the incident he did observe a gun in Reed's hand. However, the Departmental investigation into this incident never reconciled the differing statements concerning the circumstances surrounding the shooting.

The Firearms Discharge Review Board after reviewing this matter found it to be in accordance with Department policy.

No action was taken by the Grand Jury.

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CASE OF NICALAS BONILLA (C. Vernon Mason)

An emotionally disturbed person was killed when he threatened an officer with a knife.

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On June 5, 1979, at 1:15 A.M. Police Officer Robert Scire, and his partner responded to a radio run of a

"dispute". At the scene the officers were informed by Pablo Bonilla, a 10 year old Hispanic youth, that his uncle, Nicalas Bonilla, was in the bathroom kicking on the wall in anger and that he had been beating the victim's parents, Mr. & Mrs. Bonilla. Upon seeing P.O. Scire enter the apartment, Nicalas Bonilla darted over to the sink, obtained a knife approximately 12 inches in length and advanced on the officer, making growling noises. Officer Scire retreated to the wall, drew his revolver and yelled, "drop the knife", three times. With his back to the wall, and unable to retreat any further, P.O. Scire fired one shot at Bonilla, causing his death. Police Officer Scire's account of the incident was corroborated by the victim's mother and nephew, as well as his partner. Nicalas Bonilla had been under psychiatric treatment at the Manhattan State Hospital for Mental Retardation and Muteness. A CCRB investigation was conducted and the officer was exonerated. The Kings County Grand Jury voted "No True Bill". The Firearms Discharge Review Board found the shooting to be within Department Guidelines. A U.S Justice Department investigation into this matter found no police wrongdoing.

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CASE OF PETER FUNCHES (C. Vernon Mason & Rev. Daughtry)

Died after his auto crashed into cement wall while fleeing from police officers.

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At approximately 2:30 A.M. on June 17, 1979, two New York City Police Officers, Howard DiPietri and Catherine Crowe on Radio Motor Patrol, observed a Green Buick driving southbound on Davidson Place where it struck an occupied auto. The Green Buick failed to stop and fled the scene with the officers in pursuit. During the pursuit the fleeing auto committed many traffic violations. At University Avenue and 179th Street, P.O. DiPietri exited the driver's side with his revolver in hand. The fleeing auto struck the RMP causing P.O. DiPietri to accidentally discharge his weapon in the air (no injuries or property damage), and causing his partner to fall back into the RMP from which she was alighting. The auto continued to flee. Other officers joined the chase, attempting to cut off the auto, which repeatedly slammed into the RMP. The fleeing auto turned into a street which ends at a cement retaining wall. The auto smashed into the wall at a high rate of speed. P.O.s Martin and Preziose broke through the driver's window and reached into the auto to apprehend the driver, Peter Funches, a 39 year old black man.

P.O. Martin cut his right hand on the broken window. P.O. Preziose also reached into the auto and sustained a knife cut on his left hand. The two officers removed Funches from the auto. He continued to resist arrest and was finally overcome by force.

Funches was handcuffed and placed into an RMP and driven to the 46th Precinct. Upon arriving at the 46th Precinct, Officer DiPietro and Crowe observed that the defendant was unconscious. They then drove immediately to the Bronx Lebanon Hospital. Upon arrival at the hospital, Funches was declared dead by an examining physician.

Mr. Pearl, Medical Examiner, indicated death was caused by a laceration of the pulmonary artery and hemorrhage around the coronary artery, an injury consistent with injuries sustained in an automobile accident.

A CCRB investigation resulted in a finding of no wrongdoing.

The Grand Jury heard witnesses during the course of a six week investigation and on October 10, 1979, the Grand Jury voted No True Bill.

Mr. Funches had a previous arrest history involving weapons possession, resisting arrest and intoxicated driving. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF LOUIS RODRIGUEZ (C. Vernon Mason)

Died as the result of injuries while under the influence of Angel Dust & Cocaine.

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On July 31, 1979 at approximately 11:20 P.M. Mr. Rodriguez entered the H & S Grocery Store in the Bronx, where he proceeded to go to the rear of the store and behind the counter. The store owner then struck Rodriguez on the head with a bottle of soda. Rodriguez fell to the floor, and friends of the store owner joined in ejecting Rodriguez from the store. Rodriguez then attempted to re-enter the grocery store but was prevented from doing so.

At this point, police units began to arrive in response to calls of a robbery in progress. A total of 8 uniformed and 2 Anti-Crime officers responded.

The officers attempted to place Rodriguez under arrest, and placed a pair of handcuffs on his wrists. Rodriguez now on the ground, attempted to crawl under one of the radio cars. The officers then placed a set of cuffs on Rodriguez' ankles to prevent him from kicking at the officers. He again crawled under the RMP. A second set of cuffs were put on his ankles and he was placed in a radio car.

Ten witnesses to the incident have stated that at no time did the responding officers use guns, nightsticks, fists or any other objects to subdue the prisoner.

Officers Walter Galiano and Robert Visconte brought Rodriguez to the 46th Pct., at 11:40 P.M. Rodriguez was still cuffed at his wrists and ankles and he was conscious, protesting, struggling and bleeding. He was lodged in the detention pen still cuffed at the wrists and ankles.

At 12:10 A.M. the Desk Sergeant visited the detention pen and observed Rodriguez and another prisoner standing in the pen. Rodriguez was shouting and bleeding and banging his body against the chain-link grid door. A call for an ambulance was made at 12:16 A.M. At 12:51 A.M. a second call was made for an ambulance. At approximately 1:30 A.M. Galiano and Visconte reported to the Sergeant that Rodriguez was lying on the floor of the pen. At 1:50 A.M., a third call for an ambulance was made.

At 3:00 A.M. an ambulance arrived from North Central Bronx Hospital and attendant Cintron pronounced Rodriguez DOA.

The Medical Examiner's Office stated, "Final Cause of death - multiple contusions, abrasions and lacerations of the face, body and extremities. Collapsed in 46th Pct. cell with hands and feet cuffed after resisting arrest for (sic) altercation in grocery store while under influence of "pencyclidine (angel dust) and cocaine".

Michael Cook - the other prisoner in the pen with Rodriguez, stated that at no time did any officer assault Rodriguez. He said the police had "ministered to him".

Bronx County Grand Jury after hearing evidence from civilian witnesses returned a No True Bill. All of the members of the service involved made statements and they related the story as has been outlined above.

On August 21, 1980, an investigation by Internal Affairs Division into this matter was closed without any finding

of misconduct. CCRB investigated and determined the case to be unsubstantiated. The Justice Department conducted an investigation and took no action against the officers.

The deceased had 6 previous felony and four misdemeanor arrests resulting in 3 felony and one misdemeanor convictions.

\* \* \* \*

CASE OF ARTURO REYES (C. Vernon Mason & Rev. Daughtry)

Shot when he lunged with a knife at an officer who was attempting to arrest him.

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On August 21, 1979, at about 3:25 A.M. Anti-Crime Officers Schwartz and McDonald were directed to meet a complainant at 231st Street and Kingsbridge Avenue, regarding three suspicious men.

The complainant told the officers that he observed two men break into a car and then flee East on West 231st Street. The officers pursued and observed two men that fit the description given by the complainant.

Officer Schwartz followed the suspects on foot and at 229th Street and Bailey Avenue observed one of the suspects remove a brown paper bag from a parked auto. Officer Schwartz then called his partner on his portable radio saying "they have hit". Officer Schwartz approached the suspects from the rear. At a distance of 3-5 feet holding his shield in his right hand he shouted "Police". One of the suspects, Arturo Reyes, a 17 year old Hispanic youth, turned with a knife in his hand and lunged at the officer. Officer Schwartz fired one shot striking him in the neck, killing him. He then ordered the other suspect to lie on the ground. A 9½" knife was found at the scene. Two civilian witnesses observed the knife being picked up off the street by one of the responding officers.

The Manhattan Grand Jury voted No True Bill. There were no civilian complaints filed concerning this incident.

The Firearms Discharge Review Board found the shooting to be within Department Guidelines.

\* \* \* \*

CASE OF LUIS BAEZ (C. Vernon Mason)

An emotionally disturbed person armed with a pair of scissors was killed by police when he attacked them.

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On August 22, 1979 at about 8:27 P.M., Police Officers Thomas Amendola and John Carson received a radio run of "10-54" Psycho with a Knife", at 189 Clifton Place, Bklyn. They responded to the location and were met by Mrs. Rosa Padilla who told them, through an interpreter, that her son, who had a history of mental problems and had been recently released from a psychiatric hospital, was upstairs in their apartment acting strangely and sticking a knife into the floor. The officers called for assistance, and P.O.s Paul Ciurcina and Edward Hill responded. All four officers, along with Mrs. Padilla, went upstairs to the 2nd floor apartment where Mrs. Padilla showed them the kitchen floor bearing apparent knife marks. P.O. Ciurcina picked up a chair and attempted to disarm Mrs. Padilla's son, Luis Baez, who was in a bedroom with a 7 inch pair of scissors in his hand. Baez slashed at the officer and began backing up. Ciurcina continued his efforts with the chair until Baez retreated to a front window and then went out through the window onto a fire escape.

P.O. Ciurcina climbed out the window onto the fire escape while the other officers went to the street. At this time, Baez was clinging to the ladder which would, if released, reach to street level, all the while holding the scissors in one hand.

A radio call was made for additional police assistance and P.O.s Daniel Murphy and Paul LaPenna responded. A civilian acquaintance of Baez attempted to persuade Baez, who only spoke Spanish, to come down and drop the scissors. Baez, who was agitated and cursing in Spanish, asked this person to get him a gun, and then slashed at him with the scissors. Other Spanish speaking civilians also tried to persuade Baez to drop the scissors, but to no avail.

Sgt. David Whitfield and P.O. Charles Blackwell responded to the scene. The sergeant directed all P.O.s to have their batons at the ready, and a call was made for the assistance of Emergency Service. P.O. Murphy was ordered by the sergeant to assist P.O. Ciurcina on the fire escape. It was decided that the 2 officers on the fire escape would release the ladder, thereby causing Baez to fall to the ground. As the officers attempted to release the ladder, Baez slashed at them, cutting P.O. Ciurcina's boot and puncturing it twice, with no injury to the officer.

The ladder was released and Baez stumbled but did not fall or lose his grip on the scissors. At this point, he was contained within an area of approximately 8 feet by 5 feet surrounded by a 3 foot high wrought iron fence. P.O.s Carson, Amendola, LaPenna, Hill, Blackwell and Spinelli (who had responded in the interim) as well as Sgt. Whitfield formed a line in front of the fence and attempted to contain Baez. P.O. LaPenna struck Baez twice in the wrist with his baton in an attempt to knock the scissors from his hand. Baez, in response jumped over the fence. Still wielding the scissors, Baez approached to within 2 to 4 feet of the officers and then lunged in the direction of P.O.s LaPenna and Spinelli. Five of the Police Officers at the scene then opened fire, firing 24 rounds in the direction of Mr. Baez and striking him 16 times.

A Brooklyn Grand Jury voted No True Bill. The U.S. Justice Department investigated the case and found no violations of law by the police.

The Firearms Discharge Review Board found the actions of all officers to be within Department Policy. No CCRB complaint was filed.

As a result of this incident the Department revised its procedures to require that only specially trained Emergency Service officers deal with emotionally disturbed persons.

\* \* \* \*

CASE OF ELIZABETH MANGUM (C. Vernon Mason)

Killed after stabbing a police Sergeant.

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On August 29, 1979 at approximately 9:45 A.M., a City Marshal arrived at Ms. Mangum's residence with an eviction warrant. When Ms. Mangum opened the door with a knife in her hand, the Marshal withdrew and called for police assistance. Police Officers Paul VonWerne and William King, 67th Precinct, responded and along with the Marshal attempted to gain entrance to Ms. Mangum's apartment. When Ms. Mangum refused to open the door, it was forcibly opened. Ms. Mangum was standing behind the door with the knife in her hand and rambling that she wanted to go to heaven. She also pointed to her chest where she wanted the police to shoot her. P.O. VonWerne tried to convince her to drop the knife but she refused to comply. P.O. VonWerne then had P.O. King call for a supervisor. Sgt. Latimer responded to the call and also tried to persuade Ms. Mangum to drop the knife. When his efforts failed he called for Emergency Service.

Ms. Mangum continued to shift her position and the position of the knife. Sometimes the knife was held behind her back, or alongside her body, and the rest of the time she held the knife over her head.

At one point Officer Von Werne struck her exposed wrist with his nightstick in an attempt to dislodge the knife. This had no effect. About five minutes later Sgt. Latimer struck Ms. Mangum's wrist with his flashlight but she did not drop the knife. Ms. Mangum then stabbed Sgt. Latimer in the left arm. Sgt. Latimer staggered backwards and Ms. Mangum raised the knife. P.O. Von Werne warned her to drop the knife but she ignored the warning and came at P.O. Von Werne. He fired one shot from his service revolver, striking her in the chest, killing her.

The Grand Jury voted No True Bill on September 24, 1979.

No CCRB complaint was filed. The Firearms Discharge Review Board found the shooting to be within Department Guidelines. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF JAMES WELDON MCRAE (C. Vernon Mason)

Killed while menacing a black officer with a knife.

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James Weldon McRae, a 48 year old black man, was shot by a black Police Officer, Michael Sneed, on September 28, 1979 at 8:30 P.M. within the confines of the 77th Pct., Brooklyn, N.Y.

Officer Sneed, assigned to foot patrol on Fulton Street between Troop Avenue and Tompkins Avenue, was approached by two black youths who informed him about a man who was menacing them and chasing them with a "meat cleaver". The youths indicated the whereabouts of this man to Officer Sneed who began to walk in that direction.

Officer Sneed was approached by James McRae who was carrying a sharp metal object in his hand. The officer ordered McRae to stop and to drop the object. McRae continued toward the officer who retreated, repeating his command to stop and drop the object. McRae continued toward the officer stating, "you are going to have to kill me."

When the two were approximately 3-5 feet apart, Officer Sneed fired two rounds striking McRae, and killing him.

There were 5 black civilian witnesses who confirmed that the officer gave McRae a warning and opportunity to

stop before firing his weapon. McRae was armed with a spackling knife, which was recovered at the scene.

There was no CCRB complaint. The Firearms Discharge Review Board found the shooting to be within Department Guidelines, and the Brooklyn Grand Jury voted No True Bill.

Mr. McRae had one previous felony arrest.

\* \* \* \*

CASE OF HERBERT JOHNSON (C. Vernon Mason)

Killed while threatening a black detective with what appeared to be a weapon.

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Joseph Holder is a 52 year old black retired NYCPD Detective. On October 8, 1979 at approximately 10:30 P.M. he left a friend's apartment in Brooklyn and proceeded to walk to his vehicle which was parked a few doors away.

As Mr. Holder approached his car he observed a group of men in and around his vehicle. Mr. Holder spoke to the crowd and an object was thrown at him. At that point a group of four or five black youths began to move toward Holder. At the same time Holder observed an object in the hand of Herbert Johnson, a 16 year old black youth, which he believed to be a weapon.

As Johnson approached Mr. Holder in a threatening manner, Holder fired one round from his licensed revolver which struck Johnson in the head, killing him. The bullet passing through Johnson's head struck Michael Lopez, a 17 year old black youth, in his right shoulder.

Michael Lopez stated that he was never in or near the vehicle, but had seen others in it. He further states that at the time of the shooting, he was not near the vehicle. He stated he was walking towards the vehicle when he observed five or six black youths running toward him. At that point he felt a sharp pain and later went to the hospital for treatment.

John Murry, one of the youths involved, also stated he and Johnson were never in the vehicle and had not put their hands in the vehicle. Murry further stated he first learned about the shooting after the incident transpired, and that he was not at the scene, but was in his house.

Johnson's vehicle had extensive interior damage as a result of larceny to the vehicle. Latent prints that were found in the interior of Holder's vehicle, included those of Johnson, Murry and Lopez, contrary to their statements that they were never in the auto. The deceased had been arrested previously for a robbery during which he stabbed the victim in his leg.

Assistant District Attorney Dince declared the shooting justifiable and by policy of Kings County District Attorney Eugene Gold, the case was not presented to the Grand Jury. The Firearms Discharge Review Board does not investigate shootings by civilians or retired officers.

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CASE OF JOHN DAVIS, JR. (C. Vernon Mason)

Accidentally killed while resisting arrest for obstruction of an officer in the performance of his duty and while struggling over the officer's gun.

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On November 23, 1979 at about 10:30 P.M. Detective John Holden, assigned to the 114th Pct. Det. Unit and his partner were patrolling the 110th Pct. with a witness to a homicide which had occurred about an hour and a half earlier. At Northern Blvd. and 101st Street, Queens, the witness spotted the perpetrator, John Newell, a sixteen year old black youth, accompanied by another black man. Det. Holden's partner arrested Newell who was found to be carrying a concealed loaded firearm. While his partner was placing Newell in the car, Det. Holden with his gun drawn, began to question Newell's companion. At that time, John Davis, a 28 year old black man, stepped forward from the crowd that had gathered and began to talk to Holden, who had identified himself as a detective.

Davis was drinking from a beer can in a paper bag and began to swing it around, spilling the beer as he talked to Det. Holden. Davis was angry and shouted at the detective to stop bothering people and to leave the area. Det. Holden told him twice to put the beer can down. Davis punched Det. Holden twice and began to run away, but Det. Holden caught him about one hundred feet away and they grappled on the ground. Davis grabbed Holden's gun and it went off, striking Davis in the forehead. He was taken to Elmhurst General Hospital where he died three days later. Newell's companion, whom Holden was questioning when the incident began, managed to flee during this incident.

When the gun went off, Davis was holding it from the front while Det. Holden was holding it by the handle.

None of the witnesses could see precisely how the gun discharged since the parties were entwined with one another on the ground and the area was dark and not well lit. Det. Holden stated that he had no intention of shooting and that his finger was not within the trigger guard when the gun discharged.

While about 10 persons witnessed this incident, only two were located who agreed to talk. The first witness corroborated the Detective's statements and added that Davis was "very upset" and "acting wild", and that the detective was "under control" at the time of the initial encounter. The other witness, a 17 year old black youth, also supported the detective's statements, adding . . . "I don't think the policeman meant to shoot 'Duck' (Davis)".

On December 12, 1979 the Queens Grand Jury conducted an investigation into this shooting. All witnesses testified. The Grand Jury found no grounds for Indictment, and classified the case as accidental Homicide.

The Firearms Discharge Review Board found the shooting to be accidental. An FBI investigation was closed by the Justice Department, Civil Rights Division, in January of 1980.

\* \* \* \*

CASE OF WILLIE HARPER (C. Vernon Mason)

An emotionally disturbed person killed by officer when he pulled officer's revolver from his holster.

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At about 10:00 A.M. on December 17, 1979, P.O. Michael Nicoll and Det. George Sullivan responded to a radio run of an "attempted suicide", at 9325 Kings Highway, Brooklyn. A 38 year old black man, Willie Harper a/k/a Willie Gilbert, had slashed both his wrists and was on the roof of the building, threatening to jump. Officers Nicoll and Sullivan talked him down and escorted him to Kings County Hospital for treatment and psychiatric evaluation. His wrist lacerations were treated and bandaged. He seemed calm. The officers walked him out of the emergency room to proceed to another building for psychiatric evaluation. He was not handcuffed at this time.

Det. Sullivan's gun was holstered on his right side. He walked on Harper's left side, with his hand over the gun,

and Officer Nicoll walked behind them. As they approached the emergency room door, Det. Sullivan began to open it with his right hand, and Harper reached down for the officer's gun. Det. Sullivan reached back down and put his hand on Harper's and they began to struggle. An X-ray technician observed the struggle and stated that Harper appeared to pin Sullivan against the wall and pull the revolver about halfway out of the holster. Officer Nicoll went to assist his partner, and when he saw the gun coming out of the holster, he fired one shot as his partner was falling. The gun slid back into Sullivan's holster and Harper fell back into the lobby. He was pronounced dead at the scene. Later testing of the holster revealed that the safety mechanism was worn and defective through use, so that the gun could be removed from the holster by twisting and pulling upwards on the handle.

The Firearms Discharge Review Board found the shooting to be within the Department Guidelines. The Brooklyn Grand Jury voted No True Bill.

No CCRB complaints were filed. Willie Harper had one prior felony and three misdemeanor arrests.

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CASE OF CURTIS GARVEY (C. Vernon Mason)

Two black males shot by off duty Transit Police Officer during the commission of residential Burglary.

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On December 19, 1979, at 11:15 A.M. Curtis Garvey, a 17 year old black youth and John Harpe, a 15 year old black youth, were shot by off duty Transit Authority Police Officer Charles Hart, a 34 year old black officer.

Police Officer Hart was at home when he was awakened by a constant ringing of his front door. The officer proceeded from his bedroom down a stairway leading to the apartment door. When he opened the door he heard a loud crash coming from the 1st floor entranceway. He went back up to the 3rd floor to get his authorized off duty gun. Having obtained his gun, he began to walk down to the second floor again and at this point he heard voices and saw two persons in the hallway. He identified himself as a police officer and told the two not to move. One of the two turned toward him and the officer fired. The two youths fled and Officer Hart pursued them continuing to tell them

to halt. As they were going out the apartment door on the 2nd floor, he fired again. The suspects ran down the stairs to the first floor with Officer Hart still in pursuit. At this point Officer Hart discharged the remainder of the rounds from his weapon. Officer Hart then returned to his bedroom where he reloaded his weapon and called for assistance.

Upon reaching the street Officer Hart observed one person lying in the street and was informed by a passing bus driver that the other person had crawled to an alleyway across the street. Officer Hart searched them for weapons and found none. Units from the 75th Precinct responded, aid was rendered to the man in the street and the other suspect was discovered in the back yard of the premises, slumped over a fence.

The suspect in the street was Curtis Garvey. He was pronounced dead at the scene. Garvey had been shot in the thigh, abdomen and heart. John Harpe, the other suspect, was taken to Brookdale Hospital where he was treated for gunshot wounds of the buttocks, lumbar spine area, left lower abdomen and left forearm.

John Harpe said that it was Garvey who broke the front door of Hart's house and went into the building. Harpe, remained on the 1st floor as a lookout. The next thing he knew was that Garvey came running down the stairs yelling, "He's got a gun and he's shooting at me". Harpe turned, started to run and felt himself get shot in the leg. Curtis Garvey fell on top of him from the rear.

On February 15, 1980, a Kings County Grand Jury voted No True Bill.

On February 15, 1980, New York City Transit Authority Firearms Discharge Review Committee found that the shooting by Police Officer Hart was justified.

No complaints were filed with the Transit Civilian Complaint Unit.

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CASE OF ABDUL HADID (C. Vernon Mason)

Killed when he resisted arrest and removed gun from officer's holster.

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On February 18, 1980, at approximately 1:15 P.M. Abdul Hadid, a 24 year old black man, was shot by Sergeant Robert Pezzano, Street Crime Unit, on Tiebout Avenue, in the 46th Pct., Bronx, New York

Abdul Hadid approached a female decoy police officer and removed a wallet from her pocketbook, which had been slung over her shoulder. Police Officer Michael Ciravolo and Detective Juan Sanchez, two members of her "back-up team", observed the theft, and moved in to apprehend the suspect. The officers approached Mr. Hadid, identified themselves, and informed him that he was under arrest. Detective Sanchez attempted to handcuff Mr. Hadid who resisted after a handcuff had been placed on one of his hands. A struggle ensued during which Mr. Hadid removed a gun from Police Officer Ciravolo's holster, which was attached to his belt.

Sgt. Robert Pezzano, Street Crime Unit, who was assisting in the arrest observed Hadid's hand begin to rise with the gun, whereupon he fired one shot which struck him in the back. Mr. Hadid slumped to the ground and Police Officer Ciravolo regained control of his revolver. The defendant continued to struggle while on the ground and Detective Sanchez completed the hand cuffing.

This matter was heard by the Grand Jury on two separate occasions. On the first hearing, the Grand Jury could not reach a determination. At the second hearing, after hearing 27 witnesses, over a three week period, the Grand Jury returned No True Bill.

The Firearms Discharge Review Board found the shooting to be within Department Guidelines. A family member filed a complaint with CCRB which was referred to the Chief of Operations. No misconduct by the officers was found.

Abdul Hadid had previously been convicted once for attempted jostling (pick pocketing) and once for attempted criminal possession of a weapon in the second degree.

\* \* \* \*

CASE OF NORMAN CHARLES (C. Vernon Mason)

Killed by officer he was attacking with a knife, after previously stabbing a civilian.

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On March 4, 1980, at approximately 10:36 P.M. Sergeant Richard Fucillo of the 78th Precinct and his driver responded to a radio run, "10-34 - man assaulted with a knife".

When they arrived at the scene they were informed by a female that her boyfriend had been cut by a man wearing a blue jacket who had a butcher knife. (Carrion received 60 stitches on the face and head). The female stated the assailant fled down Fulton Street. The RMP stopped about 15 feet from the individual. The Sergeant alighted and stood behind the car door for protection. The individual raised the knife and rushed at the Sergeant. The Sergeant yelled "Stop", and when the man with the knife continued to advance, the Sergeant fired one shot from about 7 feet striking the individual in the head.

He later was identified as the individual who had stabbed the complainant's boyfriend.

No CCRB complaint was filed.

The Firearms Discharge Review Board found the shooting to be in accordance with Department Guidelines.

The Brooklyn Grand Jury after reviewing this case, voted No True Bill.

Norman Charles had been arrested 10 times for felony offenses, and had twice been convicted for misdemeanors, and once for a felony.

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CASE OF MELVIN EVANS, JR. (C. Vernon Mason)

Killed by Police Officer while attempting to draw a 9 mm pistol from right pocket.

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At approximately 11:10 P.M. on April 5, 1980, two persons entered the 75th Precinct Station House and reported

that a black man had fired shots outside in the street. Police Officer Kevin Cancellieri, and three other officers followed the complainants into the street, where they pointed out Melvin Evans, Jr., a 23 year old black man, as the man who had fired the shots.

The officers ran up to the subject, with Police Officer Cancellieri arriving first. After being told to stop, the subject whirled around and attempted to remove a 9 mm pistol from his right jacket pocket. From about eight feet away, Police Officer Cancellieri fired his service revolver at the subject causing his death. The suspect's gun fell to the pavement and was recovered at the scene.

A 13 year old hispanic youth who observed the incident corroborated the fact that the deceased possessed a gun. The deceased's father was interviewed and acknowledged that his son owned a 9 mm pistol.

The Grand Jury voted No True Bill, and the Firearms Discharge Review Board found the shooting to be within Department Guidelines.

No CCRB complaints were filed.

In addition to the pistol, the deceased had on his person a marijuana packet and 4 tin foil packets of cocaine.

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CASE OF EDWIN QUINONES (C. Vernon Mason)

Subject was shot and killed when he pointed a gun at a police officer.

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Edwin Quinones, a 19 year old Hispanic man, was shot in the chest by P.O. Louis Petrella, on April 8, 1980 at approximately 11:40 P.M. in the front of 417 Baltic Street, Brooklyn, N.Y.

Edwin Quinones was the operator of an auto which was occupied by himself and three other men. The subject's auto was approached by Police Officers Louis Petrella and Lawrence LaRocca because the vehicle lacked a front license plate. Quinones did not pull over to the curb as directed, but sped off after the traffic light had changed.

A chase ensued and Quinones drove his auto into a housing project area which left him no avenue of escape. The pursuing RMP collided with Quinones' auto. The front passenger ran from the car into one of the project buildings. Quinones climbed out the driver's window and was confronted by P.O. Petrella. Quinones pointed a gun at the officer who fired one shot which struck Quinones in the chest. P.O. Petrilla restrained him when Quinones attempted to run away. Quinones was rushed to Methodist Hospital but died enroute.

Two others were apprehended at the scene: Richard Molina and Antonio Medina. Medina refused to make any statements to the police after being advised of his rights. Molina made a statement about the incident but could not add anything to the shooting since all he saw was the deceased climbing out of the car window.

A .32 calibre revolver was removed from the deceased. It had four chambered rounds, 2 of which contained evidence that the primers had been struck.

This matter was heard by the Brooklyn Grand Jury which voted No True Bill.

A CCRB complaint was filed, but the Board exonerated the officer.

Firearms Discharge Review Board found the shooting to be in accordance with Department Guidelines.

The deceased had 1 felony arrest, 2 misdemeanor arrests and 2 outstanding warrants.

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#### CASE OF MICHAEL FURSE

Killed while being arrested for Robbery (pretended gun) and while turning with an object in his hand.

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On June 16, 1980 Police Officers Ellen Alwill, Abraham Hurtado, Gerald Conway and Eugene Deady all members of the Brooklyn Senior Citizen's Robbery Unit were engaged in a decoy operation in the area of Parade Place and Woodruff Avenues. Police Officer Ellen Alwill was clothed as an elderly female. At about 11:15 P.M. a 16 year old black youth,

later identified as Michael Furse, was placed under surveillance by Police Officer Alwill's "back-up officers". Furse followed P.O. Alwinn to a point where he passed her, spun around with his hand inside his shirt, walked back towards her and stated "I have a gun, this is a holdup, give me your pocketbook or else I'll shoot you". A weapon was not displayed since the suspect kept his hand inside his shirt. During the confrontation with Mr. Furse, P.O. Alwill signalled her backup team by clicking her portable radio. A 15 year old who was looking out an apartment window across the street, screamed ". . .the lady's being robbed". Mr. Furse then fled the scene. Immediately thereafter P.O. Alwill by portable radio, broadcast to her backup . . . "I've been ripped off, he has a gun". P.O.s Gerald Conway and Eugene Deady seated in a van near the scene, spotted the suspect and gave chase. They yelled "stop police" several times as they pulled up along side of Mr. Furse. Officer Deady observed a pocketbook (which was later identified as the pocketbook belonging to P.O. Alwill) in the suspect's left hand and an unknown object in his right hand. At about 12 feet away, Mr. Furse turned towards the van and raised his right hand containing the unknown object. At this point, P.O. Deady fired three times striking Mr. Furse in the head and body. Two witnesses stated that the suspect had a pocketbook in his left hand and an unknown object in his right hand. The unknown object turned out to be a coin purse with a silver chain, stolen from the decoy officer.

After hearing testimony from eight witnesses, civilian and police, the Grand Jury voted No True Bill. The Firearms Discharge Review Board found that P.O. Deady acted within the Police Department Guidelines.

No CCRB complaint was filed.

Michael Furse was previously arrested 5 times for Juvenile Delinquency for the following offenses:

3/18/80	Burglary, Criminal Mischief
2/07/80	Burglary
10/22/79	Family Court Warrant
8/07/79	Attempted Robbery
5/22/79	Burglary, Criminal Mischief
6/19/79	Y.D. for Assault

A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF KENNETH GAMBLE AND RICKY LEWIS (C. Vernon Mason)

Killed by officers after Attempted Murder of Police Officers.

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On October 18, 1980 at approximately 12:15 A.M. Police Officers Joseph Esposito and Fred Falcone assigned to the 83rd Precinct Anti-Crime Unit, noticed a disturbance in front of a social club at 209 Evergreen Avenue, Brooklyn, N.Y. They stopped their unmarked vehicle a block away and proceeded on foot to investigate.

As they approached the crowd they heard numerous shots being fired and saw one black man, later identified as Lemuel Thompson, carrying a sawed off shotgun. After the officers yelled "Stop, Police", Thompson turned and fired one shot at them. Thompson then went towards a Red Ford where two other individuals fired at the officers. The officers then returned five shots each at the gunmen by the Ford, from a distance of approximately twenty-five feet. Thompson dropped the shotgun as he entered the Ford which sped away. Esposito retrieved the shotgun and then he and Falcone got back into their vehicle and gave chase. Several civilian witnesses, recounting their observations of the scene, confirmed that Thompson fired the shotgun at the officers.

A chase ensued from Evergreen and Cedar, to Bushwick and McKibbens, a distance of fourteen blocks. Police Officers Gaspar Cardi and Michael Cohen, on RMP duty responded and joined the chase in a marked Radio Motor Patrol Car. Police Officers John Bobot and Robert Dixon in an unmarked burglary car also gave chase.

Five of the six officers stated that during the course of the chase, the suspects fired shots at them. The officers did not return fire during the chase.

Just prior to the Red Ford crashing into a fire hydrant, it slowed down and a black man, later identified as Kenneth Gamble, jumped or fell from the passenger side. Police Officer Bobot stopped and exited his car, observing Gamble rise to a crouch position as if he had a gun. Officer Bobot fired one shot at Gamble which missed. Nonetheless, Gamble collapsed and was handcuffed by officers. He died of gunshot wounds. Ballistics examination revealed two bullets in his body were fired from Officer Esposito's firearm. In addition, Gamble had an old .22 calibre bullet in him, which was connected to a homicide which had occurred on August 21, 1980. An accomplice to that crime stated that Gamble was the actual shooter.

The Red Ford, which now had five occupants, crashed into the fire hydrant at Bushwick and McKibbens. The Anti-Crime Auto, with Police Officers Esposito and Falcone, then came abreast of the drivers side of the suspect vehicle. Officer Falcone hearing shots being fired, discharged four rounds, while his partner Esposito fired five, from a distance of 3 to 5 feet.

At that time, Police Officer Cardi, in a marked RMP (burglary car), also hearing shots and seeing a flash come from the passenger side of the Ford, stopped his car, exited, and fired one shot in the direction of the Ford.

The officers on the scene then converged on the Red Ford, removed the occupants and effected their arrest. The driver, Ricky Lewis a 24 year old black man had been fatally wounded.

Police Officers Ronald Vaughn and James Samuels observed officers Falcone and Esposito opening the passenger door of the Ford, at which time both officers saw a hand come out of the auto and drop a gun. One of the officers kicked the gun away from the vehicle.

A large crowd gathered at the scene and a lot of confusion ensued. The gun referred to by Officers Vaughn and Samuels was not recovered.

Lemuel Thompson was convicted for felonious possession of a weapon and received a sentence of 3 to 9 years in state prison. The other survivors were not prosecuted.

Statements were taken from ten police officers, the four occupants of the Red Ford and twenty-five civilians. The Grand Jury reviewed the officers actions and voted No True Bill. The Firearms Discharge Review Board found the shootings to be within Department guidelines.

No. C.C.R.B. complaint was filed. A U.S. Justice Department investigation into this matter found no police wrongdoing.

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CASE OF DONALD WRIGHT (C. Vernon Mason)

Killed by black officer after a verbal and physical altercation.

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On December 30, 1980, Police Officer Cleveland Ladson,

a black officer assigned to the 28th Precinct was on foot patrol in uniform. At approximately 6:00 P.M. Officer Ladson entered a shoe store on 125th Street, to use the bathroom. While Officer Ladson was in the bathroom an argument started between a customer and a clerk. At this time P.O. Barbara Boyde also on uniform patrol entered the store.

When Officer Ladson emerged from the bathroom Charles McCrimmon, a customer made a remark about the police officers being in the store. An argument ensued between Mr. McCrimmon and Officer Ladson. Another customer, Donald Wright, a black man, intervened and a struggle resulted.

During the struggle Officer Ladson twice struck Mr. McCrimmon on the side of his head with a department radio. In addition, Officer Ladson removed his gun from his holster, because he feared it might be grabbed during the struggle.

Officer Ladson pushed Wright toward the front of the store and P.O. Boyde attempted to control McCrimmon. While in the front of the store with Wright, Officer Ladson's gun discharged, striking Wright on the left side of his head. Officer Ladson stated that Wright grabbed for his gun, but none of the witnesses saw Wright grab for Ladson's gun. Two bags were found close by Wright's body and at least two witnesses saw Wright carrying a bag in his right hand.

The Manhattan Grand Jury voted No True Bill.

Officer Ladson was given Departmental charges for improper use of his firearm, and at a Department Trial was found guilty and dismissed from the N.Y.C.P.D.

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CASE OF RUTH ALSTON (C. Vernon Mason)

Killed while struggling to remove gun from officer while being questioned about prior complaint of menacing with a gun.

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At approximately 5:00 A.M. on January 5, 1981, an argument arose among patrons of a bar on Adam Clayton Powell Boulevard in Manhattan. A bar employee telephoned the police when a woman patron pointed a gun at him. Police Officers

Badstibner and Orhnber responded to a 911 call for a "woman with a gun", at that location.

Upon their arrival, the complainant met the officers on the street and told them that the woman was walking down West 132nd Street. He also told the officers that the woman was about to pass the gun to a man also on the street.

Officer Orhnber detained the man and some distance away, Officer Badstibner detained the woman. The officers had their guns drawn. While Police Officer Badstibner was holding the woman at gunpoint, he was attacked by three other women, two sisters and a niece of the suspect. The four women were jumping on the officer's back hitting him. The officer was hit on the side of the head and knocked to the ground. One of the women was still pulling at his gun. Police Officer Badstibner fired one shot in the direction of the woman pulling at his gun hand, hitting Ruth Alston a black woman who subsequently died.

When Police Officer Orhnber heard the shot, he went to aid his partner. The male suspect escaped and his identity remains unknown.

A loaded gun was found on the ground floor stairwell of a building 15 feet from the shooting location. This gun was identified by the bar employee as the same gun with which the woman menaced him. He was able to positively identify it because of a distinguishing mark on the barrel.

The witnesses, including the "common law husband" of the deceased corroborate Police Officer Badstibner's and Police Officer Orhnber's version of the facts.

No C.C.R.B. complaint was filed. The Firearms Discharge Review Board found the shooting to be within Department guidelines. The Manhattan Grand Jury reviewed the officers conduct and voted No True Bill.

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CASE OF JOSE MENDEZ (C. Vernon Mason)

Killed by officer after he shot and wounded officer.

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CASE OF JOSE MENDEZ (continued)

On February 10, 1981, at approximately 1:00 P.M., Jose Mendez, in the company of Juan Rodriguez, David Rubio (11 years old), and a female known only as Tracy, was driving a car that had been stolen the previous day. Mendez was attempting to drive the car into the store front of an abandoned building. Tracy was standing outside the car directing Mendez. The others were inside the car. The neighborhood's abandoned buildings are utilized by car thieves to strip vehicles. While maneuvering, Mendez struck a van parked at the curb which was owned by P.O. Richard Agrillo.

P.O. Agrillo and P.O. Thomas Fox, while off duty, were working restoring a building on the same block. A fellow worker saw what Mendez was doing and informed P.O. Agrillo. P.O. Agrillo, P.O. Fox and Francis Cooper, a fellow worker, went out to investigate.

P.O. Agrillo approached the car, which was on the sidewalk perpendicular to the street, from the driver's side. Officer Fox approached from the passenger's side.

When the officers shouted "Police, Stop", the car lurched forward striking the right front door of the van. Almost simultaneously, the driver, Mendez fired at least one shot at officer Agrillo striking him in the right arm. Officer Agrillo fired six shots into the auto, and officer Fox fired once. Mendez died in the exchange of gunfire. At this point the passenger door opened and the juvenile (Rubio) ran out. Officer Fox grabbed him while simultaneously forcing the mortally wounded Mendez to the ground. The juvenile broke free from the officer and fled. Rodriguez also exited the car and struggled with the officer.

When the car door opened, Mendez' gun fell out and went under the van. Witnesses stated that Tracy shouted to the juvenile to get the gun. The boy grabbed it and ran off. He was later arrested, but the gun was never recovered.

Rodriguez and Rubio were questioned shortly after the incident, while in the presence of the parents. Both corroborated P.O. Agrillo's account of the incident. Later, however, they recanted their original statements by saying Mendez never had a gun.

The Grand Jury, after hearing testimony from many witnesses to the incident, voted No True Bill.

The Firearms Discharge Review Board found the officers had acted within Department Guidelines. There was no CCRB complaint filed. The deceased had a history of car theft, attempted assault, assault, robbery and possession of a weapon.

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CASE OF MANUEL HERNANDEZ (C. Vernon Mason)

Storeowner killed during an exchange of gunfire between police and armed robbers.

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This is a case in which the owner of a grocery store and one (1) robber were killed by gunfire during a police response to a 911 radio dispatch alleging a "Robbery in Progress with Shotguns" on 2/12/81. There were four (4) positively identified perpetrators; six (6) victims; fifteen (15) uniformed members of the Department identified as being present inside of the store; and numerous other Police personnel present at the scene. There were a minimum of 40 rounds fired by 10 members of the service, 8 rounds fired by one of the victims (a pistol licensee), and one round fired by one of the perpetrators. The entire incident occurred inside of a small grocery store approximately 22 x 38 having 3 aisles, with 5 shelves loaded with stock and with poor lighting conditions in the rear of the store where the shooting occurred.

This case must be viewed in the context of the extremely volatile and dangerous conditions existing at the time of occurrence. This was a fast moving, highly emotional action, and the only two (2) eyewitnesses in a position to state positively the facts which triggered the gunfire in the rear of the store, died without making statements. Therefore, there are numerous inconsistencies, in the statements of both civilian and police witnesses.

Within the context of these introductory statements, a Legal Bureau attorney after thoroughly investigating this matter on the basis of the witnesses' statements, statements made by the perpetrators after their arrest, forensic reports, physical evidence, a physical inspection of the scene and an interview of the deceased store owner's nephew, has reconstructed the shooting incident as follows:

Four perpetrators entered the store, one at a time, and found the store owner and four other persons present. The now deceased perpetrator, Angelo Fontanez, was armed with a sawed-off rifle, which was recovered at the scene. The three other perpetrators were armed with a shotgun, a pistol and knife. The two perpetrators with the firearms escaped and the one with the knife was apprehended at the scene. Upon entering the premises, the victims were all ordered to lay on the floor while the owner was taken to a rear room by the perpetrator, who was armed with the sawed-off rifle. The perpetrators believed the store owner kept money in the back. While the robbery was in progress, a 6th victim entered the store and was made to join the others. Shortly thereafter a customer was denied entrance to the store by one of the perpetrators. It was this customer who made the 911 call of a "Robbery in Progress". Also, it was determined that there was a silent alarm sent from the store by the owner.

The responding Police Officers were observed trying to locate the exact location of the robbery and this enabled two of the perpetrators to escape taking their firearms with them. The remaining two perpetrators were alerted to the police presence but were unable to exit the premises. The responding officers were confronted by one of the perpetrators who pretended to be a victim and stated that they were just robbed and that the robbers fled the scene. This perpetrator attempted to pass the officer but was detained. This action appears to have given the perpetrator Fontanez who was holding the owner in the back of the store an opportunity to fire a shot and made a dash towards the front in an effort to escape. It also appears that the owner had his licensed handgun secreted in the rear room and during the distraction, he grabbed his gun and fired a few shots at Fontanez, one of which hit Fontanez in the back. The Police Officers not being able to distinguish the shots and motivations for them, interpreted this action as being shots fired at them from the rear of the store. This assessment by the officers was fortified by the fact that one officer who was actually cut by flying glass shouted out that he was hit. The Police Officers then fired multiple shots. This was an instantaneous reaction. The perpetrator, Fontanez, maybe not even knowing that he had been hit in the back, dropped the rifle near the middle section of the store and ran back to the back room of the store for cover. While this was happening, some officers transmitted a call for help indicating that an officer had been shot. It should be kept in mind that this is a rapid sequence of events. At this time Fontanez was seeking cover in the rear room unaware of the fact that the owner had a gun. The owner hastily unloaded and reloaded while the perpetrator, Fontanez, was seeking a way out of the rear room. The owner fired two rounds into Fontanez at a very close range. The officers hearing gunfire coming from the rear of the store again believed that they were under attack, fired several more rounds towards the back of the store. All of the action occurring between Fontanez and the owner took place right around the door of the rear room. The darkened light conditions made the muzzle flash highly visible and this led to the police officers' retrospective statements that they had actually seen a hand pointing the gun at them. The mortally wounded perpetrator, Fontanez, staggered towards the door and collapsed while the owner, gun in hand, became visible at the door. One of the officers, upon seeing the perpetrator Fontanez staggering out shouted "here he comes", several shots were fired by the police officers and at this point, the officer whose bullet was later identified as the one which killed the store owner stated, "I looked up and saw a man with a gun in his hand, I fired 5 shots and retreated". It is assumed that the owner Emanuel Hernandez, at that point in time was severely traumatized by his ordeal and could not comprehend the danger of attempting to exit the rear room with a gun in his hand. It should further be noted that Emanuel Hernandez' last intelligence with respect to the action in the front of the store was that there were several robbers out there armed with guns.

It is conceivable that he was not entirely sure that the police had control of the front since he probably did not associate the gunfire in the front of the store as a reaction to his firing in the rear.

It should be noted that although this incident at various times, has been described as a hostage situation, it was actually an aborted robbery which developed into an attempted escape from the scene by the two trapped robbers. This attempted escape was defeated by two conditions which were independently acted out and actually contributed to the tragic results. That is, the perpetrators attempted to flee the scene by commingling with the victims and through firing a shot to create confusion. The police response was to assume a tactical position which would provide the cover for themselves and afford for the removing of victims and suspects from the premises. Simultaneous with the police response and action, the store owner, a pistol licensee took immediate action to disable the armed robber, who had been holding him at bay with a gun. It was a combination of these three different objectives and the separate reaction to each set of rounds fired which cause the demise of the store owner.

Given these sets of circumstances, it is reasonable to conclude that both the Police and the Pistol Licensee, Hernandez, acted and reacted reasonably. The absence of any single variable in the whole incident could have produced a completely different result.

The statements taken from each of the eyewitnesses immediately after the shooting varied on several points. However, each witness confirmed that the police did not initiate the shooting but did respond to shots fired in the rear of the store.

A New York County Assistant District Attorney responded to the scene and initiated his investigation immediately. Based upon all of the information available, he concluded that it would not be necessary to present this case to the Grand Jury, noting that the trial and conviction of the surviving perpetrators was a sufficient public record of the incident.

The Firearms Discharge Review Board reviewed this matter and found the shooting did not violate Department guidelines.

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CASE OF ROBERT GREENE (C. Vernon Mason)

Killed after pointing a firearm at a pursuing police officer.

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On March 31, 1981, at approximately 10:40 P.M. Police Officers John Mayer and Carol Esserman while on duty in an unmarked department auto responded to a radio call of "Two men with guns" at 3208 Third Avenue, Bronx, New York. Upon arriving at the scene, the officers approached a parked car with two occupants. As they approached the vehicle, they heard a shot from within the vehicle, which then abruptly lurched forward at excessive speed in the direction of Officer Mayer, who was shouting "Police". Officer Mayer jumped back to avoid being struck by the auto. He then observed an arm extended from the passengers side with a gun pointing at him. Officer Mayer then fired five rounds from his service revolver at the vehicle, which was approximately five to seven feet from him. The vehicle continued a short distance and then crashed into a storefront.

Robert Greene, a 48 year old black man, alighted from the vehicle on the passenger side and pointed a handgun in the direction of Police Officer Mayer. Officer Mayer discharged two rounds from his off duty revolver. Mr. Greene then ran from the scene with Police Officer Esserman in pursuit. Officer Mayer then arrested the female operator of the vehicle, who had a gunshot wound in the right elbow.

Police Officer Esserman, continuing in pursuit of Mr. Greene, observed him stop, turn and face her, pointing what appeared to be a handgun in her direction. Officer Esserman discharged one round from her off duty revolver at Mr. Greene, who turned and continued running. Officer Esserman lost sight of him but determined that he entered a nearby tavern. He was found dead on the floor of the bar. A search of the area failed to uncover a gun.

Police Officer Esserman was indicted by the Bronx Grand Jury in May of 1981 for Criminally Negligent Homicide. Police Officer Mayer was indicted by the same Grand Jury for Assault in the second degree.

Both officers were acquitted after a non-jury trial.

The Firearms Discharge Review Board found the shooting to be within Department guidelines.

Both officers received disciplinary charges and were suspended at the time of indictment. After they were found not guilty of the criminal charges and after a thorough

investigation by the Department, the disciplinary charges were dropped upon motion of the Department Advocate.

The deceased had been arrested twenty-seven times dating back to 1958.

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CASE OF SYLVESTER ELLIS (C. Vernon Mason)

Killed by Correction Officer while resisting arrest for Burglary of residence.

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At approximately 7:35 P.M. on April 11, 1981, Correction Officer Philip Mistretta, while off duty, was visiting his father's residence on Conklin Avenue, Brooklyn. As he entered the side door and stepped into the landing, he heard someone slam the inside kitchen door. He also heard scuffling and running noises from the rear bedroom. The officer then ran to the yard at the rear of the house, positioning himself near the bedroom window where two or more suspects exited. He identified himself as a Police Officer. He was then jumped and knocked to the ground by the suspects who began kicking and punching him. At that point the officer managed to draw his revolver and fire two shots at the silhouettes. As the suspects attempted to escape over the fence in the rear yard the deceased, Sylvester Ellis, a 17 year old black youth, fell dead on the fence as a result of a gun shot wound. The other suspect or suspects escaped.

On the person of the deceased was found a smoking pipe which belonged to the officer's father.

The case was presented to the Kings County Grand Jury, which voted No True Bill. The Department of Correction, after investigating, exonerated the officer from any wrongdoing. The deceased had two previous felony arrests wherein he was adjudicated a Youthful Offender and another arrest which was pending at the time of his death.

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CASE OF CAMERON DASHIELL (C. Vernon Mason)

Killed while choking an officer with his nightstick.

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On June 28, 1981 at approximately 1:20 A.M., Transit Police Officer Allen Gianfortune responded to a request by a Transit Conductor to remove a sleeping man from a train. The officer went into the car and tapped the man, Cameron Dashiell, a 28 year old black man, on the leg with his nightstick in order to awaken him. Dashiell awakened and then went back to sleep. The officer then tapped him on the arm with the stick and the subject stood up and asked the officer, "Why did you hit me?". The officer responded that he didn't hit him and advised him to leave the train. The subject then put his hands to the officer's face in a karate stance and started coming towards him. The officer then held his stick in a defensive position and at the same time requested assistance over his walkie talkie.

At this point, the officer backed up as Dashiell kept coming with his hands waving in the officer's face. Dashiell then lunged and grabbed the officer's stick with both hands, twisting the officer around, causing the officer to lose control of the nightstick. At this point the officer's stick was being used to choke him and the officer removed his gun and advised him to drop the stick. Dashiell responded by telling the officer "you're not going to do a thing". He then pulled the officer around and started to push down with the stick in the officer's throat. At this point, the officer placed the gun into Dashiell's mid-section and fired twice. Dashiell died in the operating room at Beekman Downtown Hospital.

The officer was treated at St. Vincent's Hospital for injuries to his arms, back and neck and then released.

The Grand Jury voted No True Bill. The Transit Authority Police Department found no misconduct on the part of the officer.

The subject had 2 previous felony assault arrests and one misdemeanor arrest for Criminal Possession of a firearm and a knife.

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CASE OF MACKENZE DESIR (C.Vernon Mason)

Killed by officer during the commission of a burglary.

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Police Officer Vincent F. Adinolfi and his partner P.O. John T. Sherman, on September 1, 1981 at approximately 5:30 A.M.

responded to a radio call of a signal "10-31 (Burglary in Progress), four or five youths trying to get into 3423 Church Avenue." They were the first officers on the scene. They immediately made an arrest of a black youth exiting the front of the store.

Sgt. Stephan Jordan and P.O. John P. Leahy responded as backup. While Sgt. Jordan and P.O. Sherman took custody of the first youth, P.O.'s Leahy and Adinolfi entered the premises (a small grocery store). A second black youth was located and arrested by P.O. Adinolfi who passed him outside to Sgt. Jordan. P.O. Adinolfi continued searching towards the front. The store was dark with some light coming in from the street. The grocery store has narrow aisles crowded with merchandise.

P.O. Adinolfi was confronted in the rear of the store by a third individual, later identified as Mackenze Desir, a 15 year old black youth. Desir approached the officer with what appeared to be a shiny object in his right hand which the officer believed to be a knife raised in a thrusting position.

P.O. Adinolfi had his gun drawn and ordered the subject to "drop it", and to "stop". He then backed away from Desir until he could back up no further. Desir continued towards him and P.O. Adinolfi fired one shot which resulted in Desir's death.

P.O. Leahy, who was in the front of the store at this time stated that he heard P.O. Adinolfi say either "drop it" or "stop it", and almost immediately thereafter he heard a shot.

There was no knife or shiny object found on the deceased or on the floor area around his body. A knife and two rolls of coins were found in a toilet bowl within a bathroom near where Desir had fallen.

Mackenze Desir had previously been arrested as a juvenile delinquent twice for Burglary, and once for an Attempted Burglary, Criminal Mischief and Possession of Marijuana.

The second accomplice, an 18 year old, had been previously arrested 7 times: once for Robbery, once for Attempted Robbery, once for Attempted Grand Larceny Auto and Possession of Burglar's Tools, once for Trespassing, and three times for Burglary.

The third accomplice, a fifteen year old had been arrested for Robbery and Forced Theft; Burglary 2nd degree, Assault 2nd, Possession of a Noxious Material (Mace) and

Possession of a Knife, and attempted Burglary and Criminal Mischief.

No CCRB Complaint was filed. The Grand Jury reviewed the matter and voted "No True Bill". The Firearms Discharge Review Board determined that the member concerned discharged his firearm in accordance with Department Policy.

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CASE OF GARY BECTON (C.Vernon Mason)

Transit Police Officer, while shooting at fleeing suspects, hit and killed an innocent bystander.

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On September 4, 1981 at 8:45 A.M. Gary A. Becton, a 26 year old black man, was shot by Transit Police Officer Marvin Zeigler, a 34 year old black officer in front of 1010 Eastern Parkway, within the confines of the 71st Precinct, Brooklyn, New York.

Officer Zeigler was on duty and in uniform at the IRT subway station located at Eastern Parkway and Schenectedy Avenue, Brooklyn. He observed two black men attempt to remove a wallet from the right hand pocket of a man who was entering a turnstile. When the victim shouted to the officer, the perpetrators ran up the subway stairs toward the street. Officer Zeigler chased after them. He saw silver objects in their hands.

When Officer Zeigler got to the street, he shouted for them to stop. One of the men turned toward Officer Zeigler with a silver object in his hand. The officer fired one shot from his off duty revolver which missed the suspect. The suspects escaped.

Mr. Becton who was riding his bicycle on Eastern Parkway was struck in the head by the bullet fired by officer Zeigler. Mr. Becton was taken to Kings County Hospital where he was pronounced dead.

The victim of the subway incident could not state whether his assailants possessed a firearm and none was recovered because they escaped.

This case was reviewed by the Kings County Grand Jury which voted "No True Bill".

Department disciplinary action was brought by the New York City Transit Authority. Officer Zeigler was found guilty of endangering innocent victims by his use of the

firearm on September 4, 1981. He was suspended for 44 days without pay.

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CASE OF LAMONT HEYWOOD (C. Vernon Mason)

Claims he was assaulted by Police Officers who arrested him for Criminal Possession of a Weapon.

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On September 15, 1981, at approximately 8:20 P.M. Police Officers Alfred E. Smith, Harold Lanigan, and Kenneth Peterson, all in plainclothes and assigned to the 7th Precinct Anti-Crime Unit, responded to a radio dispatch of "female calls for help". When they arrived at the scene, a black man, later identified as Lamont Heywood, began to run and was chased by Officers Lanigan and Peterson. During the chase, Officer Peterson saw Mr. Heywood throw what appeared to be a gun into a vacant lot. Mr. Heywood was apprehended approximately two blocks away and brought back to the lot where a gun was found. Mr. Heywood was then brought to the 7th Precinct for arrest processing.

Mr. Heywood subsequently filed a complaint with the New York County District Attorney's Office that while being transported to the Station House he was beaten by the officers and also in the 7th Precinct Station House where he had an electric toothbrush inserted into his mouth, which cut both sides of his mouth and his tongue.

After careful investigation the Manhattan District Attorney's Office found there was not sufficient evidence to proceed. Physical and medical evidence did not corroborate Mr. Heywood's claim. Mr. Heywood's statements to the four doctors who treated him were inconsistent and did not support his allegation. There is no record that Mr. Heywood at any time while in the criminal justice system, asked for medical attention. Mr. Heywood also made inconsistent statements to two assistant prosecutors who interviewed him. The U.S Justice Department is currently reviewing this case.

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CASE OF LORNA EARL

Punched by officer after she bit him on the hand.

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On September 21, 1981 at 11:00 P.M. Officer Oxley accompanied by two other officers, all in uniform, responded to 1504 Sheridan Avenue, Bronx, to execute a family court warrant for the arrest of one James Earl, on the complaint of his former wife, who was present with the officers.

Upon knocking on Mr. Earl's door and announcing the purpose of their visit, Lorna Earl, Mr. Earl's present wife, refused to open the door and challenged the officers to knock the door down. The officers after attempting to persuade Mrs. Earl to open the door, pushed the door open and entered the apartment. Mrs. Earl began to scream at the officers as they searched the apartment for Mr. Earl. During this search, Mrs. Earl ripped a telephone from a wall. After determining that Mr. Earl was not in the apartment, the officers began to leave. At this time, Mrs. Earl struck Officer Oxley with the phone. When the officer raised his arm to remove the phone from Mrs. Earl's grasp, she bit him on the hand. The officer then struck her and placed her under arrest. The Officer's rendition of the facts is supported by Mr. Earl's former wife and the building superintendent, who were present at the time of the occurrence.

Police Officer Oxley was treated at Columbia Presbyterian Medical Center for the bite wound.

Mrs. Earl was arrested for assault in the Second Degree. No disposition of the case is available due to the court record being sealed.

The matter was investigated by CCRB and the allegations were unsubstantiated.

No disciplinary action was taken against the officers.

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CASE OF "BLUES BAR" (Alan Roskoff)

Complaint that officers damaged a bar and assaulted black patrons.

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A number of complaints received by the Police Department alleged that on September 29, 1982 at about 11:00 P.M., several uniformed police officers entered the "Blues" Bar at 264 West 43rd Street, New York, N.Y. These officers are

alleged to have assaulted patrons and employees of the bar and to have taken money and other property. These same officers threw bar stools, turned over a pool table, broke liquor bottles, glasses, mirrors, and caused extensive damage to the bar.

A review of the F.A.T.N. communications printout indicates that at 10:55 P.M. "911" received a call from a male complaining that two blacks assaulted him and threw him out of the "Blues" Bar. Three Midtown Precinct South Sector cars and a foot patrolman responded. Two minutes later, 10:57 P.M., a signal "10-13" (assist patrolman) was called over the air and five Midtown Precinct North cars, including one sergeant, responded. At 11:00 P.M. "no further assistance" was called over the air; and by 11:03 P.M. eight minutes after the first call to 911, police units were resuming patrol.

The first two police officers to arrive on the scene, Police Officer Manuel Gomez and Police Officer Thomas Monroe, both of MTS Precinct, were injured while trying to break up a fight between two unidentified black men but were unable to identify those who injured them.

Sixteen complainants who were interviewed were unable to identify conclusively officers who were at the scene. One complainant, Arnold Doreen Williams did identify Police Officer Auer and his partner who denied ever responding to "Blues" Bar. No other officers interviewed could place Auer or his partner at the scene.

A total of 50 police officers were interviewed. Nineteen officers stated they responded to the "Blues" Bar but never entered the bar. Eleven officers admitted entering the bar but denied using any force or damaging any property.

This case is still under active investigation by Internal Affairs Division.

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CASE OF HENRY WOODLEY (Rev. Daughtry)

Killed while armed with a knife as he ran towards police officer.

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On January 9, 1983 at 12:15 A.M., Henry Woodley, a 23 year old black man was shot and killed by Housing Authority Sgt. Gary Commer.

Gwen Woodley, sister of the deceased, ran into a Housing Police facility stating that 5 or 6 black men were beating up

another black man. The desk officer, Lt. Carl Cruickshank along with Sgt. Gary Commer and off duty Housing Police Officer John Cimilluca responded to the front of 1390 5th Avenue, within the confines of the 28th Precinct. Upon arriving at the scene they observed a number of persons engaged in a fight. As the officers moved towards the fight those involved stopped fighting and started to run away in various directions. Two of the men involved in the fight started to run in the direction of Sgt. Commer. The first was unarmed, but was being chased by the second man who had a knife in his hand.

Sgt. Commer shouted to the man with the knife, Henry Woodley, to stop. When Woodley did not stop, Sgt. Commer fired three shots, striking him twice, causing his death. A carpet knife with a black handle which Woodley was holding was recovered at the scene.

Several civilian witnesses corroborated many aspects of the police account of the incident. At least two of the witnesses observed Woodley with a knife in his hand and no witness said Woodley did not have a knife.

On February 24, 1983 the New York County Grand Jury voted "No True Bill".

The Housing Authority after investigation concluded the firing was pursuant to Department Guidelines.

\* \* \* \*

#### CASE OF LARRY PEOPLES

Complaint that five officers threatened him with a gun, wrongfully arrested him in connection with a drug raid, and forced his one year old son to stay unattended in a van for several hours.

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At approximately 1:00 P.M. on February 17, 1983, members of the Narcotics Division effected 18 arrests, seized nine handguns, a sawed-off shotgun, almost \$30,000 and approximately 430 pounds of marijuana at 971 Anderson Avenue, in the Bronx.

Larry Peoples was observed "steering" people into a building which was under observation by Narcotics Officers. He was one of four observed "steerers". He was observed entering a van just north of the premises in question, and remained there until the raid was made.

When Larry Peoples was placed under arrest for acting in concert with others selling marijuana, he resisted arrest by knocking two officers to the ground causing them minor injuries. As a result he was additionally charged with Felonious Assault and Resisting Arrest.

On March 30, 1983, one Carol Peoples sent a letter of complaint to the Attorney General's Office, which forwarded it to CCRB. CCRB has made numerous attempts to interview Peoples without success. Mr. Peoples contacted CCRB on September 21, 1983 and stated that on advice of counsel, he would not make any statements. Mr. Peoples' criminal case is still pending for misdemeanor Assault and Resisting Arrest. CCRB still has an active investigation on this case. The U.S. Justice Department is currently reviewing this case.

\* \* \* \*

CASES OF LARRY DAWES (Cora Gibson)

Subject was involved in a fatal accident while being pursued by police.

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At 11:40 P.M. on March 16, 1983, Larry Dawes, a 20 year old black man was fatally injured in an accident. The deceased was the operator of a motorcycle which was being pursued by an RMP for passing a steady red light. The motorcycle crashed into a parked vehicle and Dawes was killed and a passenger, Corey Gibson, a 20 year old black was injured. Gibson claimed that the pursuing RMP bumped the motorcycle causing the crash. This matter was investigated by NYPD Highway Unit and the Accident Investigation Squad. Their forensic findings, which were testified to at subsequent Grand Jury proceedings, indicated no consistency of damage between the motorcycle and the RMP. The sole civilian witness testified that she did not observe contact between the RMP and motorcycle.

The Brooklyn Grand Jury after hearing testimony from these witnesses voted "No True Bill".

A complaint was filed with C.C.R.B. which is currently under investigation. The U.S. Justice Department is currently reviewing this case.

\* \* \* \*

CASE OF REV. LEE JOHNSON (Dr. Shriver & C. Vernon Mason)

Subject claims unnecessary force was used against him to effect an arrest.

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On April 30, 1983 at 7:40 P.M. at 127th Street and Lenox Avenue, Police Officers Teller and Messina on duty and in uniform stopped Rev. Johnson for operating a vehicle with no front license plate. When asked for his license and registration Rev. Johnson refused and began shouting and using abusive language. A crowd began gathering and the officers informed him that he was under arrest. Rev. Johnson refused to leave the vehicle and swung his fist at P.O. Teller. The crowd became more unruly and the officers called a 10-13 (officer needs assistance) on their radio. The officers removed Rev. Johnson from the vehicle as other radio cars responded. Sgt. Longhran arrived and assisted Police Officers Teller and Messina in cuffing the prisoner and placing him in an RMP. At the time, bottles were being thrown at the police officers and one individual, Roderick Mitchell, was shouting to the crowd, "Don't let them take the brother! Let's get them!" Roderick Mitchell was arrested for obstructing govern-

CASE OF REV. LEE JOHNSON

Rev. Johnson made no claim of injury to police officers on the scene, at the stationhouse, or during the booking process. The Department has no records indicating an injury to him. When Rev. Johnson publicly stated he had been injured and treated at a hospital, the Department asked him to waive his confidentiality privilege with respect to any hospital records. He refused, and has repeatedly declined to cooperate with the Department's attempts to obtain his version of the incident in question.

CASE OF CORNELIA MUAMBA/EMILIA BARKMAN (Laura Blackburne)

Civilian Complaint against Transit Police Officers alleging discourtesy.

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Cornelia Muamba, a black woman, 48 years of age, filed a complaint with the Transit Authority Civilian Complaint Unit alleging discourtesy and injury caused by two Transit

Authority Officers, Ronald Bauman and Harry Hom, of Transit District No. 3 on May 18, 1983 at 4:00 P.M., at the IND Subway Station at 125th Street and 8th Avenue.

Ms. Muamba had observed the two Transit officers confront a black youth and female companion because the man had failed to pay the required fare. Ms. Muamba interceded on behalf of the youth indicating that she would pay the fare for him. After a summons was issued to the youth, Ms. Muamba states the officers told her to mind her own business, and that when she replied in a discourteous way she was arrested for disorderly conduct.

Ms. Muamba claimed an injury to the right side of her face as a result of being thrown against the wall in the station.

Ms. Ianta Washington, a 23 year old woman, telephoned the Civilian Complaint Unit and stated she witnessed an incident in which two white police officers had slapped a handcuffed black woman in the face. Ms. Washington did not witness any activity between the officers and the black youth, nor did she hear any profanity.

Transit Civilian Complaint Unit did not substantiate the allegations made against the two police officers because of "doubt as to whether what the witness reportedly observed actually occurred", as the complainant never alleged that she was slapped by either officer.

\* \* \* \*

CASE OF ERNEST WRIGHT (Appeared in Person)

White Police Sergeant alleged to have made discourteous remark at the scene of complainants wife's death; and of assaulting him.

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On June 5, 1983 at approximately 7:15 P.M. Billie Jay Wright, a black woman jumped or fell to her death from a 6th floor window at her residence, on Ocean Avenue, Brooklyn.

Mr. Wright states that when Sgt. John Moscio arrived at the scene, along with an ambulance and other police units, he remarked to another police officer in words to the effect that "he probably pushed her".

Mr. Wright stated that when he heard this remark, he called the Sergeant an "insensitive bastard" and went for him. As he did so, he alleges the Sergeant kicked him in the stomach and that an unidentified Police Officer placed a choke hold on him. As many as nine uniformed police officers may have been on the scene at the time.

Mr. Wright first complained to CCRB on July 26, 1983.

One witness, a Long Island Railroad Police Officer has thus far been interviewed. He heard Sergeant Moscio's remark and confirms that Wright went toward the Sergeant. Although there was a struggle the witness did not see Sgt. Moscio kick Wright.

This had been a CCRB conciliation case but has been re-classified because additional witnesses have been located. The case has been reassigned and is currently pending, awaiting the interview of additional witnesses.

\* \* \* \*

CASE OF HERBERT WOODS (C. Vernon Woods)

Complains that officers used obscene language and struck him on side of the face, breaking his eyeglasses.

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On June 7, 1983, at approximately 12:30 A.M. Police Officers Paul Dellacona and James Jordan of the 28th Precinct were called to a fire scene by firemen to remove a disorderly person. After the officers directed the disorderly person to leave they entered their RMP but could not leave because a vehicle pulled up and parked in front of them between two fire trucks.

The operator of the vehicle identified himself as the owner of the building. The officers asked him to move his vehicle. He moved it about five feet where he left it double parked, still blocking the RMP. Officer then arrested him and removed him by RMP to the 28th Precinct where he was issued three summonses (disorderly conduct, double parking and obstructing traffic).

Mr. Woods, a 30 year old black man complained to CCRB that the officer used obscene language towards him and struck him on the side of his head causing his eyeglasses to break.

CCRB investigators canvassed the area on three separate occasions but could locate no witnesses. The complainant on June 7, 1983 told investigators that there were no reliable witnesses. A week later on June 16th, the complainant told CCRB that his cousin had witnessed the incident and would contact the investigators. He never did. After interviews of the firemen on the scene, complainant and officers concerned, as well as supervisors who were on the scene, CCRB found no evidence to substantiate complainant's allegations. Case Closed, UNSUBSTANTIATED. The U.S. Justice Department is currently reviewing this case.

\* \* \* \*

CASE OF P.O. WARENA BROWN (C.Vernon Mason)

Female Black Police Officer alleges she was improperly treated by a white female and oriental male officer.

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Police Officer Brown, while off duty and on Extended Military Leave called 911 to report a Burglary on 6/9/83. Investigation reveals that Officer Brown was uncooperative with responding officers, after they had apprehended a suspect she had pointed out. At the scene she recanted her original identification of the suspect and refused to properly identify herself, and attempted to leave the area. When the officers persisted in trying to secure her cooperation she became belligerent and used obscene language, drawing the attention of bystanders. The officers took her into custody and removed her to the station house to avoid an incident with the crowd.

The Commanding Officer, 67th Precinct, and representatives from the P.B.A. and the Guardians Association were present at the station house where P.O. Brown was properly identified and permitted to leave.

Officer Brown complained to the Guardian's Association at a later date that her five year old daughter was abandoned on the street and that she was not allowed to converse with a supervisor or make any telephone calls until one hour after she was detained.

An investigation by Internal Affairs Division found these allegations to be UNSUBSTANTIATED.

\* \* \* \*

CASE OF FRANCIS CHU (William Chong)

Complains he was beaten by arresting officers.

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On July 19, 1983 at about 7:30 P.M., Francis Chu, a 20 year old oriental and a companion in his car, were arrested for Reckless Endangerment, Felonious Assault, Resisting Arrest, and disobeying a traffic control device (stop sign).

Mr. Chu was observed by Police Officers Egan and Sergio, who were assigned to an auto larceny vehicle, pass a stop sign at 38th Street and Greenpoint Avenue. The officers pursued Mr. Chu's vehicle for 23 blocks before it crashed into a wall at Laurel Hill Blvd. and 43rd Street. The officers' vehicle collided with a pole at that location. Mr. Chu and his passenger were arrested. On August 4, 1983, Mr. Chu, through the Chinese Consolidated Benevolent Association, complained to the Police Department that he was beaten by officers. Mr. Chu's case is still pending in the Queens Criminal Court. His companion's case was dismissed by the prosecutor.

Numerous attempts have been made by the Assistant District Attorney assigned to the case, and I.A.D. to interview Mr. Chu concerning his allegations. Mr. Chu's attorney has refused to allow his client to speak under a polygraph test. The matter is still pending and a newly assigned assistant prosecutor, I.A.D. and Mr. Chu's attorney have agreed to meet and discuss a possible interview of Mr. Chu.

This case remains ACTIVE, pending further investigation.

\* \* \* \*

CASE OF FITZROY SHABAZZ/ROY JAMES (Appeared in Person)

Two white police officers allege black man attempted to ram their RMP and assaulted them after they issued summonses to him. Black man alleges officers held gun to his head.

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On July 19, 1983 at about 9:30 P.M. in front of 559 Utica Avenue, Brooklyn, New York, Police Officer James J. Maio issued a Traffic summons to a black man, Roy Jamez (Fitzroy Shabazz). P.O. Victor Nico was Officer Maio's partner at the time.

Approximately 10 minutes later in the vicinity of Utica Avenue and Rutland Road, Roy Jamez (Fitzroy Shabazz) attempted to ram their patrol car, and then he fled the scene in his vehicle. Police Officers Maio and Nico chased Shabazz in their patrol car and caught him at Schenectedy and East New York Avenue where they allege Jamez (Fitzroy Shabazz) assaulted them. He was placed under arrest for Reckless Endangerment, 1st degree, Assault Second Degree and Resisting Arrest. The criminal case against Jamez (Shabazz) is still pending.

P.O. Maio received injury to his back and was treated at Coney Island Hospital and released. Police Officer Nico received injuries to his arm, hand, neck and back and was treated at Coney Island Hospital and released. Jamez (Shabazz) did not claim injury but alleged one of the Police Officers held a gun to his head and called him names.

To date, no complaint has been filed with C.C.R.B.

\* \* \* \*

CASE OF POLICE OFFICER CLARK (John Cousar)

Complains of being subjected to racial slurs and assaulted by white officers.

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Police Officer Roberts, male, white, assigned to the 101 Precinct and Police Officer Clark, female, black on a summer detail at the 101 Precinct became involved in an argument in the lounge of the Station House.

On July 25, 1983 at 8:15 P.M. Police Officer Clark, while on her meal period, was watching television when Police Officer Roberts came into the lounge and changed the channel. Officer Roberts told Officer Clark that if she joined the Precinct's TV Club and paid dues she could watch whatever she wanted on the club TV. Police Officer Clark then got up and changed the channel back to what she had been watching. Officer Roberts then changed it back to the baseball game and was allegedly struck in the neck by Officer Clark. Officer Roberts then turned and allegedly struck Officer Clark in the mouth.

Officers in the next room heard an argument going on, and went to the door of the lounge and observed Officer Clark throw a metal chair at Officer Roberts from a distance

of 5 - 8 feet and call him a "bastard". Officer Clark picked up another chair and threw it at Officer Roberts striking him in the forearm. Officer Clark went to the desk officer hollering, "I am not going to let that white mother            get away with this. Roberts hit me and I want to make a complaint against him."

The Lieutenant interviewed both officers and observed a cut on Officer Clark's lip. Officer Clark was treated and released at St. John's Hospital. Officer Roberts was treated and released at Penninsula Hospital.

Charges and Specifications have been preferred against both officers for conduct unbecoming officers.

These Department charges are still pending.

\* \* \* \*

CASE OF ROSEMARY STERRETT (Laura Blackburne)

Complains that Police stopped her at gunpoint and failed to apologize.

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Complainant states that on August 7, 1983, while driving with a friend, her van was stopped by the police somewhere around 40th Street in Manhattan. The officers had guns drawn, spoke loudly and that Detectives and other Police Officers searched her, her companion and the van. While she understands that the officers might have had probable cause, she states she was emotionally traumatized by the incident, and that no apology was given to her.

The case is presently being investigated by Sgt. Peter Cullen, Patrol Supervisor, Midtown North Precinct, who was on patrol on the date in question. He has spoken to the complainant and as of October 3, 1983, had received and was reviewing the Communication Unit tapes in connection with the incident. Investigation is continuing.

\* \* \* \*

CASE OF DET. PHILLIP FRANCIS

Complaint of unnecessary force by officers mistaking him as a criminal suspect and using racial slurs.

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On August 9, 1982, Det. Philip Francis was assigned in civilian clothes to Anti-Robbery Patrol in the Midtown Manhattan Area with Det. Louis Diaz, in a Department Taxi. At approximately 10:10 P.M., they responded to a radio run "Signal 10-30, Robbery in Progress man with a gun" at West 48th Street and Eighth Avenue. Upon arrival, Det. Diaz assisted uniform officers from the Midtown North Precinct subdue one suspect. Det. Francis gave chase on foot on West 48th Street to assist other uniform officers subdue a second suspect. As Det. Francis ran towards an officer who was frisking a black suspect, he was grabbed by other uniformed officers who thought he might be an accomplice. An altercation occurred between Det. Francis and the uniformed officers in which he alleged he was choked, struck on the head and face and hit on the back and side with nightsticks. Det. Francis stated he had displayed his shield and announced his command upon his arrival.

After the initial encounter, Det. Francis stated he began to shout that he was hit only because he was black and that he believed uniformed officers hit every black man until they get the right one. He said he began to walk away and was surrounded by a group of uniformed officers, one of whom said "I'd like to punch you in your black mouth". Det. Francis said he challenged this individual to a fight and started toward him, when he was again grabbed and choked from the rear. Det. Francis later told investigators from Central Robbery and MSA-FIAU he might be able to identify the individual who said "I'd like to punch you in your black mouth". He was unable at the time of the interview to add any information relative to shield numbers, RMP numbers or physical descriptions of the officers involved, except to say they were all white. It was noted by Captain Fitzpatrick, who prepared the confrontation situation report on October 4, 1982, a day after the incident, there was no outward manifestation of the claimed injuries to the head and face of Det. Francis. The detective, according to statements taken from his immediate supervisor, refused medical assistance more than once on the actual date of the incident. The next day Det. Francis did complain of injury and related pain, and was found by one District Surgeon to have sustained "contusion scalp, traumatic myositis neck and back". The officer was returned to duty on August 18, 1982.

Det. Diaz, his partner, states he saw Det. Francis struggling with uniformed officers and that he immediately ran to them shouting that Francis was a police officer. He confirms that a verbal dispute arose and that another scuffle ensued. Det. Diaz did not hear anyone say "black mouth", nor did he interpret this incident to be racial. Diaz stated he did not see anyone strike his partner with a night-stick or closed fist. He characterized it as a pushing and struggling match.

Uniformed officers who were at the scene and involved in the apprehension of the robbery suspect stated that Det. Francis was intercepted and restrained by them but that he was neither struck nor choked. They were aware at some point in the altercation that he was a member of the service. They state that a verbal dispute arose between the detective and themselves following this disclosure but none mentioned another scuffle taking place.

The initial investigation did not determine whether or not Det. Francis was wearing a police armband and/or a shirt with police insignia attached as noted in records maintained by the Guardians Society. As recently as a month and a half ago, Det. Francis in a telephone conversation with Sgt. Mollica, PBMS-FIAU stated that he was wearing an armband denoting the color of the day at the scene of the incident. However, this factor was never looked into during the initial investigation.

Det. Diaz, Det. Francis' partner, was contacted on October 4, 1983. He stated he was not wearing any armband at time of the incident because he said he believed the color of the day was pink and there were no such colored armbands available. He doesn't recall whether Det. Francis was wearing an armband or a shirt with police insignia. He does recall that the shirt worn by Det. Francis was a sweat shirt type as his shield was underneath this type of garment and worn around his neck.

The departmental investigation was closed since there was no substantial evidence of this being a racial incident. It was characterized as a case of mistaken identity.

\* \* \* \*

CASE OF LINDA WOLF (C. Vernon Mason)

Complaint was made by third party that Ms. Wolf was beaten by Transit Authority

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At about 1:00 A.M. on August 13, 1983 at the 42nd Street and 8th Avenue Station, Linda Wolfe, a 34 year old black woman and 4 others were arrested for assault, disorderly

conduct, resisting arrest and other charges. Ms. Wolf had been holding the doors of the "A" train open when she was told to either get on or off the train by Transit Police Officer Michael Ross. A struggle involving P.O. Ross and Ms. Wolf ensued. Four civilians attempted to free Linda Wolf from Ross' grasp. Officer Ross arrested all five assailants with help from another Transit Police Officer, Riley. None of the prisoners were injured. P.O. Ross received bite and scratch injuries and had to receive medical treatment.

One civilian complainant testified about this case before the Congressional Sub-Committee. No complaints have been filed by any of the parties arrested nor anyone else. Nor have any calls been received by CCRB concerning the incident. One of the parties arrested was Sybil Long, possibly a relative. She alleged Linda Wolf was beaten by Transit Officers.

The matter is presently under investigation by the Transit Authority Police Department as a result of the testimony before the Sub-Committee.

Criminal charges against Ms. Wolf are still pending.

Correction: Linda Wolf was in fact injured. She sustained a cut on the right side of the head requiring three stitches to close, and a lump on the left side of the head. She was treated and released at St. Clare's Hospital.

\* \* \*

CASE OF MICHELE ROSS (Laura Blackburn)

Complains officer was unnecessarily rough and refused to identify himself.

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Michele Ross, a black woman, filed a CCRB complaint stating that on September 5, 1983, she attempted to transfer from the train to the #49 bus without a transfer pass. A verbal dispute ensued between her and the bus driver when she refused to get off the bus.

Ms. Ross states that the driver left the bus and returned with a Police Officer, who told her "Miss, you'll have to wait for the next bus". She states that when she refused, he removed her from the bus with unnecessary roughness and when asked his name and shield number, the Police Officer refused to identify himself, and left the scene.

This complaint is currently under investigation by CCRB. The officer remains unidentified as neither the 103rd Precinct nor NSU 19 (both of which cover the area in question) had officers assigned to that post at the time in question. Additional investigation is being made to locate and interview the bus driver. Transit Authority Police Department and the Housing Authority

Police Department are being contacted to see if they had any police officer assigned to that post.

\* \* \* \*

CASE OF DARNEL MURDOCK (Darnel Maurdaugh) (Laura Blackburn)

Civilian complaint by arrested person alleging Transit Officer used racial slurs and unnecessary force.

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On the 6th of September 1983 at approximately 5:15 P.M. off duty Transit Police Officer John Vella was in his car at the corner of Webster Avenue and Gun Hill Road, Bronx, N.Y. waiting for a red signal light to change, when his vehicle was struck in the rear by a moped operated by Darnel Maurdaugh a 23 year old black man.

Vella states that Maurdaugh approached the operator's side of his vehicle and punched him in the face causing injury. A fight ensued and Maurdaugh was arrested for Assault, Resisting Arrest, Criminal Possession of a Controlled Substance in the 7th Degree and Leaving the Scene of an Accident. P.O. Vella and Maurdaugh both received facial injuries and were treated and released from a local hospital.

A witness to the incident confirmed the officer's statements regarding the assault actions of Maurdaugh.

On September 12, 1983, six days after the original incident Maurdaugh changed his story and stated Vella was with another unidentified male passenger, and that both individuals were drinking and intoxicated. Maurdaugh further states Vella had pulled up to a red light and yelled racial slurs to him. Maurdaugh says he responded in kind, whereupon officer Vella reached out and slapped him. After the signal light changed, the vehicles left. Approximately seven or eight minutes later, Vella approached him on foot, punched him in the mouth and menaced him with a gun. He states that Vella did not identify himself as an officer, and that Vella and his unidentified passenger both proceeded to strike and kick him.

Maurdaugh produced four witnesses who support his story.

Mr. Maurdaugh has been arrested on approximately 15 occasions in the past; nine felony arrests and six misdemeanor arrests. These arrests include arrests for: Criminal Possession of Weapon; Criminal Possession of Weapon with Intent to Use; and Assault.

This matter is still under investigation by the  
Transit Police            Civilian Complaint Review Board.

\* \* \* \*

CASE OF MICHAEL STEWART (Rev. Daughtry)

Died in hospital 13 days after being arrested by Transit  
Authority Officer for writing graffiti in the subway.

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On September 15, 1983, Michael Stewart was arrested  
on the 1st Avenue, 14th Street BMT LL Station by a Transit  
Police Officer for writing graffiti on the subway walls.  
He bolted and ran up the stairs and was apprehended. Mr.  
Stewart became violent and was subdued by a member of the  
Transit Authority Police.

Mr. Stuart was brought to Bellevue Hospital for  
psychiatric evaluation. Upon admission to the emergency  
room, Mr. Stewart became comatose. He died on September 28,  
1983.

The Manhattan District Attorney's Office is conducting  
an investigation into the matter.

\* \* \* \*

CASE OF RUSSELL HARRIS (Rev. Daughtry)

The Rev. Daughtry in his testimony before the Congressional Hearings cited a case where police called to the scene of youngsters having an argument "commenced beating the black teenagers while he and other friends screamed 'He is not the one. He doesn't have the knife.'" Rev. Daughtry further stated that all this was happening "while they watched a white teenager, who was his friend screaming 'I have the knife, here is the knife, stop beating my friend.' The police officer continued to assault the teenager who then suffered broken ribs, facial scars and body bruises."

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At about 9:45 P.M., on July 13, 1983, P.O. Villante and Police Officer Celliberti, responded to a radio run complaint of a disorderly group. Upon arrival Officer Villante was informed by a woman that her son, a 13 year old black youth had been menaced by two youths with a knife. The son pointed out Russell Harris, a 17 year old black youth as one of them. Officer Villante informed Harris that he was under arrest and placed him, with his hands extended, against the radio car. Harris told the Police Officer "I don't have a knife", and pulled away from the officer, placing his hand in his rear pocket. At this point, the officer struck him with his nightstick because he believed that Harris was about to obtain a weapon from his pocket and use it against him. Harris was then forced to the ground and Officer Villante felt a hard object in his rear pocket. When he placed his hand into the pocket he cut his finger on a razor knife, with an exposed razor, which was in the pocket.

During the altercation between Officer Villante and Russel Harris, Keith Hodges, a 16 year old white youth, appeared and was pointed out by the complainant as the one who had placed the knife to his throat. Mrs. Ruth Riddick stated that these boys had been physically menacing and threatening her sons over the past three weeks. Both Keith Hodges and Russel Harris were arrested for menacing and criminal possession of a weapon. Harris was additionally charged with resisting arrest. The criminal cases against both defendants were adjourned in contemplation of Dismissal.

Russel Harris was treated and released from Brooklyn Hospital for bruised ribs and laceration above the right eye.

P.O. Villante was treated at Brooklyn Hospital for a cut on the left thumb and a sprained middle finger and released.

Gloria Harris filed a CCRB complaint alleging that her son was beaten by an officer after the officer cut his finger on a knife which was in her son's pocket.

The case is currently under investigation by the Civilian Complaint Review Board.

\* \* \* \*

CASE OF DAVID THORPE (Hector Soto)

Complaint that a number of Police Officers responded to an incident and abused both husband and wife "without regard".

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At 10:40 P.M. on July 19, 1983, three uniformed police officers observed a robbery in the vicinity of 8th Avenue and West 44th Street. The officers were able to apprehend the perpetrator of the robbery and while placing him under arrest, the complainant, David Thorpe, attempted to interfere with the arrest by positioning himself between the arrestee and the arresting officers. The complainant shouted obscenities at the officer which caused a crowd to collect. He also attempted to obtain assistance from others who had gathered to prevent the arrest. When placed under arrest he violently resisted by kicking and punching at the officers. The arresting officer suffered an injury to his right ankle requiring medical treatment.

Mr. Thorpe was charged with the crimes of Felonious Assault, Riot, Obstructing Governmental Administration, Resisting Arrest and Disorderly Conduct.

At the time of the incident, Mr. Thorpe was not injured nor did he request medical aid.

A complaint was made to the CCRB and is presently under investigation. The CCRB has been attempting to contact Mr. & Mrs. Thorpe without success. Their telephone has been disconnected. A registered letter was accepted by the Thorpes, but they have yet to contact CCRB for interview purposes.

Mr. Thorpe has a previous criminal record of 3 felony and 4 misdemeanor arrests resulting in 0 felony and 6 misdemeanor convictions.

\* \* \* \*

CASE OF YVONE LEON (Hector Soto)

Complainant states that while her sons were at home, three Detectives came looking for her husband and searched the apartment and took 2 pictures of her husband.

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At approximately 11:00 A.M. on July 21, 1983, three unidentified men entered the apartment of Julio Baez and Yvone Leon. At the time of the incident Mr. Baez's 2 sons, ages 8 and 14, were home alone in the apartment. They described the men as one Hispanic and two whites. The Hispanic man told the boys that he was a police officer, but he did not show any identification. The boys stated that they looked through the apartment, but did not open any drawers. They finally took two pictures of the father and left the apartment.

An investigation of the incident was conducted by CCRB. After interviewing Mr. Baez, Ms. Leon and the children, Ms. Yvone Leon withdrew her complaint in writing. Mr. Baez indicated that the three men who entered his apartment may have been friends of his former wife, with whom he was having difficulty.

A thorough search of Department records indicated that there were no outstanding warrants for Mr. Baez nor was he in any way the subject of police investigation.

CCRB has closed this case as a result of this investigation.

\* \* \* \* \*

CASE OF JULIO CASTILLO (Hector Soto)

Complainant states that while he was driving home because his wife was very ill, a police officer stopped him to issue summonses and pulled his gun telling him not to move. While he had his hands up, the police officer kicked him in the stomach and he fell unconscious. Police Officer also verbally abused him at the hospital and at the precinct station house.

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At approximately 4:00 P.M. on July 28, 1983, Police Officer Edward Day and Police Officer Edwin Garcia, while on Radio Motor Patrol observed Julio Castillo, a 41 year old Hispanic man driving in an erratic manner and pass a red light. The police officers pursued the subject in a marked police vehicle with roof lights and siren operating. The subject passed 3 additional red lights, 3 yield to pedestrians and one stop sign. The pursuit lasted for approximately 16 blocks when Mr. Castillo stopped his vehicle in front of his house. Police Officer Garcia and Police Officer Day, with his gun drawn and to his side, approached the vehicle as the operator jumped from the car. Police Officer Day ordered him to stop. When Mr. Costello attempted to run, Police Officer Day believed that he was attempting to flee or attack his partner. In an effort to stop him, Police Officer Day kicked him from the side, causing Mr. Castillo to fall to the ground and cut his head on the edge of his open car door. It was not until Mr. Castillo was on the ground and handcuffed that he advised the officers that his wife was ill.

Upon learning that Mr. Castillo's wife may be ill, another officer immediately went to his residence and interviewed Mrs. Castillo. Mrs. Castillo informed the officer that she had not called her husband and that she was not ill and did not need medical attention.

In addition to receiving 10 summonses for the traffic violation, Mr. Castillo was charged with resisting arrest, disorderly conduct and harassment. He was taken to the hospital by ambulance where he received 5 stitches and was released. Upon further inquiry by the Police Officers as to the origin of the message for medical assistance by the wife, Mr. Castillo stated that he wears a telephone beeper and because it was activated, he presumed that it was a message from his wife requiring his assistance.

The CCRB is presently investigating this case and it is still pending.

\* \* \* \*

CASE OF ELLIOTT HERNANDEZ (Hector Soto)

Hector Soto in his testimony before the Congressional Committee complained that an Hispanic man "could not move fast enough when he was instructed by a police officer to remove himself from the front of the building."

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At approximately 11:00 P.M., August 26, 1983, P.O. Bunis was escorting a prisoner from the 52nd Precinct to Central Booking. Outside the station house the officer and prisoner were approached by Mr. Hernandez, a 29 year old Hispanic male, who became abusive to the prisoner because of a prior disagreement between them. The officer advised Mr. Hernandez to go in the station house if he had any business to conduct and if he didn't to remove himself from the area. At this time, Mr. Hernandez attempted to strike the officer with his fist. When the officer attempted to place Mr. Hernandez under arrest, he violently resisted. During the ensuing altercation, Mr. Hernandez suffered a contusion to the right side of his head. No weapons were used by the police. He was charged with Attempted Assault, Obstructing Governmental Administration and Resisting Arrest.

No CCRB complaint was filed against the officer. The criminal charges against Mr. Hernandez are still pending.

\* \* \* \*

TWO UNKNOWN CASES: (Hector Soto)

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In his testimony before the Congressional Committee, Mr. Hector Soto referred to 2 cases wherein he charged abuse of police authority. The first case was an incident that occurred in 1981 where an 18 year old Puerto Rican woman was in a pizza parlor while 3 police officers were looking for a suspect and they decided that she was the suspect. The other case concerned an unemployed Puerto Rican mother of 6, who was the victim of an assault and was arrested by the same officers to whom she went for assistance.

A thorough search of Police Department records failed to identify these cases.

Mr. Soto was contacted but refused to provide the Department with any information concerning these cases. Accordingly, pending further information, these cases cannot be investigated.

\* \* \* \*

**TESTIMONY OF ROBERT McGUIRE**

Commissioner MCGUIRE. I believe these two exhibits conclusively refute the allegation that systemic and pervasive brutality is a characteristic of policing in New York City. On the contrary, I believe that a fair appraisal of both the public record and the daily performance of the overwhelming majority of New York force demonstrates beyond question professional restraint in the use of force and racial sensitivity in dealing with all sections of the public.

In those cases where individual officers have not lived up to the high standards of professional conduct, they have been aggressively and appropriately disciplined.

I regret, Mr. Chairman, that the subcommittee has not conducted its proceedings in a responsible manner. Your premature and politically motivated judgment of the issue, Mr. Chairman, has recklessly injured the reputation of this department. It may have polarized our city. It has diverted the attention and energies of all of us from real and constant source of fear in all of our neighborhoods, especially in our minority neighborhoods, the fear of violent crime.

It may have injured the solidarity between our police officers and those who live and work in these neighborhoods, a relationship that has been the source of civic strength and pride.

When I leave office shortly, I will do so with the conviction that the strength of the decency and good will of both our police officers and all the citizens they serve is superior to the destructive consequences of these proceedings.

I am prepared to answer any questions you may have after Chief Bracey makes a brief statement.

Mr. CONYERS. All right. Chief Bracey.

Chief BRACEY. Yes.

Mr. CONYERS. Mr. Bracey, have you submitted your testimony? Your first line is that the subcommittee already has my formal testimony.

Chief BRACEY. We have extra copies.

[Prepared statement of William Bracey follows:]

TESTIMONY OF WILLIAM R. BRACEY

MR. CHAIRMAN:

THE SUBCOMMITTEE ALREADY HAS MY FORMAL TESTIMONY. THIS MORNING I WISH TO BRIEFLY EMPHASIZE SEVERAL POINTS MADE THERE.

I'M HERE TODAY AFTER ALMOST A YEAR AND A HALF OF PEACEFUL RETIREMENT TO SHARE MY VIEWS THAT ARE THE RESULT OF MY EXPERIENCES FROM PATROLMAN, THROUGH THE RANKS, TO CHIEF OF THE ENTIRE UNIFORM FORCE. AS CHIEF OF PATROL DURING THIS ADMINISTRATION, AS A LONG-TIME NATIONAL SUPPORTER AND ACTIVIST IN THE NAACP, AS A PAST PRESIDENT OF THE GUARDIANS ASSOCIATION OF OUR DEPARTMENT, AS ONE OF THE FOUNDERS AND PRESENT EXECUTIVE BOARD MEMBER OF THE NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES (NOBLE), AND AS A POLICE OFFICER WHO SERVED THIS CITY FOR THIRTY-SIX YEARS, I APPROACH THE MATTER BEFORE YOU FROM A UNIQUE AND HIGHLY RELEVANT PERSPECTIVE.

FROM THAT PERSPECTIVE I STATE, YES, THERE IS POLICE BRUTALITY COMMITTED BY MEMBERS OF THE NYCPD ON CITIZENS OF THIS CITY. THERE IS POLICE ABUSE OF AUTHORITY, DISCOURTESY AND ETHNIC SLURS. THERE IS NO QUESTION ABOUT IT. HOWEVER, I CAN ALSO STATE UNEQUIVOCALLY THAT POLICE BRUTALITY, ABUSE OF AUTHORITY, DISCOURTESY AND ETHNIC SLURS ARE NOT WIDESPREAD, ARE NOT CONDONED AND ARE NOT SYSTEMIC. I AM ALSO CERTAIN THAT A GREAT DEAL OF PROGRESS HAS BEEN MADE BY THE DEPARTMENT IN THE PAST DECADE IN DEALING WITH THESE PROBLEMS.

I AM ALSO AWARE OF THE FACT THAT MOST OF THE PEOPLE DIVIDED BY THIS CONTROVERSY OF POLICE BRUTALITY ARE PEOPLE OF INTEGRITY AND GOOD WILL. THE REASON THEY ARE DIVIDED IS BECAUSE OF THEIR PERSONAL BACKGROUNDS, PERSONAL EXPERIENCES, THEIR INTERPRETATIONS OF THE FACTS, AND THE WEIGHT GIVEN TO THOSE FACTS,

AND THE WEIGHT GIVEN TO THOSE FACTS. FACTS SUCH AS: "THE NEW YORK CITY POLICE DEPARTMENT WHEN COMPARED WITH THE PERFECT POLICE DEPARTMENT HAS A LOT OF ROOM FOR IMPROVEMENT." HOWEVER, THE NYCPD WHEN COMPARED WITH OTHER POLICE DEPARTMENTS, DOES VERY WELL AND IS FAR OUT IN FRONT OF MOST POLICE DEPARTMENTS IN DEALING WITH POLICE VIOLENCE, DEADLY FORCE AND ABUSE OF AUTHORITY. WHY DOESN'T THE NYCPD COME CLOSE WHEN COMPARED WITH THE PERFECT POLICE DEPARTMENT? BECAUSE LIKE ALL POLICE DEPARTMENTS, THE NYCPD RECRUITS ITS POLICE PERSONNEL FROM THE ADULT CITIZENS OF OUR CITY, STATE, AND NATION AND UNFORTUNATELY, THIS NATION HAS DEVELOPED A RACIST SOCIETY. THEREFORE, ALL POLICE DEPARTMENTS IN ORDER TO BE EFFECTIVE AND PROFESSIONAL MUST OVERCOME THIS HANDICAP BY A SCREENING PROCESS INCLUDING PSYCHOLOGICAL TESTING, IN DEPTH RECRUIT TRAINING, IN SERVICE TRAINING, STRINGENT RULES, REGULATIONS AND GUIDELINES, CLEAR POLICIES, AND FOREMOST MUST HOLD ALL SUPERVISORS AND COMMANDING OFFICERS ACCOUNTABLE FOR THE ACTIONS OF THEIR SUBORDINATES. THE NYCPD DOES THIS WITH A PASSION AND THAT IS WHY IT DOES SO WELL WHEN COMPARED WITH OTHER DEPARTMENTS, AND IS PROGRESSING SLOWLY BUT VALIANTLY IN REDUCING THE GAP BETWEEN ITSELF AND THE PERFECT POLICE DEPARTMENT.

IN ANY POLICE ORGANIZATION THERE WILL ALWAYS BE SOME OFFICERS WHO ARE BRUTAL, RACIALLY INSENSITIVE OR PERSONALLY PREJUDICED AGAINST ETHNIC, RACIAL OR RELIGIOUS MINORITIES. WHAT IS ESSENTIAL IS THAT THE DEPARTMENT AND ITS LEADERSHIP UNRESERVEDLY CONDEMN AND PUNISH SUCH ATTITUDES AND BEHAVIOR. THE NEW YORK CITY POLICE DEPARTMENT UNDER THE LEADERSHIP OF COMMISSIONER ROBERT J. MCGUIRE ADOPTED SUCH A POLICY, AND MADE IT A CARDINAL FACET OF ITS TRAINING, DISCIPLINE AND COMMUNITY RELATIONS.

1077

TESTIMONY OF  
WILLIAM R. BRACY  
RETIRED CHIEF OF PATROL  
NEW YORK CITY POLICE DEPARTMENT  
BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE  
OF THE HOUSE COMMITTEE ON THE JUDICIARY

New York City  
July 18, 1983

I WAS THE CHIEF OF PATROL IN THE N.Y.C.P.D. FROM MARCH 23, 1979 TO JULY 15, 1982. I SUPERVISED THE PATROL SERVICES BUREAU AND COMMANDED OVER 15,000 POLICE OFFICERS AND 3,000 CIVILIANS THAT COMPRISED APPROXIMATELY 70% OF THE PERSONNEL WITHIN THE DEPARTMENT. PATROL SERVICES BUREAU HANDLED ALL TYPES OF POLICE SERVICES PARTICULARLY THOSE PERFORMED BY UNIFORMED PERSONNEL.

I WORKED AS A POLICE OFFICER FOR THIRTY-SIX YEARS. I BEGAN MY CAREER IN 1946, WORKING AS A POLICE OFFICER IN BEDFORD STUYVESANT, BROOKLYN. AFTER EIGHT YEARS I WAS PROMOTED TO SERGEANT AND TRANSFERRED TO THE BOROUGH OF QUEENS, THEN A PREDOMINATELY WHITE NEIGHBORHOOD. IN 1959 I WAS PROMOTED TO LIEUTENANT AND ASSIGNED AS A DESK OFFICER IN A PRECINCT ON THE EAST SIDE OF MANHATTAN. IN 1970 I WAS PROMOTED TO CAPTAIN AND IN 1971 WAS ASSIGNED AS COMMANDING OFFICER OF THE 32 PCT. IN CENTRAL HARLEM. ONE YEAR LATER I WAS PROMOTED TO THE RANK OF DEPUTY INSPECTOR AND IN 1973 WAS PROMOTED TO INSPECTOR AND RETURNED TO BEDFORD STUYVESANT IN THE BOROUGH OF BROOKLYN. LATER IN 1973 I WAS PROMOTED TO DEPUTY CHIEF, BECOMING SECOND IN COMMAND OF THE POLICE FORCE IN BROOKLYN NORTH, A FORCE OF 2500 OFFICERS CHARGED WITH SERVING A POPULATION OF APPROXIMATELY TWO MILLION PEOPLE. ON JULY 1, 1977 I WAS ELEVATED TO THE RANK OF ASSISTANT CHIEF AND ASSUMED THE ROLE OF BOROUGH COMMANDER OF THAT AREA. ON MARCH 23, 1979 I WAS APPOINTED TO THE POST OF CHIEF OF PATROL WHERE I REMAINED UNTIL I RETIRED.

DURING MY CAREER I HAVE BELONGED TO A NUMBER OF PROFESSIONAL LAW ENFORCEMENT ORGANIZATIONS. I WAS ONE OF THE FOUNDERS IN 1976 OF NOBLE, THE NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, AND FOR THREE YEARS SERVED AS ITS RECORDING AND CORRESPONDING SECRETARY. PRESENTLY I SERVE AS NOBLE'S ASSISTANT TO THE NATIONAL PRESIDENT AND AM A MEMBER OF THE NATIONAL EXECUTIVE BOARD. ONE OF THE PURPOSES OF NOBLE IS "TO ESTABLISH EFFECTIVE MEANS AND STRATEGIES FOR DEALING WITH RACISM IN THE FIELD OF CRIMINAL JUSTICE."

I AM ALSO A MEMBER OF THE IACP, THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE. I SERVED ON ITS ARSON COMMITTEE, AND HAVE ADDRESSED IACP WORKSHOPS ON THE UNNECESSARY USE OF DEADLY FORCE, USING THE N.Y.C.P.D. AS AN EXAMPLE OF WHAT CAN BE ACCOMPLISHED BY PROPER GUIDELINES WHILE AT THE SAME TIME HOLDING SUPERVISING RANKING OFFICERS ACCOUNTABLE FOR COMPLIANCE WITH THE GUIDELINES.

I AM ALSO A LIFE MEMBER OF THE GUARDIANS ASSOCIATION, AN ORGANIZATION OF BLACK POLICEMEN THAT I SERVED AS PRESIDENT OF IN 1958 AND 1959.

COMMENCING IN 1980 I'VE PARTICIPATED AT THE REQUEST OF MARTIN A. WALSH, REGIONAL DIRECTOR OF COMMUNITY RELATIONS SERVICE OF THE DEPT. OF JUSTICE AS A CONSULTANT AND PANELIST AT VARIOUS FORUMS AND WORKSHOPS. ON DECEMBER 9TH AND 10TH I PARTICIPATED IN A TWO DAY WORKSHOP ON "POLICE USE OF FORCE" AND "REMEDIES TO EXCESSIVE USE OF FORCE" WHICH INCLUDED SUCCESSFUL METHODS USED

BY THE N.Y.C.P.D. TO DEAL WITH THE UNNECESSARY USE OF FORCE BY THE POLICE. THIS SEMINAR WAS HELD IN MERIDEN, CONN. AND WAS ATTENDED BY CHIEFS OF POLICE AND FOUR MEMBERS OF THEIR COMMAND STAFF ALONG WITH TEN COMMUNITY REPRESENTATIVES FROM 14 CITIES IN NEW ENGLAND. (11 FROM CONN., 2 FROM MASS., 1 FROM RHODE ISLAND.)

ON MAY 21, 1981 I PARTICIPATED AT THE REQUEST OF MARTIN WALSH OF C.R.S. - DEPT. OF JUSTICE AS A CONSULTANT AND RESOURCE PERSON IN A FORUM IN LAWRENCE, MASS. THE WORKSHOP WAS SPONSORED BY THE DEPT. OF JUSTICE AND THE CITY OF LAWRENCE AND INVOLVED "IMPROVING RELATIONS BETWEEN THE CITY OF LAWRENCE AND THE HISPANIC COMMUNITY." (SEE EXHIBIT A LETTER FROM MARTIN WALSH TO ME)

COMMENCING IN 1980 WITH THE APPROVAL OF P.C. ROBERT MCGUIRE, I'VE WORKED AS A CONSULTANT AND EXPERT WITNESS FOR THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND AT THEIR REQUEST. THIS WAS DONE BECAUSE OF OUR MUTUAL CONCERN ABOUT THE ISSUE OF POLICE USE OF DEADLY FORCE AND ITS EFFECT ON THE MINORITY COMMUNITY. I HAVE GIVEN "EXPERT TESTIMONY" ON MANY OCCASIONS IN CASES IN THE FEDERAL DISTRICT COURTS INVOLVING MEMPHIS, TENN., SPRINGFIELD, OHIO AND OTHER CITIES, USING N.Y.C.P.D. REGULATIONS, POLICIES, TRAINING METHODS, ETC. RELATED TO THE USE OF DEADLY FORCE, STRESSING THE INAPPROPRIATENESS OF LESS STRINGENT POLICIES, REGULATIONS AND TRAINING. --(SEE EXHIBIT B - LETTER FROM NAACP, LEGAL DEFENSE FUND TO P.C. MCGUIRE & ENDORSEMENTS, B-1 ENDORSEMENT, B-2 LETTER FROM NAACP TO ALDEMAN, CITY HALL, TORONTO - ONTARIO.)

- 4 -

IN 1981 AT THE REQUEST OF THOMAS ATKINS, GENERAL COUNSEL, NAACP, I SERVED AS A CONSULTANT AND ADVISOR ON THE NAACP PROJECT FOR THEIR REGION V TRAINING INSTITUTE IN ATLANTA, GEORGIA. IN ATTENDANCE WERE TWO NAACP LEADERS FROM MIAMI AND PENSACOLA, FLORIDA, BIRMINGHAM, ALABAMA, JACKSON, MISSISSIPPI, MEMPHIS AND NASHVILLE, TENNESSEE, GREENVILLE AND SPARTANBURG, SOUTH CAROLINA AND CHARLOTTE, NORTH CAROLINA. THE FOCUS OF THE SESSION WAS TO PROVIDE THIS CORE GROUP WITH SUFFICIENT BACKGROUND INFORMATION TO ENABLE THEM TO WORK IN THEIR RESPECTIVE COMMUNITIES ON THE PROBLEM OF POLICE VIOLENCE. (SEE EXHIBIT - C - LETTER FROM MARTHA FLEETWOOD, NAACP TO CHIEF BRACEY - AUG. 20, 1981.

MY TWO FOREMOST PRIORITIES UPON ASSUMING COMMAND OF THE 32ND PCT IN 1971 WERE 1) COURTEOUS AND EFFECTIVE POLICE SERVICE, 2) HOLDING SUPERVISORY OFFICERS ACCOUNTABLE FOR THAT WHICH THEY HAD AUTHORITY TO MONITOR, AND CONTROL. THESE PRIORITIES HAVE NEVER CHANGED.

AS CHIEF OF PATROL 7 BORO COMMANDERS REPORTED DIRECTLY TO ME. 17 ZONE COMMANDERS REPORTED DIRECTLY TO THE BORO COMMANDERS AND 73 PRECINCT COMMANDERS REPORTED TO THE ZONE COMMANDERS. I PERSONALLY ASSIGNED, TRANSFERRED AND MADE RECOMMENDATIONS FOR PROMOTION OF ALL OF THESE COMMANDERS. I WAS AWARE OF THEIR STRENGTHS AND WEAKNESSES AND HAD FORMAL AND INFORMAL MEANS OF ASSESSING AND EVALUATING THEIR PERFORMANCES.

- 5 -

MOST CONTACTS BY THE POLICE WITH PEOPLE IN THE COMMUNITY ARE MADE BY UNIFORMED POLICE OFFICERS ASSIGNED ON FOOT PATROL OR IN RADIO CARS. THEREFORE, MOST CIVILIAN COMPLAINTS RELATED TO POLICE VIOLENCE - ABUSE - DISCOURTESY - ETHNIC SLURS, ETC. ARE AGAINST UNIFORM PERSONNEL. I WAS AWARE OF THE PROBLEM AS I SPENT MOST OF MY 36 YEARS OF POLICE SERVICE AS A MEMBER OF THE UNIFORMED PATROL SERVICES BUREAU AND AS CHIEF OF PATROL OF THE ENTIRE CITY OF NEW YORK. I USED ALL OF MY AUTHORITY TO IMPROVE CONDITIONS BY HOLDING ALL COMMANDERS ACCOUNTABLE FOR ALL INCIDENTS IN THEIR COMMANDS INCLUDING THE IMMEDIATE, PROPER AND EFFECTIVE INVESTIGATION OF EACH INCIDENT.

THERE WERE ALSO OTHER UNITS SUCH AS THE DEPARTMENTS INTERNAL AFFAIRS DIVISION, TRIAL ADVOCATE OFFICE, FIELD INTERNAL AFFAIRS UNITS THAT DID AN EFFECTIVE JOB IN SURFACING POOR AND IMPROPER PERFORMING OFFICERS OF ALL RANKS.

DURING MY TENURE AS CHIEF OF PATROL I RE-STRUCTURED THE INVESTIGATION & EVALUATION SECTION. I ASSIGNED AN INSPECTOR IN COMMAND AND HAD INCIDENTS THAT I CONSIDERED OF HIGH PRIORITY, INVESTIGATED BY THIS UNIT WITH THE INSPECTOR REPORTING DIRECTLY TO ME. THIS INCREASED MY ABILITY TO DEAL QUICKLY AND EFFECTIVELY WITH MANY PROBLEMS AND ALSO ASSURED GREATER INTEGRITY IN ALL INVESTIGATIONS.

- 6 -

MY AUTHORITY AND INFLUENCE EXTENDED IN MANY INSTANCES BEYOND THE PATROL SERVICES BUREAU.

I WAS A MEMBER OF THE VIOLENCE PRONE COMMITTEE. THIS COMMITTEE EVALUATED POLICE OFFICERS WHO ACCUMULATED AN INORDINATE AMOUNT OF CIVILIAN COMPLAINTS WHETHER SUBSTANTIATED OR NOT TO DETERMINE IF THE POLICE OFFICER WAS SUITABLE TO REMAIN ON PATROL.

I WAS ONE OF A GROUP THAT REVAMPED THE DEPARTMENT'S RULES AND REGULATIONS REGARDING OUR HANDLING OF EMOTIONALLY DISTURBED PERSONS IN 1979. POLICE OFFICERS RESPONDING TO A CALL INVOLVING AN EMOTIONALLY DISTURBED PERSON THAT HAD A POTENTIAL FOR VIOLENCE WERE REQUIRED UNDER CERTAIN CIRCUMSTANCES TO CALL FOR ASSISTANCE INCLUDING THE SGT. ON PATROL AND EMERGENCY SERVICE PERSONNEL. THIS CHANGE IN PROCEDURE REDUCED UNNECESSARY CONFRONTATION BETWEEN EMOTIONALLY DISTURBED PERSONS AND POLICE OFFICERS WITH LIMITED EXPERTISE IN SUCH MATTERS.

I ALSO SERVED AS CHAIRMAN OF THE CANDIDATE REVIEW BOARD. THIS BOARD WAS ESTABLISHED IN 1979 TO REVIEW CASES OF CANDIDATES WHO WERE DISAPPROVED FOR APPOINTMENTS AS RECRUITS TO THE N.Y.C.P.D. BY THE APPLICATION INVESTIGATION UNIT OF THE PERSONNEL BUREAU FOR REASONS USUALLY RELATING TO THEIR CHARACTER OR PERSONAL BEHAVIOR. AN INORDINATE AMOUNT OF CANDIDATES REJECTED WERE MEMBERS OF MINORITY GROUPS. OVER A 3 YEAR PERIOD OF REVIEWING THE REJECTED APPLICANTS AND INTERVIEWING THEM AT THE BOARD HEARINGS ABOUT 30% OF THE CANDIDATES ORIGINALLY DISAPPROVED WERE APPROVED AND SUBSEQUENTLY APPOINTED.

- 7 -

HOWEVER, THE KEY TO THE SUCCESS OF THE N.Y.C.P.D. IN THE PAST 5 YEARS WAS DUE PRIMARILY TO THE LEADERSHIP OF POLICE COMMISSIONER ROBERT J. MCGUIRE. HE IS AN INTELLIGENT, TALENTED, SINCERE, COMPASSIONATE MAN WITH A GREAT FEELING AND LOVE FOR PEOPLE. ALL PEOPLE AND NO MATTER WHAT THEIR RACE, CREED OR COLOR HE IS CONCERNED ABOUT THEM. HE FORMED A TEAM OF POLICE EXECUTIVES WHO COULD WORK TOGETHER, AND HE PERMITTED THEM TO DO THEIR JOB. HE HAD NO HANG-UPS OR INSECURITIES AND BROUGHT A FRESH ENLIGHTENED CIVILIAN ORIENTED APPROACH TO POLICE WORK. HE EFFECTIVELY ESTABLISHED AND MAINTAINED THE PROPER STANDARDS OF DISCIPLINE AND PROFESSIONAL RESTRAINT THAT HE EXPECTED AND DEMANDED. HE NOT ONLY ARTICULATED THIS IN SPEECHES AT LARGE CEREMONIAL AFFAIRS OR WHILE CONVERSING WITH SMALL GROUPS OF POLICE PERSONNEL OF ALL RANKS, BUT HE METED OUT STIFF PENALTIES WHEN REQUIRED TO THOSE WHO FAILED TO COMPLY WITH HIS DEMANDS. HE SET A TONE FOR RACIAL EQUALITY AND RACIAL HARMONY BY HIS ACTIONS, INCLUDING APPOINTMENTS AND PROMOTIONS WHETHER THEY INVOLVED PROMOTIONS TO DETECTIVE POSITIONS, OR TO THE EXECUTIVE CORP. WHERE A GREAT EMPHASIS WAS MADE TO ASSIGN THE LIMITED NUMBER OF MIDDLE MANAGEMENT BLACK EXECUTIVES TO IMPORTANT AND SENSITIVE POSITIONS. A VERY SIGNIFICANT APPOINTMENT OF A BLACK WAS OF DR. CLARENCE ROBINSON ON JANUARY 1, 1980, AS THE FIRST FULL TIME CHIEF SURGEON IN THE HISTORY OF THE N.Y.C.P.D.

- 8 -

DR. ROBINSON, WHO HOLDS THE RANK OF A THREE STAR CHIEF, IS RESPONSIBLE FOR THE PHYSICAL WELL BEING OF THE ENTIRE POLICE DEPT. AS SUCH, HE MONITORS THE MEDICAL CARE GIVEN DURING THE 10,000 LINE-OF DUTY INJURIES INCURRED ANNUALLY BY N.Y.P.D. OFFICERS. HE ALSO OVERSEES THE SICK REPORTS OF POLICE OFFICERS TO ENSURE THEIR RAPID RETURN TO DUTY. CHIEF ROBINSON SUPERVISES A STAFF OF 23 SURGEONS AND 200 HONORARY SURGEONS.

POLICE COMMISSIONER MCGUIRE WAS ACCESSIBLE AT ALL TIMES TO ANY AND ALL RESPONSIBLE GROUPS AND MET WITH THEM AT POLICE HEADQUARTERS OR AT THEIR COMMUNITY MEETINGS. THIS ALSO SET THE TONE FOR FIELD COMMANDERS WHO WERE ALSO VERY ACCESSIBLE TO RESPONSIBLE GROUPS.

I FINALLY WANT TO ADDRESS THE QUESTION OF POLICE BRUTALITY. IN ANY POLICE ORGANIZATION, THERE WILL ALWAYS BE SOME OFFICERS WHO ARE BRUTAL, RACIALLY INSENSITIVE OR PERSONALLY PREJUDICED AGAINST ETHNIC RACIAL OR RELIGIOUS MINORITIES. WHAT IS ESSENTIAL IS THAT THE INSTITUTION, THE COMMAND STAFF AND THE CIVILIAN LEADERSHIP OF THE DEPARTMENT UNRESERVEDLY CONDEMN AND PUNISH SUCH ATTITUDES AND BEHAVIOR. THE NEW YORK CITY POLICE DEPARTMENT, UNDER COMMISSIONER MCGUIRE HAS ADOPTED SUCH A POLICY, AND MADE IT A CARDINAL FACET OF ITS TRAINING, DISCIPLINE AND COMMUNITY RELATIONS.

WILLIAM BRACEY

# EXHIBITS

U.S. DEPARTMENT OF JUSTICE  
 COMMUNITY RELATIONS SERVICE  
 NEW ENGLAND REGION  
 100 Summer St., Suite 1920  
 Boston, Mass. 02110



"A"

May 18, 1981

Mr. William Bracey  
 Chief of Uniformed Police  
 New York City Police Department  
 1 Police Plaza, Rm. 1308  
 New York City, New York 10028

Dear Chief Bracey:

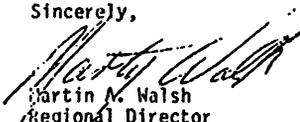
On Thursday, May 21, 1981, the Community Relations Service, U.S. Department of Justice, along with the City of Lawrence, MA, is co-sponsoring a police/community relations forum on improving relations particularly between the City of Lawrence's Police Department and the Hispanic community.

On behalf of the sponsors of this important effort, I wish to thank you for agreeing to be one of the principal resource persons. Your part of the seminar will be addressing "Measures Police Departments Can Adopt in Addressing Charges of Police Abuse." During other parts of the seminar you will be participating as a resource person to facilitate productive dialogue between police officials and other citizens.

The Community Relations Service, U.S. Department of Justice, continues to be proud of your work both in New York and during those occasions when you serve as a consultant. I was most impressed with your excellent, professional and most stimulating contributions at the Tri-State Conference held December 9-10, 1981, in Meriden, CT.

I look forward to working with you again during this seminar. If there is any additional information required or assistance needed, please call upon us as soon as possible.

Sincerely,

  
 Martin M. Walsh  
 Regional Director



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.  
10 Columbus Circle, New York, N.Y. 10019 • (212) 596-8397

B

November 12, 1979

Robert J. McGuire  
Commissioner  
New York Police Department  
1 Police Plaza  
New York, New York 10038

Dear Commissioner McGuire:

As you may be aware, the Legal Defense Fund has for many years been concerned with the legal aspects of police/minority community relations. As part of that concern, we have focused on the issue of police use of deadly force. Over the last decade, we have brought several cases in Memphis regarding police use of deadly force. Under Tennessee law, the police are authorized to use deadly force in any case involving a fleeing felon. In the past, Memphis police officers have used deadly force in cases in which we believe it was totally inappropriate.

A recent case has opened the way for a new challenge to the deadly force policies of the Memphis Police Department. Currently, we have two cases before the federal district court in Memphis that involve this issue. The first will go to trial on January 2, 1980. In each of these cases, we are seeking to show that the regulations, policies, and training related to the use of deadly force by Memphis police officers fall short of those adopted by other major police departments and police professionals. To do so, we will need the help of expert testimony. We are desirous of retaining Chief William R. Bracey as such an expert. He has indicated that he might be interested in assisting us in that manner. His involvement in the case would consist of approximately two to three days' work; of course, the Legal Defense Fund would cover his expenses.

Both cases involve the shooting deaths of juveniles. In

*Contributions are deductible for U.S. income tax purposes*

THE NAACP LEGAL DEFENSE & EDUCATIONAL FUND is not part of the National Association for the Advancement of Colored People although it was founded by it and shares its commitment to equal rights. LDF has had for over 20 years a separate Board, program, staff, office and budget.

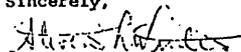
Roberg McGuire  
December 12, 1979  
Page Two

B

one, the victim was involved in an auto theft. In the other, the victim had burglarized an occupied residence. Neither of the victims were armed, nor did they commit any acts of violence toward third persons. I am enclosing some materials which more fully explicate the facts of these cases.

Thank you for your consideration of this matter.

Sincerely,



Steven L. Winter  
Assistant-Counsel

SLW:mm  
Enclosures

cc: William R. Bracey

DCLM 691/79  
PCM 1515

P.S.B.# 624-1

2ND ENDORSEMENT

Deputy Commissioner, Legal Matters to Chief of Patrol. January 11, 1980. Please note the attached. I suggest that you respond to Mr. Winter. I have asked Lt. Flanagan to be available should you wish to have his assistance in this matter.

KC:vc  
cc: Lt. Flanagan

*Kenneth Conboy*  
KENNETH CONBOY  
Deputy Commissioner  
Legal Matters





NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE  
SEVENTEEN NINETY BROADWAY • NEW YORK, N. Y. 10019 • 212-245-2100  
**POLICE-CITIZEN VIOLENCE PROJECT**

PROJECT DIRECTOR  
Martha Fleetwood

REGIONAL FIELD ASSISTANTS  
Joseph Duff  
Oliver Jones  
Kenneth Secret  
Leon Sharpe

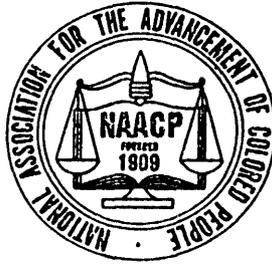
August 20, 1981

Chief William Bracey  
Patrol Bureau  
New York Police Department  
New York, N.Y.

Dear Mr. Bracey:

I appreciate your willingness to serve as a consultant to this project for our Region V Training Institute. That session will be held in Atlanta, Georgia on August 29th, from 9a.m. to 6p.m. In attendance will be two N.A.A.C.P. leaders from each of our local units in the site cities where this project is operating. These cities include: Miami and Pensacola, Florida; Birmingham Alabama; Jackson, Mississippi; Memphis and Nashville, Tennessee; Greenville - Spartanburg, South Carolina; and Charlotte, North Carolina. The focus of the session will be to provide this core group with sufficient background information to enable them to work in their respective communities on the problem of police violence.

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**TESTIMONY OF WILLIAM BRACEY**

Chief BRACEY. Thank you, Mr. Chairman. The subcommittee already has my formal testimony.

This morning I wish to briefly emphasize several points made there. I am here today, after almost a year and a half of almost peaceful retirement, to share my views that are the results of my experiences from patrolman, through the ranks, to chief of the entire uniformed force.

As chief of patrol during this administration, as a longtime national supporter and activist in the NAACP, as a past president of the Guardians Association of our department, as one of the founders and present executive board member of the National Organization of Black Law Enforcement Executives, and as a police officer who served this city for 36 years, I approach the matter before you from a unique and highly relevant perspective.

From that perspective, I state, yes; there is police brutality committed by members of the New York City Police Department on citizens of this city. Yes; there is police abuse of authority, discourtesy and ethnic slurs. There is no question about it.

However, I can also state unequivocally that police brutality, abuse of authority, discourtesy, and ethnic slurs are not widespread, are not condoned and are not systemic. I am also certain that a great deal of progress has been made by the department in the past decade in dealing with these problems.

I am also aware of the fact that most of the people, divided by this controversy on police brutality, are people of integrity and good will. The reason they are divided is because of their personal backgrounds, personal experiences, their interpretation of the facts, and the weight given to those facts. Facts such as, for example, the New York City Police Department when compared with the perfect police department has a lot of room for improvement. However, the New York City Police Department when compared with other police departments does very well, and is far out in front of most police departments in dealing with police violence, deadly force and abuse of authority.

Now, why does not the New York City Police Department come close when compared with the perfect police department? Because like all police departments, the New York City Police Department recruits its police personnel from the adult citizens of our city, State, and Nation. And, unfortunately, this Nation has developed a racist society. Therefore, all police departments in order to be effective and professional must overcome this handicap by a screening process, including psychological testing, in-depth recruit training, inservice training, stringent rules, regulations and guidelines, clear policies, and foremost, must hold all supervisors and commanding officers accountable for the actions of their subordinates.

The New York City Police Department does this with a passion, and that is why it does so well when compared with other departments and is progressing slowly, but valiantly, in reducing the gap between itself and the perfect police department.

In any police organization, there will always be some officers who are brutal, racially insensitive, or personally prejudiced against ethnic, racial and religious minorities. What is essential is

that the department and its leadership unreservedly condemn and punish such attitudes and behavior.

The New York City Police Department, under the leadership of Commissioner Robert J. McGuire, adopted such a policy and made it a cardinal facet of its training, discipline and community relations. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much, Chief Bracey.

Mr. Bracey, let me point out to you that the racist society that we live in leads many of us to conclude that much of the violence to which you object and I object and the mayor objects is indeed systemic. And I do not think that we need to be embarrassed by that consideration.

Now, I would like to ask the audience who are guests in the court that we refrain from any kind of support or criticism of the statements that are being made. We are trying to conduct this hearing—this is a very important opportunity for the subcommittee to talk with the mayor and the police chief and his top officials about the very serious matter that brings us all here.

What I would like to point out to you is that one of the things that we are working on is to determine the extent of all of the alleged increases in community relations board staff, how we deal with the policeman who is under stress, what kind of a psychological testing goes on, how the discipline system actually works. And these are matters we will not be able to settle without your cooperation and permission for our staff and examine with your staff on where these records and statistics are.

Mayor KOCH. May I respond, Mr. Chairman?

Mr. CONYERS. Of course. What I am saying to you is that that is the part that I think will give substance to the hearing and it is also the part that has yet to be taken care of. Please, Mr. Mayor.

Mayor KOCH. The first thing is you have never asked for that. No one on your staff has ever asked us for those records. We would be happy to provide them.

The second aspect of that statement is the following: You see, we would have had no objection, we could not, but we would have been supportive, if in fact these were national hearings and you were going from city to city, which you conveyed to the press and to me on one occasion. To the best of my knowledge, Mr. Chairman, you have held no hearings in other cities, other than in Washington, D.C., where witnesses came. And for you to select New York City, which has the best record, as the city, in my judgment was a disservice which is what we complained about.

Mr. CONYERS. I do not know if you are hearing me correctly, Mr. Mayor. I said we have had hearings in Los Angeles. We have had hearings, we have the record. We can make a copy of it. We have been in the District of Columbia. We have been in Miami, Fla. I do not know how you can tell me that this committee, to the best of your knowledge, has not done it.

We have police officers and ACLU experts and NAACP. It was stenographically recorded. So I do not know why you would think that these hearings have not always been going on, and are not going to continue to go on in other cities. This was not an invented activity. I can assure you that when Chairman Rodino of the full Judiciary Committee came to my office to approve these hearings,

he did so out of the same commitment that I did in agreeing to come into New York. Our good faith has never once wavered about this matter.

I am sensitive to the fact that it is very important that we improve these relations, but because we have not been into the details on the case, the Congress just let out only last week, we are now in the process and will be able to make the kinds of requests that you have openly agreed are perfectly permissible and can be done.

Mayor KOCH. May I make one other comment?

Mr. CONYERS. You certainly may.

Mayor KOCH. Then I think it would be helpful if we got into the substance of it, but it is important that I do that.

If, Mr. Chairman, you have not gotten into the details of the case, can you tell me how you could allege that in the city of New York police brutality is condoned, that it systemic, that it is institutionalized?

Mr. CONYERS. Yes, sir. I would be very happy to do that.

The fact of the matter is that I was reflecting the hearings of probably some 25 witnesses that have gone a full day. And I did not, as you suggest, did not make any conclusions. I did not dispose of the matter. I was merely reflecting what had been stated on the record at that point by the witnesses. I did not mean to foreclose any testimony that you may give, any subsequent investigations into the record or statistics that might occur. That is not—I hope that you do not draw the conclusion that from now on my mind is made up based on the first witnesses. That is not going to be the case.

Mayor KOCH. Then is it a fact, Mr. Chairman, that at this point, you are not condemning the New York City Police Department for condoning police brutality?

Mr. CONYERS. Wait a minute. Hold it. Let me tell you what I am doing.

Mayor KOCH. I am asking.

Mr. CONYERS. As you know, what we are doing here is trying to determine whether or not the violence that has been complained of has a basis in fact. We have just received this matter. We are not even prepared to answer questions from it. And obviously it is going to take a little bit more time. This is a very well-drawn document. It is going to require considerable examination.

But all I am saying to you is that my conclusions, what you have described as conclusions, are not that at all. I was summing up from the end of a very long day's testimony. And I did not mean to cast any slander on an entire police force. Even if there was systemic violence, it still would not apply to each and every police officer in any force. That has never been the case and would never be my intention.

Now, what I would like to ask with all of your police leadership here, is how do you handle officers who are under stress? Officers who have had a record of drawing of gun, some who have actually fired their weapon in the course of duty. And what is the process in which there is some monitoring that goes on?

Commissioner McGUIRE. Let me respond to that by first indicating that we have the lowest incidence of shootings of any large major police department in the country, and are viewed as the pro-

totype in terms of procedures in place to restrain police force, specifically the discharge of the weapon.

When a police officer recruit is selected for the police department, he or she is subjected to a psychological examination, to determine whether the individual is prone to violence. If they are prone to violence, they are precluded from entering into the police department.

Thereafter, in the police academy, there is vigorous training with respect to the use of force. Parenthetically, in 1973, this department initiated and put in place guidelines which are far more rigorous than the Penal Law of the State of New York, respecting the use of force.

We do not permit police officers to shoot at a fleeing felon, unless somebody's life is in danger. We do not permit a police officer to shoot at a fleeing vehicle, unless a person's life is in danger. And we are far more restrictive than most large police departments and most small police departments in the United States.

We have what is called the firearms discharge review board, which is three-tiered. In the field, when there is a shooting, there is an immediate investigation by the superior officer on the scene. Then there is a borough commander or area commander's investigation. And, finally, there is an investigation at headquarters level, composed of the highest ranking members of the department.

As you all know, in New York City there are grand juries and other legal procedures in place to investigate police shootings, even if they are accidental in nature. Even if they are the result of arresting a suspect in a criminal case.

Additionally, we have a counseling unit and psychological services unit in the police department, which has pioneered efforts to assist police officers, who, for whatever reason, are in distress.

We have a counseling unit which deals with alcohol problems, which are endemic in this society and obviously afflict all large police departments.

We have a psychological services department chaired by a psychiatrist, Dr. Martin Simmons, who is a former police officer, and is an eminent psychiatrist in New York City, full-time psychiatrist. We have several psychologists on our staff, and we make references of troubled police officers to outside psychiatrists for psychiatric assistance.

Additionally we have a committee chaired by the first deputy police commissioner, the No. 2 ranking police official in the department, who deals with violence-prone police officers, even if they have not acted out. If we determine that a police officer appears to be fragmenting or not being able to deal with stress and dealing with the public, we remove him/her from any job in the police department where he/she might be interacting with the public.

We have a very, very proud and distinguished record, Mr. Chairman, in this area, and obviously it can be improved, but most large police departments come to the New York City Police Department to ask us how we do it.

Mr. CONYERS. Do you have an investigator's manual that lays out the procedures?

Commissioner MCGUIRE. We have the rules and procedures of the New York City Police Department, which obviously lay out these procedures.

Mr. CONYERS. Are the statements that you have made taken verbatim or approximately from that manual?

Commissioner MCGUIRE. Absolutely not. The New York City Police Department, like the Catholic Church, is composed of both the Bible and tradition. And we have numerous traditions and programs in the New York City Police Department which are formal. They may not be manually depicted in rules and procedures, although I would say that 90 percent of what I just referred to is referred to and specifically delineated in the rules and procedures of the department.

Mr. CONYERS. All right. It is in the rules and procedures manual.

Commissioner MCGUIRE. By and large, yes.

Mr. CONYERS. That is what we would like to be made aware of. And that is how we will base our investigation as we go on. Thank you very much, Mr. Commissioner.

Let me ask you, do you have any records that show the number of police homicides that have been committed for this year and for the years previous?

Commissioner MCGUIRE. We have homicide statistics going back many years, yes, sir.

Mr. CONYERS. Let us just start with this year. How many do you have?

Commissioner MCGUIRE. I do not have the statistics in front of me but we have all of those records.

Mr. CONYERS. Would it be accurate to suggest that there has been an average loss of 36 lives a year, an increase, during the Koch administration? Would that statement strike you as roughly accurate?

Commissioner MCGUIRE. You will have to tell me what you are referring to, Mr. Chairman. We have between 1,600 and 1,850 homicides—people killed each year.

Mr. CONYERS. We are talking about police killings of citizens.

Commissioner MCGUIRE. Those figures fluctuate each year.

Mr. CONYERS. Are you prepared to tell us what is happening for this year?

Commissioner MCGUIRE. In 1978, there were 40 killings. In 1979, 36. In 1980, 28. In 1981, 36. In 1982, 39. And thus far in 1983, there have been 18. They average 35.8 on an annual average over the last 6 years.

Mr. CONYERS. Is that an increase over the number of police killings in the previous administration?

Commissioner MCGUIRE. No; it is not.

Mr. CONYERS. Is it a decrease?

Commissioner MCGUIRE. No, it is the same. In 1974, there were 43. In 1975, 42. In 1976, 27. And in 1977, there were 30. That averaged 35.5 on an annual average. The previous period 1970 to 1973, there was an annual average of 66.7.

Mr. CONYERS. Can you make a copy of your information there available for our records?

Commissioner MCGUIRE. We will provide you with any information you request.

Mr. CONYERS. We would like to get that right away.

Now, could I ask either the mayor or commissioner, about the affirmative action policies in the New York Police Department? That is, to be quite candid with you, Mayor Koch, I was stunned to find that the majority of police officers in Harlem are not black. Can you indicate to me what your policies in terms of hiring black and minority police officers is?

Mayor KOCH. Yes; I am going to give you a general statement on it. Then I am going to ask the commissioner to give you the specifics.

The comment on your part, Mr. Chairman, that you were surprised that a majority of the police officers in Harlem are not black, indicates a difference in philosophy as it relates to your position and the position of the city of New York, and I believe most people, white or black, in the city of New York. We do not assign cops on the basis of their race.

In fact, there was a suggestion a number of years ago, that black cops be assigned to Harlem, and white cops be assigned elsewhere, and the people of this city at that time, those who spoke out, denounced that, including black prominent citizens, because that is a racial assignment, which we believe is neither helpful to the city nor the country, and indeed illegal.

Mr. CONYERS. I am not suggesting that there be a racial assignment. I am suggesting that police officers reflect the communities of which they patrol. So I am not asking you to racially make those assignments. I did not want you to misunderstand why I was surprised.

Mayor KOCH. Mr. Chairman, cops are not assigned to districts on the basis that they live there. We do not assign people on the basis that they live in the community. They are assigned throughout the city. That is No. 1.

Mr. CONYERS. I am not even requesting that, mayor.

Mayor KOCH. What then?

Mr. CONYERS. I am not requesting that they have to live in Harlem to be a patrolman in Harlem, but you could be black and live anywhere in New York, and be assigned.

Mayor KOCH. You are talking about the numbers?

Mr. CONYERS. Exactly.

Mayor KOCH. Let me talk about the numbers. It happens that in my administration, the number of minority police officers has been increased by 50 percent. It is roughly today about 18 percent of the police force. We have gone out and done what I believe is one of the best affirmative action programs without imposing racial quotas, which I oppose. I do not know what your position on that is. But I am opposed to racial quotas. I do not know what your position is on it.

Mr. CONYERS. We never mentioned quotas. I am glad that you are opposed to them, but they have not entered the discussion.

Mayor KOCH. I want to go a little further, Mr. Chairman. What we have done is to encourage people, and the commissioner can get into details, to apply, who are black and Hispanic. And even to the point of creating special classes where they could learn the techniques of taking a civil service test.

In addition to that, Mr. Chairman, by increasing that by 50 percent, at my initiation, and with court approval, instead of having rank order in the selection, which the civil service law requires, but with court approval we were able to effectuate a change. What we did, Mr. Chairman, was to have a lottery, that if you passed the test under the regulations, which the commissioner can get into, there was a lottery, as opposed to rank order.

I think that we have done a lot in the area of encouraging people to come in, increased the minority component of the police force by 50 percent in my administration.

Mr. CONYERS. What is the percentage of black officers in Harlem? You do not know offhand? All right.

Let me ask you, if you wanted to comment on this as well, about the question of promotion within the department. Of course, you know, in affirmative action, it is first getting in the door, getting hired, and then, second, being able to proceed up the career ladder. Can you make any comments, or can the Commissioner, about the availability and fairness of the promotions within the police department?

Commissioner McGUIRE. The promotion system in the New York City Police Department is civil service in nature. Under the constitution of the State of New York, and the laws of the State of New York, there has to be an objective, competitive test for each civil service appointment.

During the past 6 years, and you must understand that between 1975 and 1979, there were no hires in the police department because of the fiscal crisis, and when we came into office, there were about 11 percent black and Hispanic police officers, very few women. Since that time, as the mayor indicated, we have increased it to 18 percent, and there are approximately 1,500 women in the police department today. That was not done easily.

With respect to your specific question of promotion after you get into the department, again it is civil service in nature. The ranks of sergeant, lieutenant, and captain, are all civil service ranks. We have brought in, at great expense to the city, independent experts to prepare the sergeant's exam, which is the hardest exam, because it has the largest universe of people taking it. We have some 15,000, 16,000 people taking the exam for very limited sergeant's positions.

We also changed the entire nature of that exam from a written pen and pencil exam, which historically has a disadvantage to black and Hispanic people, to a combination of a written exam and a role-model type of exam where you act out and demonstrate other qualities. Indeed, the exam right now is in litigation because of our changing that. But we brought in experts at great expense and we have changed the nature and the structure of these examinations, both sergeant and lieutenant, and hopefully this will result in increased numbers of blacks, Hispanics, and women passing these exams.

But, again, you have limited authority to move in these areas because they are civil service exams, and they must comply with the constitution and the laws of the State.

Mayor KOCH. Bob, if I may ask you, where you exercise your discretion in those posts where civil service does not apply, could you tell the chairman what you did as it related to minorities?

Commissioner MCGUIRE. What the mayor is alluding to is that the police commissioner has discretion with respect to selection of detectives, which is a noncivil service rank, increased compensation, and also police officers above the rank of captain, who serve at the pleasure of the police commissioner. And with respect to those two categories, I think it is a fair statement to say that every superior officer of captain and above, who is capable of being promoted by me, who is black or Hispanic, has been promoted at least once, and on some occasions three times, during my tenure.

Mr. CONYERS. Would you point out to me, sir, if there has been a court action to require affirmative action implementation within the police department?

Commissioner MCGUIRE. There was a lawsuit with respect to the 1978 police officer examination, which was settled. And the second circuit found that the police department did not intentionally discriminate. But, nonetheless, there was a disparate impact with respect to minorities in the preparation of that exam. That exam was prepared long before the mayor came into office.

Mr. CONYERS. I see.

Commissioner MCGUIRE. With respect to the next examination, which was prepared during Mayor Koch's administration, it was prepared by independent experts, and that resulted in a settlement, where the mayor, as he indicated to you, went to a random computer selection process, whereby anybody who passed the exam, had the same statistical chance or probability of being selected. In other words, the person who had a 99 and the person who had a 75, were in the pot together and were selected without respect to their rank order.

And that has had the beneficial result of large numbers of blacks and Hispanics who scored successfully, but at the bottom end of the pass area, of being selected as police officers.

With respect to the sergeant's examination, like every civil service exam, in every large agency in the country today, it is the subject of litigation. That also was settled pursuant to a court-ordered settlement, resulting in one out of eight black, Hispanic, and women being placed into the sergeant's ranks. There is a new sergeant's exam now, a new lieutenant's exam and a new captain's exam being scheduled, or already given, which have been prepared by independent experts, not connected to the city of New York or the police department, at great financial expense to the city of New York.

This is, and I speak as a lawyer as well as police commissioner, one of the most difficult areas to deal with because of lack of data and lack of particular understanding on the part of everybody, including many so-called experts, as to how to prepare a nondiscriminatory job-related exam, which will not discriminate against any group of people. It is very, very difficult. You have to work very, very hard, and we have tried to do that as best we can.

Mayor KOCH. Mr. Chairman, may I add to that?

Mr. CONYERS. Please.

Mayor KOCH. Because implicit in your question, you said is there not some court order requiring affirmative action in the hiring of black police officers? That was your basic question. And the answer is categorically, no. And that is something that some people think in fact does exist. The fact is, there was a lawsuit brought, I believe in 1978, referring to an exam prepared before I became the mayor. The trial judge at that time found that the city of New York was violating the rights of blacks and said that there shall be a racial quota. I said that I know that we are not intentionally violating anybody's rights. I did not prepare that written exam. And we took an appeal, and the circuit court found directly that there was no intentional racial bias in the city of New York, and did not require any quota.

They said, if we used that test, then they would require the action of hirings of blacks in a proportion. But if we had a new test, since that test was faulty, not prepared in our administration, then there would not be any kind of quota.

What we decided was it takes several years to put a test together, that we desperately needed police officers, and that so long as we used that particular faulty test, that we would in fact do exactly what the court said, which was to hire a certain percentage of blacks. When we got the new test to stop that. But we were never under a sanction. There has never been a finding in my administration that we have been guilty of prejudice against blacks or Hispanics.

Mr. CONYERS. Thank you. This is a very important part of these hearings, and we will be looking at some of these court cases.

Commissioner MCGUIRE. Mr. Chairman, if I just may also indicate that in about 1979 we initiated an affirmative action program, as the mayor indicated, again at great expense. In addition to preparation of the exam, we put in place a recruitment unit in the police department, in the personnel division, and also a retention unit. We recruited young black and Hispanic men and women to take the exam, and we succeeded in overwhelmingly large numbers.

Then after they passed the exam, we had a whole group of police officers, primarily black and Hispanic police officers in our retention unit, who went out and assisted these young men and women to process their applications, get driver's licenses, get their background checks in order, resulting again, in large numbers of black and Hispanic police officers coming in.

We had, as the mayor indicated, tutorial programs, which we set up in the minority neighborhoods around the city, to show people how to take the exam, which again we believe helped us in this effort.

Finally, we have the ongoing recruitment effort. It is under the direction of Inspector Lou Rayford, who is a black commanding officer in the police department, and he runs that whole effort for the New York City Police Department.

Mr. CONYERS. I have one other question and then I am going to ask Congressman Rangel to participate in the questioning. The civilian complaint review board is the mechanism by which wrongdoing is determined. And what was going over in my mind last night as I was preparing for these hearings, Mayor Koch, in view of the

number of civilian deaths that are sustained at the hands of police officers, has there ever been in your memory a New York City police officer who has been subsequently convicted in the criminal courts for a homicide that he committed?

Mayor KOCH. The answer is yes, sir.

Mr. CONYERS. Would you elaborate?

Mayor KOCH. Not only has that occurred, but there have also been those who have been acquitted by the criminal justice system and then subsequently fired by the police commissioner who had higher standards apparently.

Mr. CONYERS. When you said yes, you mean that that has happened how many times?

Commissioner MCGUIRE. Officer Shea in the Bronx was convicted of killing somebody.

Mr. CONYERS. Right. I am familiar with that case and I was just wondering if, in your memory, there was any other case besides that?

Commissioner MCGUIRE. Walker, Ryan. These are names being given to me right now.

Mr. CONYERS. You say two or three more?

Commissioner MCGUIRE. Yes.

Mr. CONYERS. Let me now recognize my colleague from New York, Congressman Charles Rangel, who I am very glad to see this morning.

Mr. RANGEL. Thank you, Mr. Chairman. I thank the panel for their attendance this morning. It is good to see Chief Bracey. I cannot think of any police officer in title or on duty that has received more awards from the community because of the respect he has not only for his job but his respect for the community. And while there have been many disagreements with the chief, I do not think any one of them have quoted him as being unfair as relates to issues that have come before him as a patrolman, as a precinct captain, and certainly as chief of the uniformed patrol officers.

Therefore, your honesty does not come as a surprise to me this morning, that while resisting the allegation that brutality is widespread within the department, you certainly do acknowledge that brutality does exist, abuse does exist, and that people of integrity and good will are divided on the issue based on their experience. So my question would be, that if you were one of the people brutalized, certainly it could appear to you, especially if you did not receive a fair hearing on this issue, that there was police brutality practiced upon you as an individual.

I would then ask, based on your knowledge and experience over the years, would you believe that a person who has been beaten by a police officer wrongfully should expect to receive fair treatment and an investigation of that person's allegations in the local precinct where the officer was assigned?

Chief BRACEY. The question is should he expect his case to be heard at the precinct where he was assigned? I think you are talking about should he expect to receive this treatment at the local level?

Mr. RANGEL. Yes.

Chief BRACEY. It would depend upon who heard the case and how objective they might be.

Mr. RANGEL. What if someone was beaten on Lenox Avenue, should they go to the 32d precinct and say the person that is on duty has just beaten me and expect that at the precinct level that that police officer will be called in that justice would be served? I mean, with your experience in the police department.

Chief BRACEY. No; he should not expect that because that does not happen.

Mr. RANGEL. How about the civilian review board?

Chief BRACEY. May I just say this? When a person alleges that he has been beaten or abused, he goes to the precinct or can call from home or can go anywhere to make that complaint. When the complaint is heard, it is not heard at that precinct. It is investigated in the first instance at a borough level, and as has been explained, it then goes on and it is finally adjudicated at the headquarters level.

Mr. RANGEL. Based on the record of the New York City Police Department and your experience with them, and whether we have a large number of cases or not, do you believe that those who have alleged brutality have had fair hearings on their cases?

Chief BRACEY. Yes, I think, by and large, they have had fair hearings.

Mr. RANGEL. At the local level and the civilian review board?

Chief BRACEY. The civilian complaint review board, I would say, has improved immensely under this administration. I go back many years and I know that there were times that things were swept under the rug. But the reason I am here today is because I have seen such an improvement in the past decade, and I have been a part of much of that improvement, and I feel that when people are abused or assaulted, many, many times, it is a result of what has happened in terms of them committing a crime. Police work is violent work. And many times police officers in arresting people, have to use force, and it has to be necessary force.

Mr. RANGEL. Chief Bracey, you knew the names of the people that testified at past hearings, who were ministers of churches. There were wives of ministers that testified. And, certainly, in terms of the integrity and respect that they were held by the community, they said they did not receive any of the reaction or investigations that you are talking about. Could they possibly be exceptions to the rule?

Chief BRACEY. You say they did not receive.

Mr. RANGEL. There was not a response to their allegations of brutality. We are talking about churches that are well-known in the central Harlem community, that this has happened.

Chief BRACEY. I cannot speak for particular cases, but I am relating the experiences that I have had, and I had many, that brutality complaints were investigated and they were responded to, and many, many times, the response from the department is not always satisfactory to the complainant, because people see things differently.

Mr. CONYERS. Would you yield on that point for a moment? Have you seen this document, chief?

Chief BRACEY. Yes; I have.

Mr. CONYERS. Have you read it?

Chief BRACEY. I have read it. I could not go into detail on it.

Mr. CONYERS. I have not read it either; do not feel bad about that. But what I am saying though, in connection with your question, Congressman, is that this is the response to the testimony, and I would like Chief Bracey to examine it before he comes to any judgment about the fairness that Congressman Rangel is asking can be received.

Chief BRACEY. I have examined that to some degree. There are cases there that I was personally aware of. And many of the people who testified gave their version of what went on. And then there was the police department's version. And the version of the police department, as I saw it after complete investigation, was the accurate one. And I think that anyone sitting in judgment having all the facts would have come up with the same conclusion.

Mr. CONYERS. Is that in every case?

Chief BRACEY. Not in every case. There are cases there in that document where the police were wrong and the police were punished accordingly. There is no question about that.

Mr. CONYERS. Thank you.

Mr. RANGEL. Chief McGuire, in Chief Bracey's statement, while he says it is not widespread or condoned, that there is just no question that there is police brutality and police abuse of authority, discourtesy, racial slurs. Do you have any problem with that part of his statement at all?

Commissioner MCGUIRE. First of all, you have demoted me, Congressman, after 6 years I am a commissioner, not a chief. I would like to go out as the commissioner.

Congressman, if you read my original statement which was submitted to the committee, and if you read the mayor's original statement, both of us reiterated the same thing that Chief Bracey said here this morning. And that is that in any large police department, there will be the use of excessive force by certain police officers.

Mr. RANGEL. You did not have a problem with the chief's statement.

Commissioner MCGUIRE. I certainly did not have a problem with Chief Bracey's statement.

Mr. RANGEL. My next question would have been, then, if some people were the victims of this isolated behavior on the part of the New York City Police Department, and then petitioned to Congress, and more specifically the chairman of the Criminal Justice Subcommittee or Judiciary Committee chairman, and indicated that they felt aggrieved and that they would want to have hearings on this, and did not feel that relief could be granted on the local or State level, would you not believe that these were people of integrity and good will?

Commissioner MCGUIRE. They may be people of integrity and good will. Congressman, you know me for, I guess, 25 years. We served in the U.S. attorney's office together. Did you ever call me prior to the institution of these hearings and suggest that there was a systemic problem of brutality in this city? Second—

Mr. RANGEL. Let me just tell you how—

Commissioner MCGUIRE. Let me just finish.

Mr. RANGEL. Commissioner, it is working that you are a witness and I have just asked you a question and you are responding by asking me a set of questions. Now, all I am asking is was there any

reason for you to believe that when John Conyers, authorized by Chairman Rodino, said that congressional hearings were going to be held in the city of New York, that this decision was not made among people of good will and integrity?

Commissioner McGUIRE. I do question the good will and in a certain sense the integrity of certain of the people who caused these proceedings to be initiated.

Mr. RANGEL. When you allege that the subcommittee did not conduct these proceedings in a responsible manner, and that it was politically motivated, had you not prejudged the hearings and made public statements prior to the times that the hearings were actually held?

Commissioner McGUIRE. No; what I was criticizing and what I continue to criticize were the procedures utilized. First, on a personal professional level, I dealt with Calvin Butts, and Herb Daughtry, and the other people in this city, as has my deputy commission for community affairs, Bill Perry, as did Chief Bracey, on numerous occasions, as I did with you. We had numerous conversations about numerous issues.

When the Reverend Johnson case, which was the lynch pin for the institution of these hearings happened, nobody called me to say, "We have to sit down. We have a serious problem."

Mr. RANGEL. Commissioner, are you not making a presumption? All I am talking about is an announcement made in Washington by Chairman John Conyers that he will continue to have these hearings on police brutality. I think he had a different name for it. And that hearings would be held in the city of New York.

My question to you is did you not prejudge those hearings before they took place?

Commissioner McGUIRE. We questioned the integrity of those hearings.

Mr. RANGEL. And did you not make public statements.

Commissioner McGUIRE. You have got to let me finish my answer, which you are not doing.

We determined that there was some question about the integrity of those hearings because of the manner in which they were procedurally conducted. What do I mean by that? Nobody contacted us. No staff people came into New York City to assess what was going on. Nobody talked to witnesses before they were allowed to testify. No sworn affidavits were taken from any witness. And, indeed, the manner in which the hearings were conducted, and you were present at the Harlem State Office Building, and what occurred.

Mr. RANGEL. I am not talking about the hearings. I am saying before the hearings, before John Conyers ever came to New York City, did you not condemn the hearings from taking place at all? Did you not prejudge the proceedings before they took place?

Commissioner McGUIRE. No; We questioned the need in New York City in 1983 for these hearings. And we continue to question them. We think they have been divisive. We think they were unnecessary. We question whether there were hearings in other cities. We have reached down to all of these alleged other cities and we have not been able to find that any other city has been the subject of these hearings.

Mr. RANGEL. You did make public statements condemning the hearings before they took place.

Commissioner MCGUIRE. You use whatever word you want. I questioned then and continue to question the need and the propriety of these hearings in New York City in 1983.

Mr. RANGEL. You charged that the subcommittee, which John Conyers chairs, and of which I am not a member "may have polarized our city." That is a heavy weight to place on a Congressman that comes from outside of our city, but would you not think that elected officials within the city of New York contributed to this possible polarization?

Commissioner MCGUIRE. No; I do not.

Mr. RANGEL. Now, I assume you understand that when I said "elected officials," I have not pinpointed any particular person. So you mean that there have been no statements made by any elected officials in the city of New York that in your opinion polarized the situation among our citizens?

Commissioner MCGUIRE. I was speaking about the issue of police brutality. And I think the manner in which it has been conducted and the hearings that have been conducted have tended to confuse the people of this city. They do not know what is going on anymore. And I think it has a strong potential for undermining the confidence between the police department and the citizens.

Mr. RANGEL. I did not say that. Do you understand my question? My question is not dealing with the police department, but the polarization, and possibly concerning the hearings, but my question was, do you believe in the performance of your responsibilities as the chief of police for the city of New York, that certain statements made by an elected official have made your job more difficult by adding to the polarization?

Commissioner MCGUIRE. No; why do you not ask the mayor? You are talking about the mayor.

Mayor KOCH. And the mayor is here ready to respond.

Mr. RANGEL. Mr. Mayor, when you heard that the Judiciary Committee or John Conyers intended to have hearings in the city of New York, did you write the chairman of the Judiciary Committee and complain about those hearings taking place?

Mayor KOCH. I am going to tell you exactly what I did, Mr. Chairman.

Mr. RANGEL. Did you write him that letter that one of the reasons why he agreed to have the hearings was because Charles Rangel and Major Owens were running for mayor? Did you put that in the letter? And then the close of my question is did you issue the letter to the press? And then the final part of the question is, did Chairman Rodino respond and did you issue that letter to the press?

Mayor KOCH. Mr. Chairman, let me give you in context, if I may, the first time that I learned that there were to be any hearings, and I think this is an abnormal practice. At least when I served in Congress for 9 years, I never found that to be so. That there was an announcement made at 3 o'clock in the afternoon by the chairman, I believe, you, sir, Mr. Conyers, that there were going to be those hearings. And the press came in and said, "What do you think of that?"

I cannot remember my exact words. I said, "I am outraged, astonished, outraged. I find it inexplicable." I do not know the exact words, but that was the tenor of it. "That an announcement be made in Washington as it relates to the subject of alleged police brutality without any inquiry to find out what the facts were." And I said that.

Then I received a call from the chairman, actually in a restaurant that I was at, at the time. And we went over that. And I think, Mr. Chairman, that you would agree with me that you felt it would have been more appropriate had you called to find out what the facts were before you announced that there would be a hearing. That was the tenor of our conversation.

Mr. RANGEL. Mr. Mayor, you can respond in your own fashion. It has nothing to do with my question, which has to do with writing the chairman, mentioning—

Mayor KOCH. Let me go a little farther. So I wrote a letter. The letter speaks for itself. I do not have it here. You undoubtedly have it there. To the chairman. Subsequent to the delivery of that letter, not before, which we sent down by telecopier, subsequent to the delivery of it, that letter was released to the press. Subsequently the chairman sent a letter to me. I do not have any problem about releasing his letters.

Normally if a letter is to be released, it is released by the person who sends it. If the chairman had wanted his, and I am now talking about Chairman Rodino, if the chairman had wanted his letter released, he would have released it.

Mr. RANGEL. You just have not responded to the substance of the question. All I am asking is, you see, if we have a problem, no matter how big or how small, you cannot find the solution unless you recognize there is a problem.

Mayor KOCH. Well, we do recognize there is a problem.

Mr. RANGEL. I am asking did you believe what you said to Chairman Rodino is that hearings will be held on the very sensitive matter of police brutality because of the ambitions of two Congressmen?

Mayor KOCH. I want to go a little further, Mr. Chairman. I have always said, in every comment that I have made to any press person who has asked me or whenever I delivered a statement on the matter, that I believe that the subject of police brutality is a very important matter, and is one that requires that we deal with both the substance and the perceptions.

I have also said it is never condoned, it is always condemned. I have said that there are people who rightly are concerned and voiced their concerns, sometimes factually as it relates to individual cases. Sometimes falsely, but not knowingly, as it relates to the general subject.

I have also said, Mr. Congressman, that there are people who use this issue for political purposes. Yes, indeed. I said it before. And I do not believe when I said it, I was in error.

Mr. RANGEL. I am having difficulty in framing my question. I am going to try this one last time, and I am just going to ask you, did you write Chairman Peter Rodino, and in the conclusion of the letter indicate that the hearings were taking place because they were requested by Charles Rangel and Major Owens, both of whom

are running for mayor of the city of New York, and that you had no objections to them running, but certainly allegations of police brutality should not be the vehicle that they would use?

Mayor KOCH. Mr. Chairman, again I want to say, the letter speaks for itself. You should produce it. Second, as it relates—

Mr. RANGEL. Did you write that?

Mayor KOCH. There is no question I sent a letter to the chairman and it speaks for itself.

Mr. RANGEL. Did he respond to that?

Mayor KOCH. I absolutely believe that there are people who have a legitimate, real desire to address this issue substantively and perceptually.

Mr. RANGEL. Do you believe that Mayor Koch is a candidate for mayor of the city of New York?

Mayor KOCH. I also believe, Mr. Congressman, that there are people who are using this issue for political purposes.

Mr. RANGEL. Thank you very much for your response.

Mr. CONYERS. Mr. Mayor, as a congressman, of course, you know that we rarely swear witnesses and never subject them to cross-examination. You said you were surprised.

Mayor KOCH. I was surprised. Mr. Chairman, normally, my recollection, any time a committee met, there would always be the ranking minority member present or someone from the other side. To the best of my knowledge, that has not occurred in the first hearing, the second hearing, or the third hearing.

Mr. CONYERS. That is only because nobody from the minority side has chosen to come. That cannot defeat the purpose of a congressional hearing.

But that still does not address the question of your being surprised that no one was cross-examined. Now you really know better than that.

Mayor KOCH. I do not agree with you, Mr. Chairman. I believe that in any hearing of this nature, where people are making allegations that relate to what we perceive to be a false slander against the police department, that it is incumbent upon those who take the testimony to interrogate them. Whether or not you chose to swear them, I leave to your decision. But whether or not you chose to interrogate on the facts, I think that is the sine qua non of any such hearing.

Mr. CONYERS. Are you aware that we are not in a court hearing? We are only in a courtroom.

Mayor KOCH. I understand that.

Mr. CONYERS. But this is a congressional hearing. I have been in Congress just a little bit longer than you, but I have never heard of us providing for cross-examination.

Mayor KOCH. By you, not by us.

Mr. CONYERS. I do not know why you would think that I would have a responsibility to cross-examine.

Mayor KOCH. Are you not questioning us, Mr. Chairman?

Mr. CONYERS. Sure.

Mayor KOCH. Did you question those witnesses?

Mr. CONYERS. Of course we questioned them.

Mayor KOCH. Let the record speak for itself, Mr. Chairman.

Mr. CONYERS. I just wanted to correct the differences between a court proceeding and a congressional proceeding.

Let me just cover a few more points here. I know our time is running out.

Is it not correct, Mr. Commissioner, that only about one-half of 1 percent of all the complaints filed by the civilian complaint review board ever result in hearings? Is that a statistic of yours compatible with mine?

Commissioner McGUIRE. That result in hearings in the civilian complaint review board?

Mr. CONYERS. Yes; before CCRB.

Commissioner McGUIRE. I do not believe so. Every case is fully investigated by investigators and then it goes to Commissioner Adams, who makes a recommendation to the full board. The full board then makes a determination as to what the appropriate approach should be and then they recommend, if necessary, disciplinary charges to the police commissioner. It then goes into the trial room with all of the other disciplinary cases that we have.

We have three trial commissioners sitting. We have a trial advocate. We have a large group of lawyers who prosecute these cases on behalf of the police department. The cases of police brutality are one segment of the overall range of cases that we deal with in a disciplinary sense in the police department.

Mr. CONYERS. I was talking about of all complaints.

Commissioner McGUIRE. I am not sure that figure is accurate. I am not sure where you got it. You would have to tell me.

Mr. CONYERS. It is not a matter of me telling you where I got it. I am asking you if it is true or not.

Mayor KOCH. We will provide you with the figure.

Mr. CONYERS. All right. Let me ask you about police brutality as opposed to police shootings. And here is what I would like to present to you. Is it true that the complaints of police brutality declined during the Beame and Lindsay administrations and have statistically increased during the Koch administration?

Commissioner McGUIRE. No; I do not believe so.

Mr. CONYERS. We can check those figures.

Commissioner McGUIRE. Absolutely. I think you have to also agree on your definition of what you are talking about. Police brutality is a word of art. You can use physical force. You can include verbal harassment. You can use ethnic slurs. I think one of the things that has been lacking in this entire dialog, if we want to call it a dialog, is that people have not even agreed fundamentally on what they are talking about. Whether they are talking about shootings. Whether they are talking about physical force.

Mr. CONYERS. I have been in agreement. I agree with you that brutality can include words and can include violence. There is no question about that.

The point is that we want to break down both categories and determine whether this is a correct assumption that is being made.

Commissioner McGUIRE. We can give you any statistics you want. You just have to request them.

Mayor KOCH. Mr. Chairman, we have some figures. The fact of the matter is that, subject to being corrected here, the figures for 1982 in police brutality involving force went down roughly 32 per-

cent over the prior year. The figures for slurs, racial and otherwise, and racial is only a part of that, went up about 30 percent. But normally when you are referring to police brutality, you are referring to the use of force and injury, physical injury. In that area, they went down about a third.

**Mr. CONYERS.** Are you aware of an observation that has been made that New York is one of the only two cities in the United States which has shown an increase in police killings over the past 4 years? And that other cities, other large cities, have shown a downward trend?

**Mayor KOCH.** Where is the source of that, Mr. Chairman?

**Mr. CONYERS.** It is not a matter of the source.

**Commissioner MCGUIRE.** There has to be a source because there are very few statistical assimilations of all this information. The FBI keeps statistics. We keep our own statistics. The Daily News has gone out and specifically done a study of this with respect to other large cities, and has concluded that New York City continues to rank the lowest with respect to police shootings in 1983. We will put this in the record, if you will, Daily News, I believe it is November 9, 1983, the headline is "Our Cops Least Brutal, Study." And it is by a reporter Arthur Brown.

And it indicates "New York City police officers killed fewer people per capita while carrying out their duties than officers in most other large cities, according to a Daily News survey." And it goes on and it details the statistics with respect to that.

**Mayor KOCH.** We will put that in the record.

**Mr. CONYERS.** It will be accepted, without objection.

[The material referred to follows:]

# Our cops least brutal: study

By ARTHUR BROWNE  
City Hall Bureau Chief

New York City police officers kill fewer people per capita while carrying out their duties than officers in most other large cities, according to a Daily News survey.

The survey, undertaken after a congressional hearing into allegations of widespread racially motivated police brutality, compared the frequency of "justifiable homicides" by police in eight of the nation's 10 largest cities, including New York. The comparison was based on population, the size of the police force and the rate of violent crimes.

The study showed that while there are far more on-duty killings by police here, they occur at rates that are among the lowest for any major police department.

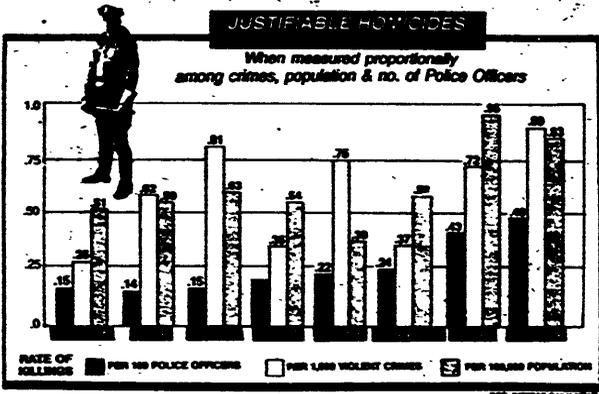
From 1978 through 1982, for example, there were 170 "justifiable homicides" by police here. During the same five-year period, police in the country's next two largest cities—Chicago and Los Angeles—killed a total of 381 persons, two more than were killed in New York. The combined populations of these two cities, however, is just under 6 million—more than 1 million fewer than New York City.

THE FINDINGS of the survey are based on statistical information gathered from New York, Chicago, Los Angeles, Philadelphia, Houston, Detroit, Dallas and Phoenix. Complete figures from two other cities—Baltimore and San Diego—were not immediately available.

Commenting on the survey, Mayor Koch said: "The figures confirm my belief that the Police Department shows great professionalism and restraint and debunks the notion that there is institutionalized brutality within the department."

C. Vernon Mason, one of the most vocal critics of the Police Department, said: "I don't think that those statistics measure restraint at all. And if it's your only purpose to say that brutality doesn't exist because other cities are worse, I can't respond. I think it would be more appropriate to deal with the people who are complaining that brutality is happening in the community. I also think it is interesting that other cities are improving while New York isn't."

THE NEWS BEGAN gathering the data after last month's controversial congressional hearing. In seeking to rebut the allegations, Police Commissioner



or Robert McGuire asserted that New York "has the lowest incidence of police shootings of any major American city" as evidence that cops here are restrained in their use of force.

Minority group leaders who made the brutality allegations countered that McGuire had based his claim on distorted and misleading statistics.

The key findings of The News survey include:

- When measured against the total number of violent crimes in each city, New York had the lowest incidence of killings by police of any of the cities—a rate of 26 killings per 1,000 violent crimes. The average for the eight cities was 39 killings per 1,000 violent crimes.

- When measured against the size of the police force, New York had the second-lowest rate of killings—35 per 100 officers. Philadelphia had the lowest rate, at 34 per 100 cops. The average for the eight cities was 35.

- With a rate of 31 per 100,000 people, New York was second lowest behind Phoenix in the incidence of killings as measured by population. The rate in Phoenix was 38 per 100,000 people. The average was 38.

- Since 1978, the incidence of killings by police in New York has remained virtually constant. During the same period, the incidence of police killings in most of the other major cities—Chicago, Los Angeles, Philadelphia, Houston and Detroit—has been steadily declining.

- McGuire's assertion that New York has the lowest incidence of police killings was based on a study that covered 1975 to 1979 and compared the 54 largest cities in the country.

- Minority group leaders questioned the validity of using statistics that old, and said the study also showed that many of the smaller cities have even lower rates of police killings than New York.

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Mr. CONYERS. I would like to now recognize the gentleman from California, Mr. Berman, who has joined us at the hearings, and ask him if he had any questions or comments that he would like to pose to the mayor and the police commissioner?

Mr. BERMAN. I do not at this time, Mr. Chairman. Thank you very much.

Mr. CONYERS. The next question, gentlemen, goes to possible remedies. I would like to have you consider the kind of complaints that have been lodged against the civilian complaint review board. And I was wondering would there be any possibility that you would consider making it a more open, a more independent body, in which there could be a recording of the complaints, in which members would not be police department employees, but that it would have a little less police flavor to it?

Mayor KOCH. May I respond to that, Mr. Chairman?

Mr. CONYERS. Yes, sir, please.

Mayor KOCH. Mr. Chairman, in 1966, John Lindsay imposed a civilian complaint board reflective of the kind of board that you have just outlined, where the civilians were not part of the police department on that board. And we have some statistics as relates to that, which I will get to in a moment. But as a result of that, there was a referendum on the ballot that year.

In that year I was running for office. It was a terribly unpopular position to have the civilian complaint board as you have described it. I nevertheless supported it. It was defeated by over a two-thirds vote. And it was the most divisive campaign I have ever seen in my history of being in politics, which goes back to 1956, when I actively pursued politics.

And it was voted down overwhelmingly in every borough except Manhattan where it carried marginally. Just a very small margin. But over two-thirds of the city voted it down.

Now, the law says, it is not a question of administrative decision, that the members of the civilian complaint Board must be civilians who are part of the police department. That is not an administrative remedy that we could change if we wanted to.

Now the question is, should we seek a change in the law? That is basically your question. And then the question becomes, if you are seeking a change, what is the purpose? The purpose has to be to accommodate some substantive reason. And so I examined that, and I looked at it from this point of view.

Those who do not like the civilian complaint board in its current form, because they say that the people who are on it are not true civilians, when they just reject the dispositions of that board, unless they come out with a disposition that finds the cop guilty, those people will not be satisfied if the civilians are in fact not related to the police department. How do I know that? Because the very same people who object to the position of the civilian complaint board as presently it is constituted, object when a grand jury, which generally gets these same matters, finds no indictment against the police officer. Then they say that that Grand Jury did not do the right thing, although grand juries are made up only of civilians, in the truest civilian sense. And in the city of New York, grand juries have blacks and Hispanics on them, without question.

So you will not satisfy those people. And then in addition to that, because I have been through this, Mr. Chairman, if they do not like the grand jury, then they go to the U.S. attorney the Justice Department and the Attorney General. And we have been all up the ladder in some of these cases; not in every one.

The people on each occasion, when each of those governmental forces, not in my control, decide that the cop did not do anything wrong in the use of force, nevertheless, the same people object. They say, "We did not get justice." And then I go back to the Lindsay civilian complaint board, which is the kind that you are suggesting we consider, and I look at what they did. And it is a shocker when you go back.

During the 5-month life of Mayor Lindsay's civilian board from July to November 1966, only 5 of 146, or 3.4 percent of the complaints were found substantiated. Only one led to disciplinary action, a reprimand. Now, how does that statistic compare to our statistic where the civilians are police personnel? Well, it is exactly the same thing. In fact, we do better, 3.5 percent. Statistically that does not mean anything. But 3.5 percent, as opposed to 3.4 percent of the complaints have been substantiated in the civilian complaint board as presently constituted. So when you see that, then you come to the conclusion, as I do—you may have a different one—assuming that the city council were to pass the legislation creating a civilian board as you outline it, and assuming, as I believe, there will be, the same kind of divisive battle that we had in 1966, have you helped this city? I think you have hurt this city. Let them debate it. Maybe people will come forward.

Council Member Fred Samuels has such a bill. No one is inhibiting his going forward and holding hearings on it. And then I was told by an assemblyman, Angelo Del Toro, who came in to see me. Bob McGuire and I were with him together. And he says he has a bill on a State level which would impose such a civilian board, as you have outlined it, on the whole State. And then he says to me, "You know what, you could not have a referendum. The people could not undo this one even if they wanted." That is what he said to me, "Because State legislature, the State legislature cannot be the subject of a referendum." So I said to him, "Go, see if you can pass it." My personal opinion. Even though I was for it, and I have no objection on the merits, because I know based on the merits, it does not change things. But I do know if we have the same kind of divisive battle in 1984 as we had in 1966, you have not helped this city. You have not helped the racial harmony. You have destroyed the city. You have destroyed its racial harmony.

Mr. CONYERS. Let me ask you about the special prosecutor who investigates corruption. And as you know, out of the Knapp Commission there arose this specific prosecutorial vehicle to deal with a very clear problem.

Would you see any possibility of expanding that jurisdiction to include police abuse, police violence as well?

Mayor KOCH. Let me tell you why I do not believe that we need a special prosecutor. Do you know that until, I would say, the last 3 or 4 weeks, I never heard anybody say anything about Bob Morgenthau except to extol his virtues. He is the DA in Manhattan, where

I suppose the largest number of cases arise, it being the central business district.

Now he is subject to attack. Why? Because a grand jury finds no bill, no true bill against a cop. I still extol Bob Morgenthau. You only replace people in terms of their jurisdiction. If you do not have confidence. I do have confidence in Bob Morgenthau the DA, and unless you can show us that that confidence is misplaced, I do not believe that we should seek to supersede them.

Mr. CONYERS. Then you do not think either one of these methods would help improve the civilian complaint board.

Do you have any notions at this point of how we might make it become more trustworthy of the citizenry?

Mayor KOCH. Yes, sure. And what we are trying to do, we can always improve it. And I am not telling you that we have a lock on that which is good. We are always willing to listen to suggestions on improvement. There are some who suggested that we go out and advertise the civilian complaint board. Well, we are doing that. We are putting signs in the subways and buses.

There were others who suggested that notwithstanding the fact that the civilian police complaint board is not in a police building, is in a commercial building, that they would still like other non-threatening buildings in which to file a complaint, although you can file a complaint on the telephone. Nevertheless, we still are acceding to that. And so the 59 community boards now have the complaint forms available, as city hall will have them available. So we are willing to listen to suggestions. We are not foreclosing improving the process.

We do not believe, and I have given you those statistics that by a composition change, that you are going to have a change in the ultimate outcome, unless you believe, and I do not, that a police officer is simply guilty when a civilian makes a complaint against him. That civilian is entitled to a presumption of innocence if charged with a crime, and so is the police officer.

Mr. RANGEL. Will the chairman yield? In all these presumptions, Mr. Mayor, when a minister indicated that he was brutalized by a policeman, did you not make a presumption that he was not brutalized?

Mayor KOCH. Mr. Congressman, I thought you would ask me that, so I wanted to bring with me and have my full comments on the matter, which only run for a paragraph. So let me read that, if I may. Very short. It appears in the May 9 Daily News. The Daily News is getting a lot of publicity.

This is my direct quote:

The incident happened in Harlem with two white cops. I find it certainly possible, but nevertheless strange, that in the heart of Harlem two white cops would intentionally, in violation of the law, harass a minister. It is possible it could have happened. I am not passing judgment. And then the allegations that the person, the minister was brought to the police precinct. The police precinct is in Harlem, and there is a large number of black police officers. The allegation is that he was beaten up and racially harassed. Now it is possible it could have happened, but again in a police precinct filled with large numbers of black officers. That all has to be examined. If the police officers did what is alleged, they will be punished.

Now, you should know what the context of that statement was. There was a white minister who issued a statement, and we will put both statements in the record, who said, "These police officers

are guilty." He was not there. "These police officers should be removed from the police department." He was not there. "The city of New York makes me ashamed." He was not there.

I did not pass judgment on the incident. I simply believe then, as I do now, that civilians and police officers, as it relates to innocence or guilt, have the same presumption.

Mr. RANGEL. Mr. Mayor, I was not asking what statements the white minister made, I just was wondering whether or not you thought it was proper, as the chief magistrate of this city, and as the mayor of this city, to say that it is strange when a black person alleged that they were beaten by white policemen in Harlem. Do you think that was a proper statement?

Mayor KOCH. I believe that when I said if the police officers did what is alleged, they will be punished.

Mr. RANGEL. As strange as it appears that the facts may be to you.

Mayor KOCH. Mr. Congressman, I am simply not going to find them guilty in advance of an appropriate tribunal, hearing all of the parties. And by the way, Mr. Congressman, coming to that conclusion, are you aware, Mr. Chairman, and we would like to put that into the record, too, as it relates to the outcome of that case. Because it did go ultimately to the grand jury, and a statement was issued, and with your permission, I would like to comment from it, Mr. Chairman. Let me read it.

This is a statement issued by Robert Morgenthau, November 7:

A New York County Grand Jury has declined to file criminal charges against four police officers, who were alleged to have beaten a 32-year-old Brooklyn divinity student and a passenger in his car.

Mr. CONYERS. Mr. Mayor, we have that information.

Mayor KOCH. You have that statement? And you will make it a part of the record.

Mr. CONYERS. We will take it into the record again.

Mayor KOCH. Thank you.

[The material referred to follows:]

## DISTRICT ATTORNEY - NEW YORK COUNTY

November 7, 1983

Contact: Mary de Bourbon  
553-9400, 01

A New York County Grand Jury has declined to file criminal charges against four police officers who were alleged to have beaten a 32 year old Brooklyn divinity student and a passenger in his car when the two were arrested for a traffic violation last April and has dismissed charges against the divinity student and passenger, according to District Attorney Robert M. Morgenthau.

The incident about which the Grand Jury heard evidence occurred on April 30, 1983 on Lenox Avenue and 127th Street at about 7:45 p.m. Police Officers Gary Messina, Joseph Teller, Angelo Petriello and Sgt. John Loughran arrested Lee Johnson and Roderick Mitchell after their car was stopped because it lacked a front license plate. Johnson and Mitchell subsequently accused the police of brutality. Both defendants were issued desk appearance tickets returnable for arraignment on May 18. When their lawyer did not appear for their arraignment, their cases were adjourned to May 20 in AP3. On May 20, when Johnson's lawyer requested that the District Attorney's Office investigate alleged police brutality, Assistant District Attorney Sonia Sotomayor, who was assigned the case, said she would promptly begin a full investigation.

During the Assistant District Attorney's five month investigation, she visited the area of the incident 8 times and a civilian investigator employed by the District Attorney's

Office visited the area twenty-four times. Assistant District Attorney Sotomayor and the civilian investigator spoke to over 50 civilians and more than 24 members of the Police Department. In addition, an Internal Affairs Unit of the Police Department also interviewed an additional 14 police officers and assisted with the investigation. Johnson and Mitchell refused to be interviewed and declined to appear before the Grand Jury. Nor would they tell the District Attorney's Office the whereabouts of Al Bradley, a third man in Johnson's car who witnessed the incident. Johnson also refused to provide the District Attorney's Office with his hospital records.

After hearing the available evidence, the Grand Jury declined to charge the police officers with any crime and voted to dismiss charges of Resisting Arrest, Obstructing Governmental Administration and Disorderly Conduct against Mr. Johnson and charges of Resisting Arrest, Inciting to Riot and Disorderly Conduct against Mr. Mitchell.

Mr. RANGEL. Just one last question, Mr. Chairman. This is the question that the police commissioner asked that I should ask you. Do you believe that public officials have added to the polarization of the city of New York?

Mayor KOCH. Mr. Chairman, I am sure every one of us, you, and myself, and the chairman, have said things that each of us should regret saying. And it becomes a question, Mr. Chairman, of provocation.

I have a duty and an obligation, and that is to defend the city of New York from unfair, unfounded charges. It may be on occasion I will be too feisty in my response in that defense, but I will never cringe from defending this city.

Mr. RANGEL. So that even though it leads to polarization, you think that is a part of your responsibility?

Mayor KOCH. I would try, and I have always tried, not to engage in polarizing statements. I am sure I am guilty of them, and I am sure you will say you are likewise guilty of them.

Mr. CONYERS. Before I recognize our Congressman Major Owens from Brooklyn, who has just arrived, I would like to ask Mr. Mayor about the requirement that police live within the municipality within which they work.

Mayor KOCH. Mr. Chairman, when I first became mayor 6 years ago, I introduced legislation, that is to say I asked legislation be introduced into the State legislature, which is the only jurisdiction having authority in this matter, asking that we be given the right, at that time I said retroactive, and then subsequently in the second year, because it was clear nobody was for retroactivity here, I said prospectively as it related to new hires, to require all city employees, police, fire, teachers, and so forth, to live in the city of New York.

That legislation was rejected by the State of New York. I have no authority to do that.

Mr. CONYERS. But you did think it was a good idea?

Mayor KOCH. Yes; I believe today that every employee of the city of New York should live in the city of New York. I do not have the power to impose that. I requested it from the State legislature. They refused me that authority.

Mr. CONYERS. I recognize Major Owens, Congressman from Brooklyn.

Mr. OWENS. Mr. Mayor, on that same question, can I just ask, was the legislation rejected or did the city council pass legislation and it was found by the courts to be—

Mayor KOCH. The city council took the position that it did not need State legislative authority, in that the State legislature has granted such authority to other counties outside the city of New York, and therefore it was unconstitutional to discriminate between us and other counties.

Mr. OWENS. That is the point I wanted to get to.

Mayor KOCH. The city council therefore said we do not need authorizing legislation and imposed that on all city employees. The city employees brought an action and it was held that the State legislature had the only authority and the city council did not, and the State legislature refused to give the legislative authority to the city.

Mr. OWENS. When the courts held that only the State legislature had that authority, did you appeal that decision?

Mayor KOCH. Let me say this. The corporation counsel took whatever appropriate measures were available and in his discretion prudent.

My position today is that all city employees should live in the city. And when you were at that time a State senator, I hoped that you could perform and get that miracle passed.

Mr. OWENS. Mr. Mayor, the point I am making is that that decision has never been appealed to the State's highest court. It has never been appealed to the Supreme Court. And the Supreme Court of the United States has ruled in the case of Chicago, that municipalities do have the right, and if you appealed the case, if your corporation counsel would take the case through the proper channels to the Supreme Court, they would find that the city would probably be ruled to be correct.

Mayor KOCH. The corporation counsel is here. He hears what you are saying. That was not the opinion of the corporation counsel prior to the current corporation counsel.

Mr. OWENS. I think the issue has a great deal of bearing on the problem we are facing, and for that reason I hope that it is pursued.

Two other questions. One relates to the Transit Authority Police. Recent developments related to the murder of Michael Stewart have revealed that the Transit Authority Police are not under any civilian review board, as inadequate as that apparatus may be. They are not even under that kind of operation. What kind of instrument is there available to deal with the transit police or the housing authority police?

Mayor KOCH. Let me tell you, I personally was surprised to learn that they were not under a civilian complaint board of the kind that the NYPD has. What they are under is the president, who is a civilian. John Simpson is the civilian authority who makes that decision. So the point is—it is a State agency, as you know. I could not change it if I wanted to. That has to be done on a State level. The transit cops, while we pay for them, are within the jurisdiction of the MTA. So I could not impose that.

Mr. OWENS. Have you any recommendations?

Mayor KOCH. I will talk to Mr. Kiley who is the chairman, and then I will ask you, sir, if he puts in a civilian complaint board made up of police civilians, which they have at the MTA, would you support that?

Mr. OWENS. I will support that, but I am surprised in the years that you have been mayor, you have not noticed a major paramilitary body that has no procedure for review.

Mayor KOCH. Let me explain why. There is a procedure for review. It is a different kind of procedure. It is a procedure made by a civilian who is the president of the TA.

But I will tell you why it never came to my attention. And it is something that the commissioner remarked on and got no answer from Congressman Rangel.

You know, I have been the mayor for 6 years. And prior to these hearings, do you know that I never received a single letter in nearly 6 years from a single legislator representing anybody in the

city of New York on a police brutality, alleged police brutality matter. Not from you and not from Congressman Rangel. From no legislator.

Now if it were——

Mr. OWENS. I stopped writing letters to you a long time ago, since I never got any responses. I never received a response to those letters I did write.

Mayor KOCH. Congressman, the fact is that you sent me letters on a whole host of other matters. You may not have been satisfied with my responses. It did not deter you from continuing to send letters. But on this major issue, which now is alleged to be so overwhelming, I received not one letter in nearly 6 years from any legislator, white, black, or Hispanic, on this matter. It is hard for me to believe that if there were that overwhelming passion, and that there were a need for restructuring, and that there were allegations which were not being attended to, that your constituents would not have importuned you to bring it to my attention.

Mr. OWENS. Is there an apparatus for the housing authority police?

Mayor KOCH. Yes; there they have a different kind. There the entire board, as opposed to the chairman, sits. And on that board sits a Hispanic and two whites, a Hispanic woman and two whites.

Mr. OWENS. Employees of the housing authority?

Mayor KOCH. They are members of the board. I would not call them employees of the housing authority. It is the chairman and two members of the board.

Mr. OWENS. The chairman and two members of the housing authority board are themselves the reviewing mechanism for the actions of the police?

Mayor KOCH. Yes, sir.

Mr. OWENS. With all the activities that they are involved in, they have that duty?

Mayor KOCH. Yes; along with all the others.

Mr. OWENS. Do you approve that procedure, Mr. Mayor?

Mayor KOCH. Well, again, it is more civilian than what you object to.

Mr. OWENS. Do you think it is adequate and reasonable?

Mayor KOCH. Nobody has complained to date. And if there are complaints, we will certainly review it. In fact, I asked the commissioner to review both the TA and the HA, the housing authority procedures, and to advise me of what he thought I should be supporting. I did, in fact, make that request of him and I will, without question, pursue whatever proposal he makes to me.

Mr. OWENS. Let the record show that these hearings have highlighted these gross inadequacies that exist in the cases of the housing authority police and the transit authority police.

My final question is on the issue of taxpayers who go to court and sue when there are problems with the police. Over the years, there has been a dramatic increase in the amount of money that has been paid out by the city of New York in these cases of police misconduct or alleged police misconduct. Evidently the judges find it sufficient, sufficient evidence, to make awards. The awards in 1968, the year ending 1968, June 30, 1968, were about \$422,596. These are figures that came from the comptroller's office. The

awards in the year that just ended, June 30, 1983, the amount totaled \$9,123,000. That is a gigantic increase in the amount paid out to cover police misconduct. It is very significant, also, in view of the fact that the number of police have gone down dramatically over that same period.

We have at least 5,000 or 6,000 fewer police from that period, maybe as many as 10,000 fewer. And yet we are paying out tremendous amounts of money that could be used for police protection in some other area. Certainly my communities could use it in various ways. Can you comment on that?

Mayor KOCH. Yes; I can, sir. First, you should understand that in about 60, or 1 percent of those cases, the average age of the cases that appear before the courts is 4½ to 5½ years. Of all the police actions cases concluded since 1978, when I became the mayor, 61.5 percent were filed prior to my becoming mayor. So they involve cases that did not occur in my administration.

Second, as it relates to the amounts. You know today we are spending on what we call judgments and claims, about \$120 million. That is bigger than the budgets of a lot of cities in this country. But that is what we are paying out, not for police matters, but for a whole host of claims. A lot of people, as it relates to that.

But in addition to that, higher verdicts are a result of inflation and so forth. And then, most important, there is a different standard, Mr. Congressman, as it relates to claims filed and disciplinary proceedings which are in effect finding a criminality aspect.

And the difference is this. That when someone brings an action, and by the way, most of these cases we win. We win 86 percent of the cases. That is not bad. That is the figure—86 percent in 1981 and 86 percent in 1982. I do not know what the figure is in 1983. But we win.

When we do not win them, and we settle, you have to understand the nature of a civil settlement. One, we will settle cases for marginal amounts, simply because it is cheaper to settle than it is to keep our corporation counsel's talents employed defending them. Everybody does. That is an insurance company aspect.

The second aspect to that, of these cases that we had, my recollection is, four of them took half of the total amount of settlement. So there were four cases that got half of the \$9 million. That is another aspect of it.

And the third is this, that when people bring these actions, they are not all police brutality or violence. There is false arrest. In addition to that, you can have negligence. You know a police officer, like anybody else, can be negligent. It is a different standard. He does something that is negligent but not criminal. We are all capable of negligence. But when a police officer engages in a single negligent act, the city of New York is responsible fiscally for that negligence. And that would, in my judgment, be the explanation for the increase in dollars. Remember that we are now paying \$120 million for all of the actions that we settle. Not only the \$9 million that we paid for matters involving the police department.

Mr. OWENS. Would you not say that the dramatic increase, the increase, the jump in the number of cases, the amount of money, was something, as chief executive of the city of New York you

should have noted as a red light which indicated that something was radically wrong?

Mayor KOCH. Mr. Chairman, I am saying to you that police brutality is something that I condemn, do not condone. I speak out about it. And yes as was said earlier by Bill Bracey, Bob McGuire, and myself, you know the police department, particularly we have a desire to bring everybody into the police department. And we screen psychologically, but there are going to be—listen there are a couple of bad mayors, even a couple of bad congressmen. We all know that. Would you hold the Congress responsible for those few Congressmen who violate the law? Would you hold all mayors responsible?

Mr. OWENS. My question is more specific. I am just saying that these figures should have been an indicator, and should have made you as the chief executive, without having police brutality hearings, take a look at the situation and if nothing else justifies the hearings, it is fact that this kind of evidence, available to everybody, was ignored. Concrete dollars and cents concerns were ignored.

Mayor KOCH. Mr. Congressman, I think you were unaware of the \$120 million that I told you about a few minutes ago.

Mr. OWENS. That does not matter. It is the dramatic jump. The increase in the number and the amount at a time when the number of policemen decreased to indicate there is a problem.

Mayor KOCH. I believe that these figures, and we do not like paying anything, believe me. I do not like paying the other \$111 million, but nevertheless when you settle claims for the reasons I have given you, you have to make those payments. I believe that these figures are relative to the total amount of settlements made and claims and judgments.

Mr. CONYERS. Thank you very much.

Mr. Mayor, we have 16 other witnesses. And what I think that I have heard you say, and the commissioner as well, that we will be able to coordinate any statistical research, investigatory matters, that will be necessary to finish up our work.

Mayor KOCH. We will provide you with any information you want. And I want to thank you, Mr. Chairman, for giving us a full opportunity this morning to state our case.

[Prepared statement of James J. Fyfe follows.]



**STATEMENT OF  
PROFESSOR JAMES J. FYFE**

**CONCERNING  
POLICE BRUTALITY**

**SUBCOMMITTEE ON CRIMINAL JUSTICE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**Brooklyn, New York  
November 28, 1983**

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**School of Justice  
College of Public and International Affairs**

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**4400 Massachusetts Avenue, N.W., Washington, D.C. 20016 (202) 686-2532**

Mr. Chairman and members of the Subcommittee:

I am pleased and honored to appear before you today to discuss the subjects of police brutality and means of holding police officers accountable for their actions. As you may recall, I last appeared before this Subcommittee in April, when I testified in opposition to proposed legislation to weaken Fourth Amendment safeguards against unreasonable police search and seizure by enacting a "good faith" exception to the current exclusionary rule.

Before addressing the subjects currently under examination by the Subcommittee, let me review my background. Since 1979, I have been an associate professor of justice at The American University in Washington DC, and a senior fellow of the Police Foundation. I am also a contributing editor of the Criminal Law Bulletin, and a Deputy Editor of Justice Quarterly, the journal of the Academy of Criminal Justice Sciences. I have published three books and approximately 30 articles, book chapters, and monographs on police and criminal justice matters, most of which concern police use of force. In 1979, my research on the use of deadly force by New York City police officers won the Annual Award of the American Society for Public Administration as the year's outstanding national contribution to criminal justice administration. Upon its publication by the Police Foundation in 1982, a dozen copies of my most recent book, Readings on Police Use of Deadly Force, were furnished to this Subcommittee. I am also proud to say that my research on police use of deadly force is quoted extensively in the works on that

subject recently completed by the National Urban League and the National Council of La Raza, which I reviewed for the National Institute of Justice.

I have also been active in other efforts to reduce unnecessary use of police force. I have worked with police around the country in the formulation of departmental policies related to the use of force. I have assisted in or testified against police departments and police officers in civil rights actions stemming from wrongful use of force in virtually every area of the United States. I have served as a consultant to the Civil Rights Division of the United States Department of Justice in their litigation against the Philadelphia Police Department. I was a consultant to the Legal Defense Fund, Inc., in Garner v Memphis, the 1982 case in which the Sixth Circuit of the United States Court of Appeals declared the Tennessee fleeing felon statute unconstitutional. I have also consulted with several state chapters of the American Civil Liberties Union on litigation and other matters related to police use of force, have done similar work for the Community Relations Service of the United States Department of Justice, the United States Civil Rights Commission, several states' civil rights commissions, and the National Association for the Advancement of Colored People. With the input of several black police executives, I wrote the Model Controls on Police Use of Deadly Force that appear in the NAACP's recent publication, Police-Citizen Violence -- An Organizing Guide for Community Leaders.

For the 16 years prior to 1979, I was a New York City police officer. I worked on patrol for nine years in Brooklyn, Times Square, and Queens, and earned seven departmental citations. I left the department as a lieutenant after serving in the Police Academy for nearly six years. While I was a police officer, I earned bachelor's, master's, and Ph.D. degrees in criminal justice and was an adjunct professor at John Jay College of Criminal Justice, City University of New York.

I could continue but, for brevity's sake, let me summarize by stating that I appear before you as an individual who has spent his adult life doing police work, and thinking, studying, teaching, and writing about police work. Further, I think that the record shows that I have not been reluctant to criticize the police or to disagree with popularly held police positions. I disagreed with Police Commissioner McGuire, for example, when he recently argued that a mayor's general tone does not affect the work of police officers in the street. The fact is that mayors get what they want from their police departments.

Fifty years ago in New York City, Mayor Fiorello LaGuardia advised his detectives to "bring [prisoners] in bloody", and his detectives did. Ten years ago in Philadelphia, Mayor Frank Rizzo advised his officers to "break their heads before they break yours", and his officers did, with tragic results in loss of citizens' lives and dignity, and with damage to the treasury of Philadelphia that continues to this day with the settlements of myriad civil rights suits against the city. Those mayors

tolerated -- or even encouraged --brutality by their officers, and they got what they wanted.

Times and tempers have changed dramatically in New York City since Mayor LaGuardia held office here. Every mayor who has held office in New York City since I became a police officer has demanded and gotten humane policing from his officers. None of those mayors tolerated brutality, and every police commissioner under whom I served made it clear to all of us on the street that he would not tolerate brutality.

That tradition -- which other cities, under the leadership of enlightened mayors like William Green of Philadelphia -- are only more recently starting to enjoy -- is so deeply imbued in New York City that it is easy to see how Commissioner McGuire overlooked it. It is a given that New York City police do everything they can to avoid using force, and all of us who have served in the department -- including Commissioner McGuire -- often forget that this tradition is not a part of the natural order, but has been the result of the work of mayors, police commissioners -- including Commissioner McGuire -- , and police personnel to whom any other police working style was unthinkable. Since leaving New York City, I have learned that this tradition has earned the New York City Police Department a reputation as a "tenderized" department among some other "hard-line" police departments.

The record shows how well-established the tradition of humane and "tenderized" policing is in New York City. When I was a young officer, New York City had its "urban disorders" -- the Harlem and Bedford-Stuyvesant riots of 1964 -- which were

admittedly started by an extremely controversial police shooting. But, by and large, the deaths ended there: unlike many other cities, New York did not experience wholesale deaths of citizens at the hands of police in the course of quelling those disturbances. New York City has never had a "SWAT Team": instead, its police pioneered the art of hostage negotiation, and its negotiators are in worldwide demand as lecturers and instructors in this non-violent method of calming explosive situations. New York City police have not used teargas -- which can often be lethal -- since before World War II. New York City's rules and review procedures related to use of firearms are considered a national model, and have been adopted by police agencies throughout this country. Those cities have more recently realized the reductions in this most lethal form of force that these measures accomplished eleven years ago in New York City.

Perhaps the most eloquent testimony to the tradition of humane policing enjoyed by New York City is the intensity with which its officers are sought out by other, troubled cities, and the degree of success they have enjoyed as police chiefs in those places. Shortly after the disastrous riots in Detroit in 1967, a New Yorker was appointed that city's police chief. Later, Patrick V. Murphy -- my boss at the Police Foundation -- also served as police chief there. In 1968, he was Public Safety Director in Washington, DC, and drew great and virulent criticism from, among others, members of the District of Columbia Committee of the United States House of Representatives for his

command that officers not shoot looters during the disorder that followed the tragic death of Dr. Martin Luther King. Gary, Indiana has had 2 former New York police officers as Police Chiefs. The first came back to New York to run the Civilian Complaint Review Board and the second is the incumbent Chief of Gary. The present Chief of Birmingham, Alabama is a former New York Police Captain appointed by Mayor Arrington after a long period of extreme antagonism between the Police Department and much of Birmingham's black community. Former New York officers are currently Chiefs of Police in Seattle, Washington, Pontiac, Michigan, Minneapolis, Minnesota, Raleigh, North Carolina, Baltimore County, Maryland and Racine Wisconsin. The elected sheriffs of the Jackson County, Michigan and Wayne County, Michigan are former New York officers. One of the first official acts of former Governor Hugh Carey was to appoint a former New York City officer to head the New York State police who were still reeling from the events of Attica. Joseph McNamara, a former New York City officer is Chief of Police in San Jose, California, where his department was awarded recognition by the National Conference of Christians and Jews as a model of police in community relations. Before he accepted this job he was appointed to succeed Clarence Kelley as police chief of Kansas City, Missouri. Shortly after McNamara took office one of his officers shot and killed a young black man under circumstances that drew great community protests. McNamara attended that young man's funeral, expressed his regrets to the family, and modified department Firearms rules (on the model of New York City's regulations) to ban such incidents in the future. One consequence of those acts - - which were predictable on the part of someone who had spent so

many years as a New York City officer -- was a deluge of hate mail and threatening phone calls that lasted many months.

Clearly, it is more than a coincidence that so many of my former colleagues and supervisors have been recruited to serve as police chiefs in so many American jurisdictions, especially in those in which police-community relations were at disastrously low levels. Further, it is not accidental that, despite the great bloodshed and bodycounts that often occurred at the hands of police during the riots of that period, in two cities -- the one in which we sit today, and Washington DC, where police were commanded to use restraint by an alumnus of this city's police department -- deaths were extremely rare or did not occur: two persons, including the young man whose death precipitated the Harlem and Bedford-Stuyvesant riots, died during New York's 1964 disturbances, and none died in Washington, DC.

None of this is to suggest that brutality does not exist in the New York City Police Department. Police brutality is any act that unnecessarily -- or even maliciously -- injures people, or causes damage to their dignity, or violates their rights under the federal and state Constitutions. Police brutality abuses the broad discretion inherent in the police role. In every police department, brutal acts occur, and in every police department, there are officers who are inclined to be brutal, and who will be brutal if they feel that they can do so with impunity. Thus, it would be hopelessly naive to argue that, in a big department like New York City's, there have not occurred brutal acts. Further, in a big department like New York City's, there are probably many

officers who are inclined to be brutal. That is so because police officers are not all the same: they are human beings who work under extremely trying conditions, and they react differently to those conditions. They also receive a tremendous amount of public encouragement to be "tough and aggressive" in dealing with the problems they face. At social gatherings over this last holiday weekend, scores of police officers in this city and elsewhere were told by friends and family that, "I could never be a cop. The first time someone gave me a bunch of lip, I'd punch him. I wouldn't last a week." At work this last holiday weekend, scores of patrol officers in this city and elsewhere were told by complaining citizens that, "Twenty years ago, the cops would have cleared the kids off that corner with their nightsticks. And if the kids went home and complained about it, their fathers would have hit them, too, for giving the police a hard time. The problem is that you guys are handcuffed nowadays." But I was a cop in this city twenty years ago, and we did not use nightsticks to clear off corners. We were, however, told exactly the same thing about the cops who had preceded us by twenty years.

If we understand that police officers are human beings, and that human beings differ, we will also understand that some officers are inclined -- even encouraged -- to be brutal. But we cannot excuse them for acting out their inclinations on those grounds. Nor, until the psychologists provide us with foolproof means of predicting behavior and measuring peoples' inclinations and prejudices, can we hope to "weed out" in advance all those who bear prejudices or who are inclined to be brutal. Instead,

we must try to make it as difficult as possible for them to act out their prejudices or inclinations to brutality..

To understand what that means to a police chief and to a concerned citizenry, we must distinguish between two types of police brutality: systemic brutality and isolated brutality. In some of the police agencies in which I have studied or had access to records in the course of civil rights litigation, it is clear that brutality is systemic. That kind of brutality is easy to find. It exists when there are no limits on police discretion, so that officers are free to follow their own inclinations, however wrongheaded. In Philadelphia during the 1970s, for example, the police chief abandoned the department's restrictive policy on the use of firearms, and told the United States Civil Rights Commission that, so long as his officers "believed" they were acting correctly, he would offer them all the support possible. Systemic brutality is easy to detect: it exists when officers are not trained to act in accordance with carefully thought out policies, but are told to "do what you think is right." It exists when there are no carefully thought out policies to guide police actions, or when police departments refuse to make public their policies. It exists when officers are not held accountable by having to submit to official inquiries into their actions. It exists when policies are mere window-dressing: when carefully thought out and well-defined procedures to hold officers accountable for their actions are ignored whenever violations occur. It exists whenever a department closes ranks, and refuses to make available to those

concerned the results of its investigations of officers' actions, and the reasons for its findings that those actions were justified or unjustified. I, and many other scholars, can tell you that no data suggest any systemic brutality in the New York City Police Department.

Isolated brutality is more difficult to detect. It exists even in the most well administered police departments -- including New York City's --, and involves officers who seek to conceal their actions because they know that they are vulnerable to punishment if found out. Officers who commit isolated acts of brutality deceive their supervisors about what they have done, because they know that citizens' rights are zealously guarded by their departments. Further, except in the most extreme cases, they leave little or no objective evidence of their misconduct. Neither do they act brutally in the presence of uninvolved witnesses. Consequently, when the victim of such an officer's brutality complains that he was unnecessarily struck, that he was derided by an ethnic slur, that he was threatened, that he was unnecessarily held at gunpoint, or that he was unlawfully arrested, there is little to substantiate his claim. In most cases, even the most intensive and objective investigations of citizens' complaints, become "swearing contests" in which complainants make uncorroborated allegations and officers deny them. Stated most simply, regardless of the intensity of investigation, and regardless of who conducts investigations of complaints, and regardless of who adjudicates them, most citizens' complaints against officers in departments that do not

tolerate brutality will be found unsubstantiated by objective adjudicators.

Thus, after the fact review of police officers' actions in cases not involving clear objective evidence is of limited value in determining the facts: what is the difference between excessive force and necessary force? how can the investigator reconstruct the circumstances that prevailed during an incident that resulted in a complaint against an officer? The fact is that he cannot, and that, taken alone, a low rate of "substantiated" complaints provides no indication whatever that a police department's complaint investigation process is inadequate. One of my students, for example, did a study of the civilian complaint review processes in New York City -- where police employees investigate and dispose of complaints -- and in Berkeley, California -- where civilians adjudicate complaints. One of his major findings was that the "substantiated" rates were extremely similar in both cities (about 3.5%). But that is still not an adequate analysis, because comparison of those rates does not take into account differences in the rates at which complaints may be informally disposed of without having been recorded.

In New York City, complaints against officers may be made in any manner -- by telephone, anonymously, by obviously intoxicated persons -- to any police officer. The officer who receives such complaints has no discretion in disposing of them: he must forward them to the Civilian Complaint Review Board for investigation, even though he may determine that they

involve no violation of citizens' rights, law or departmental rules. I know of no other police department that follows such a policy.<sup>1</sup>

If after the fact review of police complaints is of only limited effectiveness in dealing with isolated brutality, one might ask, why should citizens make complaints against police, and why should there exist have a civilian complaint review process at all?

The answer is that a complaint review process should serve several purposes. Complaints against police officers are a form of management information. While it may be rare that individual complaints against officers are sustained, the department that encourages citizens to complain when they feel that they have been wronged by citizens allows itself to reexamine its policies, and to determine whether they are in need of reformulation. Some complaints about police officers' actions may involve officers who have acted in accordance with ill-advised department policies.

More important, even though they may be individually unsubstantiated, individual complaints against officers may identify patterns of isolated brutality on the part of individual officers. It is hard to argue that the police chief who has in his hands a record of similar, unsubstantiated complaints made by different people at different times and places, all of whom allege similar types of misconduct by the same officer does not have cause for further investigation, or for further review of officers' behavior.

Thus, police departments should actively encourage citizens to complain when they feel they have been wronged by police. But, like most burglary victims, citizens must know that the probability that their individual complaints will be found substantiated, or that officers will be disciplined as a result of their complaints, is low. Just as they are encouraged to report their victimizations in order to help police identify patterns of criminal behavior, citizens must be encouraged to report their victimizations by police, in order to help their departments identify patterns of misconduct by officers. They should also know that, just as a very few criminal offenders account for many burglaries, a very few officers account for much police misconduct.

None of this means a thing, of course, unless a citizen complaint review procedure is credible. Here, citizens should know that it does not matter very much who -- police officer or civilian -- investigates and disposes of complaints. What matters is the process: are investigations thorough, and are their results explained to complainants? This latter is a particularly tough task because, regardless of findings -- substantiated or unsubstantiated --, those who investigate complaints are bound to make someone -- citizen or police officer -- very unhappy. Those who propose a complaint review board composed of civilians should also be aware that this approach is not a panacea to the problem of discontent with dispositions of complaints. If investigations are thorough -- as I can tell you at first hand they are in New York City --

substitution of civilians for police personnel is not likely to substantially alter dispositions of complaints. Nor, as time passes, is the board so likely to appear as "independent" as it was at its inception. Civilian complaint review boards have, as the United States Civil Rights Commission noted, had a "stormy" history, and have "largely failed", and like other external controls on police "are no substitute for fair and effective regulation within a police agency."(emphasis in original)<sup>2</sup>

The credibility of police systems for controlling misconduct and for reviewing citizen complaints must be made apparent to police personnel, as well as to citizens. We have all heard of the "blue curtain" of police silence. I do not know of any police department that has done more to break it down than has New York City's. I know of no other police department whose internal affairs unit has a cadre of "field associates" who work regularly in field commands, but who surreptitiously report to internal affairs on any misconduct they observe. The New York City Police Department does not sit by and wait for complaints: it is the only department I know of that regularly tests the integrity of its complaint review process by having its own personnel pose as citizens and make complaints -- in person or by telephone -- into field commands in order to determine whether they are being processed properly. I know of no other department that has given its personnel no discretion in the determination of whether complaints they receive are with or without merit. Indeed, most officers from other departments are shocked when I tell them these things.

Neither do I know of any police departments that have worked so early and so hard to develop "early warning" and "violence prone" programs directed at identifying officers inclined to violence. When I worked in the Police Academy in this city, the recruit curriculum was revised in accordance with the recommendations of a study funded by the United States Department of Justice. The result was a program that was evaluated by the New York State Board of Regents as the equivalent of 35 undergraduate college credits, to my knowledge the highest such evaluation ever given an American police recruit training program. About one-third of that curriculum was devoted to teaching new officers about the peoples of this city, and about the need to be responsive to them, to respect their dignity, and to avoid treating the differences among them as signs as lesser worth. I know that there are problems in the New York City Police Department. There are certainly some officers who are inclined to brutality among its ranks, and there have certainly occurred incidents of police brutality in New York City. But, since leaving New York City, I have looked long and hard at other police departments, and have become convinced that New York City is the state of the art where humane and responsive policing is concerned.

## NOTES

1. A personal anecdote is illustrative: Several years ago, I was en route home from work in my personal auto, and was stopped at a red light in heavy rush hour traffic. My car was suddenly struck in the rear by another car that pushed me into the auto in front of me. All three of us exited our cars to inspect the damage, which was substantial (\$450) to my car. We agreed to pull across across an intersection, and to exchange vehicle information out of the traffic lane. I did so, but the driver who hit me suddenly turned onto a cross street and fled in his auto. I followed him for a period of time, and finally got an opportunity to pull alongside him, show my identification, and signal him to stop. He swerved into my car again, but was finally forced to a stop by traffic. I exited my car, told him he was under arrest for leaving the scene of an accident, ordered him out of his car, placed his hands on the roof of his car, searched him, and requested that a bystander call the local precinct and advise them that I was holding a suspect.

Later, another bystander -- with whom I had spoken cordially at the scene -- called the local precinct to complain that I had arrested the suspect, ordered him out of his car, searched him, removed items from his pockets, and handcuffed and transported him away from the scene in the marked police car that appeared at the scene. No other allegation was made. The complaint was immediately forwarded to the Civilian Complaint Review Board, who subsequently investigated it thoroughly (seeking to find additional witnesses, interviewing the complainant, the suspect,

and me), and determined that I had acted according to the prescribed arrest and search procedure. When the investigation was concluded, I was told by investigators that the complainant (whose name was kept from me) had advised them early on that her husband -- a criminal lawyer -- had told her that I had followed prescribed arrest procedure, and that she wished to withdraw her complaint. Under the department's rules concerning civilian complaints, however, once made, complaints are investigated to conclusion regardless of the wishes of complainants.

I know of no other police department in which the official number of complaints lodged against police officers includes incidents in which even the most cursory interviews by receiving personnel would determine that there existed no bases for the complaints. I do know of many police departments, however, in which complaints must be made in person at police facilities by complainants who must swear to and sign their complaints under warnings that they may be prosecuted for perjury or sued for libel if their allegations are determined to be unsubstantiated. Because New York City allows its police personnel no power to handle complaints "informally" or to advise complainants that they have detailed no cause for action against officers, the number of complaints it records is swollen by some percentage of complaints that would not appear on the records of other police departments, and the percentage of complaints it finds "substantiated" is concomitantly lowered.

2. United States Commission on Civil Rights, Who's Guarding The Guardians, Washington, DC: USGPO, 1981, pp. 125-127.

Mr. CONYERS. It is my pleasure entirely. Before we hear from the Grand Council of Guardians, the president and the past president, a 10-minute recess only, and then we will resume the hearings of the Subcommittee. We stand in 10-minute recess.

AFTER RECESS

Mr. CONYERS. The subcommittee will come to order. Will everyone please be seated. Excluding those members of the press who are standing, will everyone else please be seated. The subcommittee will come to order.

We are very pleased to have as our next witnesses from the Grand Council of Guardians, its president Mr. Jacques Maurice, who is here to present testimony, and accompanying him to the witness table is the past president, Mr. John Cousar. Gentlemen, welcome before the committee. We thank you for much activity that you have contributed behind the scenes to bring these hearings to fruition, and we would very much be pleased to hear you at this point and we would like to begin with President Jacques Maurice.

**TESTIMONY OF JACQUES MAURICE, PRESIDENT, NEW YORK POLICE DEPARTMENT GRAND COUNCIL OF GUARDIANS; JOHN COUSAR, FORMER PRESIDENT; WILLIAM JOHNSON, FORMER PRESIDENT**

Mr. MAURICE. Mr. Chairman, I notice that William Johnson, also a past president of the NYPD Guardians, has joined the panel.

Mr. CONYERS. Welcome. You may begin your testimony whenever you are ready.

**TESTIMONY OF JACQUES MAURICE**

Mr. MAURICE. Mr. Chairman, friends, citizens, fellow New Yorkers. I am Jacques Maurice. I am the chairman of the Grand Council of Guardians. The Grand Council of Guardians is the umbrella organization which represents the Correction Guardians who have the hardest job in the city of New York, the toughest job, the Housing Police Guardians, the NYPD Guardians and the Transit Guardians.

We would like to say, number one, thank you very much for coming. The subcommittee was asked, was invited, and we welcome you for coming to assist us in our plight. At this time, up to this time, we have had very little forum. Black people in general have had very little forum. We have had no entree to discuss our grievances. Our leaders are not given their just due. They are not respected by the people who run this city.

Reverend Butts, who is the leader of all of this and started all of this, was the one that marshalled us and galvanized us together, made many attempts to speak to the powers that be, including the police commissioner, to no avail.

It was only then did he call upon the New York City Guardian Association, and thus the grand council, for us to come and get involved, in bringing about some relief and remedies.

The mayor's attempt to ridicule this matter when he uses the word "alleged" is not going to make it go away. All officers in the

city of New York, all police officers risk their lives and place their lives in danger. And as the chairman of the Grand Council of Guardians, I am interested in the things that pertain to black police officers. All officers risk their lives, again. However, it is only black police officers that get assaulted by white police officers. It is only black police officers who get injured or beaten by white police officers. In the history of the city of New York, in all the police agencies that we have in New York, at no time did anyone say that a black police officer has ever brutalized a white police officer.

Whether it be an error, intentional, or whatever, we have never had such a situation. All of the police officers have been shot and killed and wounded have all been black.

Part of the problem, my friends is, which the mayor says he cannot address or change, has to do with the fact that white police officers, as a general rule, not all, "but white police officers cannot tell the difference between black crooks and black cops."

The fact that the mayor says that police brutality is not condoned. It may not be condoned, but the matter is not rectified. The punishments for brutality against police officers, black police officers particularly, never happens. It is always "a tragic incident," "a tragic mistake."

The NYPD Guardians and other Guardian associations have had too many of their officers injured, beaten, assaulted. I have had too many cases where police officers come to me and say, "I showed the cop my shield and he threw it in the river."

The trickle down theory, which mayor Koch purports to practice, does not work. It is not working. While he may be saying it at the top, and McGuire, it is not trickling down to the guys in the field at the bottom. Many of those officers seem to feel that black police officers are not their equals.

Fortunately, here in the city of New York, at this time, the four leaders of the police unions, of the four police unions, are responsible men, are good leaders. They are just not aware of all that is happening, of all that is going down. And in some instances, they do not listen.

The unfortunate part of it is in these police unions, particularly in the NYPD, there are no blacks involved in the union. There are no black officers on the executive board. There are no black officers that are precinct representatives. There are no black officers that are there when the decisions are being made as to what posture the union is going to take. That is unfortunate, but I do not blame the union leaders for that.

I would like to talk about the CCRB. The CCRB is a poorly constituted compromise. It is the best that John Lindsey and the city at the time could salvage. The PBA again used black police officers' money to fight the CCRB as it was originally proposed. That part nobody talks about.

The CCRB has been understaffed for I do not know how many years, but I am not going to plead their case. I am going to tell you that the staffing was increased only because of these hearings. I am going to tell you that the position of deputy director, deputy director of the CCRB was open for 6 years. That position was filled

only because of these hearings, and I do believe on the day the hearings were held.

In addition, the CCRB historically, from its inception, regardless of who the mayor was, regardless of who the administration was at the time, from its inception till now, has never printed anything to be distributed to the citizens at large, for the citizens to know exactly what to do.

The New York City Police Department has the largest printing budget of any city agency. Nothing has ever been printed. And if it has been printed, it has been only because of these hearings.

There is each year, the New York Times carries it, and I am sure the other newspapers do also, a precinct by precinct description of crime statistics. How much crime occurred at each and every precinct in the city of New York. And they run the gamut from loitering to homicide. There is no annual report or statistics on the actions of the CCRB, which is something, I would say interests all citizens in the city of New York. There is no one to say, there is no printing or release of information, concerning how many complaints or civilian complaints were lodged in each precinct in the city. There is no annual report on the dispositions of these matters, which is what we need to know about. And, Mr. Chairman, when you say 1½ percent, you are being generous.

Mr. CONYERS. I said one-half of 1 percent.

Mr. MAURICE. Yes; then you are on target, sir. But in the end, it is important that everyone here know, that the CCRB is only advisory. That is all they do is advise. And over the last 6 years, and I will be more specific, Commissioner McGuire has pocketed or vetoed their advice in many instances. He does not even pay attention. Officers that should be fired or get retraining are given a slap on the wrist.

There is a tremendous amount of inaccurate reporting by the department. We have one instance where an officer, and this instance it is a transit police officer, who was shot and killed, and the way the facts came out in that 95-point document, it sounds nothing like the incident as it happened in 1969. The officer was Lemuel Booker.

By the way, that matter was recently investigated by the police department, who thought nothing of investigating it from all this time until the present.

Polarization, I want to tell you a little bit about that. The polarization is there. It is not these hearings that is bringing about polarization. These hearings are providing a forum for people, citizens, men of good will, good hearts and integrity to voice what they feel are injustices. Whether they be true or untrue, there must be a forum. The evidence will present and show whether they are.

The police commissioner talks about shooting guidelines. Let me tell you something, my friends, those shooting guidelines were only put in effect when black police officers were getting shot very often. That is when they thought about shooting guidelines. I do not have to tell anyone here. I think everyone is aware the number of black police officers that have been shot. And that was presented at the last hearings.

Only when the department is forced to do something, will they do so. The mayor said that the hiring of minorities was not court-

mandated. Well, let me say this to you, the creation of the new test was court-mandated, and that would have never been done, had it not been for the courts.

I would like to add some more things here. In regard to the \$34 million that has been paid out in police brutality claims, since Mayor Koch has been mayor he seems to attempt to allay the costs, but \$34 million can buy a lot of police officers.

I would like to say that \$34 million is 1,258 cases. Now, apparently that is only 14 percent, because the mayor said they win 86 percent of the time. So that is only 14 percent of all the claims, 1,258. That is a lot of people who were successful in their litigation, regardless of what the other number was.

The first year that Koch was mayor, let me say to you, \$1,900,000 was paid out. And as the good Congressman brought out, last year was \$9 million. At this time right now, there are 2,039 cases still in litigation in the corporation counsel's office, right now. That is up to August 31, 1983.

Mr. CONYERS. Is that a larger number for this period of the year than before? Or can you tell?

Mr. MAURICE. It is hard to tell. However, there are 2,000 cases right now that are still in litigation. And it does not make any difference whether they were started 10 years ago or last month. There are 2,000 case of people who feel they have been aggrieved. And we are talking about police cases.

It is important—very recently, as a matter of fact, I believe 2 days ago, there was an article in the paper that talked about the fact that integrity practices and checking on integrity have been tightened up. More staff had been added. In which the department is now able to do a better job in investigating whether police officers are involved in unsavory, corrupt practices. In 1972, we had Knapp Commission hearings here in New York. And the same kind of things that were said then, polarization, devisiveness, were said then, are being said now.

As a result of the Knapp Commission hearings, the entire climate of the police department has changed. Police officers know that corruption will not be tolerated. That integrity must be upheld. What we are hoping for as a result of these hearings, is that a climate will change with regard to brutality. That everyone will know that brutality will not be tolerated, not only in the mayor's mouth or in his mind, but everywhere.

We want to see as a result of these hearings, that the corruption fighter, the chief who is in charge of corruption fighting will also make police brutality a priority as far as his activities are concerned. It will make everyone aware. The same way that police officers have been rewarded in the past for assisting corruption fighting, we are hoping that they will be rewarded for assisting in brutality fighting.

It is important that the climate again be changed so that everyone will know, that that word go forth. That is something else.

I would like to talk about the psychological testing. At best, it is questionable. It is necessary, but questionable. We have a young lady officer. She took the test for police officer. She passed it. She was investigated, her character, her background, her physical, she

passed it, and the psychological and was admitted to the academy. She was admitted to the academy.

I think she got a little too complacent and about halfway through, for academic reasons, she was dismissed. The young lady took the test again. Went through the procedure a second time, was about ready to be sworn in, and she received word from the psychological testing unit that she was no longer eligible because of her psychological makeup. Now, you must remember this is the same young lady that took the test, the psychological testing barely a year before. I say it is questionable.

We would like to close by saying that no one joins the police department. Everyone applies and hopes they are selected. And the selection process here has to be improved.

I am very happy to be here, Mr. Chairman, and I would like you to listen to my cohort here, John Cousar, who has some very important exhibits that I think everyone here will find eye opening.

Mr. CONYERS. Thank you very much. The Council of Guardians is doing a tremendous job under very adverse circumstances. And I think it is recognized by everyone on this subcommittee. We are deeply in your debt. I will recognize Mr. John Cousar. Proceed.

#### TESTIMONY OF JOHN COUSAR

Mr. COUSAR. Thank you, Mr. Chairman. I am John Cousar, the most recent former Guardians Association president in the New York City Police Department. I retired in 1982, but I am still a member of the Guardians Association board.

I am now a special assistant for criminal justice services through Assemblyman Roger Green of the 57th Assembly District in Brooklyn.

After having entered the New York City Police Department through Haryou Act, a manpower development training act of 1966 and 1967, I obtained my B.S. degree from John Jay College of criminal justice, in Criminal Justice. I also graduated from the FBI National Academy in 1978.

The following information and testimony, Mr. Chairman, comes on that backdrop, 15 years of service in the criminal justice system, 20 years in the African-American community in the city of New York.

In 1966, when I became a police cadet, there are some things that I want to reflect on, and I think it is important for this committee to hear. One of the hottest stories at the time in the press, remember it is 1966, is the case of *Miranda v. Arizona*, dealing with police interrogation procedures. That was 17 years ago. But I can remember as if it were yesterday, the negative and panic-type statements that came from members and representatives of the 90 percent male white police force in the city of New York. Listening to them, one would have thought that the *Miranda* decision would end or make it impossible to do successful investigation. By now all of us know that did not happen.

By the year 1967, I was not only a student of the criminal justice system, but also a member, in that I was a probationary patrolman in the New York City Police Department. As a student and member of the criminal justice system, I quickly learned that the

vast amount of Federal level restrictions placed on law enforcement officers came after, and only after, certain widespread abuse of authority and local had been done, and local level officials had done nothing about it.

Mr. CONYERS. Mr. Cousar, I suppose that we should put in the record that the *Miranda* decision required that policeman advise those arrested of certain rights that they had before they begin to elicit testimony.

Mr. COUSAR. That is correct.

So then if there is an enemy of the police in bringing on or making the Federal level action possible and necessary, it is the police themselves.

In *Mapp v. Ohio*, in 1961, the *Mapp* decision came down after the police had not only abused their authority brutally in a search and seizure situation beyond the limits of the law, but also beyond the imagination of the reasonable man. Doree Mapp decided that the police brutality against her was a bit much and took action through the courts.

The *Miranda* decision came down after Ernesto Miranda decided that he had been brutally interrogated.

Now, abuse of authority is one of the factors of police brutality. I submit that the general population is extremely tolerant when it comes to police brutality and abuse of authority. Obviously, too tolerant. This tolerance comes from a number and combination of reasons. People have a need to believe their police force is one that will protect rather than brutalize them. There is also the fear factor. People fear the repercussions that will come as a result of reporting police wrongdoings. Note, the defenders of the police in New York City, the mayor, the police commissioner, the PBA. All with powerful and large budgets.

People do not believe they can win in these situations. Therefore, they do not come forward. People do not always have the money to hire a lawyer and go to court. The governmental agencies where people can go to complain cost-free are few, ineffective, improperly located, and understaffed.

At this point one might ask why are we talking about or discussing the *Mapp* and *Miranda* cases? They did not take place in New York City. Well, my academic training tells me that it is impossible for one to discuss police brutality or anything else intelligently without knowing its broad history and definition.

For example, *Mapp* in Ohio, *Miranda* in Arizona, begins to show us the wide geographic spread of police brutality and abuse of authority in the United States. New York City just happens to be the place where the issue is being raised at this time. If we took the time, we could look at each State in the United States and find cases on the level of *Mapp* and *Miranda* that drew decisions from the Federal level following acts of police abuse of authority and brutality.

If so many cases like *Mapp* and *Miranda* and others are making it to the Federal level, can we assume that something is wrong or at least lacking at the local level. Do not people usually look for remedy at the local level before proceeding to the Federal level?

Earlier I mentioned that we need a definition of police brutality and excessive use of force. After listening to the group before us,

God knows we need a definition. And we have already pointed out that this is something that spreads across large geographic areas, without regard to local or State boundaries. It is also widespread relative to incident and character. It is more than outright murder of citizens by the police. It is shootings and beatings that maim. It is verbal abuse. It is stopping motorists with families and treating them like felons when there is no justifiable reason to do so. It is what the officer does as well as what he does not do. It is commission as well as omission. It is the use of force, of more force than is necessary to accomplish the law enforcement function. It is racial. It is a vicious cycle. It has little to do with crime. It has no respect for economic strata, but does have some respect for color and even hides under the color of the law.

If the read, listener will bear with me, I want to spend more time on the definition of police brutality because I do not believe that we can carry on an intelligent discussion unless we can at least agree on a common definition of brutality.

Further, I do not believe that brutality can be understood or dealt with properly, if it is not seen in the proper perspective.

In 1966 the civilian complaint review board was voted into existence by the electorate in New York City after many incidents of police brutality against African Americans. After many outcries of protest from the African American community in New York City, led at that time by the NYPD Guardians Association.

The following sentence comes from page 541 of the New York City council record dated March 18, 1980, helps us with the definition of police brutality. The civilian complaint review board reviews complaints involving: One, unnecessary excessive force; two, abuse of authority; three, discourtesy; and four, ethnic or racial slurs. The group before us knew 25 percent of that definition.

Mr. CONYERS. Brother Cousar, it pains me to have to tell you that you are on page 5 of your testimony. We have 16 witnesses. We have got till 5:15 p.m., so what I am going to do is put the entire statement into the record, and then ask you to hit the high points in the conclusions, so we can bring on William Johnson, and move on. We are just really filled up. We are not saying this is the last hearing, but I want you to cooperate with us in that respect.

Mr. COUSAR. Mr. Chairman, we will do that.

Mr. CONYERS. Thank you very much.

[Prepared statement of John Cousar follows:]

TESTIMONY OF

JOHN COUSAR

FORMER PRESIDENT OF THE GUARDIANS ASSOCIATION  
OF THE POLICE DEPARTMENT, CITY OF NEW YORK,  
BEFORE THE SUBCOMMITTEE OF CRIMINAL JUSTICE  
OF THE HOUSE COMMITTEE ON THE JUDICIARY -  
HEARING CONDUCTED AROUND POLICE BRUTALITY  
(EXCESSIVE USE OF FORCE) IN THE CITY OF NEW YORK

EASTERN DISTRICT COURT HOUSE

225 CADMAN PLAZA WEST

BROOKLYN, NEW YORK

NOVEMBER 28, 1983

I am John Cousar, the most recent former president of the Guardians Association of the Police Department of the City of New York. I retired from the New York City Police Department in July of 1982. I am still a member of the Board of the Guardians Association. I served as President of the Guardians Association from January 1, 1980 until June 1982. I am now the Special Assistant for Criminal Justice Services in the office of Assemblyman Roger L. Green 57th Assembly District, Brooklyn, New York.

After having entered the New York City Police Department through Har You Act(a Manpower Development Training Act of 1966 and 1967), I obtained my B.S. degree from John Jay College of Criminal Justice, in Criminal Justice and also graduated from the F.B.I. National Academy in 1978. During my career in the New York City Police Department I promoted to the rank of Detective.

The following information and testimony is given then in the backdrop of my fifteen years as an active member of the New York City Police Department, of the Guardians Association and as a more than twenty (20) year resident of the African American Community in New York City.

In 1966 I became a Police Cadet under the Manpower Development Training Act here in the City of New York. The Police Cadet Training Program was conducted by the New York City Board of Education in conjunction with the New York City Police Department, under a grant from the Federal Level Manpower Training Act. The program trained young, poor people between the ages of 21 and 29 to take and pass Civil Service Examinations, with emphasis on the entry level test for police officer.

Note again that the year is 1966 and one of the hottest stories in the press at the time was around the case of Miranda vs. Arizona, dealing with police interrogation procedures. That was seventeen (17) years ago but I can remember as if it were yesterday the negative and panic type statements that came from members and representatives of the 90% male white New York City Police Force. Listening

to them, one would have thought that the Miranda decision would end or make it impossible to do successful investigations. By now we know that did not happen.

By the year 1967 I was not only a student of the Criminal Justice System but also a member, in that I was a Probationary Patrolman in the New York City Police Department. As a student and member of the Criminal Justice System I quickly learned that the vast amount of Federal level restrictions place on Law-enforcement officers came after and only after certain wide-spread abuses of authority by local level law-enforcement had gone unchecked over long periods of time, with local level officials doing little or nothing about that abuse of authority. So than if there is an enemy of the police in bringing on or making the federal level actions possible and necessary it is the police themselves.

Mapp vs. Ohio 1961: The Mapp decision came down after the police had not only abused their authority brutally in a search and seizure situation beyond the limits of the law but also beyond the imagination of the "reasonable man". Doree Mapp decided that the police brutality against her was a bit much and took action through the Courts.

Miranda vs. Arizona 1966: The Miranda decision came down after police abuse of authority in interrogation procedures. Ernesto Miranda decided that the abuse was out of order and he went to Court and therefore, the Miranda decision. It's worth noting here that Mapp, Miranda and the continually increasing long line of people who have gone and are going to court and protesting in other ways, relative to police abuse of authority and brutality, are in the minority as compared to the long line who are abused by the police and do not bother to even report the abuse to local or other Governmental agencies. I submit that the general population is extremely tolerant when it comes to police brutality and abuse of authority, obviously too tolerant. This tolerance comes for a number and combination of reasons:

1. People have a need to believe that their police force is one that

will protect rather than brutalize them.

2. Fear, people fear the repercussion that will come as a result of reporting police wrong doings. (Note the defenders of the police in New York City).
  - a. The Mayor
  - b. The Police Commissioner
  - c. The P.B.A. etc. (all powerful with large budgets)
3. People do not believe they can win.
4. People do not always have the money to hire a lawyer and go to court.
5. The governmental agencies where people can go to complain, cost free are few, ineffective, improperly located, and understaffed.

At this point one might ask why are we talking about or discussing the Mapp and Miranda cases? They did not take place in New York City. Well, my academic training tells me that it is impossible for one to discuss police brutality of anything else intelligently without knowing its broad history and its definition. For example Mapp in Ohio and Miranda in Arizona, begins to show us the wide geographic spread of police brutality and abuse of authority in the United States. New York City just happens to be the place where the issue is being raised at this time. If we took the time we could look at each state in the United State and find cases on the level of Mapp and Miranda that drew decisions from the Federal level following acts of police abuse of authority and brutality.

If so many cases like Mapp, Miranda and others are making it to the Federal level, can we assume that something is wrong or at least lacking at the local level? Don't people usually look for remedy at the local levels before proceeding to the Federal level?

Earlier I mentioned that we need a definition of police brutality (excessive use of force) and we have already pointed out that it is something that spreads across large geographic areas without regard to local or state boundaries.

It is also wide-spread relative to incident and character. It is more than the outright murder of citizens by the police. It is shootings and beatings that main. It is verbal abuse. It is stopping motorist, families and treating them like felons when there is no justifiable reason to do so. It is what the officer does as well as what he doesn't do, it is Commission as well as omission. It is the use of more force than is necessary to accomplish the law-enforcement function. It is racial, it is a vicious cycle. It has little to do with crime. It has no respect for economic strata, but does have some respect for color and even hides under the color of the law.

If the reader, listener will bear with me I want to spend more time on the definition of police brutality because I do not believe that we can carry on an intelligent discussion of police brutality unless we can atleast agree on a common definition of brutality. Further I do not believe that brutality can be understood or dealt with properly if it is not seen in the proper perspective.

In 1966 the Civilian Complaint Review Board was voted into existence by the electorate in New York City after many incidents of police brutality against African Americans, and after many outcries of protest from the African American Community in New York City lead by the N.Y.P.D. Guardians Association. The following sentence from page number 341 of the New York City Council record dated March 18, 1980 helps us with the definition of police brutality. Civilian Complaint Review Board reviews complaints involving unnecessary or excessive force, abuse of authority, discourtesy and ethnic or racial slurs. This clearly indicates that atleast as early as 1966 a majority of the voting electorate in New York realized that police brutality was more than police use of unnecessary or excessive force (Deadly force), but is also abuse of authority, discourtesy and ethnic or racial slurs.

The Community Relations Service of the United State Department of Justice was created by the Civil Rights Act of 1964 to help Communities resolve disputes and conflicts arising from discriminatory practices based on race, color, or national

origin. According to Community Relations Services representatives, since the agency's inception in 1964, a substantial number of the race related disputes in which it has intervened have involved negative relations between minority groups and law-enforcement officers.

Again I am spending time and space here to build around the definition of police brutality because my experience tells me that we are spending too much time on a fraction of the problem as defined, that fraction of the problem being the use of dealy force while attention to the bulk of the problem goes un-attended. I submit that the bulk of the problem that we are leaving un-attended i e, abuse of authority, discourtesy, ethnic or racial slurs, are the roots that sustains the tree of police use of dealy force. The cycle is simple, when we let the double standard abuse of authority continue, the discourtesy and the ethnic or racial slurs, the police begin to think that this abuse is ok. The ethnic group that is affected by the double standard begins to resist and the police moves along to the use of deadly force.

Community Relations Service is to be in my opinion commended for its tremendous amount of efforts and energies spent across the United State of American since 1964. From a conciliator and mediator standpoint Community Relations Service has brought many police and community groups together, and helped them work out solutions to reduce police brutality, and many of the roots of police brutality. I have personally attended atleast one workshop conducted by Community Relations Service in the State of New York and can contest to the value of same. Community Relations Service like many other groups does highlight police use of deadly force but never seems to fail to get to the roots of police use of deadly force and therefore to the roots of police brutality.

In May of 1982 Community Relations Service printed a conciliation hand book for citizens and the police, entitled police use of deadly force. The handbook's title may lead one to believe that it deals with just one fact of police brutality, (deadly force), but in fact it does more, it focuses on things which may aid in

alleviating police brutality or in some cases contribute to it, for example;

(1) Firearms policy (2) Police Community Relations, (3) Citizen Complaint Process, (4) Civilian Review Boards, (5) Demonstrations and Civil Disorders, (6) Minority Recruitment, (7) Training and (8) Psychological Testing.

By now you have probably realized that I appreciate and agree with those who take the broad view of police brutality, so I must take this opportunity to make you understand why. Well, police brutality has broad ramifications. All too often the ramifications are so broad until riots are started and lives are lost. Yes the issue of police brutality is a vast and difficult issued to deal with. I am sure that Community Relations Service will agree in that the frist step in dealing with this issue is simply getting the two entities, the police and the community together for discussion, and even this is difficult.

Mr. Chairman, you and the Subcommittee then must be commended for having on this date November 28, 1983 in the City of New York, brought atleast to the same building, representatives of the police and the community. We from the Grand Council of Guardians are police, but we are representative of the New York City Community. Prehaps if all the police here today were representative of the total New York City Community, there would be no need for us to be here.

One's book of experience is probably the best book for one to quote from or discuss because he had to read it at least once. So let me just begin here to discuss from my own experience and collections about police brutality and abuse of authority by the predominantly white New York City Police Force.

In 1966 when I began to look closely at the police force in New York City I saw a force that was 90% male white and highly non-residents of New York City. A force that wrote racial slurs on rest room walls. A force that disrespected and ripped off the Black Community. A force that brutalised Black suspects and non-suspects. A force with a vocabulary consisting of words like scum bag, skell, mope and nigger.

NEW YORK CITY POLICE DEPARTMENTSELECTION PROCESS

The New York City Police Department builds in the basis for police brutality from the very beginning of the selection process. The department recruits personnel from the City and also from several Counties outside the City. From the Counties outside the City they succeed in drawing mostly young white males who are unfamiliar and often times afraid of the Black Community in the City of New York. Within the personnel in the department who are responsible for screening, this young white male is referred to as a cream puff and has little trouble getting through the screening process, but he does have problems relating to the black community in New York City.

On the other hand the young blacks who are recruited predominantly from the city of New York and are obviously familiar with the residents of the city be they Black or White, finds many problems trying to clear the screening process young Blacks trying to clear the screening process to become police officers, encounter problems that are tantamount to police brutality against them. They are taken over the cloes so to speak in every step of the screening process:

1. The character background check, done by police officers assigned to the Applicants Investigation Blacks over longer periods of time than any other group. Eliminate Blacks at a higher rate. Send Blacks back for documents over and over again, even for ones that have been turned into the investigator and alledaly lost by the investigator. Try to

persuade Blacks to bow out of the process or as not to be turned down. Harass Black applicants, threaten to arrest Black Applicants, etc. This process to eliminate rather than screen Black applicants continues through the psychological testing unit, and the Medical Unit. Many Blacks have spent as much as \$3,000 appealing rejections while clearing the screening process.

In 1979, the Department conducted a recruitment effort which in the final analysis established a list which contained close to 4,000 Blacks. On this list in the final analysis Blacks outnumbered all other groups except whites. But due to the brutal and discriminatory screening process that I mentioned above when we count those who were hired from the list Blacks come out with the lowest percentile. Even after a federal court had ordered that 33 1/3% of each class hired from said list had to be Black and Shipanic. (Show chart Re: Blacks and Hispanics Hired 1979 - 1983). So the Department's screening process eliminates Blacks and screens no one.

#### TRAINING

The New York City Police Academy's Training Curriculum is a professional and well balanced document then it would seem that officers trained at the academy would be sensitive and would refrain from brutality. This simply is not the case, so let me give some reasons why. When I entered the New York City Police Academy in 1967 the academy curriculum contained the behavioral sciences, but when the street crisis grew and demonstrations turned to riots, the behavioral sciences were put on the back burner and the training relative to the use of force was high lighted, the GYM and the firing range, physical

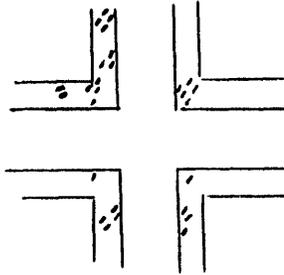
and shooting. The recruit and the instructor looked upon the behavioral classes as a time to be less than serious. Today in the police academy the behavioral sciences are referred to by recruits and instructors as silly sciences. In addition to such remarks, (which tend to degrade the importance of Human Relation Training) teaching and or which tends to develop negative attitudes towards minority. Whenever, examples of Police aggression are made (in classroom settings) Harlem Bedstx or the South Bronx are almost always named as the place of occurrence. Even written examples appear in the training manual. For example, chapter four of the Social Science Curriculum has an exercise on Occupational perception:

"You will develop powers of observations in doing your everyday job that we will call here occupational perception. This power of perception is not unique to the police. An electrician, upon entering a room, would immediately notice exposed faulty fixtures; a gardener will see flaws in a garden that most of us would describe as magnificent; and an architect may see immediate flaws in the most luxurious building.

Because of your multifaceted service occupation, you will be expected to observe objects and events more keenly, more accurately, more perceptively, than the average person.

#### EXERCISE 1

You receive a call that a man is standing on the corner of West 135th Street and Lenox Avenue, and he has a gun. The man is standing with three other men. Which man would you identify as the one with the gun?"



This training practice tends to constitute a socialized process by which all recruits are pre-conditioned to become more aggressive in minority communities. This aggression is conducive to abuse of authority, at best, and Police brutality at worse.

While examples are good for the training process, they should have a universal interpretation. Until training practices have adopted a professional approach, these courses will continue to be nothing more than cosmetics on paper until the leadership in the police department, and in the city government begin to set a tone that requires police officers to be sensitive and punish those officers who do not respect the Public, and who use excessive force.

Now we have discussed three phases of the selection process in the New York City Police Department. (1) Recruitment (2) Screening and (3) Training. I also mentioned two types of recruits and what happens differently to them as they pass through the screening and training process. The young Black is subjected to a lot of abuse and brutality and the young White is not..

We must remember now that this screening and hiring process is taking place after the 1979 entry level examination for police officer had been found to have a discriminatory impact upon Blacks and Hispanics, and a Federal Court Judge had ordered the New York City Police Department to make each class from the 1979 list (list #8155) contain effect the N.Y.P.D. manage to circumvent it, and still did discriminatory hiring where the young Blacks were concerned.

This discriminatory harassment and screening out of young Blacks started in 1979 and continues today.

AFFIRMATIVE ACTION IN THE NEW YORK CITY POLICE DEPARTMENT 1979 - 1983

Since 1979 and to date 1983, officials in the New York City Police Department have been talking about their Affirmative Action Program. As mentioned before; the Guardians Association sued the New York City Police Department in 1979 in an effort to force its leadership to act in the spirit of Affirmative Action. The Police Department resisted and appealed all the way to the highest tribunal in the land, the Supreme Court. As mentioned before, the department lost and immediately started a concerted effort to circumvent the court order.

Our major court case was won by the latter part of 1979. By July, 1980 the Medical Unit had viciously screened out enough Blacks and Hispanics under the guise of unauthorized substance in their urine alone to warrant a Class Action suit. Katie O'Neal from the Legal Action Center took the case to court several times on a Class Action and individual case basis attempting to force the spirit of Affirmative Action. As the hiring continued and continues other Minorities numbers have doubled, tripled and even quadrupled while Black males have not even doubled, and have indeed increased by

less than 10% over a four year period during which over 8,000 officers have been hired, 1979 - 1983.

The methods used to screen out or eliminate young Blacks is not only discriminatory but also less than humane.

The psychological testing unit questioned the mental stability of 30.8% of the Black Females who come before that unit. Many of the parents of the young Blacks who were being turned down by the psychological testing unit called me in my capacity as President of the Guardians Association, whispering into the phone asking me if I thought their daughter or son was crazy. These young people were being stigmatized as crazy right into their immediate families.

The backlash inside the New York City Police Department after the court win was the worst and most racially charged that I had seen in my entire police career. In my capacity as President of the Guardians Association from 1980 to 1982 I received numerous complaints and letters from Black police candidates about the racial backlash within the screening process, and even from those who had cleared the screening process and proceeded into the police academy and into the field. Even today the backlash continues. In my opinion the New York City Police Department has failed and is failing in the area of offering equal employment opportunity to the large pool of young blacks in New York City who want to be police officers and want to work. Our documentation from 1979 to present will hear this contention out. Our documentation and eyewitness positions also show us vividly that the young Blacks who comes through the New York City Police Departments selection process and become police officers, still find themselves becoming victims of police brutality, the record

and our Black police witnesses also indicate that no matter how long the black police officer have been a police officer or "blue", he is still the victim of police brutality the same as the Black population who are not police officers.

LIST OF POLICE OFFICERS, CIVILIAN VICTIMS AND WITNESSES

1. 1970 - Det. Robert Mahone: was shot in the forearm, by an officer who fired through the rear window of an R.M.P. Det. Mahone survived, and was awarded \$5,000 after civil action against the City of N.Y.
2. 1972 - Det. William Capers: who had served 19 years as a member of the N.Y.P.D. was shot and killed while on duty by a police officer who had 2 years service in the N.Y.P.D. Capers was shot while apprehending a suspect in front of a shoe store. Following the incident Det. Capers son committed suicide by jumping off the roof. Det. Capers wife is presently under psychiatric care.
3. 1973 - P.O. Irving Wright, killed in the line of duty by two white male officers who emptied their revolvers. They alledged that officer Wright turned toward them and fired. Dr. Farik B. Presswall who examined officer Wrights body at the Medical Examiners office said "six bullets entered the officers' body, all of them in his sides as if fired a little from the rear".  
Officer Wrights family received \$400,000 after Civil Action against the City of N.Y.

LIST OF POLICE OFFICERS, CIVILIAN VICTIMS AND WITNESSES (Cont'd)

4. 1978 - Det. Squire D. Boswell, on duty while struggling with a suspect on the ground was shot by his white male partner. Det. Boswell survived but was permanently injured. The original police report did not include any statement from Boswell. And when Boswell did make a statement it differed from his partners'.
5. 1983 - P.O. Warena Brown, a member of the force was on extended military leave, reported a crime to the police, and as a result was arrested for impersonating a police officer.
6. 1982 - Det. Francis Phillip, while on duty was beaten by uniformed officers while assisting a uniform officer in an arrest. It was found by one District Surgeon that officer Francis Phillip had sustained "Contusion scalp traumatic myositis neck and back".
7. 1983 - P.C. Jan Clark, while on duty in uniform was punched in the mouth by a white male officer also in uniform.
8. 1983 - P.O. Willis Crosland, reported another officer for wrongdoing and as a result Crosland was harassed.
9. '1969 to Present - Retired Transit Police Officer, Richard Woodbury. In 1969, P.O. Woodbury intervenced to stop the beating of a black male by a white police officer.
10. 1973 - An 11 year-old black child Clifford Glover, was hot and killed by a white New York City Police Officer in the 103rd Pct. in Queens. Glover was not in the possession of any weapons and had committed no crime. Because of this incident, the

LIST OF POLICE OFFICERS, CIVILIAN VICTIMS AND WITNESSES (Cont'd)

10. (Cont'd)

Police Dept. started a violent prone list, and eventually started what is now the psychological testing unit.

11. 1976 - A 15 year-old black child, Randolph Evans, was shot and killed by white police officer Robert Torsney. Evans did not have in his possession any illegal weapons and had committed no crime.

The cases listed above are only a fraction of the Black police and Civilians who have been killed, shot, beaten, disrespected and humiliated by the New York City Police Department to present. For example: A study that was done in 1974 by Betty Jenkins and Adrienne Faison of the Metropolitan Applied Research Center Inc. headed by Dr. Kenneth P. Clark revealed that in a mere four year period 1970 - 1973 at least 130 black citizens were killed by the New York City Police. The study also revealed that the greatest number of blacks killed in this period were male and were between the ages of 22-30. Twenty-seven (27) of them were under the age of 21 with the youngest being 10 years old. Finally the study indicated that most of the killings were done by whitepolicement and took place in Ghetto areas.

Now with that matter taken care of, we need to say what the cases listed above do show. The cases show that geographically the killings and beatings are taking place across the Black New York City Community. Manhattan, Queens, Brooklyn, etc. They show that the Blacks being killed beaten etc. come from all economic and educational levels. The one entity in the listed group that is totally constant

is that they are all black. Prevalent to is that they are predominantly male and young. I listed the black police who were killed and beaten etc. separately from black civilians, because I think that this more than anything else proves that the people being killed are being killed on a racial basis, and that the killings and beatings have very little to do with criminal activity. The cases also show the illegal activities by the police going through several phases.

1. Outright killings - Capital punishment without trial.
2. Woundings - Maimings and beatings.
3. Disrespect and humiliation.
4. A combination of two and three.

It is essential for us to note here that the cases of police officers wounding, maiming, beating, disrespecting and humiliating black citizens are much more frequent than the outright killings. Though there is nothing worse and more final than the taking of a life, we must begin to look closer at the hideous things that the police do to the black population in this city that are just short of taking our lives. At this point very little is being done about this huge amount of wrongdoings that are being carried out in the Black Community realize the devastating the negative affects that are being caused by these frequent incidents, even to the point of bringing down the quality of life.

The New York City Police Department has a screening process, a training process, a disciplinary process and a Civilian Complaint Review Board. So with all these units in place why is it that the department is still producing a considerable number of white police officers who administer Police Brutality to the fullest definition,

with a bumper crop of examples in the current year 1983. I mention two types of New York City Police recruits and where they are recruited from on purpose; (1) the white male who is recruited largely from outside the City and (2) the black male who is recruited largely from the inner City. Making the black male more familiar with the inner city and the white male less. Now let's put these two recruits shoulder to shoulder and lead them through the selection process, and into law enforcement in New York City. Right from the beginning of the screening, the two recruits will see that the black male is given a harder time than any other recruit group, while the white male will be treated more humane and even pampered more than any other recruit group. The white male will encounter a large number of role models in the department, the black male will encounter a smaller number. From the screening process forward through training on to the street the white male police officer role model will show the white male recruit by practical example how to give the black male recruit a harder time than anyone else. How to use double standard discipline against him, how to give him all the bad assignments, how to beat and even shot and kill him. This is the practical example that is shown while reading him beautiful, cosmetic. Curriculum the C.C.R.B. and the balance of the disciplinary system right up to the trial room slaps the white male on the wrist and nails the black male to the cross - give examples - I think that what we can see here is that the department is doing a practical and on site job of training recruits to be brutal toward the black male and female recruit/police officer and the black community. And a cosmetic job, toward training the police recruit to be sensitive.

Now I have pointed out that the departments' screening process screens no one really, but does eliminate blacks. That the training process is simply cosmetics, and that the real training process takes place through real examples of police brutality and unfairness to blacks, especially the black male. That the disciplinary system operates under a double standard and the Civilian Complaint Review Board, C.C.R.B. fails right from the beginning, in that it doesn't even meet the bare bones definition of a Civilian Complaint Review Board, that definition being simply, a board staffed by civilians. The department's C.C.R.B. is staffed predominantly by police personnel from the directly downward. The present director, no matter what they call him, is a police sergeant. The Deputy Director is a police officer and this kind of cosmetics and misleading juggling and calling personnel by temporary titles while the permanent title is subdued, continues throughout that board. Further, whether police department officials realize it or not they have admitted that the present C.C.R.B. is not working, and we agree. Any organization that the present C.C.R.B. is not working, and we agree. Any organization that substantiates or clears with results only 39 out of 869 complaints is not working. That cannot gain the confidence of the Public is not working.

I believe that the present C.C.R.B. in the New York City Police Department is not working for the following reasons:

1. It's personnel from the director down must answer to the same Department that they are reviewing (The New York City Police Department). All of the personnel at the C.C.R.B. considers themselves to be privileged and in a good detail (they are happy to

## 1. (Cont'd)

be there) and will do very little to upset the controlling organization (the New York City Police Department). Some of the personnel at C.C.R.B. are making higher salaries as a result of being there. They are not independent of the department that they are reviewing for wrong doings.

2. The investigation process at the C.C.R.B. is too slow allowing time for the complaining witnesses to lose interest, and to become advisers to others in the community advising them not to waste their time complaining to an ineffective C.C.R.B.
3. The investigation process discourages complaining witnesses by asking them to sign waivers and by talking about the complaining witnesses arrest record if there is any.
4. The manpower level at the C.C.R.B. almost assures that there will not be enough time for thorough and effective investigations.

In my opinion the following is some of the things that must be taken into consideration when forming an organization to monitor and offer checks and balances on the police.

1. Who will the personnel be?
2. Who will pay the personnel?
3. Who will select or appoint the personnel?
4. What will be the powers of the monitoring organization?
5. Will the monitoring personnel seek out abuses or just wait to be notified?

6. Where will the monitoring sites be located?
7. What will be the term of office for the monitoring organization?

A police monitoring organization should be as close to independent as possible. It should consist of personnel who are from and reflect the population to be served. The personnel's pay, nor the purse strings to the monitoring organizations budget should be controlled by the organization to be monitored, nor by local political leaders.

The process for selecting the monitoring personnel requires study, but must be one that will assure a balanced group. Of well trained and experienced investigators.

To be effective the monitoring organization needs subpoena, disciplinary and enforcement powers.

In a booklet developed by the United State Department of Community Relations Services as the result of a workshop conducted in 1978 around police use of deadly force, many of the myths about the causes, who causes and results of the use of deadly force are exposed. For example; Howard P. Carrington National Administration of Justice Specialist Community Relations Service, United State Department of Justice, Contributed the Community Relations Service perspective be dealt with some of the myths as follows.

The issue of police use of deadly force in one of the crucial issues that face this nation today. Community Relations Service is in a very unique position to get feedback from perception and concerns of community groups across the country, and in our daily operations in 10 regional offices, we have, for a long time, been getting reverberations about the impact of police use of excessive force. Recognizing the delicacy of this issue, our director, Gilbert Pompa, has established it as one of our priority issues. So we have set about trying to utilize the objectiveness of the Department of Justice in conjunction with addressing the immediate concerns of those who have been most victimized, and those are obviously minorities -- mostly blacks and browns.

We were recently attuned to a situation in Philadelphia, the MOVE situation, which exemplified an extreme amount of what may be regarded as police over-zealousness, if one were to use the term. This is only one of the kinds of situations that happen. Philadelphia and Houston happen to be cities in which the press has been extremely interested, but there are many other Philadelphias and Houstons across this country. Many of them do not get the kind of publicity that has accrued to those two cities, but the basic problem is still there.

NEW YORK CITY POLICE DEPARTMENT OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Equal Employment Unit was created as a section within the Personnel Bureau in January, 1973.

Between 1979 and 1983 the investigative capacity in E.E.O. was reduced by about 30%. So at a time when there is an increase in complaints of discriminatory type, there was a reduction in personnel in E.E.O. This does not show a commitment to equal employment opportunity.

Commissioner, Robert J. McGuire's Proposed Testimony Dated July 18, 1983.

Commissioner McGuire's testimony and statistical analysis in comparing the percentile of shootings in New York City to other Cities in the United States immediately presents a problem in that there is no other City in the United State that can be compared to New York. For example there is no other city in the United State with 8 million people, with 24,000 police. Therefore pure logic would tell you that whatever any other city has on a chronological basis New York has more of it. For example going even back to the percentile count 10% of 24,000 = 2400 and 30% of 20 = 6 what we have done is simply compared the police force in New York City to the average police force in the United States giving the average force a 20% advantage and New York still wins.

IS THERE A CORRELATION BETWEEN POLICE BRUTALITY AND CRIME?

Dr. Lawrence W. Sherman  
Project Director  
Project on Homicides by Police Officers  
Criminal Justice Research Center  
Albany, New York

Dr. Sherman offers the following contribution relative to the question here. What are the circumstances preceding the homicides? This varies the most widely of any of these characteristics among cities, and I think it does reflect the difference in policies. What varies the most is traffic. In a big city like Philadelphia or New York, a very small percentage of the homicides occur

in the context of traffic incidents. The national study of newspaper clippings, however, showed that one-third of police homicides occurred during a traffic incident.

More important, perhaps, was the fact that in New York, where felons who have not committed violence are not permitted to be shot, only seven percent of the police homicide victims were burglary suspects, whereas in Philadelphia, where there is no such restriction, 37 percent of the police homicide victims were burglary suspects. Robbery suspects comprised between one-fifth and two-fifths of all the cases. Disturbance calls -- a very imprecise category ranging from a family fight to a man with a gun -- comprise one-sixth to one-third of the cases. But in the cases that were studied by the Police Foundation in a report I recommend to you entitled *Police Use of Deadly Force*, fully four percent of the woundings (bullets that hit people) were officer horseplay, accidents, personal disputes and things that weren't justified by any kind of crime intervention at all.

How often is the victim armed? The majority of the victims, about 55 to 60 percent, in the studies that have been done, have been found to have weapons on them. But those figures are based on official data, and the problem of the throw-away weapon that police officers plant on a victim of homicide is a very real one. Recently, in the Houston area, a police union responded to a case in which a police officer had planted a gun on a homicide victim. The gun was found to have disappeared from the police property room, having been seized in a suicide in 1963 and disappeared in 1968, and the logic was that it disappeared into the officer's pocket as a throw-away weapon to provide a defense when he killed somebody. The response of the local police union was to publish in their newsletter the advice that you should use a knife for a throw-away because it cannot be traced as easily as a gun! That problem varies across cities, but I think it should at least make one skeptical about the frequency with which the victims of police homicides are, in fact, armed. And it's something that should be looked at

certainly whenever one is dealing with particular cases.

Dr. James J. Fyfe offers the following contribution relative to the question here "Geographic Correlates of Police Shooting: A Microanalysis," Journal of Research in Crime and Delinquency, January, 1980, pp. 101-113. This study finds that police shooting rates and rates of public homicide and arrests for violent crime are closely related across New York City neighborhoods.

I agree with Dr. Sherman and disagree with Dr. Fyfe for the following reasons:

1. If there was a correlation between crime and police brutality, then criminals would be up in arms and these hearings would be conducted from within the walls of our Correctional Facilities. However this is not the case because the individuals complaining about police brutality are our Black Police Officers, Doctors, Ministers, Teachers, Lawyers and our Children.

Finally we defy James Fyfe to offer these individuals who complains about Police Brutality that the reason for this abuse is a rise in crime.

POLICE COMMISSIONER MCGUIRE'S INVESTIGATION

Following the September 19, 1983 Congressional Hearings Commissioner McGuire released a more than 90 page document reflecting the investigation of more than 100 cases that were raised at the hearings. We would just like to focus on one case in which many inconsistencies exist. To wit; case of Warena Brown, Black female police officer. Police officer Brown after having reported a burglary in progress was arrested and charge with impersonating a police officer. McGuire's investigation indicates that police officer Brown was taken into custody, but not arrested even though she was held for four hours.

The investigation further indentifies police officer Brown's five month old daughter as a five year old.

After police officer Brown was held in police custody for four hours, the commanding officer of the 67th Pct. signed an overtime slip for four hours for police officer Brown. This is an outright admission that someone had made a mistake.

A complete reading of the document indicates these inconsistencies throughout.

In conclusion on behalf of the Grand Council of Guardians I want to thank you Mr. Chairman and the members of the Congressional Sub-committee for having succeeded in bringing the police and the community in the City of New York to the frist step toward dealing with police brutality, thank you,

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Mr. CONYERS. What we need to know from black police officers is where do we go from here. This problem is intractable. I have been working with lawyers. I have been working with criminologists. I have been working with Members of Congress. We have a sore festering in the body politic. It is to me quite clear. And what we need from you who have risked your lives every day in going to work, who know the stories from inside the precinct to outside on the street, we need to have you put into this record what you would have us in Government, us in Congress, us at the State level, those of us who are citizens and activists, those of us who have been brutalized, those of us who will be brutalized—we have to know what you would have us do.

Mr. COUSAR. All right. I think if we proceed to some major areas then, we will have done that. Let us take a quick look then at the selection process for police officers in the city of New York.

The selection process in this city consists of the recruitment and the investigation period, psychological testing and all of that. In our exhibits, we have kind of brought out that it is ineffective in this city by using a hiring staff from 1979 to 1983. That is exhibit 1. During that period, page 1 of exhibit 1, 1979, total appointments in November 1979 for New York City Police Department, 415 individuals were appointed. The number of black males were 12; the number of black females were 3; for a total of 15 out of 415. The number of Hispanic males were 29; the number of Hispanic females were 2; for a total of 31 out of 415.

September 1980, NYPD, appointed 596 police officers. Black males, 71; black females 49; Hispanic males 133; Hispanic females, 40, out of 596, a total of 293.

You noticed a big jump between the appointments in November and the appointments in September 1980. November 1979 and September 1980. The reason for that has nothing to do with the New York City Police Department living to the letter of affirmative action. But it does have to do with the legal action brought in the Federal courts by the Guardians Association.

September 1980, New York City Transit Police Department, under the same court order, appointed 57 police officers; a total of 5 black males; a total of 6 blacks and 13 Hispanic out of 57.

I do not think for the sake of time we need to go through all of that exhibit, but I do need to point out one thing. Even after the court order, and underneath that court order, after the New York City Police Department had hired 8,000 officers, the black police numbers in the police department had not really raised that much. And let me tell you how slim they raised.

From 1978 to 1983, the number of black male police officers—and I said 8,000 were hired—the number of black male police officers increased by only 103, and that is underneath a court order. Where did all the 4,000 blacks on that list go? That is important. We could not get through the psychological testing unit. We could not get through the applicant's investigating unit. We could not get through the medical unit. Unless we had a lot of money.

When we challenged, spent \$5,000 for certain individuals, they got through. But obviously the bulk of them cannot spend that kind of money. The double standard discipline in the New York City Police Department also gives us a problem.

Looking at the CCRB, the civilian complaint review board, we see right from the form itself, that is one of the exhibits inside your folders, we will see on that form, for example, one of the questions that is asked of the person who is making the complaint, "With whom do you reside?" I do not see the relevancy of that when I am complaining I have been brutalized by a police officer.

Another question on that form is, "Where are you employed?" What does that have to do with me being brutalized by the police? We submit, nothing.

Reverting back to, for a moment, the selection process in the hiring. If the New York State Police Department was really doing anything about getting minorities through that process, it would not be necessary for the Guardians Association to have to prepare handbooks to get young people through that system—handbooks this thick. Even with the handbook, the court order, and a lot of great big brother and sister situations for the young people trying to come through, we still get negative results. There must be some resistance.

Mr. CONYERS. Could you comment on the Harlem situation in terms of the presence of black officers?

Mr. COUSAR. There is no precinct in the city of New York that would have large numbers of blacks inside that station house at one time. That is an absolute impossibility in this city.

Let me just delve into that a little bit. Even when we would be doing rollcall, that possibility would not be there. So under then the normal circumstances during the day, obviously the few of us who would be there, would be out on patrol. We would not be inside the station house. There should not be large numbers of any kind of police officers inside a station house.

Let's look at another area in the New York City Police Department that should deal with unequal employment practices and possibly other injustices that could be done to police officers.

There is an EEO office that was set up in the New York City Police Department in 1973. In 1979, we had about 16 individuals employed in that unit. By 1983, the investigative power in that unit had been reduced, showing, in my opinion, a lack of concern about those kinds of things.

The PBA was mentioned by the NYPD Grand Council Authority's chairman, Mr. Jacques Maurice. I do not think I will be as kind about the PBA as he was because I just do not see that it is doing any positive things at all. One of our exhibits has to do with the PBA. We just simply listed the board of directors of the PBA and I think it will prove my point. All the directors of the PBA of the city of New York are 100-percent white male, representative definitely not of this city, and not of the membership in the New York City Police Department. I think that is all I need to say about the PBA.

Mr. Chairman, further, we come as members of the Grand Council of Guardians, and therefore obviously police. But there is one major difference between us and the other police, so to speak, and those who came to represent the police. We are police, but we are also representative of the New York City community. Possibly if all the police in the city of New York were representative of the city of New York, Mr. Chairman, we would not even be here.

Mr. CONYERS. Could you make a concluding statement and then we are going to move on to our other witnesses?

Mr. COUSAR. I will make a concluding statement. I must speak though to one thing that came out today, relative to doubling the number of minorities in the New York City Police Department under the present administration. Let me just put it into context.

At the time that statement was made, someone from the committee was talking about black representation in the New York City Police Department. And the answer came out talking about minorities. So I do not want anybody to get the impression that blacks have doubled under the present administration. The number of blacks under this administration has increased by less than 10 percent.

Now, if we look at the doubling figure that we are talking about for minorities, doubling them, taking them up to 17 percent, what we are really saying is that we have taken up to 17 percent, given 17 percent of the jobs in law enforcement in New York City to this large group, white females, blacks, Hispanics, Haitian-Americans, and Native Americans. I do not think it is plus to give all of us 17 percent of the jobs.

Let me stay with this conclusion for a minute. When we began to compare New York City to other cities about anything, the first thing I say is that there is no city in the United States of America that can be compared to New York City. Let me make that point clear. For instance, if we compared the 24,000-member New York City Police Department to the average police department in the United States, we will be comparing 24,000 police officers to the average 20 across the United States. So there is no city that we can compare it to.

Now, Mr. Chairman, I think we must show at least one of our major exhibits because it has to do with firearms policy. The firearms policy obviously relates closely to police brutality. The firearms policy in the city of New York does not authorize the axe-handle that you see him pointing to. It authorizes or equipment policy authorizes the one below. It does not authorize the 007 knife, but they are carried by a high number of New York City police officers.

It does not authorize the carrying of the 9-millimeter revolver under normal patrol circumstances in New York City, but they are being carried by New York City police officers. It does not authorize the sniper that is something that if you are hit with it enough times, you wind up in a coma and even dead. It does not authorize the blackjack, which is leather wrapped around steel, which would cause you serious physical injury.

[Submitted materials follow:]

*Exhibit (1)*

POLICE DEPARTMENT  
CITY OF NEW YORK

BLACK HISPANIC APPOINTMENTS  
FROM EXAM #8155

The following are statistics on the total number of appointments with the number and percent of Black and Hispanic within a hiring pool:

<u>Total</u> <u>Appointed</u>	<u>NOV. 1979</u> <u>N.Y.P.D.</u>	
415 (11%)		
	<u>BLACK</u>	<u>HISPANIC</u> <u>TOTAL</u>
M --- 12		29                      41
F --- 3		2                        5
15 (33%)		31 (67%)              45 (100%)
<hr/>		
<u>Total</u> <u>Appointed</u>	<u>SEPT. 1980</u> <u>N.Y.P.D.</u>	
596 (49%)		
	<u>BLACK</u>	<u>HISPANIC</u> <u>TOTAL</u>
M --- 71		133                     204
F --- 49		40                      39
120 (41%)		173 (59%)            293 (100%)
<hr/>		
<u>Total</u> <u>Appointed</u>	<u>SEPT. 1980</u> <u>N.Y. TRANSIT</u>	
	<u>BLACK</u>	<u>HISPANIC</u> <u>TOTAL</u>
M --- 5		10                      15
F --- 1		3                        4
6 (32%)		13 (68%)              19 (100%)
<hr/>		
<u>Total</u> <u>Appointed</u>	<u>SEPT. 1980</u> <u>N.Y. HOUSING</u>	
50 (34%)		
	<u>BLACK</u>	<u>HISPANIC</u> <u>TOTAL</u>
M --- 4		4                        8
F --- 5		4                        9
9 (53%)		8 (47%)                17 (100%)

*Exhibit (2)*

<u>Total</u> <u>Appointed</u>	<u>DEC. 1980</u> <u>N.Y. TRANSIT</u>	
191 (34%)		
<u>BLACK</u>	<u>HISPANIC</u>	<u>TOTAL</u>
M --- 16	39	55
F --- <u>6</u>	<u>4</u>	<u>10</u>
22 (34%)	43 (66%)	65 (100%)

<u>Total</u> <u>Appointed</u>	<u>JAN./FEB. 1981</u> <u>N.Y.P.D.</u>	
979 (34%)		
<u>BLACK</u>	<u>HISPANIC</u>	<u>TOTAL</u>
M --- 87	147	234
F --- <u>59</u>	<u>42</u>	<u>101</u>
146 (44%)	189 (56%)	335 (100%)

<u>Total</u> <u>Appointed</u>	<u>JULY 1981</u> <u>N.Y.P.D.</u>	
1,031		
<u>BLACK</u>	<u>HISPANIC</u>	<u>TOTAL</u>
M --- 96	141	237
<u>61</u>	<u>36</u>	<u>97</u>
157	177	334 (100%)

<u>Total</u> <u>Appointed</u>	<u>JULY 1981</u> <u>N.Y. HOUSING</u>	
115		
<u>BLACK</u>	<u>HISPANIC</u>	<u>TOTAL</u>
M --- 14	24	38
F --- <u>10</u>	<u>7</u>	<u>17</u>
24	31	55 (100%)

*Exhibit (3)*

<u>Total</u> <u>Appointed</u>	<u>JAN. 1983</u> <u>N.Y.P.D.</u>	
372		
<u>BLACK</u>	<u>HISPANIC</u>	<u>TOTAL</u>
M --- 44	47	91
F --- <u>20</u>	<u>15</u>	<u>35</u>
64	62	126 (100%)

<u>Total</u> <u>Appointed</u>		
1305		
<u>BLACK</u>	<u>HISPANIC</u>	<u>TOTAL</u>
M --- 78	96	174
F --- <u>40</u>	<u>27</u>	<u>67</u>
118	123	241 (100%)

Total Appointments ----- 2288 (100%)  
 Total Black Appointed ----- 318 ( 14%)  
 Total Hispanic Appointed ----- 457 ( 20%)  
 Total Majority Appointed ----- 1513 ( 66%)

Black and Hispanic appointments are 775 or 33.8 percent of the overall number. However, of the total Black and Hispanic appointees, Blacks represent 318 or 41 percent, conversely, Hispanics, 457 or 59 percent.

CRIMINAL 10141  
 RACE, SEX AND ETHNICITY 24584 23,604 22,431 22,740 EMPLOYMENT OPPORTUNITY 23,920 23,288

Exhibit - (2)

TOTAL MALES IN RANK	97,816 1970 24,642				97,710 1970 23,604				97,510 1970 22,431				96,310 1970 22,740				94,210 1970 23,920				93,510 1970 23,288			
	WH.	BK.	HIS.	ASIAN/PAC ISL/AM IND/ASIAN	WH.	BK.	HIS.	ASIAN/PAC ISL/AM IND/ASIAN	WH.	BK.	HIS.	ASIAN/PAC ISL/AM IND/ASIAN	WH.	BK.	HIS.	ASIAN/PAC ISL/AM IND/ASIAN	WH.	BK.	HIS.	ASIAN/PAC ISL/AM IND/ASIAN	WH.	BK.	HIS.	ASIAN/PAC ISL/AM IND/ASIAN
ALL POLICE OFFICERS/ ALL DETECTIVES	1544	1402	647	8	1413	1357	638	8	1379	1285	637	11	1355	1385	878	26	1362	1495	158	42	1296	1482	202	50
	2325	336	142	2	2296	311	143	2	2192	304	143	2	2176	291	140	4	2255	321	171	7	2216	314	176	8
ALL SERGEANTS	2281	77	41	-	2225	86	39	-	2181	83	39	-	2127	88	41	-	2172	119	51	-	1985	124	54	-
ALL LIEUTENANTS	804	16	6	-	792	15	6	-	766	15	7	-	749	14	9	-	744	15	11	-	739	13	11	-
CAPTAINS PLUS ALL HIGHER RANKS COMBINED	406	6	2	-	398	6	3	-	391	6	2	-	384	6	2	-	398	9	2	-	399	7	2	-
TOTALS	21350	1837	838	0.04	20447	1775	829	0.04	19923	1693	828	0.06	18995	1786	1070	0.14	19193	1959	393	0.2	18315	1940	1445	0.3
	83.5	7.6	3.5	0.03	85.6	7.7	3.6	0.03	85.4	7.7	3.8	0.03	86.5	8.2	4.9	0.08	84.9	8.7	6.2	0.11	84.1	8.6	6.6	0.1
TOTAL FEMALES IN RANK	2,241	1978	542	-	2,131	1979	536	-	2,151	1980	508	-	2,181	1981	853	-	2,151	1982	1,383	-	2,151	1983	1,519	-
ALL POLICE OFFICERS/ ALL DETECTIVES	339	109	8	-	316	106	8	-	340	105	11	-	454	200	86	3	726	362	165	0	793	387	189	10
	52	13	2	-	67	17	4	-	68	18	5	-	67	17	8	-	67	20	10	-	65	28	11	-
ALL SERGEANTS	13	1	-	-	12	1	-	-	14	1	-	-	11	1	-	-	18	2	-	-	25	3	1	-
ALL LIEUTENANTS	3	-	-	-	3	-	-	-	4	-	-	-	4	-	-	-	3	1	-	-	5	1	-	-
CAPTAINS PLUS ALL HIGHER RANKS COMBINED	2	-	-	-	2	-	-	-	2	-	-	-	2	-	-	-	1	-	-	-	1	-	-	-
TOTALS	409	123	10	-	400	124	12	-	428	124	16	-	538	218	94	0.4	815	385	175	0.6	889	419	201	10
	75.5	22.7	1.9	-	74.6	22.2	2.2	-	77.2	22.2	3.5	-	77.2	21.8	4.4	0.3	75.5	22.7	1.9	0.6	75.5	22.7	1.9	0.3

EXHIBIT (3)

Double-Standards of Discipline in the New York City Police Dept.  
Off-Probation

- 4/18/83 Tax Reg#55963 P.O. Kevin Smith, Black (Traffic Incident)
1. Verbal altercation off-duty
  2. Pointed Revolver at civilians
  3. Assault. 3rd Degree off-duty
- Disposition  
Guilty - 25 days Vac.  
option to work
- 4/21/83 Tax Reg#55964 P.O. Pamela Louis, Black Same as above
1. Verbal Altercation
  2. Pointed Revolver unknown
- Disposition  
Guilty -20 days Vac.  
option to work
- 5/20/83 Tax Reg#56238 P.O. Mary Duffy, White
1. Failed to safeguard Firearm
  2. Caused injury to other Police Officer
- Disposition  
Guilty-10 Days Vac.
- 3/30/83 Tax Reg#56087 P.O. John Williams, White
1. Free Meals from Vendors
  2. Influence another Police Officer  
Refrain from issuing Summones
- Disposition  
Guilty- 15 Days with  
option to work
- 3/22/83 Tax Reg#55709 P.O. John Sangiano, White
1. Assault. 3rd On-Duty
  2. Discourteous
- Disposition  
Guilty - 8. Days with  
option
- 3/17/83 Tax Reg#55980 P.O. Theodore Shepard, Black
1. Pointed gun at Students
  2. Discourteous
- Disposition  
Guilty - 30 Days with  
option, 12. Mos.  
Probation

All- 1983 Cases

Tax Reg. 55580 P.O. William Saunier, White

1. Assault. 3rd On-Duty

Disposition

*Guilty*

*10 Days*

*with option*

## Exhibit (3)

Tax Reg#55905 P.O. William Ryan, White

1. Induced Witness to make false statement
2. Made false Statement

Disposition

Guilty -12 Days  
with option

Tax Reg#55623 P.O.Thomas Bonet, White

1. Assault3<sup>rd</sup> - On-Duty

Disposition

Guilty -10Days  
Vac. with option

Tax Reg#55709 P.O. John Sangiamo, White

1. Assault3<sup>rd</sup> - On-Duty
- 2.Discourteous

Disposition

Guilty -8 Days  
Vac. with option

Tax Reg#55988 P.O. Jerry Jacobs, White

- 1.Assault3<sup>rd</sup> - Off-Duty

Disposition

Guilty - Disciplinary  
Probation for 12 Mos.

Tax Reg#55948 P.O. Gary Tibald, White

1. Unnecessary Force
2. Wrongfully pushed male

Disposition

Guilty - 10 Days Vac.  
with option

Tax Reg#55655 P.O. Louis Gallo, White

1. Improper use of a Firearm

Disposition

Guilty - 25 Days Vac.  
with option

Tax Reg#55580 P.O. William Saunier, White

1. Assault3<sup>rd</sup> - On-Duty

Disposition

Guilty - 15 Days Vac.  
with option

Tax Reg#55344 P.O. Panel Heidt, White

1. Abuse of Authority/Arrest
2. No Memo Bock entry

Disposition

Guilty - 10 Days Vac.

Tax Reg#55182 P.O. Kenneth Bock, White

1. Felonious Assault Off-Duty
2. Improper use of a Firearm

Exhibit (3)

3. Reckless Endangerment

Disposition

Guilty -Suspension  
10/11/81 thru 6/28/82  
12 Mos. Probation

Tax Reg#55257 P.O. Lawrence Torino, White

- 1. Assault<sup>3rd</sup> On-Duty

Disposition

Guilty- 15 Days Vac.  
with option

Tax Reg#56389 P.O. Frank Signorile, White

- 1. Assault On-Duty

Disposition

Guilty - Suspension  
4/5/83 thru 4/13/83  
six Mos. Probation

FIRST COPY SHALL BE REMOVED AND GIVEN TO COMPLAINANT FOR COMPLETION IN HIS OWN HANDWRITING.

*Exhibit  
4*

REMAINING COPIES SHALL BE TYPEWRITTEN FROM HANDWRITTEN COPY.

40M 702085 (82)

CITY OF NEW YORK POLICE DEPARTMENT (Rev. 7-88) P.D. 312-104  
CIVILIAN COMPLAINT REPORT

OR POLICE DEPARTMENT USE ONLY) JURISDICTION  OCO  CCRB

DATE REPORTED	COMMAND OR LOCATION WHERE RECEIVED	CCRB (NAME) NYFD	SERIAL NUMBER CCRB OCO
COMPLAINANT MADE	CCRB NOTIFIED	COMPLAINT RECEIVED	EXACT TIME COMPLAINANT APPEARED/TELEPHONED
PERSON: <input type="checkbox"/> MAIL <input type="checkbox"/> PHONE	TIME	DATE	TIME

NOTE: MAKE ANY ADDITIONAL FORMS PREPARATION ENTRIES MADE IN DEPARTMENT RECORDS WITH DATES (EXCEPT BLOTTER ENTRY)

COMPLAINANT'S SURNAME	FIRST	ADDRESS	APT./FLOOR	TELEPHONE NO
NAME OF PERSON WITH WHOM RESIDING	TELEPHONE NO	ADDRESS WHERE RESIDING IF NOT A NEW YORK CITY RESIDENT	HOW LONG WILL YOU RESIDE IN NEW YORK CITY?	
EMPLOYER NAME	BUSINESS ADDRESS		YOUR OCCUPATION	TELEPHONE NO
APPROXIMATE INTERPRETER/PERSON ASSISTING	ADDRESS	APT./FLOOR	TELEPHONE NO	

NAME OF POLICE DEPARTMENT MEMBER COMPLAINED OF (If unknown provide description of officer and type of duty performed e.g. foot patrol, traffic stop, etc.)	SHIELD NO	COMMAND

TIME AND DATE OF OCCURRENCE	LOCATION

NAME OF WITNESS	ADDRESS	APT. FLOOR	RELATIONSHIP	TELEPHONE NO

DETAILS OF COMPLAINT (In your own handwriting, give a brief story of what happened. Use reverse side of form if more space is required.)

Signature of Member of Force Receiving Complaint	Signature of Person Assisting Complainant	Signature of Complainant

0  
1  
2  
3

Last Name		First Name		Initial Jr. or Sr.		Name and Address of Employer		<b>FOR OFFICIAL USE ONLY</b> Election District   A.D. (or Ward)				
<b>RESIDENCE ADDRESS</b>												
No.	Street or Road		City or town, zip code		Mailing address if different		Village					
Date of birth	Sex	Height	Color of eyes	Telephone No (if listed)	If Apartment Dweller		Length of time at residence					
					Rm. No.	Floor No.	Apt. No.	Years	Mos.	Days		
Did you previously vote in New York State? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, complete following line.												
In what year did you last vote in an election in this State?		Did you register under your present name? Yes <input type="checkbox"/> No <input type="checkbox"/>		If not, under what name did you register?		Did you then reside at your present address? If no, previous address—						
						Street _____						
						City or town _____ County _____						
Born in U.S.A.? Yes <input type="checkbox"/> No <input type="checkbox"/> If no, complete following line.												
Naturalization papers		Number on papers		Date of papers		Court		City and State		Name of person to whom issued		
Own <input type="checkbox"/>	Mother <input type="checkbox"/>	Spouse <input type="checkbox"/>	Father <input type="checkbox"/>									
<b>ENROLLMENT</b> (check only ONE)					<b>AFFIDAVIT</b>							
If you wish to enroll in a political party, check the party of your choice:					"I affirm that the information provided herein is true and I understand that this application will be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject me to the same penalties for perjury as if I had been duly sworn."  _____ Signature or Mark of Applicant <span style="float: right;">Date</span>  _____ Witness to Mark (only if applicant is unable to sign) <span style="float: right;">Date</span>							
<input type="checkbox"/> Democratic <input type="checkbox"/> Republican												
<input type="checkbox"/> Conservative <input type="checkbox"/> Liberal <input type="checkbox"/> Right to Life												
<input type="checkbox"/> I do not wish to enroll in any political party.												
<input type="checkbox"/> Transfer my present party enrollment to my new address (See Instruction No. 9)												
<input type="checkbox"/> I am herewith changing my enrollment (See Instruction No. 10)					<b>FOR OFFICIAL USE ONLY</b>							
Serial No.	Last Name		First Name		Initial Jr. or Sr.		Street address			City or town	E.D.	Wd or AD

Cancellation										
Date _____										
Reason	1	2	3	4	5	6	7	8	9	10
	<input type="checkbox"/>									

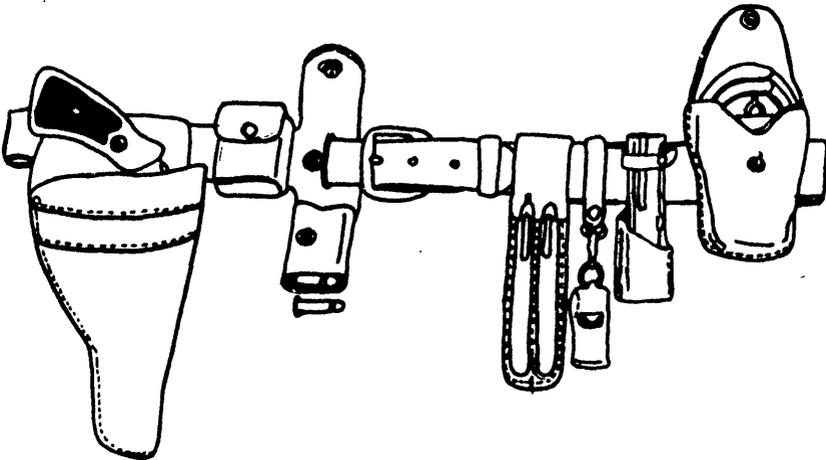
Other Remarks

Democratic Registrar

Republican Registrar

**ALSO SIGN ON**

5x6



Lieutenants, Sergeants, and Police Officers performing patrol duty in uniform are required to carry or wear the following equipment, as appropriate.

1. Regulation Service Revolver - Required for all uniformed members of the service, except police officers - female. Double action, Calibre .38 Special, with four-inch barrel, military (Patridge) sights, blued or parkerized finish and standard checkered, hardwood, factory stock. The following are regulation conforming to the above specification:

- a. Smith and Wesson Military and Police
- b. Colt Official Police
- c. Colt Mark III
- d. Dan Wesson Model II, Fixed Barrel.
- e. Ruger Police Service Six.

Police Officer - female may select any of the revolvers described above or a Smith and Wesson or Colt .38 Special revolver with three-inch barrel, double action, military (Patridge) sights, blued or parkerized finish.

**NOTE** An off-duty revolver may be carried in addition to the service revolver, provided only the service revolver is visible. (See Equipment Firearms).

2. Regulation Holster - Black leather, designed with leather safety lock, in four models:

- a. Standard for all uniformed members of the service
- b. Swivel/Holster (Optional) for uniformed members of the service assigned to duty in department vehicles.
- c. Highway Patrol Service holster - for uniformed members assigned to Highway Patrol duty (for use with Sam Browne belt).
- d. Mounted Service holster - for uniformed members assigned to mounted duty (for use with Sam Browne belt).

3. Twin pocket cartridge case with 12 cartridges.
4. Belt - Two (For equipment and trousers) black leather, 1 1/2 inches wide with gun-metal buckle. Equipment belt will cover the trouser belt and be worn firmly about the waist.
5. Pen and pencil holder with pen.
6. **ACTIVITY LOG (PD 112-145) with following Inserts:**
  - a. Auto Identification
  - b. Automobile Larceny
  - c. Spanish Phrases
  - d. Interrogation Warnings to Persons in Police Custody.
  - e. Handling Emotionally Disturbed Persons.
7. Regulation traffic whistle and belt whistle holder.
8. Regulation handcuffs — Carried in handcuff case with key available for use.
9. Regulation - 11 inch rubber billet with leather thong (0800-1600, unless baton is carried).
10. Baton - 24 to 26 inches in length, 1¼ inches in thickness, locust, hickory, white ash or rosewood, with leather thong (Carried on all tours, except as directed by commanding officer for 2nd platoon foot patrol).
11. Serviceable flashlight - all tours.
12. Serviceable watch, properly set.
13. Reflective belt (1600-0800).
14. Sam Browne reflective belt for traffic duty (1600-0800).
15. Department issue helmet worn when operating Motor Scooter.
15. Mace device and holder.

**NOTE** While performing duty in civilian clothes, revolver, handcuffs with key, and 12 extra cartridges are required to be carried.

Mr. Chairman, we also came with a number of active police officer witnesses that we want to bring before you.

Mr. CONYERS. We are not going to be able to do it. I am sorry. I am going to have to rush through the testimony. We may have to come back for more hearings. But we have a problem with the time on many of the witnesses. Just one of them.

Mr. COUSAR. Police Officer Brown. Police Officer Brown is a member of the New York City Police Department and was on extended military leave, reported a crime to the police, and as a result, was arrested for impersonating a police officer. The reason for her bringing her 5-month-old child with her—in the document that the police commissioner mentioned to you where he investigated the charges from the hearing, he called this young child a 5-year-old. The child is 5 months old. That document had inconsistencies as extreme as that one throughout it.

Mr. CONYERS. Are you referring to this particular document?

Mr. COUSAR. That is correct.

Mr. CONYERS. Report on cases submitted during congressional hearings on alleged police brutality.<sup>1</sup>

Mr. COUSAR. That is the document, Mr. Chairman. Those inconsistencies were throughout what we read very carefully. Police Officer Brown.

#### TESTIMONY OF POLICE OFFICER WARENA BROWN

Ms. BROWN. On June 9, approximately 10 a.m. in the morning, I called 911 to report a burglary. Upon the arrival of the police, I identified myself as a police officer being off-duty on child care leave. I explained to the police officers that calling 911 was the only course of action I could take, being on child care leave without pay, I am relieved by the New York Police Department from all weapons, shield, and identification cards.

I remained on the scene until two perpetrators were handcuffed, arrested, and driven away. There were approximately 4 to 5 RMP's on the scene. When most of them had driven away. I started on my way. I had Iesha in the carriage out for a morning walk.

As I had gone about a block, I was suddenly surrounded by approximately four to five white police officers. I was stopped by a white police officer, grabbing my baby carriage, spinning it around, almost throwing Iesha out into the street. I explained over and over again, "I am police officer Brown. I am on child care leave without pay." I was wearing a PEA T-shirt. I explained again and again I had no weapons, no shield, and no identification. It has been safeguarded at the property clerk's police office.

I explained this several times again and again and again. Subsequently, I was arrested for impersonating a police officer, handcuffed. My watch was broken from my arm, and I was driven away in an RMP begging for my baby. My 5-month-old daughter was left in the carriage on the streets of New York totally unattended.

I was held in the 67th precinct station house for 4 hours, 2 of which it took for NYPD to ascertain my identity. Never was there

<sup>1</sup>See page 978. Submitted by Police Commissioner Robert McGuire.

a patrol sergeant called to the scene. Never was I allowed to approach the desk. Never was I given Miranda warning.

Eventually, Captain McLaughlin of the 67th precinct read me GO15, which is equal to Miranda rights for police officer who has been charged with a crime. After I spoke to Captain McLaughlin, I was told to put on a slip for overtime. He signed the slip that I made for 4 hours overtime. I have yet to receive that pay.

Mr. CONYERS. Mr. Cousar, because of that testimony, I think we ought to quickly hear the testimony of the rest of the witnesses. If we do not get it on this record, what record will it ever be gotten on. So let us bring them on as quickly as we can.

Mr. COUSAR. Thank you, Mr. Chairman. The next witness then will be Detective Francis Phillip. Detective Phillip while on duty, was beaten by uniformed officers while assisting another uniformed officer in an arrest. It was found by one district surgeon that Officer Phillip had sustained contusions and back injuries. Detective Phillip.

#### TESTIMONY OF DETECTIVE FRANCIS PHILLIP

Mr. PHILLIP. My name is Detective Francis Phillip. August 9, 1982, was an evening I was working the midtown north precinct in Manhattan robbery squad. I was working with a Hispanic police officer and we were on patrol in a yellow taxicab. Approximately between 9:30 and 10 o'clock, a call came over the radio there was a robbery in progress at 48th Street and 8th Avenue. We were parked on 48th Street and Broadway.

We circled around and at that time we observed two uniformed police officers approximately in the middle of 8th Avenue fighting with a male black, trying to place him under arrest. I pulled the taxicab directly behind the uniform car, and my partner immediately got out and assisted the two officers. At this time I was still sitting in the car while a young lady approached me from the driver's side and told me that there was a second fellow walking down the street, across 8th Avenue.

At the same time she was saying this, a radio car pulled up behind my car and they got out and they ran after this second person across the street. I myself then got out and ran behind the two uniformed officers. At this time they captured this person, put him up against the wall and was just about to handcuff him, when one of the uniformed officers turned to me as to say to me, "Well, who are you?"

At that time I had my shield out. It was on a heavy silver chain. I had it in my hand. I said, "I am on the job, Manhattan Robbery Squad." I was also wearing a T-shirt I had made up. It has a big gold shield in the front of it and it has the initials MRS in the back for Manhattan Robbery Squad.

At the same time I was identifying myself to this officer, another officer I believe came up behind and punched me on the right side of my face, where I fell into the two officers and the man that they were trying to arrest. I was then picked up physically by my neck, thrown against the wall, and started to be choked, never letting go of the shield. It was still in my right hand and wearing the color of the day, which was orange, around my wrist.

The officer was choking me so hard, I could not say who I was. I dropped the shield, I punched him, and at the same time the other officers who were standing there, they saw this and all jumped on me. I got punched. I got kicked. I went down on the ground to cover myself up from any serious injury and they started kicking and hitting me with nightsticks.

At this time my partner came back around the corner. He saw what happened and at this time they stopped. I said to the officers, "Are you going to hit every black guy out there till you find the right one?" And they said, "Well, look, man, it is not like that. There are a lot of bogus shields going around." So there were a lot of words in between us and my partner was pushing me away, telling me to go to the car.

As I was walking away, one of the officers turned to me and he said, "Man, I would like to bust you in your black mouth." And I turned to him, and at the same time a nightstick came down on my neck. I was pulled down. I was beaten up again.

My partner stopped this second beating and I walked over to the radio car, well, really to the car I was in, the taxicab.

Mr. CONYERS. Were there any procedural followups within the department on this?

Mr. PHILLIP. At the time I called my sergeant to the scene. I went into the midtown north precinct and between my partner and the sergeant, I was more or less dissuaded from doing anything about it at that time because of repercussions from the police department that I would receive.

The following day it was pretty difficult for me to get out of bed. I went to the doctor and I decided I am not going to let this go.

Mr. CONYERS. Congressman Berman has a question of the officer. Officer, will you come back?

Mr. BERMAN. When did this happen?

Mr. PHILLIP. August 9, 1982.

Mr. BERMAN. At the point where you decided to follow up, what did you do, against the advice of your partner and the sergeant?

Mr. PHILLIP. Well, the day after when I went to the surgeon, my security officer, my captain, called me at the surgeon's office and told me to report down to Manhattan Robbery Squad office right after I left the doctor. At that time, I was asked by the DEA representative in the office if I would accept a simple apology from these police officers. And I said no. At that time I went and spoke to the captain and I explained to him what happened. I wrote out a statement as to what happened. And the field internal affairs unit was called in. And I spoke to them. And one of the sergeants who did come, he took me out into the hallway and he told me, he says, "Well, what do you want us to do about it?" I said, "I want to see these guys hurt just like I was hurt." He said, "Well, there is not much that can be done. You realize that you are going to be receiving a lot of—I do not know how to say it—harassment from the job. Are you willing to deal with this?"

Mr. BERMAN. This is the captain saying this to you?

Mr. PHILLIP. No; this is one of the sergeants from the FIA unit. At this time I said yes, I am willing to go through with it. We went back into the office and it was myself, the captain, lieutenant, and two sergeants from FIAU, and I went over the details of what hap-

pened. I was asked and there were questions asked, "Well, how do I know that they are from the midtown north precinct? Why did I not try to tell them who I was? Why could I not identify anybody? Why did I hit the officer who was choking me?" Questions that I thought were really ridiculous at that time.

Since then I have been transferred out of Manhattan Robbery Squad. I am back up in 32d precinct. When I asked why am I being transferred out of Manhattan Robbery Squad, I was told that my collars were low. And meanwhile I was out sick for the majority of that year. Things are a little bit better. Since I left there, the harassment has stopped.

Mr. BERMAN. Were you able to tell, or subsequent to all that, were you able to identify the people who beat you?

Mr. PHILLIP. No; the incident happened too fast. The entire incident may have lasted approximately, I would say, about 5 minutes. And from the blows I was getting and from me almost blacking out from being choked, it was nearly impossible for me to identify people or get shield numbers.

Mr. BERMAN. But essentially after that last meeting, as far as you know nothing has ever happened in terms of any investigation or discipline of the people who hit you?

Mr. PHILLIP. I spoke to the sergeant of FIAU some time ago, and I asked him what was going on with the case. He had told me the case was closed out approximately 2 to 3 months after I had reported it. I asked him why and he said he had received a letter from my former CO, my former captain from Manhattan Robbery Squad, saying that this captain felt that there was no, that it was not a racial incident. And he would not disclose the rest of the letter to me. And behind that, I have taken my own legal action against the city.

Mr. CONYERS. Thank you very much.

Mr. RANGEL. Then you have identified who your assailants were at this point?

Mr. PHILLIP. I still do not know who they are. The police department has not told me. According to the sergeant, he has stated he has spoken to a couple of the officers who were at the scene. But to myself, I do not know who they are.

Mr. RANGEL. But you do have counsel?

Mr. PHILLIP. Yes; I do.

Mr. CONYERS. Thank you again.

Mr. COUSAR. The next witness, Mr. Chairman, is Police Officer Jan Clark. While on duty in uniform, Police Officer Clark was punched in the mouth by a white male police officer. That is in the year 1983.

#### TESTIMONY OF POLICE OFFICER JAN CLARK

Ms. CLARK. Good afternoon, Chairman Conyers, Congressman Rangel, the other members on the dais, thank you for allowing me to speak. I would like to preface my story with a little description of myself, so that you might have some understanding of my reason for joining the New York City Police Department.

I have lived in New York—

Mr. CONYERS. Would you identify your counsel?

Ms. CLARK. My attorney is C. Vernon Mason, here to my right. I have lived in New York City since the age of 3. And my family and I have all generously given in support of New York City. I attended the University of Pennsylvania. I have a bachelor of science in economics. I worked in private enterprise for a Fortune 500 company prior to joining the New York City Police Department.

I decided for public service because I was more interested in a profession that was geared to people than products. After training, I was eventually assigned to the 113 precinct. At that time, in addition to my patrol duties, I have willingly offered, successfully in many instances, to contribute to sensitivity training for many other officers by inviting ministers and other guest speakers concerning issues of minority communities.

I have, in the last 5 months, been grappling with trying to maintain my goals in the police department by having to deal with my disillusionment behind the incident July 25 in the 101 precinct. That incident is today and foremost the most devastating incident I have ever been involved in.

While assigned to the 101 precinct, I was working in the 124 room, clerical assignment. I was relieved for meal at approximately 7:30. I went to the TV lounge to watch television. At approximately a quarter after 8, Officer Roberts, Kenneth Roberts, entered the TV room, and turned the channel. I said to Officer Roberts that I was watching something else, you just cannot come in and turn the channel. I went to turn the channel back. As Officer Roberts proceeded back across the room, he stated to me, "If you are not a member of the ——— precinct club, and you did not pay a ——— \$5, you have no say what is on the television." And that, "You summer detail people, would not come to this precinct and do what you want to do."

Now, let me state that I was in the 101 precinct on a summer detail assignment, which deserves some explanation also, because it appeared from the 113 that only black officers, a majority of minority officers were sent on summer detail. Normally the tradition is to send the rookies with least seniority. Myself and the other female black officers who have certainly more tenure were both sent, leaving one black female officer in the 113th precinct. We were both sent to the 101 precinct. Fine.

As my incident continues, Officer Roberts tried to turn the channel back. I tried to turn the channel back. Officer Roberts pushed me. I tried to push Officer Roberts back. He is approximately 6 feet 2 inches and approximately 230 pounds.

When I pushed him back, Officer Roberts took his right fist and struck me in the left side of my face. I fell back to the couch. I was bleeding. I was dizzy. And I was certainly humiliated. When I was able to remove my hands from my face, I saw him still standing over me. And I jumped up to the side and grabbed a chair and threw it at the officer, to defend myself from further attack.

The officer told me if I threw another chair, he was going to throw me on my ass. I continued. I threw another chair at him to make distance between he and I to get my way to the door. As I neared the entrance, having backed my way there, I saw two other officers enter from an adjacent room and stand only in the doorway. They made no move to assist, no moves to stop the incident.

This officer told me, Officer Roberts, that I had better get out of the room. And he continued then to start to walk back across the room to where I was. I threw another chair and at that time I still felt that as close as I was to the door, I had the opportunity to get out of there. I swung chairs, swung chairs to defend myself, without having to resort to the use of my weapon, because I felt that his behavior was so irrational, especially in the stationhouse, that I did not know whether he might be under the influence of drugs, alcohol, or he was just that distraught, whatever his reasons.

I told him in front of the other officers who stood there that I was going to lodge a complaint for assault. This officer told me, "Go right ahead. I will be up there after you." I went upstairs immediately and told the desk officer of the incident and that I wanted to be treated for my cut lip, and I wanted to make a complaint.

Until the other officer stated that he was anxious for medical treatment, for what reasons I do not know. The arrangements for my medical treatment were not made.

I was taken to St. John's Hospital in Rockaway, and treated for a lacerated lip, given a tetanus shot and x rays.

Since that incident, that evening, later that night, I was ordered, as Officer Brown, into GO15 hearing, which automatically gives the designation of it being a disciplinary matter instead of an assault case. I was denied the right to file a complaint report against this officer.

What is so shocking to me over this last 5 months, is that the very laws that are meant to protect citizens do not even protect me, which is hard to conceive of. I cannot understand under any laws of this State or Federal, that I would not have the right to file an assault complaint against anyone. I have also been denied line-of-duty designation for my injury, which in effect now has me classified as a tried sick officer in the records in the New York City Police Department, which in effect damages my unblemished record to date.

I am certainly devastated by this affair. And I am certainly angry that the police department found that the only option to deal with this matter was to go after both officers and to keep it as a disciplinary matter.

A meeting was held between the Guardians president and Police Commissioner McGuire the Wednesday evening following my incident. I was later informed that night, after being sedated by my physician for pain, that Police Commissioner McGuire stated that if I could not shake hands and forget the incident, we both would be burned.

At this time, I am awaiting trial proceedings in the department trial room on charges of conduct unbecoming an officer.

As I say, I am interested and I joined the department to better the New York City Police Department, but I see from my own incident and I see from civilian incidents that it certainly cannot be done if the laws and the policies are not equitable to all citizens. Thank you.

Mr. CONYERS. Thank you so much.

Mr. COUSAR. Police Officer Croslin, Willis Croslin. Mr. Chairman, Police Officer Croslin reported another officer for wrongdoing, and as a result Police Officer Croslin is being harassed.

#### TESTIMONY OF POLICE OFFICER WILLIS CROSLIN

Mr. CROSLIN. Police Officer Croslin. I would first like to say that approximately 36 hours ago, I was involved in a shooting incident in which one police officer was injured and the perpetrator had to be killed. I mention that because had I been very susceptible to the harassment and the treatment that I have been getting from the department officials up to now, it may have been tragic for myself or some other innocent person.

On April 6 of this year, I had an incident to report to the internal police investigation unit in which another officer was involved. I was told that the incident would be completely confidential and that my identity would be protected. The incident went on and I was being called at home and I told them I had given them the information. That I did not want to contribute to anymore parts of the investigation. But they told me that it was imperative that I give them cooperation, which I did.

I found later that I was not compensated for my time. I called the union who told me that they were representing the other officer and that I was more or less on my own. My identity was revealed to all of the members of my command. My immediate supervisor, I happen to know of one instance where I had an overtime slip from the advocate's office, which I only gave him to sign, and he went back to my partner and told my partner, "You know, he had the audacity to turn in an overtime slip for going to the advocate's office."

And my transfer, I found out later that I had to be transferred, which was not in the original plan. And my transfer was procrastinated and I had to suffer various disciplinary procedures everytime I returned to work. Just about every other day I was in the back speaking with the inspector for one thing or another.

I said my transfer was being procrastinated. Finally when I was transferred, my evaluation was sent to my command before I got there, and the guys were calling up my new command telling them of what I had done, which they really did not have a true picture of. And to this point now, I had to write a letter to the police commissioner. I was not transferred. I was temporarily assigned. And then I wrote a letter to the police commissioner because I was promised pay which I never received, and I was told that I was transferred. But they told me that I would have to go back to the precinct instead of what their normal procedure is, is to put you on another detail.

I wrote a letter to the police commissioner with the help of the Guardians Association and I was officially transferred as of October 31. I got an evaluation this year which reflects that I should not even be a police officer because I am not capable of thinking and I need maximum supervision for minimal results.

I appealed the evaluation and approximately now I am supposed to call the inspector of my old command to find out what their decision is on my evaluation. But I have not had a moment's rest

from the beginning of this incident. I have been harassed. I work with guys that will not speak to me. I am going through quite a few psychological changes that with God's help I am able to bear. And thank God, two nights ago, I survived. Because with the type of treatment and the double standard procedures that the police department has, it is very hard for black officers. And I would just like to summarize by saying that there is definitely a double standard of disciplinary proceedings when it comes to black officers. We are treated different. We work and think about the job on a different basis from the white officers because of the internal pressure that we have to work under. And our supervisors look at us most times in different lights from a police officer. We are black police officers, but we are all supposed to be blue. Thank you.

Mr. COUSAR. Mr. Chairman, our last police officer witness is police officer Richard Woodbury. He is retired from the transit authority police department.

#### **TESTIMONY OF FORMER POLICE OFFICER RICHARD WOODBURY**

Mr. WOODBURY. Mr. Chairman, I was police officer for the New York City Transit Police Department from November 1967 until August 1983. In the interest of time, Mr. Chairman, I will just go over this document that was prepared. But in the beginning I must tell you that the problem that I had with the transit police department was that also of harassment, assault by white police officers, and harassment by my sergeants, captains, lieutenants, whatever.

It started while I was on patrol at Pelham Parkway, and I observed a black passenger. He was in handcuffs and he had rag tied in his mouth to muffle his screams. He was being beaten by a white police officer. When I told the officer that I objected to the treatment of this passenger, I was told by another officer to mind my business. And this passenger was not being beaten for no crimes he committed. It was just because he was traveling with a white female.

Late that night I received a phone call from a sergeant, who was my supervisor, telling me that I was a troublemaker and he would deal with me. On March 16 I received the first of two complaints he issued me and March 29 I got the last one.

Mr. Chairman, I had a pretty good relationship with the guys in this command until this happened. But I found myself protecting myself because I dared to report the wrongdoings of a white police officer. This sergeant harassed me until I transferred from this command in Manhattan and I transferred to a 75-percent black district in Brooklyn. That was good for me because I felt that I could protect myself better there.

On July 14 I was assigned to Church Avenue station. It is in Brooklyn. And that night, I heard screams in the street. I walked upstairs and I saw whites lining the street. They had sticks, chains, dogs. And the youths were coming from Erasmus High School. And when I went up to investigate, I was knocked downstairs by the kids that were running downstairs to keep from being beat up by the police officers in the streets.

Some of them were pretty mad, and they had a right to be, but what they wanted to do was to go back upstairs and fight with the

New York City Police. I told them, I even begged them, do not do that. So we finally got order restored, and I told these, the youths were getting on the train to leave the station, for no reason at all a patrolman walked over to the subway car, reached in and hit a student in the head with a nightstick. Now, I protested this. I was called a ——— by the same police officer.

Now, my sergeant from the transit authority came on the scene. When he came on the scene, I told him what had happened. After the kids left the station, I was being transported by the RMP to a hospital because I had injured myself. I told this sergeant that I was going to file a complaint against this police officer for his treatment of these kids on the station. He promptly told me, "You file a complaint against that police officer, I am going to give you one." And he eventually gave me a complaint in October of that year at 3:55 because I came in 5 minutes early from post. And I was told by his lieutenant to come in early to keep from incurring overtime.

Mr. Chairman, this continued. And I originally filed a complaint with the Equal Employment Opportunity Commission. Now, what had happened with this was that during when this was happening, you do not realize why people are doing this to you. But after I filed this complaint, I will read to you directly, I will quote from the complaint that was issued by the EEOC. These charges was based on information from an interview by a sergeant from a doctor who is a paid consultant by the transit authority. And these are the words from the determination of September 22, 1976, from the EEOC. I quote:

With regard to issue of retaliation, the record shows that charging party filed instant charge with commission on May 3, 1976, and that respondent was notified of that charge on July 1976, and that subsequent to the hearing referee verbal issuance of his finding or recommendation, respondent official on September 22, deliberately reinterviewed a psychiatrist who had previously examined charging party' seeking medical evaluation of charging party's medical state, which had no bearings on relevance to the matter which charging party had been charged. Acknowledge that psychiatrist's new medical evaluation of charging party was then used to offer a new charge of medical incompetence against the charging party. Respondent was provided no rationale for this action and respondent acknowledged that charging party is the first against whom such a charge has been made. The record strongly suggests that the respondent, by purposely eliciting derogatory information, which had no basis of fact on charges against him, sought this as a means to retaliate against charging party by filing a charge with the commission in order to effecuate his ultimate discharge.

Mr. Chairman, after this determination came down from the EEOC, the charge of medical incompetence had been dropped.

Mr. Chairman, in closing, I think now that I have no malice against the transit police department, but because of by love for the city, I feel compelled to do so, for the betterment of this city and all people that live in this great city of ours. Thank you.

Mr. CONYERS. I want to say this. The cases that you have presented show such a breakdown of order within the law structure, that I would like to recommend that all of these cases be taken directly to Mayor Koch's office for disposition. We do not need to wait for hearings for these matters. I think all of these ought to be collected. If you recall, Mayor Koch said he never gets letters from us. He will get one this time from four congressmen, and we think

that these ought to be taken right to the top. And I am sorry he is not here to hear what is going on inside the department.

I want to congratulate the council of guardians for bringing these matters to our attention. Thank you very much, Jacques Maurice, John Cousar and William Johnson. Thank you very much.

We are now going to move right along and we are going to hear from the Center for Constitutional Rights, Families for Police Accountability, attorney Marilyn Clement, who has been working with the subcommittee on police violence matters for quite a period of time.

Will the hearing room be in order, please. Those who are exiting, please do so quietly so that the hearings may continue. Welcome to the subcommittee hearings, Ms. Clement.

**TESTIMONY OF MARILYN CLEMENT, CENTER FOR CONSTITUTIONAL RIGHTS, FAMILIES FOR POLICE ACCOUNTABILITY**

Ms. CLEMENT. Thank you, Congressman Conyers. I should make a correction. I am not an attorney. I am the director of the Center for Constitutional Rights. We appreciate very much, Congressman Conyers and your honorable colleagues, your giving us an opportunity to testify here before you. You have made these hearings available concerning the role of the police in our society, and I appreciate the opportunity to testify before you. I'd like to share with you some of the ideas from some of the attorneys in my office and also from victims of police brutality not only in New York, but all over the country.

As you know, my role at the center is as director. It is a legal group which has been concerned with this problem for many years and which has brought suit against the police in a number of cities, the latest of which is Milwaukee, the Ernest Lacy case. In addition to doing cases, we at CCK also do a lot of organizing and building of networks, and I am here also representing the beginnings of a new network of families whose young children or teenagers have been killed or have been brutalized by the police. It is the beginnings of a new network called Families for Police Accountability, and we are hoping that all of the people whom you are seeing as a congressional subcommittee, will join with that network to help to get whatever legislation you want passed, and to help you with your deliberations.

These families have been isolated from each other forever, and we think that now together they will be able to make themselves heard from the city halls to the halls of Congress.

As I have talked with people all over the country that followed your hearings, the scope of this problem has come more into focus, and it is unquestionably a nationwide problem. Mayor Koch is wrong, it is a systemic problem. There are hundreds of killings, and for every killing, there are hundreds of systematic beatings and brutalization of human beings. One lawyer here in New York, told me that it is rare for a young Third World person to be arrested without being brutalized. The same goes for poor white youths, I should say, particularly if they attempt to assert their rights in any fashion.

This lawyer in New York further charged that even police officers who do not themselves participate in incidents of brutality, turn their backs and do nothing to stop it.

The hearings that you have held thus far have revealed that this is a nationwide problem, which merits Federal attention and Federal action.

As a case in point, I would like to talk just a moment about the case in Milwaukee, the Lacy case, because even though it occurred in Milwaukee, it could be a story from almost any city in the United States. I think this case helps to show why there is a desperate need for Federal intervention in this issue.

In the summer of 1981, and I will do it very quickly, Ernest Lacy, a 22-year-old black man, left the apartment he was painting to get some food and was arrested by three police officers from the Milwaukee, Wis., Tactical Squad. These were three large policemen. The police claimed that he fit the description of a rapist being sought by police, although Lacy's physical characteristics were different. The police wrestled Lacy to the ground, forcing him to lie face down, an officer pressing his knee into Lacy's back, and lifting Lacy's arms to a 90-degree angle.

He was kept in this position even after he was handcuffed. Unconscious, Lacy was thrown into a police van, his forehead hitting the metal floor. The van was then driven to another location to arrest a man for outstanding parking warrants. That man told the police that Lacy was not breathing, but was ignored.

Finally after arriving at the scene of the rape, when the officers could not awaken Lacy, then they called the ambulance. Paramedics arriving at the scene were unable to revive him and were critical of the police for not administering first aid. Lacy was then taken to a hospital where he was pronounced dead on arrival.

At first the Milwaukee Police and Fire Commission recommended that the officers involved be suspended with pay, pending their further investigation. However, when it was announced that a coroner's inquest was to be held, the police and fire commission investigation was postponed.

I will not go into more detail about this, but only to say that this case really represents the kinds of cases that are happening all over the country. CCR attorneys represented the Lacy family in seeking a disciplinary action against the police officers before the Milwaukee Fire and Police Commission. After 6 weeks of hearings, with about eight lawyers on both sides involved, the commission finally ruled that one officer was guilty of using excessive force in the arrest and that all five officers were guilty of failing to render first aid.

One officer was fired. Three others were suspended without pay. And one was suspended for 45 days. Now the officers have appealed this disciplinary decision to the State courts. Then we filed a \$30 million Federal civil rights action on behalf of the Lacy family. And now we are also defending Ernie Lacy's parents, his family, against countercharges by the police that Lacy assaulted them, this while he had his hands cuffed behind him. The police are now saying he bit and kicked them, while he was trying to defend himself in his last moments of survival.

The *Lacy* case is just one of hundreds of examples as to why this problem must have Federal attention. We are handling at the same time the appeal of the conviction of the officers, the civil damage suit and the defense of the Lacy family against the counterclaims of the police. The cost in time and resources for communities, for families, for lawyers and for cities is incredible. And years go by before there is any redress of these grievances. The court process is too slow and too cumbersome to be responsive to a problem of this magnitude.

The Nation is in jeopardy, if we continue to leave the handling of this issue to the capriciousness and self-interest of the thousands of different cities and police departments. Of course we do not want a Federal agency running the police of this country, but we do want someone to monitor these abuses and to apply some Federal standards to police conduct.

The Federal Government over the years has faced a number of serious problems and has come up with statutes and standards and funding requirements necessary to make radical changes in some of the grossest abuses of civil rights and of voting rights. I would like to suggest that we need a Federal statute which would address the entire problem of police brutality and use of deadly force.

Everybody recognizes and accepts the fact that the Federal Government has the right and the responsibility to intervene in the area of racial discrimination. Twenty years ago that was not an accepted fact. But now there is no question that this is a Federal responsibility. The rampant police misconduct against poor and Third World communities is a disgrace to our Nation, and a deprivation of the most basic rights under our Constitution, the right to life, liberty and the pursuit of happiness.

In addition, it is in violation of the 14th and 15th amendments, and clearly an attempt to reinstate the conditions and indicia of slavery, in violation of the 13th amendment. Pursuant to these constitutional mandates, I would like to suggest three particular ways in which a Federal statute could address this problem, these problems.

One, a Federal statute could provide for federally mandated elected citizen review boards to whom the populace could complain, and from whom they could receive relief from police misconduct. Under the pressure of the rebellions of the 1960's, many cities attempted to establish these impartial review boards, and they were quickly co-opted, as we have seen right here in New York and most of the cities, to become a political tool of the city administration.

Now, where there are police review boards, they are made up of political appointees and the police themselves, rather than democratically elected representatives of the people. Under Federal statute, criteria could be established for citizen elections and for the powers that they would hold to deter and punish police abuses.

We already have Federal intervention in the form of the law enforcement assistant administration, Law Enforcement Assistance Act, which provides funding and special support to police departments. But we should not be providing Federal, financial support indiscriminately. The Federal Government should be raising questions about police abuse of power in establishing criteria and minimal requirements before it provides funding to police departments.

One of those requirements might be that a city have in place an elected citizens review board, before it could receive any funds. It should have standards established by Congress. If the Federal Government supplies material support, then we should have Federal standards for police conduct.

Second, there could be a requirement under Federal statute that the supervisor or superior officer have the absolute responsibility for any brutality or abuse against citizens perpetrated by the men under his command. And I will not go into this in detail because people have talked about it this morning. As to the Knapp Commission in New York City, that was the case in relationship to corruption, and it could be the same in relationship to police brutality.

We need Federal standards to deal with this problem, unquestionably a national problem. And one of the other things which John Conyers said and to which the mayor agreed, we need definitions of what is police brutality. Everybody has different definitions, and the police control how those definitions get put forward and the statistics which underlie those assumptions.

An example of the federally regulated State program, such as this, would be the unemployment compensation program. We do not have a Federal unemployment compensation program, but each State has its own individual program with Federal standards, and those Federal standards must be met by the State or local programs.

Why should we not have Federal standards for the police treatment of citizens? What should those standards be? These are some suggestions and I think these are certainly not exhaustive, but these are some suggestions for those standards. Absolute responsibility of the superior officers for any brutality or misuse of deadly force by the police officers under his command.

Standards for the establishment of elected citizen controlled, independent review boards, in every district that receives Federal funding support for the police.

Standards for local appeals, establishment of criteria for making charges, and standards for appealing decisions concerning these charges regarding police misconduct.

Finally, the third requirement under a Federal statute should be for monetary compensation, possibly established as a victim compensation fund for the victims of these incidents.

I am told by the lawyers in my office that there are judge-made laws, decisions in the courts, which make the road very long and difficult, almost impossible for victims and their families to collect their rightful compensation from these traumatic incidents.

We believe there is a need for this matter to be covered under Federal statute, so that the law is plain and universal throughout this land, protecting even the most humble citizen from the kinds of abuses which we have seen too often on our streets.

We would suggest that the Federal agency which would have final responsibility for this oversight function not be the Justice Department. Rather we would suggest that a new agency be created to provide this protection. The question of who controls the police is always a difficult question, but in a democracy the most painstaking care should be taken to see to it that citizens control the police, not the other way around.

Briefly I would just recall with you the situation we were in only 20 years ago in this country, the gross denial of voting rights, public accommodations and civil rights to millions of citizens. These were problems that had been considered, we were told over and over again. These were impractical problems, and unresponsive to every remedy, your own words, Congressman Conyers.

We had lived with an enormous lie that this was a democratic society and that nothing could really change. However, there were dramatic changes when it was finally admitted that Federal power had to be invoked. The Federal legislation that was passed during that period was a massive intervention that changed many things. None of us would ever suggest that the problems have been totally erased. We certainly know that there are continuing problems, but we have to note that enormous progress was made because of those Federal interventions.

As of today, really the only remedy to these police brutality incidents is a bevy of private lawsuits being brought around the country. As you will remember, there were plenty of lawsuits concerning public accommodations and voting rights 20 years ago, but their impact was nothing to compare with the impact of the massive Federal legislation involved in the Voting Rights Act and the Civil Rights Act. There is no reason to believe that this same thing could not happen in relationship to police brutality, that it can in fact be addressed and remedied by Federal intervention. And I believe that nothing less than that will suffice to make any serious change.

Just in closing for the Center of Constitutional Rights, I'd like to thank you again for coming here and making this opportunity available. I think it is very important. We are willing to provide you with any help as you move to, we hope, draft legislation on this extremely important issue.

Mr. CONYERS. Thank you so much. The Families for Police Accountability, I think, will be an excellent organizing tool. And then raising our legislative sights, we must again look to a Federal remedy to be fashioned that will deal with this problem that is going on literally in almost in every city to one degree of magnitude or the other. It is something that needs to be examined from the congressional point of view and that is why we are here. I am glad that you gave this testimony. Thank you very much.

Our next witness is from the Congress of Racial Equality, Roy Innis, and we welcome him to the hearing room. Would you identify the companion that is with you, Mr. Innis.

**TESTIMONY OF ROY INNIS, CHAIRMAN; AND CYRIL BARNES,  
BOARD MEMBER, CONGRESS OF RACIAL EQUALITY**

Mr. INNIS. I am Roy Innis, and I am chairman of the Congress of Racial Equality. On my left, one of my assistants, the chairman of the Harlem chapter of CORE, Mr. Cyril Barnes, and also board member of CORE.

Mr. CONYERS. Welcome.

Mr. INNIS. I want to first, Congressman Conyers, commend you on this committee for having the guts to come here again, and the guts to promise to have more hearings on this very vital matter af-

fecting us here in New York City and the rest of our brothers and associates nationwide.

I am not going to reiterate the chambers of horror that police brutality has been. No decent person, whether from our communities or from the outside, can deny the obvious existence of such. I want to deal with certain other implications of what is popularly known as police brutality. I want to broaden the perspective. I heard many of the witnesses here attempting to do that.

Let me say that you have two members of your panel who are equally acquainted with the actual physical abuse of police as I am. That is Congressman Major Owens, who with me, was in the movement and we walked many picket lines together and we saw personally many examples of police brutality. And Congressman Rangel, my Congressman from Harlem, who was the counsel to many of us during these very hard times in the late 1950's and early 1960's.

Police brutality is not an isolated phenomena. It is a consequence of racism and politics in this city and the Nation at large. Awareness and incidents of abuse have increased starting with the increase in assertiveness of black people during the civil rights era of the late 1950's and 1960's. This assertiveness on the part of blacks led to a racist backlash and it is the pandurate to this racist backlash that made good politics in American in general and New York City in particular.

Playing on the backlash, buzz words were employed by some politicians and some members of the press, such as "Support Your Local Police," "New York's Finest," "Crime in the Streets." And of course in Harlem and Bed-Stuy, they were talking about crime in the streets where it did not even occur, downtown someplace.

These buzz words were used, and maximized, in the campaign by Dick Nixon and Ronald Reagan. I will say that these are possibly one of the key factors in the election and turning to the right in this country by the electorate. These buzz words were used locally by once-candidate for mayor of New York City, Mario Procaccino, and it is from the Procaccino campaign that our present mayor, Ed Koch, got his political lessons, because Ed Koch realized the political fallout that comes from this kind of a mentality.

This backlash created a conspiratorial atmosphere with the involvement of press, politicians, police, and prosecutors. And one even more dangerous, in that conspiratorial atmosphere, the conspiracy with criminals.

I want to talk about the kind of police brutality that comes about from police corruption, police insensitiveness, not just the level of the ordinary police officer' but at the level of his superiors, and at the level of the prosecutors.

I sent a letter to the outgoing police commissioner, Robert McGuire. And let me say, Mr. Chairman, I want to commend you and the committee again, for helping us here in New York City to get our first black commissioner, Ben Ward. I hope that he recognizes and remembers how he got his job.

This letter to Police Commissioner McGuire will illustrate, much of what I am talking about about the other aspects of police brutality that is not considered. Let me state that I have received no response to this letter.

## To Police Commissioner Robert McGuire:

Dear Mr. McGUIRE: For some time my assistants, acting on my instructions, have been trying to schedule a meeting between us. Their report to me is that all attempts have been futile. Not only has your office refused to schedule the meeting, but they suggest that I meet with the borough commander or some other lower ranking official instead.

While I am aware of the existence of the borough command the types of crimes, the site of the crimes and the implications of the issues raised by these crimes, transcend the narrow concern of the borough commander and his limited jurisdiction.

I want to raise some serious questions concerning the role of the police. Therefore, it would not be proper and appropriate for me to meet with line police officials. It is for this reason that I am submitting this formal request for a meeting between you as police commissioner of the city of New York and me as first, (A) National Chairman of the Congress of Racial Equality, CORE, and National Civil Rights Organization with a commitment to assist in the fight against crime; and (B) as a citizen, a father, and natural crimefighter, who have endured thus far a yeoman's share of crimes committed against him and his family. And have become more dedicated to fighting crime with each passing day.

As police commissioner, you are undoubtedly aware of the high incidence of crime in black communities. What you may not be aware of, however, is to the extent that my organization, my family and I have been victims. It is improbable that under normal circumstances any one individual organization could have been victimized so frequently, directly or indirectly.

For example, three of my sons have been victims of street crime. Two were murdered, one stabbed and wounded. Threats have been made against my family and my life. Three cars driven by me have been stolen within a 4-week period. Not to mention the many which have been vandalized over a longer period.

CORE national headquarters must take first place when it comes to the frequency of breakins. In fact, we have had at least five this month alone. We have had a couple of attempted payroll robberies and thanks to our tight security measures, no one was hurt.

All this with the now famous or infamous case of Roy Innis catching a thief stealing a radio from a CORE car, and handing him to the police, whereupon I am arrested and the thief released. You should get a clear picture of why I believe this meeting is important.

The personal aspect, of course, is only one of the reasons for my request. The other and more important one, is that as a black leader, I owe it to my people to get involved in the war against crime. And I can think of no better way to do this, than for us to get together to exchange information and ideas. Thank you for your cooperation. I am looking forward to being with you soon.

Let me state, Mr. Chairman, that I have no answer to this letter from the commissioner. This letter was sent also to Ronald Reagan, President of the United States, to William Smith, Attorney General of the United States, also to the mayor of New York City, Ed Koch, in addition to the city council president, Carol Bellamy.

The only response I have gotten to this letter was from the city council president Carol Bellamy, who is not exactly a friend of mine, but I do appreciate her response.

Mr. CONYERS. If you want, we will make those letters a part of the record.

Mr. INNIS. That would be very good.

[Information not supplied.]

Mr. INNIS. I call this out to show insensitivity on the part of the police officials and the police system in this city. And I do say, I am certain this transcends New York City and it can be demonstrated in other parts of this country.

I want to point out that this insensitivity of the police and the prosecutors, and I really must include whenever I talk about the police the prosecutors. I think a very bad mistake is made when we concentrate all of our sight and our energies on the lowly policeman on the beat who hits some poor kid, stupid kid from Queens or

Long Island or someplace else other than New York. The racist sentiments that have been manipulated and nurtured by political opportunists like Mayor Koch.

We need to be concerned with the officials. Let us use my arrest as an example. No way in the world am I going to blame some lowly cop on the beat. In fact, one of them being a black woman police. For my arrest, for arresting a common criminal. That order came directly from District Attorney Robert Morgenthau, a so-called very highly respected official in the police system of the city. This order must have been concurred with by Robert McGuire, the commissioner of police of New York City. This order for my arrest must have been concurred in by Mayor Koch, the mayor of New York City. We are talking then about the officials of the police system, the police system being the police supervisors, the senior officials, and the officials in the district attorney's office or whatever prosecutorial office we are talking about.

The kind of harassment that I have suffered and others have suffered in terms of unwarranted grand jury investigation, unwarranted surveillance, unwarranted breakin and plumbing of our office. We have a situation of the CORE offices being broken into at least once a month. No typewriters are stolen. Nothing of value is ever taken. But papers are rifled. Financial records are always searched, destroyed, and disturbed.

It is clear that no burglar, no self-respecting junkie is going to break into the CORE office to find those old typewriters and leave them there. Obviously, this is being done with someone with some other agenda. Change the tapes. I do not know why they need such old-fashioned equipment in my office or whatever else they are doing, or maybe just plain harassment.

This is the kind of police system brutality that I would like this committee to address. Address the kind of political manipulation of the police by the prosecutors, by the mayor, by other senior officials in government.

This committee also needs to look into two other critical areas. One, the question of informants. Shortly after the revelation of the so-called Valachi papers by former Attorney General Robert Kennedy, Joe Valachi, depicted in the movie by Charlie Bronson, the maximum macho he-man in America, Joe Valachi became somewhat of a national hero. And all the Joe Valachi-type individuals, people that we used to call back in Harlem in the old days, rats, squealers, and stool pigeons, and the worst possible names, they became national heroes. So much so that police officials, prosecutors in particular, have developed an unholy alliance with informers.

Now, I would not mind so much if these informants had some true things to inform about. But who is an informer? An informer is any common criminal who was being caught in commission of his crime, quickly agrees with the police or the prosecutors to implicate somebody higher than him, to blame for his particular crime and for other crimes real or unreal. This type of informer was adequately described by the television reporter, Arnold Diaz, on I think the Columbia Broadcasting System, who described a situation of paid police criminal informers, who were allowed to continue and practice their trade while being police informers. In fact,

they have been given a license, an immunity from prosecution. An immunity from reprisal by us, the citizens.

Which brings me to my final point. If the police will not police our communities, we like all citizens in this country throughout the history of this Nation, must reserve the right to police our communities ourselves. I do not want for one moment to make you think that because we are concerned with police brutality that crime does not exist in our communities. The fact is, crime does exist. The fact is crime exists because of police brutality and police manipulation of the prosecutors and the politicians like Ed Koch.

The question of crime must be addressed not by the police, who quite often make common cause with the criminals, but by us. The reason for my arrest for arresting a criminal was because I had arrested one of their informers and they could not allow somebody in our community to become an authority beyond them to interfere with their informer. They had to show and make an example of me and any others who might want to do the same thing, to show that they would prosecute anybody who tries to apprehend criminals in our communities.

We must resist that and we must have your help at the Federal level to make it possible for law-abiding, decent, and serious people in the community to do what Americans have done throughout the history of this country, to combine together in a responsible manner, to deal with crime, when there are no other officials available to do so. This might be called a vigilantism, and I do not really give a damn what it is called. I am concerned with protection of my wife and my daughters and other people's mothers and aunts, and if that is vigilantism, let it be.

In doing so, there are two liabilities. There are some legal liabilities that come from suits, and there are some criminal liabilities. Criminals are very well armed. It is unconscionable that the Sullivan law is so written as to restrict decent citizens from arming themselves, when there is an absolute necessity to do so. In our communities with very little police protection, with police corruption, police insensitiveness, it is incumbent on all of us to be able to protect ourselves and our community. But with the Sullivan law in New York City, that is impossible. You have to go back to the same police to pass muster to have the right to carry arms. And unless you are a rich businessman that transacts large amounts of business in cash, it is almost impossible to be licensed to carry a weapon. This is discrimination.

How many blacks are allowed to carry weapons legally in New York City? Compare that with how many whites are allowed, because of whatever pretext, to carry weapons, legal licensed weapons. Forget the criminal, this nonsense about outlawing handguns as a way to control crime is ridiculous. Booze was outlawed in the 1920's and prohibition did not stop the massive booze trade. Drugs are outlawed right now, and laws do not stop drug transactions. Outlawing guns, outlaw guns for the decent, law-abiding citizen and legitimate guns for the common criminal. There is no one here that shows me how you are going to disarm the criminal when you outlaw guns.

The way to control crime and disarm the criminal and force the police to do their job is for the citizen, decent, law-abiding, sensi-

tive, responsible citizens to have an opportunity to obtain legal weapons, to obtain proper training, and able to be a necessary addition to controlling and reducing crime in our communities. I thank you.

Mr. CONYERS. Thank you. You have gone to the heart of a very disturbing part of these hearings, and you are the first to have raised the connection between crime and the police and the position of responsibility that black people, who are in the most vulnerable community of all, find themselves in. I think that that needs to be examined even beyond the initial presentation that you have so expertly cast this issue in. It is an important issue, and frankly, it is one from which we cannot escape, because the police violence is the tip of the iceberg in what we get. But the alliances that go on are much deeper, much more corrosive, and much more destabilizing to the democratic system and to our community itself. And so I commend you for that.

I would like to ask you to think about this question even as you leave the witness table, Mr. Innis; that is the question of police management. You see we are holding these hearings and sooner or later we are going to get around to this, just as you have gotten around to this important dimension, but the question of hundreds of millions of dollars that go into police departments and nobody here has any idea of who decides where it goes, what the priorities are, how it is allocated. It is like a secret hole in which money is thrown in huge amounts. We do not even know how much. And if the average one of us tried to find out, we would probably not be able to do it without getting into a considerable amount of trouble.

I see this whole question of the management of this part of the public welfare, this part of our government, as ultimately extremely important. It must be taken under very serious consideration by this committee and all who would put an end to police violence wherever it appears.

Mr. INNIS. I subscribe to those statements completely. Let me say that I have a more fully developed paper. I did not want to burden you with it at this time. I would like to submit to you for the records on the question of police management, police dollars, and the other questions of the police, the prosecutors and the informants as the unholy alliance.

Mr. CONYERS. One of the things that makes public hearings important is that there is an interchange of ideas. Everybody is not required to agree with all of the witnesses nor with the committee itself. But we do get into exchanges that illuminate parts of this issue that go beyond the raw violence which we all abhor. And I thank you for opening that dimension in these hearings.

Mr. INNIS. Thank you.

[Submitted materials follow:]

# CORE

THE CONGRESS OF RACIAL EQUALITY  
1916 38 PARK AVENUE NEW YORK, N. Y. 10017 (212) 690-3678

April 20, 1983

Mr. Robert McGuire  
Police Commissioner  
City of New York  
One Police Plaza  
New York, New York

Dear Mr. McGuire:

For some time now my assistants, acting on my instructions, have been trying to schedule a meeting between us. Their report to me is that all attempts have been futile. Not only has your office refused to schedule the meeting, but they dared suggest that I meet with the Boro Commander or other lower ranking officials instead. While I am aware of the existence of the Boro Command, the types of crime, the sites of the crimes, and the implications of the issues raised by these crimes transcend the narrow concern of a Boro Commander and his limited jurisdiction. I want to raise some serious questions concerning the role of the police. Therefore, it would not be appropriate for me to meet with a line Police Official.

It is for this reason that I am submitting this formal request for a meeting between you as Police Commissioner of the City of New York and me as:

- (A) National Chairman of the Congress of Racial Equality - CORE - a National Civil Rights Organization with a commitment to assist in the fight against crime.

AND

- (B) A Citizen, Father, and Natural Crime Fighter who, having endured thus far a Yeoman's share of crimes committed against him and his family, becomes more dedicated to fighting crime with each passing day.

As Police Commissioner, you are doubtlessly aware of the high incidence of crime in Black Communities. What you may not be aware of, however, is the extent to which my organization, my family, and I have been victims. It is improbable that under normal circumstances any one individual or organization could have been victimized so frequently, directly or indirectly.

**CORE**

THE CONGRESS OF RACIAL EQUALITY  
1916 - 34 PARK AVENUE NEW YORK, N. Y. 10017 (212) 690-3678

Page 2.

For Example: Three of my sons have been victims of street crime - two were murdered and one survived stab wounds; threats have been made on my family's and my life; three cars driven by me have been stolen within a four-week period, not to mention the many which have been vandalized over a longer period. Core's National Headquarters must take first place when it comes to the frequency of break-ins. In fact, we have had at least five this month alone. We have had a couple of attempted payroll robberies. Thanks to our tight security measures, no one was hurt. Crown all of this with the now famous - or infamous - case of Roy Innis catching a thief stealing a radio from a Core car and handing him to the Police, whereupon I was arrested and the thief released. You should get a clear picture of why I believe this meeting is important.

The personal aspect, of course, is only one reason for my request. The other and more important one is that, as a black leader, I owe it to my people to get involved in the war against crime. And I can think of no better way to do this than for us to get together to exchange information and ideas. Can You?

Thank you for your co-operation. I look forward to meeting with you soon.

Sincerely,

Roy Innis  
National Chairman  
CORE

RI:sc

CC: Ronald Reagan  
President, United States of America

William French Smith  
Attorney General, United States of America

Governor, Mario Cuomo  
State of New York

Mayor, Ed Koch  
City of New York

# CORE

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Page 3.

CC: City Council President, Carol Belamy  
City of New York

Comptroller, Harrison Goldin  
City of New York

City Councilwoman, Carolyn Maloney  
District #8, City of New York

City Councilman, Fred Samuels  
District #5, City of New York

Police Foundation Director, Patrick Murphy  
Washington, D.C.

1210



THE CITY OF NEW YORK  
THE PRESIDENT OF THE COUNCIL  
CITY HALL  
NEW YORK, N. Y. 10007

CAROL BELLAMY  
PRESIDENT

(212) 566-8200

May 9, 1983

Roy Innis  
National Chairman  
The Congress of Racial  
Equality  
1916-38 Park Avenue  
New York, NY 10037

Dear Mr. Innis:

Thanks for sending me a copy of your letter to  
Commissioner McGuire. I appreciate being informed  
of your concerns.

Sincerely,

A handwritten signature in black ink that reads "Carol Bellamy" with a long horizontal line extending to the right.

Carol Bellamy

CB/yc

Mr. CONYERS. I would now like to call, from the National Black United Front, Rev. Herbert Daughtry.

**TESTIMONY OF REV. HERBERT DAUGHTRY, CHAIRPERSON, NATIONAL BLACK UNITED FRONT, NATIONAL PRESIDING MINISTER, HOUSE OF THE LORD CHURCHES, ACCOMPANIED BY JIM ANDERSON, COCHAIRPERSON OF THE POLICE BRUTALITY INVESTIGATIVE UNIT; DEBRA CARB; AND MARIE LIEMAN**

Reverend DAUGHTRY. Congressman Conyers, Congressman Owens, Congressman Rangel, Congressman Berman, staff, my name is Herb Daughtry. I am the chairperson of the National Black United Front and the national presiding minister of the House of the Lord Pentacostal Churches. On my far right is our counsel, Mr. Alton Maddox. To my immediate right is Ms. "Maria" Lieman. To my immediate left is Ms. Debra Carb, who will be offering testimony. And to my far left is Mr. Jimmy Anderson, who is a member of the Police Brutality Investigation Unit of the New York Chapter of the National Black United Front.

Mr. Chairman, words cannot express how much we appreciate your coming again. Certainly in the light of the testimonies that you have heard, any person with any fairness about him at all would have to concur that police unauthorized use of force, harassment, discourtesy, is widespread, it is systemic.

My testimony is on record, Mr. Chairperson, Congressman, my testimony is on record and I would not want to use the time repeating what is already on the record. Not only that but our testimony is on record with regard to the demonstrations and boycotts and all the things that we have done in the last 7 years to raise this issue.

In fact, you will note that even Commissioner McGuire had to acknowledge that we have been raising this issue a long time. Therefore, what I would like to do is simply make a couple of comments and then hear from the witnesses.

I want to note the people outside again standing in the rain. It is very important that we note that for the record. Keep in mind that we have been told over and over again that this is not an issue. And yet each time that you have come, there have always been hundreds of people here, even thousands, and wherever you have gathered, there has always been a crush of humanity.

And as I went out into the street, there were maybe hundreds of people standing outside in the rain trying to get into the courtroom, so that they might participate in democracy. One has to ask what kind of thinking is in the mind of the highest elected officials of this city, which would not want to open this whole process to the broadest participation possible.

Second, on behalf of our organization, and all of our people would like to commend the Guardians Association for that most substantive and courageous testimony.

When I left a moment ago, I ran into Assemblyman Al Vann of the 56th assembly district and we got a big bang out of the fact that Ed Koch had said that no legislators had ever approached him. Assemblyman Al Vann and I and about 15 other people were the first people to talk with Ed Koch when he came to office January 25, 1978. The question before us at that time was the killing of

Randolph Evans, a 15-year-old lad, and so for the mayor to say that no legislators—also at that meeting was Dave Denkins, Basil Paterson, although they may not be in the strict sense elected officials, but nonetheless they are public servants. For the mayor then to make that statement suggests something of the careless way in which he handles the truth.

I wish I had the time to really talk about this nonsensical report. It surprises me. I had given the commissioner some credit for intelligence, competence and efficiency. But after this report, I do not see how anyone in his stature could put forth this report. All this is is a regurgitation of the reports coming out of the precincts, the "shiny object" reports. They had a "shiny object". They had some object. For example, the case that we cited before, the young man who was beaten by the police. In the report it says that the policeman, this young man, 17 years old, told him he was under arrest, put his hand up against the car and then this young man turned around, faced these police officers, and then go in his pocket, and when the officer catches him and goes in his pocket to see what he has, guess up? He nipped his finger on an open knife in his back pocket. And therefore this officer commenced to beat him and broke his ribs.

This is the kind of report, I would say at least 90 percent, that the commissioner is trying to make. Completely the report of the stationhouse. I am going to pass over that.

I will just go on the question of improvement. You know improvement is a funny word. I suspect that if you take the Koch administration and compare to Bilbo, you would have improvement, or if you compare to Talmadge, you would have improvement. If you compare to Birmingham or to Georgia, of my youth, I suppose you would have improvement. But I always remember Malcolm X's analysis of improvement. If you have a dagger in a man's back and you take it out one-third of the way, you can say you are improving, but the dagger is still in the man's back and he probably will die soon.

So if you look at improvement, indeed, when you compare it over the last several years, then the Koch administration has not improved at all. I noted particularly as you talked about polarization and the commissioner would not even handle the question. In fact, he readily knew who had created the polarization, so he tossed it back to his boss. Everybody knows that polarization in this city has existed and the supreme culprit is in city hall.

What I would like to do now, in the interest of time, and as I see the people behind me there are a number of very, very substantive reports we want to hear. And so in the interest of time, Mr. Chairman, I would like to let the witnesses give their testimony.

Mr. CONYERS. Please proceed.

Reverend DAUGHTRY. This is Ms. Debra Carb.

#### TESTIMONY OF DEBRA CARB

Ms. CARB. My name is Debra Carb. On December 24, 1978, I was raped by a white policeman. It was over there in Jamaica on Liberty Avenue where they were extending the college. I wanted to run, but he said if I run he would shoot me in the back of my head and

plant a gun by my side. Word is in the streets of Jamaica that police travel with these extra guns because they killed Danny Glover the same way. So I let him have his way with me.

Mr. CONYERS. Has there been any followup on this tragic incident?

Ms. CARB. No; at the time I did not report it. He works at 103d precinct, because I was scared.

Mr. CONYERS. Are you represented by counsel?

Reverend DAUGHTRY. At this point Mr. Maddox is going to represent her.

Mr. CONYERS. Not at the present?

Ms. CARB. No.

Mr. CONYERS. Has there ever been a report filed anywhere before now?

Ms. CARB. No.

Mr. CONYERS. What were the circumstances that led you to determine to bring this matter forward to this committee today?

Ms. CARB. At the time, I was on drugs. I was prostituting. And if I would have filed a complaint, it would have been his word against mine. They would have taken his word. Now I am a secretary. I have been clean 5 years. I have a good record now. I know where I came from, but I know where I am going. So when I heard about the police hearings, I said let me come forward.

Mr. CONYERS. That is incredible. I am very proud of you. You make us understand how the public work that we do reaches out to people in ways we do not even have any idea about. But we do want to back you up and support you and we want to move this complaint and see if we can bring forward the officer and put it in legal channels.

Again, thank you very much for having the courage to come before us.

Ms. CARB. Thank you.

Reverend DAUGHTRY. The next witness, Congressman, is Maria Lieman. This is a very interesting case, I think. She came to us several days ago. You probably heard the case. Her husband is the black officer that was shot by a white officer in rather peculiar circumstances, to say the least. So she came to us, I think it was Wednesday. Our process or method of coming by these cases, we are known pretty well now across the city, so that in many of the developments, people call us. So we thought it might be a case that should be heard here. So she can tell the story herself. This is Marie Lieman, wife of an officer who was 14 years on the force.

#### TESTIMONY OF MARIE LIEMAN

Mrs. LIEMAN. Actually 14½ years. My husband, Horace Lieman, on November 16 was shot. He was shot at four times, but was hit twice, in the face and the mouth. Obviously he was saying something. The officer who shot him, claimed he never identified himself. Yet there is no surface wound, which I said obviously I believe he was saying something. My husband is suspended right now, without pay, and is critical in Kings County Hospital. He has been in a coma. He is paralyzed on one side.

This is why I am seeking help because at this point they are saying that the white police officer who shot him had acted in good conduct. They claim that he had a gun out. A 14-year veteran with a gun out and an officer approaching him with his gun still in his holster, they claim he was in a combat crouch. Would he give him a chance to shoot him four times? Without shooting back at him once. And while he was down on the ground after being shot in the mouth, then he was shot in the shoulder, which extended from one side of his shoulder and came through the other side. And at this point I have no support from anyone.

Reverend DAUGHTRY. On that point, Congressman, I think that the officers will fake certain procedures that are to be followed with respect to how officers handle their weapons, whoever they might be. Some of the developments around the case was that Mr. Lieman, Officer Lieman was in a place with other people and allegedly had a person whom he had taken outside. Again, all of this is fuzzy, but the point is that according to procedure, and of course officers would know this better than I, according to procedure, a police officer is not supposed to fire with a hostage near, or a person near. But it seems that this officer, this white officer fired and then after Officer Lieman was on the ground, then went over and shot him again in the shoulder. He missed twice, and hit him once in the mouth. Apparently he was trying to say who he was, identify himself. Then when he was on the ground shot him again in the shoulder.

He has been suspended. That is, Lieman has been suspended without a full investigation. The other officer, Flanagan, at this point is still on the force. Nothing has happened to him. And we think again that this is an instance, irrespective of all of the dynamics of the case, in which it would seem that a thorough investigation would first be implemented and that both officers should in some way be involved in that thorough investigation.

Mr. CONYERS. Thank you very much for your testimony.

Mrs. LIEMAN. Thank you, sir.

Mr. CONYERS. Would any of your other companions want to say anything?

Reverend DAUGHTRY. Jimmy Anderson, who is a member of the Police Investigation Unit.

#### TESTIMONY OF JIM ANDERSON

Mr. ANDERSON. Mr. Chairman, all I would like to say is that looking at the two witnesses that we have presented, what you see people do not know what to do, and often time goes by and they get the opportunity to come forward, which kind of, what Koch and his boys would have you believe, discredits them. But it is not discredited. It just points out the seriousness.

Second, the second witness that he brought shows internally that there are a lot of problems that people on our side just do not know about. And the problem as we see it in the PBIU unit is because the problem of police brutality is not accepted.

What we find is that when it comes to police brutality, there is a lowering of resistance against it. Unfortunately, the lowest level of it is in the Government agencies. Nobody wants to prosecute. They

keep bringing us to hearings. They keep doing detailed studies. And nobody is prosecuting. And that is what the real deal is. We want to see some prosecution occur. And we do not think that it takes Mayor Koch and other heavyweights who are professional in their duties to have to dialogue about it as long as they have been doing it. In the black communities in New York we have been getting killed, and it is clear. And whether you are a civilian or you are a member of the department, you know it. The problem is the forces that should be putting that check and balance against the police department are not working.

How many times have you seen Brother Daughtry and the Black United Front in court? Not to stop justice, but to oversee that justice is, to see that justice is taken care of, and does carry out its course.

I sit here very angered. I am angered. It is cold in here. It reminds me of cases that we have been on and it is cold hearing those cold stories. And we are supposed to take serious the deliberations Mr. Koch brought.

Do you know why he does not know about police brutality. He knows about it, but the system has a mechanism, all you have to do is go to any precinct. Go on any tour if you really want to catch them doing their tricks. They have internal investigations. They have what they call shoo-fly. He is the officer of the day. He is supposed to go to these precincts where incidents occur. He is supposed to be monitoring activities inside the precincts and looking through the ledgers and the books to make sure the duty is being carried out. But you know what happens when he is in the vicinity of a precinct, and I do not mean just around the corner, as soon as he gets within the perimeters of that precinct area, across the radio, on the air, "Shoo-fly in the area." And the closer he gets to the precinct, you know what happens? The desk officer gets up, runs down to the locker room, shakes his buddies, "Get up, shoo-fly in the area." The officers in the kitchen in the little room in there drinking, "Put the bottle away, get out on patrol, make it look good." The civilian personnel, "Don't you say that. Get back in the 124 room." And then he comes through and he signs the book, "Everything OK."

Someone who has been abused approached the desk officer, having approached the officers in the precinct and then turned away, gets the information they will do something, even though not recording it. But recording it is important. Because if the New York City Police Department does not record it—the only reason this sister has not had her case brought up, I stand and tell you right now that in the 88d precinct there is a captain today, Captain Hodega. In 1978 he received direct testimony from an eyewitness of a situation involving two police officers of the 79th precinct, Lieutenant Ravenay, who was kicked out for grafting and Patrolman Joe Willis, who just happens to be a black police officer. And which they engaged in brutality.

There was a \$2 million lawsuit filed, which many of these reporters' papers probably know about. And do you know the eyewitness person has never been yet called. Do you know that the case has been snuffed under, and do you know that the eyewitness person is

available and wants to testify. And this happened in 1978, and he has been following the systems route.

You know who he went to? He went to people like former Captain McBride, Captain Tell, two of the black officers we talk about we should be proud of. We should be proud. But you know what they did? They did not want to get involved because they were on their way up the ladder and they were thinking of payday. And people wanted to come out and the reason they wanted to come out and everyone wanted to testify is because there has never been any forum.

Everybody is not all good and everybody is not all bad. But Koch brought up one point. The elected officials that are moving along with some of the ideas buck pushers, they only move because they have been forced to, and not by the establishment, but by the people, the community.

All of a sudden we are down here and we come to these hearings and everybody is concerned. Everybody has a presentation. This has been going on too long. We need to talk about what are we going to do to stop it. We have some ideas. One thing that is going to happen, there is going to be a response. Either the elected officials or the other government law agencies are going to start getting serious and using more integrity in terms of carrying out their duties or the people will eventually be pushed to a point of where these meetings will make it quite clear.

I would like to talk about lowering of resistance because that is what is happening. It is the elected officials who are the appointed people of the community. We elected them. We put them out there so that they could use their contacts with professional folks together to wage a battle for us in the community.

But you know what we find out, they do not know what is happening. And it is the constituents that are making the plea and they do not know what is happening. It should not be the people in the community down here busting down Koch's door at the police headquarters, it should be the elected officials.

I am going to finish up, but you see across the Nation, the city, the community, we have been talking about brutality. And there is no systematic effort to change it. For one thing and the words have been said before, that the pattern that we face has to be looked at as being a problem. Koch does not look at it. And Mr. Ward, he does not really want to look at it. He wants to please his boss, you know.

That is why he can say brutality is not pervasive in New York City. That is why at this date you hear black police officers telling you how many cases they have witnessed. It did not happen in 1988. We are talking about brothers and sisters who have been on the force 7 and 10 years. And had they said it back then, irregardless of the job and the money, probably we would have a better position and would not have to put up with all of this sham that Koch gives us.

The evidence shows that generally the problem is perceived as not being there, lowering of resistance I talk about. You see people in the street. They are scared to get involved because the system has taught us that if you get involved you might get hurt. So they

push do not get involved. You should not say that about brutality, you might lose your job.

The newspapers, they just want a story. You want a story, you go see Captain Lee of the 83d precinct, and you ask him about the gentleman's eye that was punched out in that case. You just ask him. I do not want to abuse the situation and say a lot of stuff.

I was in the international police force. I was in the Marine Corps, 4 years, and I got abused. I came to New York City. Three years with NYPD. And the case I am telling you about, I have been trying to fight it. I have been waiting for a forum. I looked for some help in 1979. I looked for some help in 1980. I looked for help in 1981 and 1982. And here it is 1983, and I am not sure whether I got help or somebody saying, you know, do not worry, cool out. We are going to get it.

What evidence do you need? The things that we have that we have presented at all the hearings, that we have raising up before hearings even came, are legit. If people want the factualness of them, if they do not think what we are presenting is factual, then bring your top investigators and walk through some of these streets with us. Come with us to some of the precincts and let me point out some of the stuff that I know that goes on.

You need to get to the civilian members of the department who are not truly present here. Those folks in the 124 room. You know how these complaints come about that they wrote about in that report, they are your real draftsmen of the report, but they are controlled in what they can put in there. And also take some situation out in the street, he writes what is called an unusual report, an incident report. He brings it in, and half of them only study well enough to pass the test anyway, he brings it in. The person in the 124 room is assigned to string it out to make it balance out. The contents of what is written has to equal the charge that you are being charged with.

So if you are incorrectly charged, it means the contents are brought up equal what the incorrect charge is and that is often the case. But who can dispute that? I mean where is the check and balance system? How would you get into the precinct to find out how all these bogus reports get put down as being legit. Not by having Mr. Koch come here and testify. And certainly Mr. Ward has showed us his position. There is a problem of police brutality, and Mr. Koch, Mr. Ward, police captains, and the community are aware. The elected officials are aware. And we really got to do something about it. It is not enough. You have to keep coming back and you have to leave some people here to keep watching.

Mr. CONYERS. Thank you so much. We appreciate the depth of your conviction. I think it has been felt by everyone who has heard your testimony. We are grateful again for the years and years of work that you have put forward to give these hearings some substance in this struggle. I do not think we are going to leave you this time.

I think more and more people are becoming inspired because they begin to see that unless we come together, there is no way that any of us are going to win anyway. Everybody will be a victim. And so what you said needs to be studied by everybody in almost every community across this country. And I think these hearings,

if they serve any purpose at all, will be to show the way other people have gone through what you have gone, and come to the conclusions that you have.

I want to thank you again, Reverend Daughtry, counsel and two witness, and your very, very able director, who has stood by your side all these years. Thank you all.

Reverend DAUGHTRY. May I say one thing? In departing, we want to say, with all the emphasis we can command, how much we appreciate having you here and the rest of the Congressmen. And I think what you have heard are people who have not had a place where they could give their testimony and feel that they were really going to get an earnest hearing. And in fact, if you were to open the door and say, I will stay here until I have heard all of the testimony, you might be here, if I may coin the old proverb, you might be here till hell freezes over.

[Submitted material follows:]



by the BLACK UNITED FRONT  
Police Brutality Investigation Unit

### POLICE BRUTALITY: THE REAL CRIME

Today's problem of police brutality in New York City represents a carefully orchestrated policy of violent, racist attacks against Black and Latino communities. Police brutality has created an environment of terror within these communities and has deepened the racial polarization within the city as a whole. The resulting destabilization of our communities represents part of the overall political and economic direction of New York City, as planned by New York's ruling class. The Koch administration is a faithful adherent to the notion that it is people of color and poor people generally who should foot the bill for the city's economic crisis. Police brutality is the use of terror designed to quell resistance and keep ghettos from spilling over into the white parts of the city. Koch has not only satisfied the ruling class architects of this plan, but has also managed to establish a base of support among some of the working class white communities for his racist policies. The cavalier and nonchalant posture of the Koch administration toward the opponents of police brutality is a message to both the minority and the white communities--racism will continue unchecked by his administration.



Recently, the killing of Michael Stewart is an example of police brutality and the Koch Kosmetic Kover-up. You would think that the Koch administration would be a bit more concerned with the potential outrage over this matter. Not a chance. Koch wasted no time in trying to pull the wool over everyone's eyes. The Transit Police say that Michael Stewart had a seizure, the Medical Examiner initially said that Michael died from heart failure and Koch stood and stands firmly in support of these reports despite overwhelming evidence to the contrary. Evidence like the testimony of independent doctors who saw Michael's battered and bruised body and the later statement by the Medical Examiner that Michael Stewart had in fact died from a broken spinal cord. The Medical Examiner makes no claims even of the possibility of police brutality. Only pressure from the Stewart family and concerned people in our communities has been able to force the truth into the light of day. Even the governor suggests that there may be a need for a special prosecutor. But, despite all this, Mayor Koch assures New Yorkers that there is no problem with police brutality. His position is characteristic of other positions taken this year, as in the case of the death of young Larry Dawes, an unarmed man riding his Hoped, run over by New York police. It is the same position taken in the case of Henry Woodley, who defended himself from a mugging only to be shot to death by New York police. Koch says the system is running fine, as he praises whites who defend themselves against criminal elements. But why didn't Mayor Koch defend the interests of Willie Turks, a black transit worker, murdered by a white youth mob for nothing more than being in a white neighborhood after dark.

Police brutality is a big part of the cost for white supremacy in New York City, as we watch few white people showing concern for the disproportionately high number of killings of Blacks and Latinos by the NYPD. In fact there is a call for more force needed by New York law enforcement, more jails, stiffer sentences and the death penalty. Such a posture is consistent with claims of reverse discrimination, cutbacks in school programs, medical aid, and other social programs which affect Black and Latino communities the hardest. These kind of conditions coupled with high unemployment exacerbates the general crisis in our communities and guarantees that white communities will remain white and cushioned. This is the base of support that Koch maintains and continues to woo at the expense of social justice.

#### The New Police Commissioner

The appointment of Ben Ward, a black man, to the post of New York City's Police Department Commissioner represents some foresight on the part of Mayor Koch. The recent protests and congressional hearings on the question of police brutality raised very definite concerns and worries in the Koch administration and in his reactionary base. Faced with a growing population of people of color and growing political motion in minority communities as the result of victories around the country of Black candidates and Jesse Jackson's campaign, Koch must be anxious to put a lid on it. And so Commissioner Ward was unveiled to the people. Koch immediately tried to dispel race as a consideration in his appointment of Ward. Well, we certainly know that Koch would never break form by trying to sabotage racial inequality through the use of affirmative action. Far from assuming an anti-racist posture, Koch immediately tried to assure his base and his bosses that Ward is a good skilled professional yes man who only happens to be black. Ben Ward proclaims

himself to be a hard conservative in law enforcement and denies that police brutality is a problem in New York City. Furthermore, Ward has made no indications that his appointment should be any source of pride or of celebration for Black communities. We got the message Ben, you're Koch's kind of cop! Clearly, Koch is aware of the differences that exist within our communities historically, between accomodationist and resistance forces. Ward's appointment is an attempt to drive a wedge between the two. On the one hand Koch has thrown Ward as a crumb to weaken the resistance forces and to make points with the accomodationist folks who fall for Black faces in high places, regardless of their politics. We care however, that Ward's politics do not seem to represent progress for us.

#### Congressional Hearings

These hearings have been a welcome platform for the communities and for all people interested in justice---except Koch. He has loudly and vigorously boycotted the hearings. Koch has been unwilling to face the avalanche of testimony and documentation which prove the systematic brutality of our communities by The New York Law Enforcement.

The Black United Front welcomes this third round of hearings in NYC. After several years of work to both document and oppose police brutality, we welcome the opportunity to state to the communities of all of New York, the facts of police brutality and solutions to the problem. Our work reveals more than facts and figures, it has exposed for us the systemic nature of police brutality and its devastating effects on people of color. These hearings are further opportunity to shed some light on the daily reality of terror in the Black and Latino communities. and to rally justice seeking people in support of important solutions.

In order to bring this city and the adherents of racialized violence at the hands of the police to justice, we must build a broad, mass movement. We have no illusions that a few hearings, marches or press reports will end this brutality. But the unity of the masses of people of color and progressive whites can begin to spell doom for the racist attacks against our people and fight on to end the overall racial oppression which has become the hallmark of US society. Essential to this kind of struggle for social progress is the Black United Front.

The Black United Front demands the creation of a civilian, not police department, review board. This board would be established with clear guidelines of accountability of the police to the community. The BUF will be initiating a referendum campaign in 1984 to guarantee a genuine community review board. We encourage you to write letters to your governor, mayor and state assemblymen calling for an independent investigation of the already substantiated charges of police brutality against the NYPD. Also register to vote.

Finally, we would urge you to attend these and other hearings like these, so that Koch and his kind begin to hear our messages loud and clear. We will not continue to be victims in a racist society where the answer to poverty is brutality instead of jobs, where the answer for demands of justice is cover-up and denial. We will not tolerate less than human treatment and respect.

FORWARD TOGETHER, BACKWARD NEVER!

For more information, contact:

Police Brutality Investigation Unit  
(212) 789-1862

Mr. CONYERS. I think it is in this courtroom. I know we are several hundred million dollars short in our deficit, but this is unusual in the extreme.

We have 12 more witnesses and I would like everybody to bear with me. Our next witness is the president of the Policeman's Benevolent Association, Mr. Phil Caruso, and his associate, who have been here since the morning began. We recognize that you were here for quite a while, but so was everybody else.

We have your statement, Mr. Caruso. Welcome before the subcommittee. And you may proceed in your own way.

**TESTIMONY OF PHIL CARUSO, PRESIDENT, NEW YORK CITY  
PATROLMEN'S BENEVOLENT ASSOCIATION**

Mr. CARUSO. Thank you, Mr. Chairman. My name is Phil Caruso. I am the president of the New York City Patrolman's Benevolent Association, the oldest and largest police organization in the United States, currently representing more than 18,000 active police officers.

Mr. CONYERS. Excuse me, sir. Do you have an extra copy of your testimony?

Mr. CARUSO. I sent a copy in, Congressman.

Mr. CONYERS. OK. Thank you.

[Prepared statement of Phil Caruso follows:]



## *Patrolmen's Benevolent Association*

Of The City Of New York, Incorporated  
250 Broadway • New York, N.Y. 10007-2580 • (212) 233-5531

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**JIM SAGAR**  
*Clp-17th Trustee*

PRESENTATION BY PHIL CARUSO, PRESIDENT  
PATROLMEN'S BENEVOLENT ASSOCIATION OF THE  
CITY OF NEW YORK, TO THE  
SUB-COMMITTEE ON CRIMINAL JUSTICE

Hearing -- July 18, 1983 -- 10:00 a.m.  
State Office Building  
163 West 125 Street - 8th floor  
New York, New York

My name is Phil Caruso, and I am the president of the New York City Patrolmen's Benevolent Association, the oldest and largest police organization in the United States, currently representing more than 18,000 active police officers.

While we welcome the opportunity to express our views here today, we nonetheless are puzzled by the nature of these Congressional hearings. Quite candidly, our perception is that these proceedings were precipitated by a political power struggle in which the police become the unwitting scapegoats. But that is par for the course, because, inevitably, due to the controversial nature of the police function, we remain the ever vulnerable prey of political expedience.

We find it difficult to accept the need for a Congressional inquiry into allegations of police mis-

conduct because here in New York City, praise for the remarkable restraint, outstanding efficiency, and highly professional manner in which police officers perform their duties, by far outstrips criticism. And our police officers take due pride in this aura of public acclaim.

Objective observers continually maintain that police-community relations in New York City, considering the complex social dynamics of our multi-racial, multi-ethnic demographics, have been comparatively stable and exemplary. Exemplary to the extent that they can serve as a model for other big cities to follow. Supportive evidence of improving police-community relations is glaringly reflected in the declining rate of allegations of police wrongdoing brought before the Civilian Complaint Review Board.

Consequently, under the present status of police-community relations as they really are -- not as some would like us to believe they are -- we find it truly difficult to share the claim that a systemic pattern of police brutality is provoking racial antagonisms. Under the actual set of circumstances, we suggest that this claim is in and of itself a highly inflammatory political contrivance.

The only real "police brutality" occurring on a routine, wide-scale basis in New York City is that which is perpetrated against the police. For standing as the countervailing balance to those isolated allegations of police brutality are the alarming number of shootings, stabbings and other vicious attacks that police officers are daily subjected to. Should we, then, call for a Congressional investigation into our agonizing dilemma?

In New York City there are a multitude of investigative bodies before which a citizen can vent a grievance against the police. As far as the PBA is concerned, the scope of available grievance machinery is far too facilitous and overbearing. No other civil servants -- none -- not even the Congress of the United States, are subject to the kind of intensive scrutiny that police officers are subjected to here in New York City.

For example, a police officer can be brought up on charges in the police department's Trial Room, which proceeding can lead to dismissal from the department; can be tried by the Civilian Complaint Review Board; can be indicted by a grand jury; can be made to testify before the Special State Prosecutor's office; can be brought before the City's Department of Investigations, and can ultimately suffer the severe consequences of a federal court judgment imposed under Title 42 United States Code, Section 1983 for engaging in alleged violation of civil rights that abuse police authority.

And if all this were not enough, we now have Congressional hearings. The PBA vigorously opposed the creation of a Civilian Complaint Review Board in the mid-sixties, yet, today, we have a CCRB. While we have become tolerant and understanding of the need for the extensive bureaucratic system now in existence, how much more pressure do you think we can absorb?

Once again we candidly submit that these proceedings impugn the integrity of the police commissioner, the director of the CCRB, the Special Prosecutor, every district attorney in this city, and the heads of all the other investigative agencies that scrutinize

police activities, and shatters the faith and confidence of the people in their system of government. Also, not to be overlooked, it tends to demoralize the fall guys in this entire episode, the police officers of this city, who must function in an already difficult and hazardous environment.

A Congressional hearing here is about as appropriate as it would have been for the New York City Police Department to become involved in the ABSCAM affair. We believe these hearings are an unnecessary, unwarranted intrusion into this city's effective governmental administration, an intrusion that raises doubts about the efficacy of certain federal incursions into state and local jurisdictions. Instead of engaging in polemics, it seems to us that this sub-committee would better serve the taxpayers by exerting a strenuous effort toward delivering to New York City, as well as to all other major cities in the United States, an adequate level of federal funding needed to heighten public safety and thereby enhance the quality of life throughout the nation. Such an effort is currently being begged for by the people of this country, and would be much more consistent with the Constitutional mission of insuring domestic tranquility that devolves upon the Congress of the United States.

Moreover, in light of the paltry resources -- both human and monetary -- with which we have to work, a Congressional citation for the superb overall performance consistently turned in by the men and women of the New York City Police Department would seem to be another fitting and proper Congressional action that can be taken at this time.

Mr. CARUSO. While we welcome the opportunity to express our views here today, we nonetheless are puzzled by the nature of these congressional hearings. Quite candidly, our perception is that these proceedings were precipitated by a political power struggle, in which the police become the unwitting scapegoats. But that is par for the course, because inevitably, due to the controversial nature of the police function, we remain the ever-vulnerable prey of political expedience.

We find it difficult to accept the need for a congressional inquiry into allegations of police misconduct, because here in New York City praise for the remarkable restraint outstanding efficiency, and mighty professional manner in which police officers perform their duties, by far outstrips criticism.

Our police officers take due pride in this aura of public acclaim. Objective observers continually maintain that police community relations in New York City, considering the complex social dynamics of our multiracial, multiethnic demographics, have been comparatively stable and exemplary, exemplary to the extent that they can serve as a model for other big cities to follow.

Supportive evidence of improving police community relations is glaringly reflected in the declining rate of allegations of serious police wrongdoing brought before the civilian complaint review board. Consequently under the present status of police community relations as they really are, not as some would like us to believe they are, we find it truly difficult to share the claim that a systemic pattern of police brutality is provoking racial antagonism.

Under the actual set of circumstances, we suggest that this claim is in and of itself a highly inflammatory political contrivance. The only real police brutality, occurring on a routine, wide-scale basis in New York City, is that which is perpetrated against the police. For standing as the counterbalance for those isolated allegations of police brutality, are the alarming number of shootings, stabbings, and other vicious attacks that police officers are daily subjected to.

Should we then call for a congressional hearing into our agonizing dilemma?

Mr. CONYERS. Excuse me, Mr. Caruso. I would like to ask that the subcommittee be in order while the witness is making his testimony and I would like to ask everyone's cooperation in that respect.

Mr. CARUSO. Thank you, Mr. Chairman.

In New York City, there are a multitude of investigative bodies before which a citizen can vent a grievance against the police. As far as the PBA is concerned, the scope of available grievance machinery is far too facilitous and overbearing. No other civil service, none, not even Members of the Congress of the United States, are subject to the kind of intensive scrutiny that police officers are subjected to here in New York City.

For example, a police officer can be brought up on charges in the police department trial room, which proceeding can lead to dismissal from the department; can be tried by the civilian complaint review board; can be indicted by a grand jury; can be made to testify before the State special prosecutor's office; can be brought before the city's department of investigation; and can ultimately suffer the severe consequences of a Federal court judgment imposed

under title 42, United States Code, section 1983, for engaging in an alleged violation of civil rights that abuses police authority.

If all this were not enough, we now have congressional hearings.

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Once again we candidly submit that these proceedings impugn the integrity of the police commissioner, the director of the civilian complaint review board, the special prosecutor, every district attorney in the city, and the heads of all the other investigative agencies that scrutinize police activities. It also shatters the faith and confidence of the people in their system of government.

Also, not to be overlooked, it tends to demoralize the fall guys in this entire episode, the police officers of this city, who must already function in a difficult and hazardous environment.

A congressional hearing here is as about as appropriate as it would have been for the New York City Police Department to become involved in the Abscam affair. We believe that these hearings are an unnecessary, unwarranted intrusion into this city's effective governmental administration, an intrusion that raises doubts about the efficacy of certain Federal intrusions into State and local jurisdiction.

Instead of engaging in polemics, it seems to us that this subcommittee would better serve the taxpayers by exerting a strenuous effort toward delivering to New York City, as well as to all the other major cities in the United States, an adequate level of Federal funding needed to heighten public safety and thereby enhance the quality of life throughout the Nation. Such an effort is currently being begged for by the people of this country, and would be much more consistent with the constitutional mission of insuring domestic tranquility that devolves upon the Congress of the United States.

Moreover, in light of the paltry resources, both human and monetary, with which we have to work, a congressional citation for the superb overall performance consistently turned in by the men and women of the New York City Police Department would seem to be another fitting and proper constitutional action that can be taken at this time.

Thank you, Mr. Chairman, members of the committee.

Mr. CONYERS. You are welcome. I have a question or two for you, an opportunity to be heard. We have to make and keep this a democratic hearing, regardless of what personal views we may have for or in opposition to any statements made by the witness.

I would like to just inquire about the complaints that you may have heard about, the black police officers who have testified here today. Were you present during that testimony?

Mr. CARUSO. Yes; I was.

Mr. CONYERS. Do you have any reaction or suggestions or observations about those complaints that were made before this committee?

Mr. CARUSO. I am not here to pass judgment on what occurred. The fact is that there are two sides to a story and you only heard one side here.

Mr. CONYERS. That is true.

Mr. CARUSO. Some of these cases are being investigated and ultimately a decision will be made one way or another.

Mr. CONYERS. Are some of these officers members of your organization?

Mr. CARUSO. Yes; they are.

Mr. CONYERS. Are you aware of the fact that it has been stated in these hearings that there are no black officers in the Policeman's Benevolent Association?

Mr. CARUSO. I am constantly reminded of that by the Guardians Association.

Mr. CONYERS. Is it accurate?

Mr. CARUSO. It is absolutely accurate. The fact is, I did not draft the constitutional bylaws of the PBA. We do have an electoral process. The fact is that I have done a lot to encourage black police officers to run for office. As a matter of fact, when I ran in 1980 and was successful in ascending to the office of presidency of the PBA, there was a black delegate I had urged to run with me. He refused to run. For personal matters, he refused to run.

The fact is, we need some more representation. I cannot appoint. This is beyond my control.

Mr. CONYERS. Are you sensitive then to the fact that this question of race within the Policeman's Benevolent Association may have a very negative and divisive effect within the ranks of your own organization?

Mr. CARUSO. I am very aware of the fact that we could use more minority representation within the ranks of the PBA. The fact is, I cannot run for office for these people. They are going to have to come forward and get involved.

Mr. CONYERS. Do you have any other views about difficulties that are created by the Policeman's Benevolent Association having this racial schism? In other words, what I am trying to find out is, if this is a matter of deep concern not just you alone, but also for the other top official in the organization. It would seem to me that this would be creating much difficulty within the police organization itself. You have this all-white male leadership, juxtaposed with incredible kinds of traumatic experience that black officers are going through.

They are paying dues. They are supporting officers and the organization. And yet it appears that there is very little that is forthcoming. It seems to me that might create far more constant pressure and schism than anything that could be said in the public.

Mr. CARUSO. I want to assure you that any police officer who has a problem is treated with equal fairness. We do not distinguish black and white or among ethnic groups in any different and separate way. And I do not know how better to express that to you.

Mr. CONYERS. If these matters were brought to your attention, would you as the president feel an obligation to deal with them within the framework of the Policeman's Benevolent Association?

Mr. CARUSO. I have had an ongoing dialog with the Guardians Association. I have attended their meetings. I have expressed my

feelings and they have given me feedback in terms of what their grievances are. And I have kept an open door and tried to extend that to fulfill their obligations and needs. I have had that policy since I stepped in office.

Actually, I do not know at this point what relevancy this has to police brutality. I am here today specifically to address that issue. Not the internal politics of the organization.

Mr. CONYERS. What we have found out, Mr. President, is that the police brutality frequently comes from the police directed against black policemen.

Mr. CARUSO. I do not know how you draw that conclusion, Mr. Chairman. I do not know how you draw that conclusion, based upon anything that has been said here today' because you have only heard one side of the story and these are isolated incidents. They are aberrational as opposed to being systemic, condoned acts of police brutality.

Mr. CONYERS. I do not know if they become not systemic because you state they are not systemic. I am not sure if I am drawing any conclusions.

Mr. CARUSO. Draw conclusions, Mr. Chairman, based on fact.

Mr. CONYERS. I can tell you this, though, that from what I have heard, there appears to be racial discrimination not only by the police department in the black community, but there appears to be racial discrimination within the police department itself. And I am suggesting to you, without coming to any conclusions about the matter, because this is the first I have heard of it, is that this should present an opportunity for the PBA and yourself, who has heard them, too, to help us sort them out. I would like to get the other side of the story. And I would like to get your version of what the facts are in these matters. And we would be very pleased to incorporate them in the record. And I would like to find out what you think about it and what your ultimate conclusion would happen to be. And I am, as a matter of fact, inviting you to do that.

I do not know the details of the matter. I was not there when they occurred and I do not have any control over what the total factual picture is going to be. But that is what our job is.

Mr. CARUSO. Mr. Chairman, you misconstrue my function. I represent all police officers. I do not adjudicate matters. That is what the police department and the courts, grand juries, whatever mode of approach is appropriate. Consequently, I do not make judgments as to who is right and who is wrong.

Mr. CONYERS. You represent the police officers of certain rank that are members.

Mr. CARUSO. That is correct.

Mr. CONYERS. Does any responsibility come with that?

Mr. CARUSO. We provide them with representation at all levels, yes.

Mr. CONYERS. That seems to me to be an important part of your contribution to these hearings. Maybe you will never come to any adjudication or conclusion about anything.

Mr. CARUSO. It is not my function.

Mr. CONYERS. But I would like to invite you to participate with us in seeking the truth and bringing whatever it is that your orga-

nization can bring. They are paying dues for some reason and they certainly need help.

Mr. CARUSO. They are provided with all the benefits of membership.

Mr. CONYERS. Let me ask you finally then, do you believe that, or are you in a position to answer, whether or not you think that the members of the police force who made certain complaints of an internal nature are being provided with all the benefits of membership in PBA?

Mr. CARUSO. Yes, absolutely.

Mr. CONYERS. You do?

Mr. CARUSO. Sure.

Mr. CONYERS. Have you had a chance to investigate that?

Mr. CARUSO. Investigate what?

Mr. CONYERS. The benefits of membership that you are absolutely certain that they have been afforded.

Mr. CARUSO. There is no member who is denied the benefit of representation from the PBA in any matter that is pertinent and relevant to his or her performance.

Mr. CONYERS. That is not what I asked you. I asked you if you had a chance to investigate that. Not to tell me what.

Mr. CARUSO. Investigate what, Mr. Chairman. I do not know what you are referring to specifically.

Mr. CONYERS. Investigate the allegations, the promise that you say that they are getting the fullest benefit from their membership.

Mr. CARUSO. I can assure you of that.

Mr. CONYERS. Let me just make it clear to you because you keep saying you do not understand.

Mr. CARUSO. That is ongoing policy. It is a standing policy.

Mr. CONYERS. But you did not investigate it.

Mr. CARUSO. Investigate what specifically? The fact that they are not getting representation?

Mr. CONYERS. Apparently this question is either too complex or I am not articulating. I will tell you what, suppose I tell you you will not have to respond to that question.

Mr. CARUSO. Fine.

Mr. CONYERS. Mr. Rangel, do you have any questions?

Mr. RANGEL. Thank you, Mr. Chairman. Mr. Caruso, when did you first find out that there were going to be congressional hearings on this subject? I mean how many weeks before the hearings?

Mr. CARUSO. I do not recall.

Mr. RANGEL. You probably read about it.

Mr. CARUSO. Read about it in the newspapers, yes.

Mr. RANGEL. Did you have any idea who the witnesses were going to be at all?

Mr. CARUSO. Initially, no.

Mr. RANGEL. Did you form any opinion at that time as to whether or not there should be hearings?

Mr. CARUSO. Sure; I was puzzled by it and kind of affronted by it, because I know for a fact that there is no condoned systemic police brutality in the city of New York.

Mr. RANGEL. Why is it that you would not welcome the opportunity to have that proved at congressional hearings?

Mr. CARUSO. Because I do not see where this is a congressional function. I believe that we have more than enough scrutiny of the police department, more channels for people to vent their grievance, against any other civil servant, be it at the Federal, State, or local level.

Mr. RANGEL. Is it not true as a police officer with your broad experience that every time the question comes up involving alleged police brutality in the courts, that it centers around a constitutional question, not a regulation and not a local matter? Is not every court decision that affects the conduct of police officers, is that not a constitutional question?

Mr. CARUSO. In some instances they are constitutional questions, but we are dealing with local and State law.

Mr. RANGEL. I am saying that when they say that a person's civil rights or a person has been brutalized, all the decisions, the *Mapp* decision, have they not involved a person's constitutional rights?

Mr. CARUSO. Well, we do have a U.S. Justice Department and we do have a Title 42 Code 1983.

Mr. RANGEL. Exactly.

Mr. CARUSO. All these grievances are already available. This machinery is in place.

Mr. RANGEL. If you recognize that the Federal court has the right and obligations to make inquiries as to whether or not defendants' or arrested peoples' constitutional rights were violated, why would you resist a Congress that has the responsibility to enact those laws, if necessary, to hold hearings on it, to determine whether or not it is necessary?

Mr. CARUSO. You know why, Mr. Rangel, because there is no basis for it here in New York City.

Mr. RANGEL. All I am saying is that I think you would agree with me that certain people reached conclusions before the hearings were held. They did not have reason to reach those conclusions. Perhaps you feel the obligation to do this because you are elected by the police officers, but I think you would have to agree with me that it is hard to understand why people would resist having the hearings before they hear the conclusions of those hearings.

Every time the question of congressional hearings come up, and allegations of the police abusing power, you go back to the fact that it is the policeman that is abused. Now, I am not going to deny that a lot of policemen have been abused and by the worst elements in our community, by thugs, by felons, by gangsters, by insensitive people that rob, rape, and steal. I do not take issue with that.

Why is it that you always bring this element up, when people are saying that sworn police officers are conducting themselves in the same manner? Why would you bring that analogy?

Mr. CARUSO. Very simply because, Mr. Rangel, we must demonstrate and highlight the fact that we are living in a very violent society. The fact is that we have 8 million people in the city of New York. There are 2 million guns, illegal handguns, alone. And that is a modest estimation in my view. That are adrift in this society. And police officers have to come to grips with these weapons, with these violent archtypes out there.

And the fact is that our job is very difficult, very complex, and very hazardous. And we must demonstrate that sometimes police force is necessary in order to effect arrests. Consequently, it is not always easy to take a person into custody.

Mr. RANGEL. No one is arguing that, but do you not believe that there should be a higher standard of conduct by New York City policemen than by thugs?

Mr. CARUSO. I think we have the highest standard of conduct in the nation. The New York City police officer conducts himself with an admirable degree of restraint. I think that is demonstrated each and every day on the streets of the city of New York.

Mr. RANGEL. Let me try it again. When it was publicized that there would be congressional hearings, you held a press conference, and you also probably paid for commercials on the radio, and—

Mr. CARUSO. And on television, too.

Mr. RANGEL. And on television. And you indicated that instead of having congressional investigations as to wrongful conduct on the part of policemen, that there should be congressional investigation as to wrongful conduct on the part of thugs. Why do you mix the two?

Mr. CARUSO. Because I think you people get your priorities mixed up, too. I think that what you should be doing is getting us more Federal funding to hire more police officers. Mr. Conyers, in your own city, Detroit, you have 400 police officers laid off. The crime rate has soared, so many crimes. And a lot of those police officers are minorities, black police officers. They could use their jobs back. The people could use the public safety that is needed. That is where I think you people have your priorities screwed up.

Mr. RANGEL. And so until you see more Federal assistance as it relates to dealing with the control of crime, then you believe the conduct of the police officer should not be a proper subject.

Mr. CARUSO. The conduct of the New York City police officer is outstanding. The record speaks for itself. There is no justification, no basis for a Federal investigation into our conduct and behavior. Whatever you call police brutality is aberrational and isolated, and I submit that to you, as have other people here. Every editorial opinion in this city has militated toward that opinion, that the police of this city have done an outstanding job. That is all I have to say.

Mr. CONYERS. I want the record to show that Mr. Caruso left the witness table before Congressman Owens could put some questions to him. Apparently his temper was beginning to grow in the course of the questioning. And I apologize. I will recognize Mr. Owens to put his questions on the record anyway.

Mr. OWENS. Mr. Chairman, it is important to note that several questions I would have asked I would like to have on the record.

One was, Mr. Caruso said that they represent all police officers who are in trouble. And that is a direct contradiction of one of the witnesses earlier. I think it was Mr. Phillip Francis who said that he had asked for help from the PBA and he was told they were representing the other guy. I may be wrong on the actual person, but one witness this morning said he asked for help from the PBA and they said, we are representing the other guy.

In the case of the young lady, the police officer who was struck in the mouth by another police officer, I suppose the PBA was representing both sides on that, if Mr. Caruso's testimony is correct.

I also wanted to ask Mr. Caruso how many of the officers of his organization reside outside of the city of New York. All those of male, white officers, how many of them reside outside of the city of New York? I also wanted to ask what was his overall budget, since he made a point of saying that Congress is not scrutinized as much as his police officers are. Every expenditure made by any Congressman, any voucher is made public. I would like to know what his overall budget is for the PBA, the dues that are paid by all members, including the black members? What is the overall budget? What is the percentage for public relations? How much is spent on advertising for radio and television?

If all objective observers have said that the police are doing a great job, why must such a great percentage of the budget be spent on public relations advertising what a great job the police are doing?

I also want to know how the rest of the money is spent, what percentage of the money is spent for community services, services which may be related to crime, juvenile delinquency prevention, et cetera? A large part of the money is collected by these officers who live outside the city. What do they do in terms of services for the city? And have they ever spent a dime publicizing the fact that there is a civilian review board in existence and that people should use that? Do they publicize easier ways for people to make use of those channels, all of those channels which exist to scrutinize the police?

Finally, I want to know that he agreed at the time that the Knapp Commission was created that there was a systemic problem of police corruption and the Knapp Commission did conclude there was a systemic problem of police corruption. Editorial opinion in the city at that time agreed. But for years there had been an insistence by editorial opinion, as well as PBA, that there was no corruption, that we have one of the finest, cleanest police departments in the country. It was the Knapp Commission which determined and opened everybody's eyes and continually there have been investigations after that, following that, to make sure that corruption never settles in as a systemic problem again.

I submit that we need the same kind of continual review, the same kind of continual scrutiny from outside of the police department in order to guarantee that police brutality does not remain a systemic problem as it is now. Thank you.

Mr. CONYERS. Thank you very much. And I am glad we got your questions on the record.

Our next witnesses, from the Concerned Minorities in Criminal Justice, Attorney Alton Maddox, Jr., Michael Warren, and Clayton Jones. Would you come forward please? Thank you for your patience and welcome to the subcommittee hearings.

**TESTIMONY OF ALTON MADDOX, JR., ATTORNEY; MICHAEL WARREN, CLAYTON JONES, ATTORNEY, CONCERNED MINORITIES IN CRIMINAL JUSTICE**

Mr. JONES. Mr. Chairman, my name is Louis Clayton Jones. I am a lawyer admitted to practice in the State of New York. My office was retained by the family of Michael J. Stewart, following his arrest in a New York City subway station on September 15, 1983.

In previous testimony before this committee, I presented the facts surrounding the arrest and subsequent admission of a comatose Michael Stewart to Bellevue Hospital. On September 28, 1983, Michael J. Stewart died at Bellevue Hospital, from injuries received while in the custody of the New York City Transit Police.

In my previous testimony September 19, 1983, 4 days after the arrest of Mr. Stewart, I disputed Mayor Koch's contention that police brutality in this city is nonsystemic. On the basis of a 4-day inquiry as to the circumstances surrounding the death of Michael Stewart, I characterized the mayor's assertion as disingenuous, and argued the proposition that in the city of New York, police brutality is indeed systemic. And that it is systemically condoned and covered up by the agencies of city government.

I and my associate, Michael W. Warren, and Alton H. Maddox, are here today to document the truth of that proposition.

In the testimony to follow, my associates will introduce you to the anatomy of a coverup New York style. You will be introduced to a system that is so effective that in the past 53 years only one police officer in the city of New York has been convicted of murder of a civilian.

We shall lead you down a well-worn path of lies, deception, collusion, delay, calculated ineptitude, intimidation, attempted destruction of evidence, a bogus complaint, an incomplete, inaccurate, and deceptive autopsy report, and a grand jury investigation most charitably described as a charade. A path that leads inexorably to a failure to indict.

The evidence to be presented here has been made available to the mayor through the office of the corporation counsel and to the Governor in the form of a petition to end the current charade, and to impanel a special grand jury or to appoint a Moreland-Ack Commission to investigate this system under which a police officer has an implied license to kill civilians with impunity.

We have made a copy of that petition available to this committee. That petition documents the following allegations:

One, members of the New York City police department lied to the family of Michael J. Stewart concerning the manner of his death.

Two, the complaint against Michael J. Stewart deliberately misstated the charges against the defendant.

Three, Bellevue Hospital administrators lied to the Stewart family concerning the condition of Michael J. Stewart and obstructed attempts of the family to gain access to the medical records.

Four, representatives of the transit department, a department that insists even now that Michael J. Stewart did not die from injuries inflicted by transit policemen, were present at every stage of

the autopsy and consulted with each other and with the medical examiner before the release of the initial autopsy report.

Five, the initial autopsy report found no physical injuries as cause of death, was deliberately calculated to deceive the public.

Six, the medical examiner—in secretly removing the eyes of Michael J. Stewart and placing them in a formaline solution, attempted to destroy what at that time was the only evidence of homicide.

Seven, the medical examiner waited 45 days to release the final autopsy report.

Eight, in the final autopsy report, the medical examiner deliberately altered the sequence of events leading to the death of Michael Stewart, deliberately left out evidence crucial to a finding of homicide, and deliberately failed to state the manner of time.

Nine, the district attorney of New York County, Mr. Morgenthau, brought the case before a grand jury only after an invasion of his office by a group of outraged citizens, consisting of clergymen, politicians, lawyers, representatives of the NAACP, the Black United Front, and others.

Ten, the district attorney in the exercise of his discretion, refuses to permit the only eyewitnesses to the initial beating of Michael Stewart, to see the notes taken by the New York City Transit Department detectives and assistant district attorneys and is forcing those eyewitnesses to appear before a grand jury without reviewing those notes, the contents of which they have never read.

The evidence to be presented here has been made available to the mayor. I think I said that before.

Now, let me just suggest that the mayor nor the Governor has responded—neither the mayor nor the Governor has responded directly to our concern that a miscarriage of justice is imminent in the case of Michael J. Stewart. I might say here that we did not expect a reply from the mayor, who views all black people as anti-Semitic, nor from a Governor who scoffs at black demands for jobs on the theory that they are more interested in gaining access to the welfare rolls.

To the non-New Yorker, it might appear bizarre that Mr. Cuomo would not send a letter acknowledging receipt of our letter to a group of lawyers expressing concern about an imminent miscarriage of justice. Mario Cuomo does not see three lawyers, Mr. Chairman. In his narrow and provincial world, he sees only welfare recipients. Despite this speaker's Phi Beta Kappa key, studies at the Sorbonne and Bordeaux, graduation from Yale Law School in 1961, and membership in the bars of Kentucky and New York, Mario Cuomo sees only a welfare recipient.

The public view of both Mr. Cuomo and Mr. Koch as stated to the press is that the usual processes of the criminal justice system are being followed and that justice will prevail. That same view was most recently expressed by Mr. Gottstein of the office of the corporation counsel. Mr. Schwartz, who then proceeded to castigate the lawyers for having the temerity to suggest that the usual processes of justice as applied in cases of police brutality in this city are irredeemably corrupt.

As Mr. Gottstein waxed eloquent in the expression of his outrage and indignation over our challenging the integrity of this unjust system, and indeed as I listened to the testimony of Mr. Koch and

Mr. McGuire this morning and Mr. Caruso this afternoon, I was reminded of the passage in Collin Morris' book, "Unyoung, Uncolored and Unpoor," in which he remarks concerning that group, the old, the white and the wealthy, and I quote, "They are so decadent as to make ancient Byzantium seem like the new Jerusalem. Yet so decent that as they club you to death, you feel impelled to apologize for spilling blood on their carpet."

It is the blood of Michael Stewart that soils the carpet of this city. He cannot apologize. We shall not apologize. We shall persist in our demand that the city and State of New York clean its own carpet.

Mr. Warren will provide the documentation on the role of the administration of Bellevue Hospital and the office of the medical examiner in this matter. He will be followed by Mr. Maddox, who will provide documentation on the role of the police and prosecutor in the coverup of the beating of Michael Stewart.

We all understand the constraints of time and we shall be as brief as we possibly can.

Mr. CONYERS. Thank you very much.

I want to reinforce my appreciation of your brevity in this matter. We are running into a little problem with a number of witnesses, so we would appreciate your keeping it as concise as possible.

#### TESTIMONY OF MICHAEL WARREN

Mr. WARREN. Mr. Chairman, my presentation will be twofold. The first part will relate to the Bellevue conspiratorial connection and the second part will relate to the conspiratorial involvement of the medical examiner's office exclusively in the charge of Dr. Elliott Gross.

With respect to the Bellevue connection, upon Michael Stewart's arrival at Bellevue Hospital, his hands were cuffed, feet shackled, and legs taped. He was lying face down on his stretcher in a coma, face and hands blue, and his breathing was stopped. Cuts, contusions, and bruises were observed about the face, neck, eyes, arms, head, and left flank.

CPR was administered to restore breathing. Shortly following the arrival of Stewart, a police captain entered the emergency room and instructed the police officers to speak to no one concerning the circumstances of Michael Stewart's case. Upon resuscitation, Stewart was removed to the intensive care unit on the 16th floor of Bellevue in which AIDS victims were cared for.

The first incidence of coverup by Bellevue Hospital stems from a misrepresentation made to the Stewart family relatives as to Stewart's condition. The family learned later through a family retained doctor, Robert L. Wolf, that Bellevue's characterization of Stewart's condition was a falsehood. When the parents of Michael Stewart arrived at Bellevue, they were placed in a family room, and told that their son was in critical condition, but that there was no sign of brain damage.

Upon obtaining the services of Dr. Robert L. Wolf, however, the Stewart family informed the administration at Bellevue of their wish that Dr. Wolf inspect the charts and examine their son.

The second instance of Bellevue's explicit role in the coverup relates to their treatment of Dr. Wolf. The family was advised by a Bellevue administrator that Dr. Wolf should come to the hospital and page Dr. Bill Cole who would escort Dr. Wolf to Stewart's bedside, and that medical records pertaining to the case would be made available for inspection to him.

When Dr. Wolf arrived at the downstairs administrative office at Bellevue and attempted to page Dr. Cole, he was instructed to remain in the hallway pending the making of certain telephone calls. He was then informed, after a 15-minute wait, that he could not see his patient because he had failed to bring with him his license to practice medicine in the State of New York.

Despite Dr. Wolf's offers of other proof of his credentials, his request to speak with Dr. Cole, he was required to return to his office and produce his license, which was encased in a frame on his office wall.

Two hours after being deliberately misled and victimized by lies, Dr. Wolf was permitted to see his patient.

It was only after Dr. Wolf's examination of the patient and the records that the parents of Michael J. Stewart learned at 8:30 p.m., September 15, 1983, that Stewart's brain was massively damaged and that there was almost no hope of survival, and if any survival, he would be little more than a vegetable.

The conspiratorial activities of Bellevue administrators are further complemented by an atmosphere of racism and utter disdain for black and Hispanic patients. It is a common practice, for example, at Bellevue, to refer to black and Hispanic patients as "sposhes," an acronym for subhuman pieces of ———. On the other hand, white patients are recognized as citizens. The distinction between each category offers a logical but appalling explanation of the disparity in treatment between whites and nonwhite patients at Bellevue.

While at Bellevue, Michael J. Stewart was placed in intensive care unit outside the hospital prison ward, solely for the reason that facilities in the prison ward were insufficient to provide proper treatment to the patient. At the time of his death he was in the intensive care unit, but constructively he was in the hospital prison ward. However, he was at all times, up to the following Monday, observed on a 24-hour basis by a transit policeman.

Michael Stewart remained a patient at Bellevue from September 15 to September 28, 1983, when he died. He never regained consciousness.

The third instance of Bellevue's role in the coverup is evident in the refusal to make available to the Stewart family attorneys Stewart's medical records which were required to be produced by a criminal court judge through a subpoena.

Although the attorneys representing Stewart in a criminal action obtained subpoena signed by a judge, requiring the production of medical records, Bellevue, despite the subpoena, refused to release the records to the attorneys. Through the persistence of the Stewart's attorneys, the records were ultimately produced.

Following his death, Stewart's body was immediately removed to the office of the chief medical examiner of the city of New York for autopsy. The chief medical examiner, Dr. Elliott M. Gross, whose

office is extended a high level of public trust played even a more appalling and dastardly role as a coconspirator in the coverup.

I point out to the audience for purposes of education the following procedure regarding the analysis of the medical examiner's role in the coverup. There is a presentation that exists in two parts. The first part specifically relates in order to revelations that were made by two anonymous nurses at Bellevue, concerning the condition of Michael Stewart.

Mr. CONYERS. Can we bring that into the testimony? We will not be able to show it this afternoon.

Mr. WARREN. Mr. Chairman, I think it is especially significant. It will certainly serve some benefit to this body and also to the audience.

It is not very long at all. It is not more than 10 minutes in total.

Mr. CONYERS. I am afraid we are going to end up with the building being closed and we will have witnesses that have not gone on at all. I do not want to preclude it from not coming into the record. I would be very happy to have it come into the record.

Mr. WARREN. Mr. Chairman, I think it is extremely significant that the film presentation be made. And as I indicated, it is not long at all. But it certainly highlights the evidence of police brutality that exists on a systematic level in high levels of the administration in New York City. We would not be long.

Mr. CONYERS. I would ask for your cooperation and I can see if there is no way that I can control the witnesses' time then we are going to end up excluding other witnesses from any presentation whatsoever. I am not trying to be hostile to seeing the film. I want you to understand that, counselor.

Mr. JONES. We understand exactly what you are saying, Mr. Chairman, and we would do nothing to challenge the authority of this committee to determine the time.

Mr. CONYERS. Why do we not see if we can put on witnesses in groups of three, in panels, and then if we can get it in before it is over. We may be able to work it out that way.

Mr. JONES. Mr. Chairman, I would say that the importance of the film is that it tends to document the systematic character of police brutality in this city. And I believe that we are the only witnesses that you are going to have today who can show from experience that police brutality in the city of New York is a question of system and not so much a question of isolated incidents.

We can show you through this film and our testimony and the documentation before you that the entire city apparatus comes together to coverup and to prevent indictments in cases of police brutality in this city, and we will show why in the last 53 years there has been only one conviction of a police officer.

I do not know whether the other people who are here to testify have evidence that will corroborate what we have to say here or that will in fact duplicate what we have to say, but I would seriously doubt it.

For the first time in the history of this city, that I know of, a black person, whose family was victimized by the police, has had their own medical examiners to challenge the findings of the medical examiner. It is at the point of the medical examiner that all of the evidence in this case is destroyed. It is at the point of the medi-

cal examiner where incomplete, inaccurate, and misleading reports are made which lead to no indictments. And it is important that you have this information.

Mr. CONYERS. What I would like to do is let the television presentation be made and that that would conclude the testimony. You can submit the remainder of any testimony you might have.

#### TESTIMONY OF ATTORNEY ALTON MADDOX

Mr. MADDOX. Mr. Chairman, I would just like to point out one thing. I previously appeared before this committee today as counsel to the Black United Front. At that particular time, you asked did I have any testimony to give. I surely could have given you a lot of testimony at that time and I believe I would have been accorded at least 10 or 15 minutes to do so.

But because of my concern and your concern, our mutual concerns for time, I yielded my time at that time, hoping that we would be able to give you a full scale report now. Sir, I would like to remind you that or I would like to suggest that we would be extremely brief. That this is not inconsistent at all. That considering the fact that I am very much mindful of time and that I yield my time earlier, so that we could make this presentation now. It is extremely important because as we have indicated, there is a crucial problem of lack of prosecution in these cases and this has to be presented to this committee and the people in our community must know this.

We are in a position to do that at this very moment.

Mr. CONYERS. All right. Then I am ruling that you can proceed.

Mr. WARREN. Mr. Chairman, we have a film presentation consisting of representation based on eyewitness accounts of two nurses at Bellevue Hospital who observed the injuries of Michael Stewart. We have a deceptive press statement, press release on the Gross autopsy findings from Dr. Gross, and we have an appalling representation by Ed Silver of the transit police who indicates that there are no problems in New York.

The second part will relate to the second autopsy press release and recitations by two family-retained doctors.

[Film presentation.]

Mr. WARREN. I will submit, just to educate the audience, that the final presentation was by the family-retained doctors who contradicted the report of Dr. Gross. And I would further submit that the final autopsy report fails to even make mention of various parts of Mr. Stewart's neck. Namely, it failed to mention, in his final report, microscopic observations of tissue specimens from the portion of the brain immediately adjacent to the spinal cord and the artery that supplies the spinal cord with blood. And it also failed to describe the interior surface of the neck, which is the primary cause of the concern of the entire post mortem examination, an area where multiple skin hemorrhages, fields of bleeding, and areas that suffer applied from it.

Mr. CONYERS. Was that in absence from the coroner's autopsy?

Mr. WARREN. Absolutely. That was clearly absent from the reported final autopsy protocol itself. We have clear misrepresentation as well as omissions that served to confuse.

Mr. CONYERS. Thank you.

Mr. MADDOX. Mr. Chairman, members of this Subcommittee on Criminal Justice. If Michael Stewart had been a caucasian, who had been savagely beaten on September 15, 1983, by 11 persons of African descent, those persons would have been the recipients of swift, certain, and punitive justice.

Michael Stewart was not caucasian, and his 11 assailants are not of African descent. Thus, justice has been neither swift, certain nor punitive. As a matter of fact, justice at this very moment is lying in a coma at the city morgue. In New York the police can literally get away with murder. None of the five district attorneys in this city have the inclination to prosecute a police officer for murdering a person of African descent.

These district attorneys wrongfully and knowingly abuse their authority to stamp out any claim of police brutality and to discredit the claimant from making the claim. This official indifference exists in a city rampant with police crimes against its residents and visitors.

The Michael Stewart case provides a graphic anatomy of the institutionalized techniques and procedures employed by municipal officials and law enforcement personnel to cover up police crimes against civilians. In New York City only the police and their confederates have the jurisdiction to investigate police crimes against civilians. According to the city charter, it is unlawful for any municipal official, including the mayor, to investigate a claim of police brutality.

This Constitution in any other country would amount to a police state. A person who has been fatally or badly injured initially goes through a network of municipal institutions, including hospitals, and in some cases the medical examiner's office, before he or she is released from police custody. All of these institutions have one aim, one goal, and one destiny, to exonerate the police from any criminal liability. The district attorneys normally use these false, misleading and doctored reports to obtain no true bills from their worn out rubber stamps, the grand juries.

Additionally, uses these caricatures to extricate itself of any civil liability. Although Michael Stewart was fatally beaten on September 15, 1983, and died on September 28, 1983, the Manhattan district attorney turned his head and closed his eyes and ears to this case until the transit police and the medical examiner could manufacture a tale which would titillate the virtually all-white and middle-aged grand jury. Even then this laughing part-time grand jury was impaneled only after representatives from the Afro-American clergy, the National Black United Front, the Ad Hoc Committee Against Racially Motivated Police Violence, and the NAACP, and public officials, namely State Senator Adam Jefferson, Assemblyman Roger Green, city councilperson Pickett and Hon. Thomas Fortune visited the office of the Manhattan district attorney demanding a grand jury investigation. The district attorney showed contempt for this group and their cause by failing to even greet them.

Initially the transit police claimed ignorance about Michael's injury. Later the police announced that Michael had collapsed while in police custody. This bizarre explanation occurred while

Michael was lying in an irreversible coma at Bellevue with bruises, cuts, contusions, and lacerations populating every part of his body.

Although a medical examiner is supposed to be an independent medical investigator, Dr. Gross has opted to be a mindless parrot of the New York Transit Police Department. He has trivialized the wounds found all over Michael's body and is mouthing the police's preposterous version that Michael simply collapsed while in police custody.

On November 22, Dr. Gross also pretended in a sworn affidavit submitted to Justice Andrew Tyler of the Manhattan Supreme Court, that he was without any personal or hearsay knowledge or information which would show that Michael suffered any cuts or bruise while he was in police custody. The district attorney will present this obviously absurd and perjurious testimony of Dr. Gross to the grand jury.

In addition, the district attorney will further taint the grand jury process by showing to that rubber stamp Michael's eyes which have now been bleached by Dr. Gross to wipe out the red spots. These red spots alone would have proved that the police strangled Michael to death. On the other hand, the district attorney has wrongfully precluded persons who witnesses some of the beating from giving grand jury testimony. Obviously, the district attorney wants to continue to boast that he has never indicted a police officer for murdering a civilian.

The case against the 11 white transit vigilantes is now dead and all investigatory records will be kept from public inspection and public criticism. Although this result is barbaric and regrettable, it is unprecedented in the Rotten Apple.

In 1734 a man of this Apple was charged with beating his slave to death. A jury found that the slave's death was the "work of God."

In light of Dr. Gross' bizarre and indifferent findings, Gods in 1982 must still be murdering persons of African descent who suffer fatal injuries while in police custody. There is no justice in New York for a person of color. Michael Stewart has been denied his civil rights. The titular heads of local and State governments are amused over our efforts to obtain simple justice in this case. The principal culprits include persons who occupy positions in the higher echelon of local government. Michael was the victim of an official conspiracy. Because local officials have conspired to violate the civil rights of Michael Stewart, it is only appropriate that this subcommittee demand that the Federal Government assume jurisdiction under title 18, United States Code, section 242 to investigate the death of Michael Stewart, including the conduct of top local officials, leaving no stones unturned and no culprit unpunished.

Mr. CONYERS. This case is one of the most flagrant violations of everything that this committee has come to hear in the course of the several times it has been in New York and I want to commend you, Alton Maddox, as well as Clayton Jones, and Michael Warren, for the perseverance that you put into determination that this case would not be whitewashed or pushed on the back shelf. You have kept it forward and I think that your request that there be no Federal intervention under title 18 is appropriate.

I think that this committee will be able, at least in our individual capacities, to join you in that request before the civil rights division. I would suggest that you continue to work together toward that end.

I would also like to recognize my colleague from the 11th Congressional District, Edolphus Towns; who has now joined the panel. Welcome, Edolphus. He was out of town and just got back in.

Do any of my congressional colleagues have any questions or observations of the attorneys that are now at the witness table?

I want to thank you again. Keep up the good work.

Mr. MADDOX. Thank you.

Mr. CONYERS. We are now moving forward, the head of the Organization of Afro-American Clergy, the Reverend Doctor Calvin O. Butts and Rev. Ben Chavis. And we would also like to invite to join them at the witness table, Rev. Samuel Austin of Brown Memorial Baptist Church in Brooklyn, and his daughter, Ms. Austin. Can all of them join at the table?

Dr. Butts, I know that you have been working on these matters not only before the hearings, but even in between the hearings, because we get the reports of your activities of going out into many, various parts of the community to gather the information about how police violence affects everybody in the city, and I wanted to commend you for that.

**TESTIMONY OF REV. CALVIN O. BUTTS, ORGANIZATION OF AFRO-AMERICAN CLERGY; REV. BEN CHAVIS, UNITED CHURCH OF CHRIST, COMMISSION FOR RACIAL INJUSTICE; REV. SAMUEL AUSTIN, BROWN MEMORIAL BAPTIST CHURCH AND DAUGHTER; AND MARK ANTHONY CLARK**

Rev. BUTTS. Thank you, Mr. Conyers. And as has already been stated, let me again note my and the committee's sincere appreciation for this subcommittee's coming here to the city of New York. I want to say to you that I have been joined at the table by Attorney C. Vernon Mason and Attorney Laura Blackburn, who are here to support whatever statements I will make. And also by Mr. Mark Anthony Clark, who has also been a victim recently of police brutality.

I just want to make a few brief statements, and I promise to be very, very brief. One is that your committee continues to come to this city to investigate police brutality. And it has always been interesting to us that you have always been opposed by our mayor and the PBA and the police department officials, who continue to say the committee has no credibility and it has no standing. Yet I want to say to you that I really do appreciate your coming because, as has been noted, we have a black police commissioner now, we are getting more black commanding officers at precincts. I have been invited to speak at rollcalls. I have been invited to speak at colleges.

And something else has happened. I believe, and so do the other members of our committee, that police violence is racially motivated and that it has a devastating effect on African-American and other minority communities. However, since the hearings have been here and now they have returned, we have found that a large

number of whites in the city are coming forward to say that they, too, are being brutalized by the police.

Now we predicted this. We said, just like drugs, which started in the African-American community, and nobody paid any attention to it, then it spread and it got everybody. Now they are raising the devil all over the place. What is happening is that police brutality concentrated in our community is beginning to spread, and it is beginning to hit TV producers, beginning to hit college professors, and white college students. And I predict if it was not for your committee coming here and focusing attention on this very serious problem, police authority would have gone unchecked in the city of New York, and we would have had a bonafide police State and a tyrannical regime of one Ed Koch, who is now on his way out.

Further, I want to thank you for obtaining for us immunity for the Guardians. This was very crucial. I want to say this on behalf of my brothers and sisters who are active police officers. I hope that your committee will from this point on keep very close or maintain close scrutiny of the police department, especially where our brothers and sisters are concerned, because they will face some serious reprisals. I think it is a very, very brave step they have taken by giving their testimony.

I also want to take this time to commend the Community Relations Service of the Justice Department for the very fine work that they have done in support of these hearings in helping to bring these issues to the forefront.

Since you have been here, we have had all kinds of recommendations on how to change the civilian complaint review board. We have had the appointment, as I have said, of the police commissioner. And it is looking like things are really going to change. So keep on staying with us, so that we can make sure that we bring about the full change that Judge Crockett spoke of that we really need in order to make things work.

One final thing, Mr. Koch referred to the fact that none of our political or elected officials made reference to this issue. I have my differences with political officials from time to time, but the people he [Koch] was pointing to, and I want everybody to hear this clearly because I think they will understand what I am saying, are my brothers and sisters. And I will allow nobody who is reeking havoc on my family to speak evil about my family.

These men and women, when we went to Washington, stood with us. Went into your office with us. And have backed us from that point on. This man, in making that statement, continues to try to polarize even within my own family, and I think that everyone ought to realize that if there is any time when we are sticking together to make sure an evil is removed from the city of New York, an evil that affects all people, by the way, this is one time. And the mayor will not divide us. He will not split us. Nobody wants his office of the people who went down there. Somebody will get it though. And I just want to put that on the record.

Since the last time we met, there have been incidents of police brutality that are shocking and revealing, and I wish that two of the persons here would speak to them. One is the Reverend Dr. Samuel Austin, who is the pastor of Brown Memorial Baptist Church in Brooklyn, one of our prominent churches, and his

daughter; and the other one is Brother Mark Anthony Clark. And begging your indulgence, I wish that they could speak now.

Mr. CONYERS. By all means.

#### TESTIMONY OF MARK ANTHONY CLARK

Mr. CLARK. I would like to say hello and thank you very much for coming, and I am very grateful that I am given this opportunity to speak.

Two days ago—I would like to say also that the reason why I am here is because a transit police officer threatened my life if I was to bring this forward. He told me that he had my address and that he would find me and he would take care of his justice in his way. His name is Dalton. I did not get a chance to see his badge number for at the time I had my contacts removed and the way that the badges of the police officers in the city are made, they reflect the same color and it is kind of hard to see, period. That is a problem also.

About 11:30, I was on my way home from Brooklyn to Harlem, and the officer stepped on the train. I believe it was Atlantic Avenue. And he looked at me, had his foot up on the chair. I noticed he had his foot up on the chair, but he told somebody to put their foot down. It struck me kind of strange. I did not look at him in a threatening way of any sort.

So he looked at me again. Then he was on the side of me. He was holding his gun. That struck me as being a little strange because an armed man with a gun, you are supposed to look at him to protect yourself.

He left the train car and when the train pulled into West Fourth, approximately 9 or 10 other white officers was with him, and they asked me to get off the train and I asked them what was happening. They just told me to get off the train.

At that point they took my bag from me and asked me if I had any ID, which my wallet was in my bag. I said it was in my bag and they said, you have no ID. So I pointed to my bag and they slammed me against the wall and said to me, "Do not reach for anything." At that point they removed me and took me to this little room upstairs on West Fourth Street where there was broken glass. I thought they were taking me to a precinct. But it was not anything of that nature.

They took me and they slammed me down before they handcuffed me and then picked me up again, slammed me against the wall and handcuffed me, sat me down again, smacked me, continued to frisk me while I was sitting down. Made me stand up several more times as they smacked me. At this point there was five white officers accompanying him. When they went through my wallet and found out I was a student of John Jay College of city of University here in my New York, the tempo started to change. They became a little more lenient to me asking him what was wrong and why were they doing that to me.

At one point he made some type of slur about how he had a 007 knife and how he would plant it on me, and if they were not there, how he would have killed me. This whole time I was copping a hard plea. I saw no witnesses at that time, that I would say, well, if

something would happen to me, my family or anybody else would have known about it.

On the train, there was three people on the train with me but they were not allowed to get off the train, because when they saw what was happening, they were trying to give a little bit of assistance. I do not know whatever became of them.

He backed down from his threats at one point and tried to be friendly toward me. He told me he was going to let me go, but he was going to give me a summons. But if I was to pursue the matter, that he would find me because he had my address, like I said before, and that he would take justice in his own hands. He kept repeating how crazy he was, but in order for him to think that I was not going to tell, he must have thought I was much crazier than he was.

Mr. CONYERS. Also much more courageous, than he will ever be.

I really have to take my hat off to you for coming forward after a threat of death from a police officer as you reported it. I think we are going to have to work to maintain a vigilance on some of these witnesses. Now we are going to have to make a chain of brotherhood that Reverend Butts talked about, not be theoretical, but real at this point because we are now getting into some very heavy waters now. These are not just superficial complaints and misdemeanors we are talking about. We are in now a clearly recognizable life and death situation and we all feel a part of this commitment that you have made to come forward today to make this testimony under these circumstances.

Mr. CLARK. Thank you.

Mr. CONYERS. Was that summons issued?

Mr. CLARK. Yes; I have the summons on me also.

Mr. CONYERS. What for?

Mr. CLARK. Disorderly conduct.

Mr. CONYERS. Disorderly conduct, you were charged with that.

Reverend Austin, welcome to these proceedings, Ms. Austin.

Reverend AUSTIN. Thank you. I was not there at the time of this incident, so I would prefer that my daughter will tell you about it and I will say a few words after.

#### TESTIMONY OF REVEREND AND MS. AUSTIN

Ms. AUSTIN. I am not sure of the exact date, but it was following the appointment of Mr. Ward, the next day. I was coming out in the backyard of our residence with a bag of garbage in my right hand and a glass of orange juice in my left. I happened to look up and saw two caucasians standing with guns drawn in my driveway, and one pointing at my face. He jumped up from behind the bushes and says, "Identify yourself." Now in my area there has been robberies, our car has been broken into, and all the robberies that were witnessed were done by white men.

This man came up close to me with a gun in my face. He said, "Tell me who you are." I said, "What do you mean? I live here." He said, "You are going to show me some ID." I said, "Well, I got the garbage in my hand. My mother is in the kitchen. Knock on the door. Ask her." He then pushed me in my chest, threw me up

the middle of the driveway, slammed me into the wall and cocked his pistol next to my head. He told me, I was not going anywhere.

For 3 minutes I looked down this man's gun and he was just screaming at me and I started screaming for my mother to please come, there was a crazy man in our backyard with a gun at my head. At which time my mother came through the door to substantiate what I had said. He hid the gun so she could not see that he held this gun at my head all this time. But all the time he had it cocked next to my eye.

When I saw my mother, I walked away from him. I said, "Well, you are already wrong. If you shoot me in my back, you are in more trouble. I am going in my house to report you." I called up my father first. I could not find him. I dialed 911 and I told them please send a patrol car, there is a crazy cop in my backyard, with a gun to my head, acting crazy. So I asked my cousin, "Please get his badge number."

I waited for the police to come and they tried to calm me down because I was hysterical after looking down his gun. I showed them my arm, which was bruised from where he had grabbed me. I had three purple marks on my arm from where he threw me into the wall. They took a different light of it. They said, "Well, maybe he was right up to a point, but after he grabbed you, you being a female, did he ever place you under arrest?" I said, "No." He never handcuffed me. He never charged me with anything. But he persisted in cursing at me and telling me I was under arrest.

Then his supervisor came. They tried to calm everybody down and changed the story around. They came in and asked us questions, running back out and telling him. First he said he thought I was robbing the house, because I had a garbage bag. Then we figured out the car was still in the driveway with the doors opened and running, I walked past the car with my garbage bag. He said he thought I was stealing parts off the car. Then he thought about it again and figured, well, if I was stealing parts, and the car is running, that was probably someone who was trying to steal the whole car out of my backyard. Never once did he show me a badge. When my mother asked for it, his partner showed the badge, and told him to calm down, he was carrying the whole situation too far. He said, "No, S—— he is going to 'F——ing' jail with me, I do not care what you say. I am taking her downtown and locking her up." For taking garbage out of my backyard.

They persisted with this until my father came and he started naming some politicians he knew, then everybody's attitude changed. They were so cooperative. They told me "Get in my father's car, come down to the precinct. File a report."

I began to file a very detailed report, handwritten. When they read my report they said, "Have you gone to college." I said, "Yes." They asked me what university. They asked me my profession. They tore up my written report and called down to the civilian complaint review board and let me give it verbally because I was getting too exact on the piece of paper.

My father continued to call people from down there and they told me it would take a week before somebody would contact me from the review board. My father said, "If you do not want to do that right now, I will protest in front of this precinct every day

with 15 or 20 ministers from this area until I am satisfied with what you are doing.”

Then they put somebody on the phone immediately. They told me it would take 4 days for me to meet with this person personally. After my father persisted, the next day they sent an inspector to my house, and he came 2 days in a row. And the only satisfaction that was reached was when they found out my father knew somebody.

At first the whole attitude of everybody there was like, you are black people. You are living in this white area. You gotta expect this. And like I said before, all the robberies have been committed, that have been witnessed, have been done by white young men in our area. And I could not understand why I was being chastised or submitted to such treatment, when white people had been committing the crimes in my neighborhood.

Reverend AUSTIN. Mr. Chairman, I would just like to say in addition to what my daughter said that I think we are a very level-headed family. I have served as chairman of the Human Rights Commission of the city of New York. Fifteen years ago I ran for mayor of the city of Mount Vernon, N.Y., before moving here. And I think we are pretty levelheaded. What I am concerned about, this has disrupted my whole family. I have a son that has been seeing a psychiatrist for the past 4 years. My son was sitting in the back seat of that car in the yard. That car belonged to my nephew from Buffalo. If my son had gotten out of that car and saw the police officer with the gun up against my daughter's head, and he does not have all his emotional stability right now, he shouted out or made any kind of move, I am sure that police officer would have shot.

The next thing is my wife has a very serious heart condition. This has affected her a great deal. And since this has happened to my daughter, my son observed all this and was very quiet and did not do anything, has been acting very peculiar, very queer, and has some more psychological problems.

My point is this, I am pursuing this. I filled out the complaint with the civilian review board, but we also had a lawyer to make a launch against the city. And I am concerned about this because if they can go into a community like that, and take a so-called middle-class black and abuse that family in that way, what would they do to a fellow that is renting a room, or some apartment, and who lived in another part of town. If they will do that to me, what will they do to somebody else. It is just like what they did to Adam Clayton Powell in Congress. They were saying to the whole world, if we take the highest black political person in this Nation and hang him on the Capitol, then every black person in this Nation had better sit up because we will get you, too.

My last and final statement is that I have been fighting for the rights of people, civil rights marches and other things, and I certainly am concerned also about my daughter. And I am going to push this all the way.

Mr. CONYERS. Can you mobilize others in the clergy who are perhaps coming more gradually into this than Reverend Butts?

Reverend AUSTIN. The first person I called, I think he is here now, he was out of town at the time, was the Rev. Bill Jones. And

at one time I served as the chairman of a black clergy organization, Concerned Clergy, in Brooklyn. And we have a number of people already at my command right now. We are just following the procedure to see what they are going to do. But believe me, I am a pastor with a membership of over 3,000 people. My church and other churches will be ready to move at the command when the time comes.

Mr. TOWNS. What precinct is that?

Reverend AUSTIN. 70th precinct.

Ms. AUSTIN. Officer James Arnette, badge No. 1107.

Reverend AUSTIN. I also might say that I was one of the few clergyman in Brooklyn that came out against one of our so-called men in the black neighborhoods who was being representative of black people, so to speak, but who had said publicly that he had given \$100 bills to little black boys to do acts with him that were not right. We had a riot at our church one night against a lot of people's opinion, and I came out against that, and against him. And if I did that against him, and against others, I certainly will fight all the way for the rights of my family.

Mr. CONYERS. Thank you so much. Are there any other comments from the lawyers and witnesses around the table. Reverend Chavis.

#### TESTIMONY OF REV. BEN CHAVIS

Reverend CHAVIS. In the interests of time, Mr. Chairman, I just want to briefly state that the level of tolerance in the black community has reached a bursting point. The day after has already occurred in New York City. And Mr. Chairman, there have been appeals for Federal intervention, which I think have been justified by the testimony at all three hearings.

What we are faced with, those of us who live in the black community, the responsibility is now on us, not only to remove Koch from city hall, not only to insure that police officers respect us in our community, but ongoing, Mr. Chairman, it seems to me that black people, African people across this land, we are being forced to fight and shed our blood against our brothers and sisters in Grenada, against our fraternal brothers in Lebanon, then we are forced to do something corrective in our own community.

This is not a threat, but simply, Mr. Chairman, we are not going to tolerate not one more incident of police brutality in the city of New York. If it happens, the perpetrators are going to be exposed.

I want to thank you, Mr. Chairman. We hope that you will publish widely the record of this hearing, because those who commit crimes against us remain anonymous. We want their names. We want to know where they live, where they work. And we in the black community will act appropriately.

#### TESTIMONY OF LAURA BLACKBURNE, ATTORNEY, NAACP

Ms. BLACKBURNE. I want to thank you again, Congressman Conyers, and the Members of Congress from New York, who have joined you here today. It is absolutely crucial that this dialog continue.

Since September 19, the date of the last hearing, the officers of the New York State NAACP have received on the average of two complaints a day, regarding misconduct and abuse of authority by New York City police officers. The people do not make a decision as to whether the policeman is a New York City Police Department police officer, a transit police officer, or a housing police officer, or a correction officer. All they know is a uniformed member of the law enforcement bodies of this city are brutalizing them. They are looking for relief. They are seeking relief at every level.

What the NAACP has proposed are several remedies, which I would just like to briefly put on the record, if I may at this time. Most of it is incorporated in a booklet and it is interesting to me that the NAACP would have received a grant from the Law Enforcement Administration to publish this booklet on police-citizen violence. They did because there is a national problem of police brutality aimed at black communities. That is why this booklet has been published. It is available and it is being distributed to each of our 1,800 branches across the country.

In it our guidelines for local branches to organize their communities to respond appropriately to incidents of police brutality. In this booklet are a couple of specific recommendations that are somewhat generic and have been put forth by most people today.

First and foremost, they call for a shooting policy that is national and that to date has not been implemented by any police department, and that shooting policy would require that firearms not be discharged unless life is threatened, period. That would save a number of issues of justification and of debate of whether someone was properly killed by a police officer.

The second recommendation has to do with civilian complaint review boards and recommends that such a review board be totally independent of police departments. That there be citizen representation from the broadest segment of the community, with authority to investigate, to subpoena, and to discipline police officers.

Those are the primary recommendations contained in this booklet. And I have added two more.

First, for New York City, particularly, I would add a residency requirement for New York City police officers. I would also in the context of the affirmative action discussion that is going on, simply say that if you have a police force that polices a community that is more than 50 percent minority, that that police force ought to be ashamed that it has only 18 percent of those minorities represented on the police force.

I will not say how they should change it, because that is not my job. My job is to simply point to them and say that it is wrong.

Finally I think it is crystal clear that no local grand jury should be invested with the responsibility of investigating police misconduct. The relationship between the district attorney and the police department is very, very intimate, very symbiotic and very dependent. Such a relationship cannot properly investigate or be expected to bring a true bill in the case of police misconduct.

So that my recommendation in that area, the recommendation of the NAACP, is that where there is an allegation of police misconduct, that a special State prosecutor be impaneled in every case where such charges are brought, so that the local officials are not

burdened with jeopardizing their relationships with each other in trying to investigate those charges.

Mr. CONYERS. Thank you, Ms. Blackburne.

#### TESTIMONY OF C. VERNON MASON, ATTORNEY

Mr. MASON. Mr. Chairman, I would like to also join with others in thanking this subcommittee for coming back to New York City. And I submitted my testimony in September, when we had the hearings in Harlem. And I would just like to briefly reflect upon a couple of concerns that we have.

All the persons who have testified before the subcommittee, Reverend Butts, Laura Blackburn, Reverend Daughtry, all the people, brother Alton Maddox, who have been doing this work for a number of years, I just want to say this, and I think I can speak on behalf of all of those persons, including Reverend Austin, whose family just went through the same kind of trauma. There appears to be in the highest offices in this city, the feeling that you can stomp and walk over black folks for a period of time, they can continue doing it, and it does not make any difference because we are not going to do anything anyway.

As I said when I gave my testimony in September, I came here from Arkansas by way of Georgia and Indiana, and I intend to make my home in New York City, and I am not going to South Africa. And inasmuch as I have made that decision on a personal level, I have three children I am very concerned about their being able to grow up in New York City, without being shot down by a police officer and have that matter dealt with as the matter of Michael Stewart.

I made a political decision based upon 11 years of experience when Lee Johnson was called to testify before a grand jury, that black folks have to begin to illegitimize those institutions who have been illegitimate for so long. We made a decision that he would not appear before a grand jury and have it said that he appeared before that grand jury and they came out exonerating police officers, as we knew they were going to do anyway. That appears in the report that McGuire gave you. It appears in Morgenthau's press statement. There are substantial lies in both reports. I will say that publicly, because Ken Conboy, I think he is one of the deputies in the police commissioner's office, made a statement, and we were supposed to appear together at New York Law School, he made a statement that he would not appear on any forum where I appeared because I was dishonest. That I had said certain things which upset the PC, and that he would not appear before any forum that was dealing with this issue.

I say this to him publicly and I say this to Robert McGuire, and Mayor Koch in particular, the person who said this committee came in here to lynch the city, that the folks that we are dealing with now, the folks that are here in this room, the people who testified before your subcommittee, have gotten over the fear of dealing with folks like Koch, like McGuire, like Conboy, and all those other folks, and Ben Chavis said it. I am not going to say it because I am a lawyer. But you had better believe, and I want you folks to understand this very clearly, my feelings go very deep about that. I

am very concerned about my immediate family. I am very concerned about the black families of New York City.

I am concerned when a brother like Alton Maddox has to get up here and talk about what has happened in Michael Stewart's case, and most people they do find it amazing that Elliot Gross had no problem coming out as the medical examiner saying the man died, he had a cardiac arrest. That type of thing, Congressman Conyers, has been going on for a period of years.

We want to again thank you. This has been the most important thing that has happened in the aura of police brutality since we have been dealing with it. We want to commend you. We want to thank you. We want to wish you well.

Mr. CONYERS. In that case, I will keep on coming back.

Mr. MASON. Finally, I would just like to say this. It disturbed me this morning to hear the kind of talk, but I am not surprised anymore, where Koch was saying; Phil Caruso, I will not even apologize for what he did, because he is dealing with a segregated institution. He is representing white police officers. He is not representing black police officers. He got up and walked out of here before Congressman Owens could ask him those questions because he does not have any answers.

This is the kind of leadership that has been grafted by racist elements, corporate elements in this city, upon the city. And as I think people are very well aware of now, Jesse Jackson, all those other brothers and other sisters who are out there working, the winds of change are blowing. We do not intend to come back here 4 years from now to deal with the same issue.

Mr. CONYERS. Thank you. Thank you all.

Now, we have got to finish up by 5 o'clock. I have to call a rather super-large panel, and they are all my friends, so they will forgive me, and they understand why I am doing this. Prof. Victor Goode; Dr. Sidney Haring, Queens College of Law; Prof. Doug Colbert, Hofstra University; Prof. Kellis Parker, Columbia Law School; Prof. Cornell West, Union Theological Seminary; and last, but not least, from the National Conference of Black Lawyers, Attorney Phroska McAlister.

Without objection, we will receive into the record the testimony from the New York Americans for Democratic Action, NYADA, in terms of their contribution to this hearing this morning, presented to me by Congressman Owens.

[Prepared testimony of NYADA follows:]

**NYADA**

New York Americans for Democratic Action

TESTIMONY BEFORE THE HOUSE SUB-COMMITTEE ON CRIMINALJUSTICE-- BROOKLYN, NY 11/28/83

Congressmember Conyers, distinguished members of the Committee: my name is Alex Staber, a member of the State Board of Directors of New York Americans for Democratic Action. I come before you today to reaffirm the resolute opposition of our organization to any form of undue police violence, particularly that which is racially motivated. In September of this year, our President Allen Roskoff, delivered an in-depth testimony at a similar hearing, citing examples of unabashed police brutality, and expressing our concern over the frightening incidence of its increase in the City of New York.

It is with the same resolute opposition which brings us here today. Police brutality, one of the largest threats to civil rights and civil liberties today, simply must be brought under control, and the activities of the Police Department must come under the scrutiny of an independent civilian review board. The power of the department, and the influence within it which the Mayor enjoys, demonstrates to us a major cause of the incidence of police brutality. The mere fact that officers were not granted immunity to testify here today is proof enough to us that indeed there is a problem, and that the Mayor and Police Department surely have something to hide. We at NYADA commend the courage of those officers who decided to testify here anyway, and the truth which they bring to these hearings.

Mr. Koch has referred to these hearings as a "lynching." The Mayor could not have chosen a more unfortunate or hypocritical description of the due process of law under the auspices of a Congressional Committee. The word is nothing short of a racist insult to the Black and Hispanic people of this city who have for years been struggling to gain their rightful position in our society. The struggle has been long and difficult. The actions of the police, and the condemnation of justice by the Mayor have provided severe setbacks to their progress. How can one advance oneself and one's community when that community is under physical attack from the police and political attack by the Mayor? Unless a check is placed on the horror of police brutality, unless the people of this city are given the proper recourse to address grievances and to seek redress of injustice and brutality, this progress will be halted altogether. The time has come to work together to solve this problem. This is not a lynching. It is, rather, one of the few hopes left to many New Yorkers who simply seek peace and justice in their own communities. This is certainly not too much to ask. Thank you very much for your time.

Mr. CONYERS. I have Frank Chapman, Kevin Berrill, and James Credle on the subsequent and last panel. Is Ms. McAlister here? I wanted you to be together, Mr. Chapman.

Welcome, gentlemen. You have been here as long as I have and we would appreciate any observations and comments and any prepared material that you have already put together will be appropriately entered into the record at this time.

**TESTIMONY OF SIDNEY HARRING, ASSOCIATE PROFESSOR OF LAW, CITY UNIVERSITY OF NEW YORK LAW SCHOOL, QUEENS COLLEGE**

Dr. HARRING. Thank you very much, Congressman Conyers, members of the committee. I am Sid Haring, associate professor of law at the City University of New York Law School, at Queens College, New York City's newest law school with the motto, "Law on the service of human needs."

I think we cannot have watched what happened here today without being moved, so moved, I think, I do not want to play academic, and in any way reduce or demean the impact of what my friends here today have said. I will take you at your word and introduce my remarks into the record, as a prepared statement.

Let me just say that, and I only want to say two things, I will summarize the 12 pages out of respect for people who were sitting here all day long. First of all, I do not have any question from my chances doing research on the police including now five in New York, that the practice of police brutality in the streets of New York City is in fact systemic. I think there is no question about that.

I think we see police kill. I think we see the beating of people. We see false charging and overcharging. We see racist epithets, insults of all kinds. And it is part of the package. If you get that level of mistreatment of people, you get a package of disrespect.

I am both astounded and angry, I think, at the stonewalling of this issue by Mayor Koch and Commissioner McGuire. I cannot believe they are doing it. I hope Commissioner Ward changes it. I fervently hope that.

The only thing I would like to say as the second part of my testimony is that we have seen lots of people testify as to what needs to be done. I think we can break it all down into one simple statement. We have a fox guarding a chicken coop. We do not have mechanisms to control what police are doing that are external.

You can call them anything you want. We have a civilian complaint review board, that in fact is not civilian and hardly reviews complaints. We need something that is external that has power to review police misconduct. And we need it, I think, the day before yesterday.

Again, I am very happy the committee is doing this. I cannot say how important I think this is and I want to rest on my prepared statement.

Mr. CONYERS. Thank you very much, Professor Haring.  
[Prepared statement of Prof. Sidney Haring follows.]

Statement of Sidney L. Haring,  
Visiting Associate Professor of Law at the  
City University of New York Law School at Queens College  
and  
Associate Professor of Law, Police Science, and  
Criminal Justice Administration at  
John Jay College of Criminal Justice.

I want to make it clear at the outset that I consider police misconduct, police abuse of citizens, and police killings of civilians--police brutality in all its forms--far too common and widespread in New York City today. I also think that strong departmental action could sharply reduce this unnecessary violence and at the same time improve the overall quality of justice administered by the police in this city. However, I am disturbed at the department's attitude throughout the whole proceeding: an effort to "stonewall", to deny the seriousness of the problem. This is an attitude that prevents improvement and change

I will address my remarks to two central issues: the first to show the pattern of police abuse of citizens, to show why it is systemic in spite of the department's denials. Second, I will try to offer suggestions concerning what we might do about it. Unfortunately any effort to change the situation requires first coming fully to terms with the fact that a problem exists.

Here is where I lodge my most serious criticism of Commissioner McGuire. I can begin by giving credit where credit is due: the entire operation of the department has been improved and made more disciplined and accountable over the past ten years. Police misconduct in all its forms has probably been substantially reduced. But McGuire wants to let it end there, to rest on his laurels. He can't and we can't there is still far too much unnecessary police violence. His

actions at these hearings have encouraged a continuing high level of such violence. This has the effect of making police abuse of citizens in New York systemic. It is not an isolated problem of undisciplined police officers, it is a systemic problem of poor management, of a deliberate failure to control police brutality.

I have no further to go to show that than a brief review of the statistics prepared for presentation at the hearings in Harlem in July. They are nothing less than an exercise in deliberate obfuscation, an effort to conceal both the magnitude of the problem, and the ineffectiveness of the department's efforts to deal with brutality. My primary purpose is not to offer any kind of original statistical analysis, nor to repeat facts already known: much of this data was published in an excellent article by Wayne Barrett in the Village Voice. It clearly shows the deliberate distortion of making up charts that only compare New York to cities that are worse, overlooking that we are squarely in the middle of the nations largest 54 cities in terms of police killings. More disturbing is that at a time when the level of police killings of civilians in most cities in continuing a decline New York's level is rising. Overall, we know that 98% or more of all citizen complaints against the police lead to no departmental disciplinary action. Even using McGuire's data (from the July hearings) concerning the processing of complaints alleging physical violence we get 64 disciplinary actions out of 869 complaints, or departmental inaction 93% of the time. This does not take into account the

fact that many of the disciplinary actions were extremely light. Five police officers were fired, or one for every 174 complaints of physical violence. Yet McGuire proudly cites this data as proof that the violence is not systemic, that the department is vigorously rooting out officers who engage in such violence.

Perhaps as disturbing is the Commissioner's insistence that the fact that the number of complaints are dropping proves that fact that the department is reducing the over-all level of unnecessary violence. I suspect the real reason is found in the above data: citizens feel that it is a waste of time to file such complaints because the department is unlikely to do anything. In addition, the whole image of the police in the community suffers from the high level of unnecessary violence: what risks does a citizen who voluntarily walks into a police station and files an action take in a system that he or she may have good reason not to trust?

Having just spent the better part of a page on some statistics, I want to quickly move off them with the observation that I don't trust them: I suspect that they grossly underestimate the actual incidence of police violence against our people. The police department completely controls the entire processing of complaints against it, including the gathering of evidence, all the statistics, the entire information base. We need independent data, we need independent agencies to collect, analyze and control it.

As a social scientist I find this frustrating. We simply do not have good data on the entire problem of police abuse of citizens. Yet we have strong indications that it is a national problem of staggering proportions. Let me relate some data from a period ten to fifteen years ago, when, in the wake of the Kerner Commission's charges that systemic police brutality was one of the major precipitation factors in Black riots, several large and expensive studies of the incidence of the problem were conducted. The conclusions were striking: millions of Americans have been victimized by police brutality. A study, conducted by riding around in patrol cars found some level of police abuse of citizens in 3% of all police/citizen contacts, a level that would indicate perhaps more than a million instances of abuse per year. Using Commissioner McGuire's testimony of over 5 million police/citizen contacts per year, this might indicate 150,000 incidents of unnecessary police violence in New York City. Another study, conducted by simply asking a random sample of the population if they had been the victim of police brutality, found that 5% of all Blacks and 2% of all whites reported themselves unjustifiably beaten by the police at least

once--representing over 1,000,000 Black people and over 4,000,000 White people.\*

These data are now dated, and I have previously stated that the level of police abuse of citizens may well have declined during the intervening period, but we need to know much more about the problem of unnecessary police violence. I should like to issue a simple challenge: if the current administration does not think that these data reflect the occurrence at least of several hundreds of thousands of incidents of police brutality a year in New York, to conduct their own survey: go out and ask people if they have been beaten or abused by the police; systematically place observers to watch the police and to report on the conduct that they see. I'd be happy to be of assistance.

\* These data come respectively from Albert J. Reiss, The Police and the Public. (Yale University Press, 1971), and James Q. Wilson, Thinking About Crime (Basic Books, 1975). Both of these studies represent very extensive, federally financed, and methodologically sound research, the best available in the measurement of police brutality.

When we speak of police brutality, or police abuse of citizens, or of unnecessary police killings there may be some confusion. We are talking about a wide range of behaviors that are all a part and parcel of a single phenomenon. I think it might be useful for me to spell out specifically four distinct types of direct police abuse of citizens. My point in doing this is to show how they are a part of a package, and how great the problem of police brutality is.

Much of the focus here has been on the unnecessary police killings of civilians. This is the most tragic and perhaps most hotly contested of the issues surrounding police brutality. Yet it is simply the proverbial "tip of the iceberg". In a society where the police routinely mistreat people a certain proportion of those incidents of mistreatment result in death. The saddest part of this is that we do not know how many civilians a year the New York City police kill--rather we know how many they report that they kill. Here the recent strangulation death, apparently at least at the present time, of Michael Stewart, a young Brooklyn resident perhaps guilty of a misdemeanor, should be a chilling lesson to us all. Look at how easily and routinely that the death was recorded as being of "natural causes"? But for the strength of that man's family the case would be closed. And yet, don't we all want to know now: how many people a year die in police custody? Who does the medical examinations? How many "heart attacks" conceal deaths by strangulation of being beaten to

death? And this includes only those that made it into custody. I don't want to appear to be looking for skeletons, but I can't help but wonder about all the people who turn up dead in vacant lots, blind alleys, and in the water. All of this, I think, suggests that the police kill many more people than we think they do--and none of this has anything to do with the legendary shoot outs with bank robbers that is supposed to be in our minds when we hear that the police shot somebody.

I haven't gotten yet to the problem of the "throw away" guns, the shiny objects, or the screwdrivers that look like guns because I really don't see that as the issue, although of course it is. My point is more basic: as long as there is a problem of unnecessary force on the part of the police that is denied by police administrators, we are going to have many unnecessary and tragic civilian deaths.

Second only to police killings of civilians are other forms of physical abuse: beatings, pushings, strangulations, kicking. This kind of behavior is systemic, and probably involves at least tens of thousands of New Yorkers a year. We don't need to debate this: Commissioner McGuire can get out on the streets and watch it. Again, the "official" figure of 869 reported last year, and the drop from 1,296 the previous year in no way represents the real magnitude of the problem.

Following closely behind is another form of violent abuse where the police officer uses the criminal justice system as his club, the whole package of false swearing, perjury, overcharging, and falsely charging. Unlike all the rest of us any police officer can simply take somebody that he has a problem with and lock them up. Eventually they will get out, but it will cost them money, perhaps their jobs, and some time in jail. We cannot document this problem-- but then we have learned that we cannot document even police killings for that is the nature of the system. But anybody who works around the criminal justice system knows it to exist. And here we need to include it as a part of the total package of abuse of citizens.

Fourth, follows all the non-violent forms of abuse, derogatory names, official arrogance, abuses of power. Here you all know what I am talking about. But again, my point is that this kind of behavior is directly linked to the killings and the violent abuse: it is a condoned and protected attitude, one that sets the stage for hostile confrontations with citizens. We do not have to go back further than the Kerner Commission report to begin to understand this interrelationship: verbal abuse quickly leads to physical violence and false arrests if the citizen protests.

So we are left in a very uncomfortable place with reference to the incidence of police abuse: it is frighteningly common, yet we lack adequate data. Relatively few of the cases are reported to the police administration, and they find virtually all of the reported cases unfounded. But I think I can take this one step further: all of this as a nationwide phenomenon was well documented in a wave of law review articles about the inadequacy of departmental complaint processing procedures ten to fifteen years ago. In fifteen years we have made little progress.

The issue then is how we can effectuate some changes in this area. In moving on to the question of how to effect change I am deliberately passing on the question why we have so much police abuse of citizens. Obviously this is a complex question in itself, and one that we all may differ on. The answer goes to the heart of the whole social and political role of policing in our society. This is not to suggest that we should not think about those questions: rather here it is a question of time. I do want to say, however, that a good part of the problem is that the police institution has a reluctance to confront its own awesome power, a failure to come fully to grips with its right to routinely and violently seize citizens as they go about their business, handcuff them, dump them in the back seats of patrol cars, and haul them off to jail on any one of hundreds criminal charges--and its right to use whatever

force an officer might think necessary to carry out those actions. Described this way it is both powerful and frightening--yet it is nothing less.

It would also be wrong not to raise directly the whole race and class issue integrally connected with who gets arrested, jailed, convicted, and imprisoned; and who gets insulted by the police, pushed around, kicked, hit, strangled and shot. They are poor people, Black and Hispanic people, without political power, without political connections, without ready access to lawyers and to whatever protections our legal system might offer. The police role here becomes convoluted and complex, for these people are often the most victimized by crime, and the most needy of police protection. Too often this is at the expense of being victimized by the police as well, a kind of double jeopardy.

But we don't need to fully explain or agree on why this abuse happens to agree that we need to act promptly reduce and ultimately to stop it. The sad thing about the remedy is that it is probably not that difficult to sharply reduce police violence: we could probably have sharply reduced police killings and violent abuse of citizens many years ago. Contrary to what many believe, the police institution is relatively easy to control: it is a paramilitary force, with some element of paramilitary discipline, "command discipline" for want of a better term. Twenty years ago the police department in many cities were far more poorly run than they are today: officers routinely took bribes, "disappeared"

or "cooped up" while on duty, failed to take calls, often were out of uniform and simply looked disreputable, and drank on duty. What changed this is a stringent system of (1) internal investigation and prosecution of departmental complaints, and (2) quick and sure "command discipline" for offenders, normally in the form of short suspensions from duty, the equivalent of a middle range fine. Police officers on the beat are all aware of their relationship to that system of departmental discipline, of what they have to lose by fighting it, of what they have to gain by conforming it. Simply put it is effective.

My point here is an obvious one: the police department has a different standard for punishing rule violations that adversely affect departmental discipline than it does for punishing rule violations directed toward "outsiders". If outsiders complaints were treated as fully as serious threat to the integrity of the force as internal disciplinary matters, we would have had both more regular punishment for violations of citizens rights, and a consequent reduction in the incidence of such violations. Anybody who is skeptical of such simple pronouncement might do well to recall what a difference the wave of investigations and departmental prosecutions following the Knapp Commission Report has made: the once routine and widespread "nickel and dime corruption in New York has been sharply reduced by these measures.

Coupled with this willingness to hand out "command discipline" routinely for all violations of citizens rights, for any mistreatment of citizens whatever, is an affirmative duty on the part of the police to root it out, as they have worked to root out petty police corruption. This requires an aggressive unit of the police force out engaging in surveillance of officers and locations where abuse of citizens might occur. While I do not endorse the use of "entrapment" or "sting" type operations, I will say that I think it is hypocritical to use them in general, and not use them internally against police misconduct. Undercover officers appearing to be intoxicated or unruly might "hang out" in heavily policed locations, ready to arrest police officers who assault them, or in a position to witness police assaults on others. I am suggesting that it would not take much of this type of enforcement to sharply reduce police violence.

By this emphasis on internal command type discipline as a "first line" of defense against citizens, I am in no way suggesting that it replace normal criminal proceedings where appropriate: officers who commit crimes against citizens while on duty should be fully subjected to the same criminal justice proceedings as anyone else. Prosecutors have been lax in this area: more vigorous prosecutions are needed. I am, however, only being realistic about the problem of getting convictions in criminal court against police officers, about the "beyond reasonable doubt" standard of proof in criminal cases in a case

where the only witness to a police killing or beating of an unarmed civilian is that officer himself, fully wrapped in his uniform, wearing an American flag, and talking about "law and order", and mother, and apple pie, and self-defense--even if he is lying. Command discipline involves only administrative proceedings, with an entirely different standard of proof. This lower standard of proof is entirely appropriate given the greatly reduced severity of punishment.

Obviously the weak point in such system of discipline is that it remains internal, and is subject to a lack of public respect because of the widespread feeling that the police will cover up for each other. The remedy for that is some kind of external review process. The ill-fated civilian review boards were one attempt to accomplish this, but that does not mean that they are the only possible external review system. The failure of civilian review board generally turned on the failure to provide those boards with sufficient power: the police are a powerful institution and cannot be controlled by a weak institution. An adequate external review institution needs both the power to conduct its own investigations, and to hand down penalties directly. Most such boards had to use police investigators and were only empowered to make recommendations. This is the current system in New York. The irony is that the civilian review boards were highly effective in at least one index: the public trusted them enough to file more complaints than they had previously filed with the

police. If our system of justice wants to encourage the maximum participation by our citizens then the mere fact of improving the accessibility of a potential remedy is a great gain. Hence it might be better if Commissioner McGuire, instead of telling us the number of complaints were dropping and offering that as "proof" that police abuse of citizens is not systemic might tell us what he is doing to make it easier to file complaints so that he can be sure every citizen complaint is fully heard. And I should add that I don't think passing out 300,000 leaflets accomplishes this task.

As it stands now I find Commissioner McGuire's data and his conclusions so incredible as to be beyond belief. This is not simply an empirical question, although I think that some part of it is and might be illuminated by research. But we have had fifteen years of extensive research on the workings of the police and the rest of the criminal justice system that we have not adequately taken account of in charging our criminal justice institutions. On a broader front the issue is doing our people justice--and I don't see that in th New York City police department's processing of complaints, nor in the continued high level of police killings and beatings, false arrests, and verbal abuse of our people.

**CUNY LAW SCHOOL**  
**AT QUEENS COLLEGE**  
THE CITY UNIVERSITY OF NEW YORK

FLUSHING, NEW YORK 11367  
212/520-0990

29 November 1983

Commissioner Benjamin Ward  
New York City Department of Corrections  
100 Centre Street  
New York, NY.

Dear Commissioner Ward:

Along with all of your other colleagues at John Jay I want to extend congratulations and support in your new task as New York City Police Commissioner. Surely Mayor Koch could not have located a person better able to tackle such a complex and important institution.

Obviously a lot of people have a lot of suggestions for you to consider in making the forthcoming change of administrations. I would like to add something to that list, and then briefly explain why it is important. Nearly twenty years ago Commissioner Murphy announced that he would open up the department's records and files to all serious scholars for the purposes of research. This both symbolized that the department had nothing at all to hide (obviously with the scholars accepting the responsibility of protecting the rights of individuals to privacy in the realm of police records); and also symbolized his determination that scholarly research could do much to improve police services. The cloak of secrecy that had surrounded police activity in the 1960s had become a wall separating the police from the public.

I think that the situation today is somewhat analogous, that some of the momentum of the sixties has been lost. In addition, I think that the department has little to lose by "opening" up; perhaps a few areas will be shown empirically to need improvement, but then those improvements benefit all.

Although the above is true in all areas, it is perhaps most immediately evident in the whole package of areas loosely labelled, "police misconduct". As a sociologist watching the existing situation with regard to both police corruption, and the issue of police brutality, it is obvious that simple, solid research could tell us a great deal. Just to use one example: much of the debate between Mayor Koch and Representative Conyer's Subcommittee turns on what are essentially empirical questions: is the current review board procedure adequate? Are the 13,000 complaints a year expeditiously processed? With proper protection in the form of complete anonymity for all parties involved, the patterns of complaints and the processing of complaints can be studied, and perhaps improvements suggested.

I, for one, would be very interested in doing some of this research. Other members of the John Jay or CUNY faculty I am sure would be interested as well.

Sincerely,

  
Sidney L. Harring  
Associate Professor

Mr. CONYERS. Mr. Colbert.

**TESTIMONY OF DOUGLAS COLBERT, ASSISTANT PROFESSOR,  
HOFSTRA LAW SCHOOL**

Mr. COLBERT. Thank you, Congressman. My name is Douglas Colbert. I am an assistant professor at Hofstra Law School. And I appreciate the time, Congressman, but I am sure you remember that I testified before your committee in September and tried to point out areas where I felt the mayor and the police commissioner were extremely dishonest in their public statements to your committee.

In the last 2 weeks I had a personal incident I think this committee should follow up on, which had to do with the fact that the bus driver at my son's school, who happens to be a white, Italian individual about 5 foot, 4 inches was beaten up by two police officers in full view of the children on that schoolbus. And there happened to be a teacher there who made a written statement, I believe an affidavit, to the principal of the school, and I am going to try to do my best to try to have that person here when you next return to New York City.

Congressman, there is a lot of things I can say about Mayor Koch's statement and Police Commissioner McGuire's and others this morning, but let me simply suggest to you that they were playing very fast and very loose with what the true facts are concerning police violence in the city. And I will be glad to point out areas to you where I feel that they were simply dishonest in revealing to you what the success was of even the limited use of John Lindsey's civilian review board. In the 4 months that it was in effect in this city, there were six times as many complaints filed with that review board by citizens, because they had some faith that it might work because it was an all civilian board.

Let me also suggest to you, sir, that today we have 98 percent of civilian complaints that are dismissed by the police review board; under that 3- or 4-month period, 3.7 percent were found to be substantiated. And I will only say, sir, that one-half of 1 percent of all the complaints that civilians make today in this review board process result in any charges or hearings being brought against the police officers.

If Mayor Koch or anyone else is interested in understanding how systemic police brutality is, they need only go to the criminal court of this city, where I worked for 11 years as a public defender. My colleagues and I saw too many cases of repeated instances of our clients having been beaten, not to understand the systemic nature of police brutality in this city.

I will only suggest, sir, that the present civilian complaint review board is a bankrupt process which people cannot have any faith in whatsoever. That the district attorneys have literally forfeited their rights to speak on behalf of victims of police brutality because they do not indict people. The grand jury process is a whitewashing process, because no one is charged with a crime, i.e. no police officer is. Only one police officer has ever been convicted and that was for criminally negligent homicide for the beating of a prisoner in back of a Bronx precinct house.

I will strongly urge you, sir, to do whatever your committee is able to do to get us a special prosecutor, who will have full jurisdictional powers to investigate all instances of police brutality in the city, and to do what we can do to get us a community-based civilian complaint review board that citizens can have some faith and integrity in the review process. Thank you.

Mr. CONYERS. Thank you, Professor Colbert. Mr. Victor Goode, Esquire.

**TESTIMONY OF VICTOR GOODE, INSTRUCTOR OF LAW, CITY  
UNIVERSITY OF NEW YORK LAW SCHOOL AT QUEENS COLLEGE**

Mr. GOODE. Thank you, Congressman Conyers, members of the committee. I, like my colleagues, in the interest of time this afternoon, am going to submit the majority of my testimony into the record. However, there are a couple of points that I would like to make, some of which I believe are responsive to the statements by Officer Caruso, or in some cases his absence of statement. Others, I think, are generally germane to the issue before you.

[Prepared statement of Prof. Victor Goode follows.]

Testimony of Victor Goode, Esq.

Instructor of Law

City University of New York Law School at Queens College  
Before the Subcommittee on Criminal Justice  
of the House Committee on the Judiciary

Urban police departments and the conduct of their officers continue to be one of the most researched and studied areas of our legal system. Their personnel are entrusted with enormous responsibility and power over the lives of citizens, including the power to make decisions over life and death itself. It comes as no surprise that when this arm of the state sets a pattern and practice of conduct with its citizens that is increasingly characterized as abusive and excessively violent that such practices must come under the strict scrutiny of the public eye. The Subcommittee should be commended for providing the people of New York with this opportunity to bring forth their evidence and views, and exercise through this forum the most fundamental right of a people to petition government to redress their grievances.

The Subcommittee has thus far heard a typical spectrum of testimony. On one hand, the Black and Latin communities of New York have responded to these hearings with an almost unanimous voice protesting the escalating pattern of police misconduct in the city. On the other hand, city officials, including the Police Commissioner and the Mayor, assert that police misconduct exists, but at nowhere near the scale or degree of seriousness that so many members of the minority community believe. Our City officials further assert, as those before them have, that the policy of the New York City Police Department on misconduct by officers is clear, generally effective and is an example of the most progressive

administrative procedures being employed by urban police forces today.<sup>1</sup>

The dichotomy of these views reflects very little on the veracity of the testimony submitted to you. Instead it graphically depicts the failure of twenty years of liberal reform measures in police administration and urban policy.

The issue of police misconduct against citizens and efforts to correct it has been the subject of countless studies, reports, surveys, scholarly journals and law review publications. The legion of experts in this field include police administrators, sociologists, criminologists, psychologists, organization and management specialists, human rights advocates and, of course, lawyers and judges. With such an array of interests and talent focused on this issue for nearly two decades, why does it remain today as pressing a problem as it was in the mid-sixties when abusive practices by urban police sparked riots and other disorders?

For the Black community the answer is obvious. As the Kerner Commission Report pointed out in 1968, misconduct and citizen abuse by the police is a life and death issue, not merely a larger question of relative police efficiency or propriety of administrative policy<sup>3</sup>. Our communities are caught in a desperate situation. We need effective policing as badly as any sector of the city, yet we never know when any chance encounter with the police might result in incidents ranging from racial slurs and general disrespect to unjustified

violence, including the use of deadly force.

You have heard and reviewed many statistics concerning the number of citizen complaints filed against police, the rate of discharge of weapons resulting in death or injury and other issues central to this larger question. Behind those statistics, however is the unmistakable perception in the minority community that people of color in New York are very likely to be victims of police abuse during any number of common citizen police encounters and that our communities are generally administered by a double standard that encourages one form of police conduct in white neighborhoods and another in Black and Latin communities.

The problem is that simple. Blacks and Latins believe that there is a double standard for police conduct and have ample experience and evidence to support that belief. The problem has become more egregious as the city demography has changed and the population is now majority Black and Latin. The problem has been compounded by official resistance to viable efforts at affirmative action that would have substantially increased the percentage of Blacks and Latins on the police force.<sup>4</sup> The problem has been amplified by the expanding role that police play in our society and finally, the problem has never been fully addressed by even the best intended efforts at liberal administrative reform both within the department and in the legal system of which it is a part.

Before making specific recommendations to the

Subcommittee I would like to briefly comment on the existing remedies for police misconduct and why they are inadequate.

Presently, a citizen who feels that his or her rights have been violated through abusive or improper police conduct can seek injunctive and compensatory relief in federal court. The jurisdiction most often involved is derived from 42 U.S.C. Sections 1983 and 1985.<sup>5</sup> Section 1983 provides for relief where a person acting under the color of law commits an act that violates the rights of another where such rights are clearly protected by the Constitution or federal statute.<sup>6</sup> Most Cases brought under Section 1983 alleged a violation of an individual's civil rights, and although this statute is one of the most frequently used remedies where the question of the racial motivation of the perpetrator is at issue, it is not limited in its scope only to matters of racially motivated abuse. Section 1985 extends the acts jurisdiction to conspiracies to violate the civil rights of an individual. Taken together, 1983 and 1985 are intended to cover wrongful acts and prevent them from occurring through the reach of the conspiracy provisions.<sup>7</sup>

The provisions of 42 U.S.C. 1988 completes this most frequently used trio of federal remedies. This section provides for the awarding of attorneys fees to successful claimants and was designed to increase the availability of legal representation to agrieved parties by increasing the monetary incentive for the bar to accept such cases. In

addition to these civil remedies, 18 U.S.C. 241, 242 and 245 provide for criminal sanctions against persons who violate or conspire to violate the civil rights of another person.<sup>8</sup>

Despite this apparent availability of legal remedies for police abuse they have had little if any deterrent impact on the problem. First of all, despite the attorneys' fee provision of 42 U.S.C. 1988, cases brought under 42 U.S.C. 1981, 1983 or 1985 must usually rely on evidence in the control of the offending police officers. Litigation expenses, which can run into the thousands of dollars, must be advanced by the claimant or his or her attorney and with few exceptions the majority of minority citizens in New York cannot meet those costs. The result is that attorneys will accept only the "best" cases, those where the wrong doing is relatively easy to prove based on the adequacy of witnesses and corroborating evidence or those cases supported financially and politically by civil rights groups, leaving the majority of claimants with less clear cut or popular cases, without legal representation.

The eleventh amendment of the Constitution originally limited federal suits against states or municipalities for acts such as police misconduct. However, in Monroe v. Pape, 365 U.S. 167 (1961), the Supreme Court reversed this position and established federal liability for individual police officers but not their departments or municipalities. However in Mornell v. Department of Social Services, 436 U.S. 658 (1978), the Court held that local governments were not wholly immune

under Section 1983. Despite this advance in the law, several questions remained unanswered by Mornell. First, the Court declared municipalities liable when its officers were acting pursuant to some formal or written policy or when they were acting pursuant to some custom or practice.<sup>9</sup> Ultra vires acts by an individual officer could be interpreted in a way not to leave the city immune from liability but, the more likely possibility is that future cases may define "custom and practice" in such a narrow manner so as to restrict remedies for future plaintiffs.

For now at least the Courts have recognized the importance of maintaining the present test for establishing municipal liability as key to any deterrent aspects of 1983 since it is expected that the monetary penalty suffered by the city will encourage stricter control over the police. Although this view is sound in theory, at least one survey that examined practices in Detroit revealed that municipal civil liability had little or no impact on police practices.<sup>10</sup>

I have not seen New York's records on judgments awarded to successful plaintiffs but I would assume that as with most cities, the costs awarded because of police abuse are hidden in with other judgments against the City, thereby severing the theoretical link between the potential for liability and effective prevention through management control at the precinct level. The legal work on cases of misconduct is conducted by salaried city attorneys, insurance carriers

assist with the litigation and provide a degree of indemnification for the city and all but the most extreme cases are dismissed or settled. The police union in New York provides legal representation for officers who are sued so the actual risk of liability for individual police officers is very slight. The department itself does not use a liability and risk management factor in the supervision and review of officers, therefore making the deterrent affect on management and rank and file officers almost nil and eliminating the direct financial incentives for reform.

As if these factors weren't enough, a 1979 study concluded that juries exhibit a substantial bias in favor of the police at trials that do occur. The study also found that the plaintiffs in these civil actions almost always had criminal charges filed against them, thereby further reducing their credibility in the eyes of jurors. Another documented factor in these cases is racial prejudice by jurors and their tendency to see the policing of the ghetto as a special assignment where normal constitutional safeguards can be waived. Out of twenty-eight cases followed by the study team that went to trial, in twenty-two cases, the police officers prevailed. Although there is an occasional six figure settlement, most awards are small. The study cited out of court settlements averaging \$5,723. Since plaintiffs must prove actual damages in these cases, abuses that do not result in significant physical injury well documented by a physician

often produce settlements or awards substantially lower than the average cited.<sup>12</sup>

The net effect of the cost of litigation and these barriers to recovery make 42 U.S.C. 1983, 1985 and 1988 only viable to a mere handful of the persons who may suffer various forms of police abuse.

Civil remedies in state court are also available and can be brought under the tort claim statute. The most common causes of action are false arrest, false imprisonment, malicious prosecution, excessive force, abuse of process and negligence. But, the most common claims in New York, abuse of process and excessive force, are the hardest to sustain.<sup>13</sup> The defenses of probable cause and use of reasonable force coupled with the propensity for juries to give greater credibility to police testimony, make state relief no more viable than federal.

A study of jurors in federal cases conducted by the Connecticut State Bar Association revealed that the defense of "acting in good faith" which does not legally absolve officers of liability, nevertheless continues to be used and is extremely persuasive for jurors.<sup>14</sup> In many of the cases studied, jurors either did not understand the limitations of the defense, did not receive clear instructions from the judge on its limits, or simply disregarded them<sup>15</sup>. This last matter underscores one of the central problems in pursuing judicial remedies. There is an understated presumption in

favor of the testimony, reports and statements of police, and that presumption is buttressed by the liberal/professional image that policing is such a specialized state function that only the police themselves really know what is occurring and why.

Finally, skillful defense attorneys create in the mind of jurors the image of the thin blue line standing between the average citizen and the savagery of the streets. This powerful image reinforces the prevailing idea that civil authority, and this includes civilian authority, should refrain from reaching too far into the affairs of the police. Any such intrusion is characterized as potentially crippling to the efficiency of the department and therefore detrimental to the entire city. Despite the rules on burdens of proof, inferences and presumptions of which juries are often reminded, there is a tendency for lay persons to weigh police misconduct by the criminal standard of beyond reasonable doubt rather than the civil standard of the preponderance of the evidence.<sup>16</sup> These factors reviewed together create a climate where victims of police abuse are guaranteed rights with no truly viable nor available remedy.

So what has the liberal reform in police administration of the last twenty years achieved? Changes in police practices can conceptually be understood by classifying them into three separate models.<sup>17</sup> The first model views the police as a modern bureaucracy. Indeed the size alone of

New York's police force would reinforce that analysis. As with any other bureaucracy it is theorized that increased professionalism through education and training will lead to increased efficiency, including better police conduct and fewer incidents of abuse.<sup>18</sup>

Most of the efforts at police reform over the last ten years have followed this model. Despite generating some positive changes these efforts have failed to significantly deter misconduct because the prevailing tendency of all bureaucratic organizations is to develop a strong organizational identity to the exclusion of any independent standard of moral, and unfortunately even legal, behavior.<sup>19</sup> Despite the increase in professionalism and improvement in its overall image, the department tends to close ranks and reject any vigorous adherence to law or administrative rules that could reduce officer misconduct.

The second model is one that is reflected in earlier testimony before the Subcommittee. This model suggests that policing has now become a regulatory as well as law enforcement function. This vast expansion of state authority into our daily lives necessarily increases the potential for abusive citizen encounters since police must now play high stress roles as counselors, psychologists, mediators and a variety of other functions. This increase in the breath of function therefore increases the parameters of what is considered intolerable behavior.<sup>20</sup> Accepting relatively more incidents of police

abuse is traded off by the greater good that this increased function provides for the public. In other words, a large urban force exercising the discretion necessary for their job will lead to a proportional, but regrettable increase in misconduct. The system will inevitably have some slippage.

However, the factor of race and racial prejudice is rarely factored into this model. If there is such a thing as tolerable limits of impermissible police behavior, the minority communities have every right to demand that those limits be reset and that the department rather than the courts take the first step in doing so.

The third model used to analyze our police force is one that views the police as a technical craftsman. This model views police as a special breed with special skills who confront problems on a daily basis that are beyond the understanding of lay persons. This mythology of police work has been fueled by television and movies which constantly characterize the police as a world apart from the rest of us. As such, the creation of their own rules and standards of conduct is consistent with this perception. Any moral dilemma created by this inconsistency is rationalized away by characterizing abuse as part of the job and simply denying that what happens is in fact wrong.<sup>21</sup> (Note: this same view is reflected in jury presumptions favoring police)

The only short term solution for continued police abuse of citizens is the punishment of misconduct on a regular

basis.<sup>22</sup> Although such administrative rules for punishment exist and are punitive in intent, they operate within the context of the department's need to avoid problems. This more dominant bureaucratic tendency overrides the regulations and relegates them to a secondary level of importance in the minds of individual police officers.

The existing Civilian Complaint Review Board has been ineffective precisely for this reason. In cases of police corruption, a major effort was made to clean up the department in the 1960's. Despite initial resistance and some abuses in this process, the effort was generally successful and corruption has been substantially reduced. However, the nature of corruption and the nature of policing itself dictated that any successful effort would have to first crack the most severe elements of the problem; secondly, require the active support of supervisory personnel at all levels; third, educate and enlist the support of the public and fourth, regularly reactivate a full range of investigatory approaches, all designed to send a clear message that corruption is wrong and will be punished. (See for example the Knapp Commission for both positive and negative examples of this process)

If this same approach were applied to the present problem of police abuse, there is a chance that its curtailment would be as effective. The new administration in the department has a unique opportunity to break the bureaucratic logjam that presently characterizes the CCRB. The department

should increase the penalties and range of penalties presently available at the precinct level to curb abuse.<sup>23</sup> Just as lateness, drinking on duty or failure to answer a radio call are quickly dealt with through supervisory discretion, similar procedures must be implemented for abusive behavior.

Existing departmental policy, though well intended, will not insure an evenhanded response or application of the rules. Precinct captains' evaluations should include a risk management factor to determine if abusive conduct of any officer is costing the city money through increased complaints, investigations or civil judgments. Similar standards should be applied by precinct captains to lower supervisory personnel.

These recommendations are made with an eye toward their political viability in an environment that has vehemently resisted civilian intrusion into its' affairs. If, in the short run change does not occur, the longer range approach must include a truly independant civilian review board made up of representatives that are not affiliated with the department or the district attorneys office.<sup>24</sup> There are several models for such a board which I won't go into here, however, its independence, its authority and its capacity through adequate staffing and budget would be essential to its success. In that case the goal would be to create an independant Civilian Review Board that would be more responsive to parts of the buracracy that are more democratically accountable to the community than the Police Department presently is.

In conclusion, let me simply emphasize that the problem of police abuse is prevalent and will increase in this city if measures other than the existing CCRB remedies are not employed. Existing laws offer little hope for immediate solutions but the power of departmental supervisors if vigorously channeled and publicly supported could provide a measure of success in curbing police abuse commensurate with the success of similar efforts to stem corruption.

## FOOTNOTES

1. Testimony of Police Commissioner McGuire before the Subcommittee
2. The Report of the National Advisory Commission on Civil Disorders (Kerner Commission) New York, Bantam Books 1968 at 31 passim
3. Isid at 34
4. Guardians Association v. City of New York \_\_\_\_\_ F2d \_\_\_\_\_
5. Carmen R. An Overview of Civil and Criminal Liabilities of Police Officers and Departments 9 On Journal Criminal Law. 33, 34 (1981)
6. Id at 34 - 36
7. Carmen, Supra 37 - 38
8. See Id. at 38 - 40
9. Mornell v. Department of Social Services 436 U.S. 658 (1978)
10. Littlejohn, E. Civilian Police Commission: A Deterrent of Police Misconduct 59 U. Det J. Urb. T 6, 9 (1981)
11. Suing the Police in Federal Court, 88 Yale L.J. 781, 1979
12. Id. at 789
13. Carmen, Supra at 33
14. Yale L.J. at 795
15. Id. at 796
16. Littlejohn, Supra
17. Klockars, The Dirty Harry Problem, 452 The Annals of the American Society of Political and Social Science 33 (passim 1980) [hereinafter cited as Annals]
18. Id. note 2 at 36
19. Id. at 42
20. Id. at 45 - 46
21. Id. at 47
22. Supra at 47
23. Supra at 47
24. 59 U. of Detroit J. Urb. L. Supra at 7

Mr. GOODE. Unfortunately, Congressmen, there are people in this city, City officials, officials within the police department, that neglect a very important document, that has a lot to do with why we are here today. That document is not only neglected at the local level, but is neglected at the national level. There seems to be a pervasive misuse going on. And that document I refer to is the written Constitution. The written Constitution that guarantees our rights and restricts abuse of force by government and guarantees redress of those grievances when citizens have them.

It is a sad testimony about the procedures available in this city that the right to petition governments for the redress of grievances, has to occur at this level, with federal intervention, because it is so blatantly abused and the public has lost all confidence in its access and use at the local level.

Now, Officer Caruso indicated that the police department here in New York is one of the most scrutinized public bodies, and because of that, all of the checks and balances that are operative against the police department work perfectly well. I think the testimony that has been presented here today and at previous hearings indicate that is absolutely a lie. That there has been a total breakdown in efficiency and in process, yet it is shrouded in the bureaucracy with one layer of investigation or report or panel or another, failing to do the actual job that it was set out to do.

Does the law provide any real remedy for the victims of police abuse? And the answer to that is in most cases no.

Title 42 of the United States Code, section 1983 provides for a theoretical remedy for the violation of civil rights abuses by police officers against citizens. I say a theoretical remedy, not to denigrate or disregard the use that that statute has been put in many cases of civil rights violations. However, a study that was conducted by the Connecticut Bar Association, released 2½ years ago on civil rights prosecution of police abuse indicated some very revealing aspects.

First of all, the cost for this prosecution has to be borne by the plaintiffs themselves, plaintiffs who are usually in almost all cases charged with criminal offenses. Whatever monetary means they may have for legal redress is usually exhausted at that level, making it impossible in many cases for them to retain private counsel to pursue those remedies.

Even when Federal civil rights statutes that provide for the award of attorney's fees are involved, in these situations, the more common situation is that in order to bring a case of this type to full conclusion, thousands of dollars must be put forward in advance to insure proper investigation and uncovering of the evidence. Even though there is a likelihood of recovery in some of the best cases, the cost alone acts as a deterrent for members of the private bar to vigorously pursue this and represent persons of police abuse.

So this vigorous scrutiny that Officer Caruso speaks about is in many cases merely a charade, an illusion, a right without a true remedy.

Another point that the report, which was published in the Yale Law Journal, indicated, was a significant pattern amongst jurors, and in most cases all white jurors reviewing the cases of black or

Hispanic claimants with a particular bias toward the police. Studies and questionnaires submitted to these jurors at the conclusion of trials indicated overwhelming bias to believe whatever testimony and whatever statements the police introduced regardless of the contradictory evidence put forward by the plaintiff.

Of the 28 cases that they surveyed very closely, in 22 of those the police prevailed. In all cases the police were defended either by counsel provided at no cost by the union, or by counsel provided at no cost by the department or municipality.

So what we have here is the intention and reach of section 1983 being thwarted by this process that insulates the individual officer in almost every case from any potential liability.

Now, another factor that was brought up this morning has to do with the role of the city administration as a whole in this process. As the number of complaints of abuse begin to mount, and they increase, and they become more severe, literally thousands of hours of city worker's time is spent in processing and reviewing these in one enormous bureaucratic snarl that rarely produces any effective results. But there is a cost. There is a monetary price, that we as taxpayers are paying.

It is estimated that it takes 97 hours alone to investigate properly the allegations of police abuse claim. When this time is borne by the corporate counsel's office or by other city officials, it is time that is not spent on other matters of city concern. When claimant's are successful against the city, it is the taxpayer who is also paying that claim. We are all paying for the abuse of these public officials. And yet within the city of New York now, despite an administration that claims great credit for fiscal integrity and careful accounting of the city's books, there is no study, no effort, no policy whatsoever that is determining what this pattern and practice of police abuse is costing this city, in terms of man-hours, in terms of money, in terms of insurance claims. And I think that that is an effort that must be remedied and can be remedied from the mayor's office immediately.

Finally, I would simply like to concur with the other statements that have been made that the civilian complaint review board is in fact a bureaucratic sham. The nature of bureaucracy has a strange tendency to it. It tends to create a special sense of identity of those who participate in it, an identity so strong that insulates it even from the reach and respect for the law or even the internal rules and regulations that that bureaucracy creates. And this is what our police department in New York City has become, an insulated entity operating within itself, with its own rules and regulations separate, but parallel to the laws of this city, Federal and State laws, and its own regulations that are ostensibly designed to protect citizens from police abuse.

Now, if we compare the way in which the police department has addressed the problem of corruption, graft, and other matters of that type, with the way in which they have responded to police abuse, we see two vastly different patterns emerging.

In the case of police corruption, a major effort was made to clean up the department in the 1960's. Despite initial resistance from the rank-and-file officers, the effort was generally successful, and corruption was substantially reduced. However, the nature of corrup-

tion and the nature of policing itself, dictated that any successful effort would have to first crack the most severe elements of the problem, that is make an example and show the clear intentions of the department. Second, require the active support of supervisory personnel at all levels. Third, educate the public and enlist public support in this effort. And, fourth, regularly reactivate a full range of investigatory procedures and approaches, all designed to send a clear and unmistakable message to the rank and file of the police department that corruption is wrong, it is illegal, and will not be tolerated at any level.

I suggest that we are at an opportune moment with a new police commissioner about to take office. I would only hope that he would seize the moment that is available to him when new administrations take power, when new topline officers and administrative appointments are made, and employ the same systematic approach to this pattern and practice of police abuse in our city, as has been meted out toward the issue of police corruption.

Mr. CONYERS. Thank you, Victor. You raised one question in my mind, because we have gone over the Knapp Commission and how fraud and corruption was specifically addressed. Let me give it to you, even though we are in the late hours. Is there not a relationship between violence and corruption. Is not violence another form of corruption?

Mr. GOODE. Absolutely, another form of corruption. When police officials believe that they can flagrantly violate the procedures of the department, there is no way of limiting or circumscribing the type of violation that will occur. So when the department fails to discipline its officers for violence against the citizens of this city, they are merely opening the door for additional abuses that will invariably and inevitably lead to other types of corruption.

Mr. CONYERS. That is my feeling. The more I begin to discuss this with you and other witnesses today, I have begun to see that in closing the door on fraud and corruption in the bribery sense and yet leaving violence implicitly sanctioned by the police all you have done is close off one part of the responsibility of an officer to resist corruption and allowed it to flourish in another area. Indeed, it might even come back to the old regular kinds of fraud and corruption, if you are not careful, by just sanctioning the violence.

I yield to any of my colleagues who may have any comments.

Thank you all very much. We need to watch the statistics now. This hearing has been based on the fact that Commissioner McGuire has one set of figures from sources that we will subsequently learn about, and I am operating on a different set of figures, and somewhere along the line this committee is going to have to agree on whose statistics are correct and valid. And I will be calling upon you to help me there. Thank you very much.

Ms. McAlister, Frank Chapman, Kevin Berrill, Professor Parker, Professor West, and Dean James Credle of Rutgers. McAlister, Chapman, Kevin Berrill, Kellis Parker, Cornell West, James Credle. Mr. Chapman, would you care to commence? Frank Chapman is from the National Alliance Against Racist & Political Repression.

**TESTIMONY OF FRANK CHAPMAN, NATIONAL ALLIANCE  
AGAINST RACIST & POLITICAL REPRESSION**

Mr. CHAPMAN. Thank you very much, Mr. Chairman. I am submitting to the committee model legislation which we have prepared to in order to establish democratic control of the police in New York City.

Mr. CONYERS. Federal or local?

Mr. CHAPMAN. The proposal we are going to make here is Federal. I said New York City, but actually it would be for the country. We have already introduced this legislation on some local levels, but I will get into that when I get into my prepared statement.

I am not going to go through the whole statement, in the interest of time, so I will just touch the high points.

Mr. Chairman, on behalf of the National Alliance Against Racist & Political Repression, I would like to join everyone else here in thanking you for convening this hearing on police brutality in New York City. We welcome you and sincerely hope that this meeting and deliberation will have farreaching and meaningful results.

The testimony given thus far has already pointed to a type of abusive behavior and brutality on the part of the police department and is much deeper than our mayor or the police department would have us believe. Incidents of police violence reflecting the racist policy and practices of our city and government are what is at issue here.

The NAARPR, as you know, Mr. Chairman, is a multiracial, multinational organization, which was formed over 10 years ago, and has the issue of police crimes as one of its focal points. Since its founding, the alliance has helped to bring an end to the widespread abuses of police violence in black and Latin communities, as well as defend the right of people to organize, a basic right which is under attack.

Contrary to the opinion given by our mayor, the New York Police Department, and our Justice Department, evidence of police crimes is not so scarce as to make one in the black community or any other poor and oppressed community believe that police brutality is isolated, but rather systematic and racist in nature.

When we say systematic, we mean we must not fail to recognize what we are dealing with politically, that is an officially inspired reign of terror in our communities. The way in which our communities are perceived is not isolated to one area, such as the Bronx, as we witness in Fort Apache, or the 28th precinct in Harlem or the 75th precinct in Brooklyn, Brownsville East, New York. But it is citywide, even nationwide.

Our communities, for those of us who are black, Hispanic, poor, and other oppressed minorities, are areas where the police in serve as an occupying force, an army. We know, for instance, since the establishment of the LEAA, the Law Enforcement Assistance Administration, in 1968, expenditures for the police have gone for the creation of special weapons and tactics team, known as SWAT, armed helicopters with night vision, telescopic cameras, trained and equipped surveilling. These things were not created to stop crime on the streets, but principally to block the type of rebellion

which occurred in Miami, civil disobedience of any kind, and to disrupt or sometimes eliminate the movements of social change.

Responding to the increasing volume of evidence of police crimes, and recognizing the extent to which the media and our branches of Government ignore such crimes, a national people's hearing and inquiry on police crimes was held in January 1981 in Los Angeles, Calif., sponsored by the NAARPR, National Council of Black Lawyers, and the National Black America Law Students' Association, a panel of church leaders, legislators, legal experts, community representatives was convened.

I am telling you this for the purpose of sharing with you that our findings in this hearing consistently brought out what many at this hearing have testified to: That police crime is a consistent pattern and practice of behavior. There is a significant correlation by way of race and class between the victims of police crimes. That a prima facie case can be established, showing a pattern and practice of politically and racially selective surveillance, harassment, arrest, and prosecution. And the victims are predominantly drawn from poor and minority communities.

Such facts have been found to exist in any city in this country. There have been many examples of police brutality given you today and at the previous hearings, but it is important to emphasize the type that significantly undermines our basic democratic rights. Not only are average black, Puerto Rican, Latin, and Asian citizens victims of such daily abuse, but now we have those that have been elected to office, our community leaders, and ministers, who are not respected but abused by the police.

Our assemblyman, Roger Green, was the victim of an assault, not just by a white pedestrian, but also by a white police officer, who, without question or provocation, handcuffed him with the intention of arresting Green for no reason. Cisto Medina, a school board member of district 6 in Manhattan, a community activist and respected citizen, is another example. This case, however, adds another dimension to the issue. During the May 3 school elections this year, Mr. Medina voiced his concern and complaints to poll inspectors and police assigned to Public School 173 in district 6, a predominantly Hispanic community.

Those complaints were opposing voting rights violations. For example, no Spanish-speaking poll workers, no instructions on how to vote in Spanish, no proper procedure for voting was set up. Many buff cards of parents were missing resulting in hundreds being turned away and votes uncounted. Over 1,500 parents were denied the right to vote in one district alone. Many of these votes would have been cast for Mr. Medina.

For his complaints, Mr. Medina was thrown down by the police and beaten for speaking out against these blatant acts of discrimination and voting rights violations.

The alliance has filed a complaint with the U.S. attorney's office and the Civil Rights Division on behalf of Mr. Medina and the parent voters. The charges of electioneering were dismissed after public outcry and community residents voiced their concern. Mr. Medina still faces the outcome. The election was lost under such blatant practices of discrimination, and the police very definitely played its part.

If I may speak parenthetically, perhaps the President can dispatch marines to Brooklyn, Harlem, and Washington Heights to restore the democracy and free the hostages there who daily live in fear of their lives being taken by some trigger-happy police officer.

It is not peculiar to district 6. This is the kind of political confrontation we are faced with regularly in our communities. Other examples being police attacks on striking workers.

I would like to add that with the establishment of the joint task force on terrorism, between the FBI and the New York Police Department, and its use in 1981 around the Brinks robbery, it is this racist syndrome, patterned on oppression, based on reckless disregard for the rights of citizens and the accused that permeates our police agencies. And such acts have only served and will continue to serve as a pretext for wide-scale investigation of so-called radical groups and racist-inspired persecution of black organizations.

In the case of Philani Suni Ali, the Morningside raids, and others, should serve as examples of what police and the Federal Government would do to paint those who challenge the status quo as criminals. Create hysteria and establish dangerous precedents in terms of exorbitant bail, right to counsel, witchhunt-type proceedings reminiscent of trials, guilty by association, illegal search and seizure, grand jury abuses, and so on.

At the same time the allowance of racist fanatics, such as the Ku Klux Klan, Nazis, the U.S. Labor Party, are allowed not only to terrorize, but maim and kill. The task force on terrorism needs to be abolished.

As long as we are dealing with a politically inspired definition of terrorism, and a police force which operates in such a fashion as to represent and serve the economic and political interests of the few, they will represent not only an undemocratic, but antidemocratic force in society.

The testimony we have heard here today and previously overwhelmingly suggests our police are not held accountable to the people of New York City. One of the surest guarantees of a democratic society is a democratically accountable police force.

Over the past years, the NAARPR's legal support committee has drafted model legislation for police-control counsel. Many facts presented here today bear out the fact that the existing mechanism that is to deal with problems, abuses, and policies of the police are ineffective. A body investigating itself is like a worm investigating its tail, and making recommendations to the police commissioner, who can take them or leave them, bears no justice.

We submit that this model legislation's intent is to put democratic control over the police department to abolish racist policies and practices, procedures, rules and regulations, and brutality and abuses. And put investigative files in the hands of an independent body which represents the multiracial, multinational character of the community and holds the police force accountable to its actions.

We would like to submit copies of this proposed legislation to this committee, Mr. Chairman, with the express hope that this committee would recommend to our local government bodies that such proposed legislation, or at least an examination of this type be forthwith and consideration be given to this as a viable alternative

to a civilian complaint review board. It will need the support of our people here and others.

Only with the establishment of an independent body, separate from the police department, to deal with the hiring policies, practices, rules and regulations concerning the conduct of police personnel, with the interest of the police and community at heart, will we even begin to approach a democratic solution. This model legislation has been introduced in two State legislatures in the past, Pennsylvania in 1981, New York in 1979, and currently it is being introduced in Berkeley, Calif. Yet, we have never had the support of the Government, I mean the U.S. Government, on this legislation, and that is what we are asking for here today.

We are confident that in Berkeley, Calif., this model legislation will become a living law.

In concluding, Mr. Chairman, let me say that when our organization first set up its police crime task force in 1977, we, like so many others, were fighting for stronger more democratic review boards and citizen complaint boards. But as we came to know as organizers, the increasing militarization of the police in our communities, we began to realize that being able to review complaints and make recommendations for disciplinary action is not enough, and certainly is not preventive. Therefore, we came rather quickly to the conclusion that the people in a democracy must control the police and not vice versa. Control means we who live in the community set the standards for police conduct. It means that we have the power to regulate the use of firearms, to abolish the joint task force on terrorism and police crime. This is the kind of power that the likes of Mayor Koch does not want us to have, but I submit that it is only through such firm democratic control of the police, that we will be able to bring an end to this epidemic of police violence in our community.

On the other hand, the fact that the review board process is not working in New York City, is evident by the 43,283 complaints filed under the Koch administration. There has been no disciplinary response.

We should quickly add that the record is no better for the Justice Department. In this connection, I would submit that the fundamental problem of police brutality, that is, police committing crimes against the people, is that it is yet another example of how democratic norms are being rapidly eliminated by the very government which is supposed to protect and secure our rights to life, liberty, and the pursuit of happiness.

The chamber of horrors revealed by the last congressional hearing convened by this committee and revealed here today in New York, demonstrates that the police in New York City operate on the principle that black and Latino people, and indeed all people of color, have no rights they are bound to respect.

The evidence is so clear that no matter what Mr. McGuire says, he cannot erase from your records nor from the memories of the victims that appeared before this committee, the brutal and criminal conduct of so many members of the New York Police Department, conduct which can only be explained by the racism and white chauvinist arrogance that permeates the New York City gov-

ernment from Mayor Koch to the white patrolman. Thank you very much.

[Prepared statement of Frank Chapman and materials submitted by NAARPR follow:]

**NATIONAL ALLIANCE AGAINST RACIST & POLITICAL REPRESSION**

27 Union Square West ● Rm. 306 ● New York, N.Y. ● 10003 ● 212/243-8555



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Political Prisoner

**TREASURER**

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**GENERAL COUNSEL**

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**EXECUTIVE DIRECTOR**

Frank Chapman

organizations for identification only

Testimony Submitted

by

Frank Chapman  
Executive Director

to

Subcommittee on Criminal Justice

U.S. House of Representatives

Mr. Chairman:

On behalf of the National Alliance Against Racist and Political Repression (NAARPR), I would like to thank you and the committee for convening the second of a series of hearings on racial brutality by the NYPD. We welcome you and sincerely hope this long needed deliberation will have far-reaching and meaningful results.

The testimony given, thus far, has already pointed to a type of abusive behavior and brutality on the part of the police department that is much deeper than our Mayor or the police department would have us believe. Incidents of police violence reflecting the racist policies and practices of our city and government are what is at issue.

The NAARPR, as you well know, Mr. Chairman, is

**National Executive Board**  
Elected May 15th, 1983 — Chicago, Illinois

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Rita Anthony Birmingham, AL Branch	Patrice O'Neill Bay Area, CA
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Unity + Struggle + Organization = VICTORIES!

a multi-racial, multi-national organization which was formed over ten years ago, and has the issue of police crimes as one of its major focal points. Since its founding the Alliance has fought to bring an end to the widespread abuses of police powers in Black and Latin communities, as well as defend the right of people to organize - a basic right which is under attack.

Contrary to the opinion given by our Mayor, N.Y. Police Dept., and our Justice Dept., evidence of police crimes is not so scarce as to make one in the Black community or any other poor and oppressed community believe that police brutality is isolated but rather is systematic and racist in nature. When we say systematic, we mean we must not fail to recognize that we are dealing with politically, what is an officially inspired reign of terror in our communities. The way in which our communities are perceived is not isolated to one area, such as the Bronx (as we witnessed in "Fort Apache"), or the 28th Precinct in Harlem, or the 75th Precinct in Brooklyn, Brownsville-East New York, but is citywide, even nationwide. Our communities for those of us who are Black, Hispanic, poor and other oppressed minorities are areas where the police in fact serve as an occupying force, an army. We know, for instance, since the establishment of the LEAA in 1968, expenditures for the police have gone for the

creation of special weapons and tactics teams (SWAT), armed helicopters with night vision, telescopic cameras, trained and equipped surveillance. These things were not created to stop crime in the streets, but principally to block the type of rebellion which occurred in Miami, civil disobedience of any kind and to disrupt, or sometimes eliminate the movements for social change. Responding to the increasing volume of evidence of police crimes and recognizing the extent to which the media and our branches of government ignore such crimes, a National Peoples Hearing and Inquiry on Police Crimes was held in January 1981 in Los Angeles, California, by the NAARPR, National Conference of Black Lawyers and the National Black American Law Students Association. A panel of church leaders, legislators, legal experts, community representatives was convened.

I mention this for the purpose of sharing with you that our findings in this hearing consistently bear out what many at this hearing have testified to - that police crime is a consistent pattern and practice of behavior; that there is a significant correlation by way of race, class, between the victims of police crimes; that a prima facie case can be established showing a pattern and practice of politically and racially selective surveillance, harassment, arrest and prosecution; and the victims are predominantly drawn from poor and minority communities. Such facts would be found to exist in any city in this country.

There have been many examples of police brutality given here today, and at the previous hearing. But it is important to emphasize the type that significantly undermine our basic democratic rights. Not only are average Black, Puerto Rican, Latin and Asian citizens victims of such daily abuse, but now we have those who have been elected to office, our community leaders, and ministers who are not respected but abused by the police. Our Assemblyman Roger Green, is the victim of an assault not just by a white pedestrian, but also by a white police officer, who without question or provocation handcuffed, with the intention of arresting Green for no reason.

Sixto Medina, School Board Member of District 6, in Manhattan, a community activist, and respected citizen is another example. His case, however, adds another dimension to the issue. During the May 3rd school elections this year, Mr. Medina voiced his concerns and complaints to poll inspectors and police assigned to Public School 173 in District 6, a predominantly Hispanic Community. Those complaints were opposing voting rights violations e.g. no Spanish-speaking poll workers, no instructions on how to vote in Spanish, no proper procedure for voting was set up, many buff cards of parents were missing resulting in hundreds of parents being turned away and votes uncounted. Over 1500 parents were denied the right to vote in one District alone; many of

many of these votes would have been cast for Mr. Medina. Mr. Medina for speaking out against such blatant acts of discrimination and voting rights violations was harassed, intimidated, beaten and arrested, and charged with a criminal offense of electioneering. The Alliance has filed a complaint with the U.S. Attorney's Office, and the Civil Rights Division, on behalf of Mr. Medina and the parent voters. The charges of electioneering were dismissed after public outcry and community residents voiced their concern, but Mr. Medina still faces the outcome. The election was lost due to such blatant practices of discrimination, and the police very definitely played its part.

If I may speak parenthetically perhaps the President can dispatch marines to Brooklyn, Harlem and Washington Heights to restore democracy and free the hostages there who may daily live in fear of their lives being taken by some trigger happy police officer.

It is not peculiar to District 6. This is the kind of political confrontation we are faced with regularly in our communities, other examples being police attacks on striking workers.

I would like to add - that with the establishment of the Joint Task Force on Terrorism between the FBI and the NYPD, and its use in 1981 around the Brink's robbery, it is this racist syndrome, pattern of repression, based on reckless regard for the rights of citizens and the accused that permeates our police agencies, and such acts have only served and will continue to serve as a pretext for widescale investigation of so-called "radical" groups and racist-inspired persecution of Black organizations. The case of Fulani Suni Ali, the Morningside raids and others should serve as examples of what police and federal government will do to paint those who challenge the status quo as criminals, create hysteria, and establish dangerous precedents in terms of exorbitant bail, right to counsel, witch-hunt type proceedings reminiscent of Smith Act trials, guilt by association, illegal search and seizure, grand jury abuses, and so on. At the same time, the allowance of racist fanatics such as the KKK, Nazis, the U.S. Labor Party are allowed to not only to terrorize, but maim and kill. The Task Force on Terrorism needs to be abolished.

As long as we are dealing with a politically-inspired definition of terrorism, and a police force which operates in such a fashion as to represent and serve the economic and political interest of the few, they will represent not only an undemocratic, but anti-democratic force in society.

The testimony we have heard here today, and previously, overwhelmingly suggests our police are not held accountable to the people of New York City. One of the surest guarantee of a democratic society is a democratically accountable police force.

Over the past years, the NAARPR's Legal Support Committee has drafted model legislation for a police control council. Many facts presented today, bear out the fact that the existing mechanism that is to deal with problems, abuses, and policies of the police are ineffective. A body investigating itself and making recommendations to the Police Commissioner, who can take them or leave them serves no justice. We, NAARPR submit that this model legislation's intent is to put democratic control over the police department, to abolish racist policies and practices, procedures, rules and regulations, end brutality and abuses, and put investigative powers in the hands of an independent body which represents the multi-racial, multi-national character of the community and holds the police force accountable to its actions.

We would like to submit copies of this proposed legislation to this Committee, Mr. Chairman with the expressed hope that this Committee would recommend to our local government bodies, that such proposed legislation or at least an examination of this type be forthwith, and consideration be given to this as a viable alternative to a Civilian Complaint Review Board. It will need the support of our people here and others.

Only with the establishment of an independent body, separate from the police department, to deal with the hiring policies, practices, rules and regulations concerning the conduct of police personnel, with the interest of the police and community at heart will we even begin to approach a democratic solution. This model legislation has been introduced in two state legislatures in the past, Pennsylvania in 1981, New York in 1979 and currently in Berkeley, Ca. But we have never had the support of the government. Yet we are confident that in Berkeley, Ca. this model legislation will become the living law.

#### Conclusion

In concluding Mr. Chairman let me say that when our organization first set up its Police Crimes Task Force in 1977, we like so many others, were for fighting for stronger more democratic review boards on Citizen Complaint Boards. But as we came to know as organizers the increased militarization of the police in our communities, we began to realize that being able to review complaints and make recommendations for disciplinary action is not enough, and certainly isn't preventive. Therefore, we came rather quickly to the conclusion that the people, in a democracy, must control the police and not vice-versa. Control means we who live in the community set the standard for police conduct, it means that we have the power to regulate use

of fire-arms, to abolish the Joint Task Force on Terrorism and police spying. This is the kind of power that the likes of Mayor Koch doesn't want us to have but I submit that it is only through such firm democratic control of the police that we will be able to bring an end to this epidemic of police violence in our communities.

On the other hand the fact that the review - board process is not working in New York City is evident by the fact that of 43,283 complaints filed under the Koch administration, there has been no disciplinary response. We should quickly add that the record is no better for the Justice Department.

In this connection I would submit that the fundamental problem with police brutality (i.e. police committing crimes against the people) is that it is yet another example of how democratic norms are being rapidly eliminated by the very government which is supposed to protect and secure our rights to life, liberty and the pursuit of happiness. The chamber of horrors revealed by the last congressional hearing convened by this committee in New York demonstrates that the police in New York City operate on the principle that Black and Latino peoples have no rights they are bound to respect. The evidence is so clear and no matter what Mr. Mc Guire says he cannot erase from your records, nor from the memories of the victims that appeared before this committee, the brutal,

the criminal conduct of so many members of the NYPD. Conduct which can only be explained by the racism and white chauvanist arrogance that permeates New York City government from Mayor Koch to the white patrolman.

Therefore, we call upon Congress to intervene by making it mandatory vis-a-vis federal legislation to set up precisely the kind of Police Control Board outlined and detailed in the model legislation we have submitted here today.

1805

**NATIONAL ALLIANCE AGAINST RACIST & POLITICAL REPRESSION  
MODEL LEGISLATION FOR A POLICE CONTROL COUNCIL**

**NAARPR - NATIONAL OFFICE  
27 UNION SQUARE WEST / RM. 308  
NEW YORK, N.Y. 10003**

**S.F. BAY AREA BRANCH  
P.O. BOX 10582  
OAKLAND, CA. 94810**

**GENERAL PURPOSES**

The general purposes of this legislation are to insure that:

- Popular democratic control over the functioning of the \_\_\_\_\_ Police Department rests with an independent, elected body of citizens who reflect the multi-racial, multi-national character of the community;
- Racism, racial discrimination, and brutality be abolished from the policies, practices, procedures, rules and regulations of the \_\_\_\_\_ Police Department.
- Preservation of human life and respect for human integrity and dignity become paramount considerations in the development of police policies, practices, and procedures. And further that police policies, practices and procedures demonstrate a commitment to the preservation and extension of the of constitutional, legal, civil and human rights of all people.
- No person be subjected to verbal or physical harassment or abuse by police authorities because of race, age, sex, or political beliefs.
- Only democratic police authorities function in our city where racial and sexual composition reflects the community entrance requirements, training and practices that are in the best interest of the community and, where individual members are accountable to the community.
- Lines of responsibility and accountability for an effectively and equitably functioning police authority are clearly established.
- Unconstitutional control of local police authorities by corporate and military institutions is prevented.

## POWERS AND DUTIES OF THE POLICE CONTROL COUNCIL

The Police Control Council shall have the following powers and duties:

- Investigate the extent to which present police employment, structure, budget and rules and regulations promote systematic discrimination on the basis of:
  1. Race
  2. Economic Status
  3. Geographic Location
- Establish the office of General Counsel to the Police Control Council with the authority to receive, investigate and litigate, as provided in this charter, any complaint concerning the operation and functioning of the \_\_\_\_\_ Police Department.
- Act as final authority in reviewing and imposing discipline of police in the \_\_\_\_\_ Police Department.
- Review and approve the \_\_\_\_\_ Police Department budget annually and provide for its publication before its submission to the to the authorizing body.
- Formulate and implement policies, rules and regulations to democratize the practices, procedures, and operation of public and private police authorities in order to carry out the general purposes this legislation as stated above.
- Formulate and implement policies, rules, and regulations concerning the recruitment, hiring, training and promotion of police employees in order to insure that the past history and effects of racial discrimination are remedied and that the composition of police personnel reflect, at all department levels, the racial and national minority composition of the City of \_\_\_\_\_.
- Formulate and implement strict administrative standards and regulations for the exercise of police discretion in order to curb discriminatory selective enforcement by individual police officers on the basis of race, age, sex, and economic status.
- Appoint the Chief of Police for the \_\_\_\_\_ Police Department who will then be responsible to the Council for the day-to-day functioning of the \_\_\_\_\_ Police Department.
- Oversee and regulate the appropriation of state and federal funds to the \_\_\_\_\_ Police Department.
- Investigate, make findings and publish the policies, practices and procedures of private security agencies, state and national police agencies and intelligence and military agencies operating with the City \_\_\_\_\_ to insure that their operations conform to the standards established by the Council for the democratic functioning of the police.
- Compile and publish an annual report to the Mayor and City Council of the \_\_\_\_\_ Police Department's activities during the previous year and of future plans for the upcoming year.
- Adopt rules and regulations and develop such procedures for its own activities and investigations in order to carry out the general purposes of this legislation and to publish and file the same with

POWERS AND DUTIES OF THE POLICE CONTROL COUNCIL

the office of the City Clerk and to do such other things not forbidden by law which are consistent with a broad interpretation of the general purposes of this legislation.

- Subpoena witnesses, administer oaths, take testimony and require the production of evidence. To enforce a subpoena or order for the production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the Council shall apply to the appropriate Court.

## ESTABLISHING A POLICE CONTROL COUNCIL

The general purpose of this legislation is to establish a multi-racial, multi-national democratically elected Police Control Council in the City of \_\_\_\_\_ charged with the responsibility of overseeing and supervising the overall functioning of the \_\_\_\_\_ Police Department.

There is hereby established a Police Control Council of the City of \_\_\_\_\_ Said Council shall consist of elected representatives from each of the Council Districts within the City of \_\_\_\_\_.

For purposes of this legislation the City of \_\_\_\_\_ shall be divided into \_\_\_\_\_ Police Control districts. Said districts shall be drawn with the specific intent to guarantee at least proportional representation to racial and national minorities living with in the district.

**Size of Council:** The Council shall consist of \_\_\_\_\_ members, \_\_\_\_\_ people elected to the Council from each district and \_\_\_\_\_ people at large. All persons between the ages of sixteen(16) and seventy(70) shall be eligible to vote for a Council member as well as be eligible for election to the Council.

**Composition:** Every effort shall be made to have the composition of the Police Control Council proportionately represent the racial and economic structure of the City of \_\_\_\_\_, at least to the degree described in the latest U.S. census report, in order to remedy the past effects of discrimination against racial and national minorities.

**Term of Office:** The term of each member shall be two(2) years commencing on October 4 each odd-numbered year and ending on October 3 of each succeeding odd-numbered year. Any vacancy, from whatever cause occurring during the term of any member, shall be filled by election from that district no longer than sixty(60) days after said vacancy occurs.

**Officers:** The Council shall elect one of its members as Chairperson and one as Vice-chairperson as well as an executive secretary, who shall each hold office for one(1) year and until their successors are elected. Officers shall be elected no later than the second meeting of the Council following its election.

**Budget:** The Police Control Council of the City of \_\_\_\_\_ shall be a working body and shall be funded by the City of \_\_\_\_\_ with a budget of \$\_\_\_\_\_. In order to compensate councillors for their time and work in overseeing and supervising the functioning of the public and private police authorities, Councillors shall receive \$5.00(five dollars) per hour. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Council and filed with the Controller's office of the City of \_\_\_\_\_.

Such clerical and secretarial assistance as well as office facilities as are needed by the Council shall be provided by the appropriate office of the City. The Council is further authorized to secure and define the duties of the staff named above, in the manner consistent with existing law, as it may deem necessary or appropriate.

The Council shall also appoint a Chief Investigator and an additional staff of at least two(2) investigators for each of the Police

## ESTABLISHING A POLICE CONTROL COUNCIL

Control districts. They must possess skills and experience necessary for investigative work.

All members of the staff are under the direction of the Council and neither the Chief of Police nor any other department officials shall have any authority over any member of the staff.

**Meetings:** The Councillors shall establish a regular time and place of meeting and shall meet regularly at least once a week or more frequently as the workload requires. The regular place of meeting shall be in an appropriate central location in the city capable of accommodating at least 75 people at a time most convenient for public participation, provided that no meeting be held in a building where the \_\_\_\_\_ City Police Department is located. At least once every three months, or more frequently if the Council desires, the Council by meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people of the various neighborhoods in the city at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Council, upon personal notice being given to all members or written notice mailed to each member and received at least thirty-six (36) hours prior to such meetings unless such notice is waived in writing.

All Council meetings and agenda for such meetings shall be publicized in advance by written notice given to newspapers, radio, and television stations serving the city at least three (3) weeks prior to said meetings, except special meetings where advance notice may be dispensed with. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the city as are designated by the Council.

All meetings shall be open to the public. The Council shall cause to be kept a proper record of its proceedings which shall be kept open for inspection by the public at reasonable times in the office of the Executive Secretary of the Council.

A majority of the elected Councillors shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take action.

On the petition of fifty (50) or more citizens filed in the office of the Executive Secretary of the Council, the Council shall hold a special meeting at an appropriate and convenient location and time for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Council with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for regular meetings of the Council. In no case shall the Council meet later than five (5) working days following the date the petition is filed.

**Delegation of Authority:** The Council may delegate to subcommittees, as it deems necessary or desirable to carry out its investigations and functions, provided that membership on such committees shall not be limited to Council members but may include members of the public who express an interest in the business of the subcommittees. (The members of such subcommittees shall serve without compensation). The Council may delegate in writing to a subcommittee the powers to administer oaths and take testimony.

**ESTABLISHING A POLICE CONTROL COUNCIL**

**RULES AND REGULATIONS CONCERNING CONDUCT OF POLICE PERSONNEL**

The Council within one(1) year after the enactment of this legislation, shall adopt a manual of rules and regulations to govern the conduct of individual police officers. The manual shall define categories of major and minor offenses and shall set forth the maximum and minimum administrative penalties for each offense.

In order to properly define categories of offenses, the Council shall hold a series of hearings in every borough during the first six (6) months after enactment of this legislation at which time citizens will have an opportunity to testify and present other relevant evidence to aid the Council in the adoption of the manual.

This manual shall include provisions concerning the following:

1. use of deadly force
2. use of non-deadly force
3. use of abusive language
4. selective enforcement of laws
5. internal corruption
6. activities of off-duty police officers
7. standards for the exercise of police discretions
8. prohibitions against racial and sexual discrimination
9. restrictions on dragnet arrests
10. treatment of arrestees during detention
11. political surveillance, photographing, record keeping, use of informers, development of red squads
12. use of decoys to entrap the young and economically desperate citizens
13. interrogations of those accused of crime
14. prohibit all acts of racial discrimination within and among police officers
15. strict guidelines for the collection of data to prevent its unauthorized use and dissemination/mandate public disclosure to an arrestee of any and all reports concerning said arrest
16. end corporate and military influence over the police
17. establish strict disciplinary regulations to require that police follow not only the spirit but also the letter of the constitution in the areas of arrest, interrogation, search and seizure, and stop-and-frisk.
18. develop an overall policy within the \_\_\_\_\_ Police Department that demonstrates the highest regard for human life, integrity and dignity

**RULES AND REGULATIONS CONCERNING CONDUCT OF POLICE PERSONNEL**

## COMPLAINT PROCEDURE

Complaint forms written in a clear and legible manner shall be made available to the public at the City Clerk's office at City Hall, all public libraries, and the police department. A complainant shall set out the substance of the complaint on the complaint form and file the same at the City Clerk's office, the police department, or a public library. Once filed all complaints shall be forwarded immediately to the General Counsel of the Council (the chief investigator of the Council) and the chief of police.

The General Counsel, as chief investigator, shall supervise all investigations conducted by the investigation staff of the Council. The investigation staff shall conduct investigations of complaints by interviewing all persons involved in the alleged incident. The complainant shall have an opportunity to furnish evidence, including written statements and testimony, to the investigator.

The investigators shall be given complete access to all department personnel and records and may in the course of investigation subpoena witnesses, administer oaths, compel testimony and require the production of evidence. To enforce a subpoena or order for the production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order the chief investigator shall apply to the appropriate court under the administrative procedure act.

A report shall be filed within 30 days from receipt of the complaint detailing findings of fact. Upon receipt of the finding of fact, the council shall review the record and impose whatever disciplinary action is warranted by the facts.

If a complaint is not resolved as a result of investigation to the satisfaction of the complainant, the respondent employee, or a member of the Council, may request the Council to hear or review the matter. The Council, at its option, may hear or review the matter itself or refer the matter to a fact finder.

When a matter is referred to fact finding, the complainant and employee shall request an arbitrator from the American Arbitration Association and shall select names, numbering them in order of preference. The selection will be made in accordance with the general provision of the AAA concerning selection of arbitrators. The fact finder, in the conduct of the hearing, has powers similar to the chief investigator listed above.

After a hearing, the fact finder shall, within 30 days from the last day of the hearing, submit findings of fact to the council. The council, upon receipt of the report of the fact finder, shall, within 30 days, determine any discipline to be imposed. It shall publish its decision and action. The decision of the Council is final.

Any employee against whom a complaint is filed is presumed innocent. An employee shall not forfeit any pay or seniority rights pending final action by the Council, except with the concurrence of the majority of the council present and voting.

All pleadings filed and all hearings before the fact finder and the Council shall be public. The parties to any hearing are the complainant and the respondent employee. Each has a right to counsel. The case may be presented by the complainant or counsel. Any probative evidence may be admitted.

## COMPLAINT PROCEDURE

A public docket of complaints and the disposition of each complaint after investigation shall be kept in the office of the Executive Secretary of the Council and made available to the public. A report compiling statistics as to the number of complaints received and their disposition shall be made to the Council by the chief investigator each year and said report shall be made available to the public.

COMPLAINT PROCEDURE

## HIRING POLICIES

The division of police personnel shall be headed by a director of police personnel appointed by the Council. The director of police personnel must be a civilian and serves at the pleasure of the council.

Applicants for employment as police officers (or civilian employees) must enter the department in accordance with the following procedure:

The director of police personnel shall recruit applicants for service as police officers with the department, prepare and administer examinations for hiring police officers, and prepare and conduct examinations for promotion with the department.

Lateral entry into employment with the department as a police officer is permitted in accordance with the rules, regulations and procedures established by the Council.

A program of affirmative action in the hiring of national minorities will be instituted in order to insure that past history and practices of racial discrimination be remedied so that recruitment reflect the minority population composition of \_\_\_\_\_. Promotions shall also be proportionate to population ratios wherever possible and lateral entry of police officers will be permitted to effectuate this goal.

In order to effectuate hiring based on a population ratio of minority members, hiring will be permitted where the applicant has a record of misdemeanor convictions or arrest which do not involve crimes of moral turpitude.

Psychological testing of all officers, applicants, and recruits will be conducted. The test shall be designed to detect racial bias and tendencies toward violent action. Appropriate reassignments, dismissals or refusal to hire will be based on the test results.

The chief of police shall make all promotions within the department subject to the approval of the Council.

Promotions shall be made on the basis of examinations administered by the director of police personnel. All examinations will be prepared by the division of police personnel subject to the approval of the Council.

Employees of the \_\_\_\_\_ Police Department shall receive equal pay for the same or similar work.

## CHIEF OF POLICE

The Council shall appoint a chief of police, skilled and experienced in law enforcement. The chief of police serves at the pleasure of the Council.

The Chief, with the consent of the Council, may appoint necessary deputy chiefs, including a deputy chief for the women's division who shall be a woman.

**Duties of the Chief of Police:** The chief of police is the chief executive officer of the police department and shall administer the department according to the policies, rules and regulations established by the Council and shall;

1. Recommend rules, regulations, and procedures to the Council for its approval.
2. Prepare the annual budget for the police department.
3. Except as otherwise provided by the Council, maintain custody and control of all property and equipment belonging to the department or held by the department as evidence.
4. Submit to the Council tri-monthly reports of operations the department for forwarding to the mayor, city council and public. Included in said reports shall be the number of arrests, the character of arrest, the use of any physical force in accomplishing the arrest, the number of complaints received and the names of employees complained against.
5. Exercise such other powers as conferred by the Council.

**WE WELCOME YOUR IDEAS AND COMMENTS ON THIS PROPOSAL, AND YOUR HELP IN BUILDING A CAMPAIGN DESIGNED TO ESTABLISH CITIZEN CONTROL OF THE POLICE IN \_\_\_\_\_ City.**

PLEASE CONTACT US AT :  
 NATIONAL ALLIANCE AGAINST RACIST & POLITICAL REPRESSION  
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Chief of Police

**NATIONAL ALLIANCE AGAINST RACIST & POLITICAL REPRESSION**

PEOPLE'S NATIONAL INQUIRY INTO POLICE CRIMES  
LOS ANGELES, CA. JANUARY 23 & 24, 1981

**P R O P O S A L S**

1. That we go to our respective communities and begin at once to organize campaigns to end police crimes and stop police abuse. This campaign consists first of building mass support for the concept that police must be controlled and demilitarized. To successfully educate the community on the need to democratically control the police we must combine education with agitation in each particular case so that the community is not only outraged but is ready to move politically.

2. That we start proposing legislative action in cities around the country based on the model prepared by the National Alliance Against Racist & Political Repression.

3. That we nationally generate a pool of progressive legislators on the city, county, state and federal level who are favorable to the kind of legislation we are proposing; and that wherever the model legislation is introduced that we fully utilize the technique of mass organizing and grass-roots lobbying in order to build the necessary support and/or initiatives to make it law.

4. We propose that the names of all law enforcement officers who are known to have committed police crimes against the people be compiled and publicized so as to expose to the community individual police guilty of criminality. Also Alliance Branches should consistently document instances of police crimes and send the same to the national office of the National Alliance Against Racist, and Political Repression.

5. That we use federal, state and local laws to sue the police for damages and to bring criminal charges against them and to petition for public investigation.

This is a summary of the proposals adopted at the conclusion of the People's National Inquiry Into Police Crimes, January 24, 1981. The Task Force On Police Crimes, however, has been given the charge of providing the Alliance Branches with some Action Guidelines so that our people can begin to immediately start organizing for community control of the police.

Finally, the efforts made in the various targeted cities to pass legislation for community control of the police will be fully reported on at the Sixth National Convention of the National Alliance.

## CREDENTIALS REPORT

One Hundred people registered for both the hearing and workshops; however, over 200 people attended the hearings most of whom were from California.. Other geographical areas represented were: Washington, D.C., Nebraska, Oklahoma, Pennsylvania, New Jersey, New York, Tennessee, Kentucky, Indiana, Louisiana, Texas and Colorado.

Organizations represented & identified by individuals were:

Leonard Peltier Defense Committee  
 Black American Law Student Association  
 La Raza Legal Alliance  
 Center for Constitutional Rights  
 Third World Coalition-AFSC  
 National Conference of Black Lawyers  
 National Interreligious Task Force  
 National Lawyers Guild  
 National Minority Advisory Council  
 NAARPR, D.C. BRANCH  
 NAARPR, Oklahoma Branch  
 NAARPR, Los Angeles Branch  
 NAARPR, New York  
 Antioch Law School  
 National Union of Hospital and Health Care Employees  
 Philadelphia Puerto Rican Alliance  
 Communities United Against Police Abuse (Philadelphia, Pa.)  
 Legal Aid, Omaha, Ne.  
 Peoples Investigation Commission, Jersey City, N.J.  
 Police Brutality Committee, New Orleans, La.  
 Francisco "Kiko" Martinez Defense Committee (Colorado)  
 A.M.E. Church, L.A., Ca.  
 L.A. Defense Committee for the Bill of Rights  
 National Anti-Racist Organizing Committee  
 L.A. Probation Dept.  
 Communist Party, L.A., Ca.  
 Young Workers Liberation League  
 Southern Christian Leadership Conference  
 Women for Racial and Economic Equality  
 National Black Human Rights Coalition  
Sentimiento Del Pueblo  
 IBGW Local 301  
 AFSCME Local 1108  
 Charles Brisco Committee For Justice  
 Valley Emma Lazarus Jewish Women's Club  
 NAACP, Los Angeles, Ca.  
 Welfare Rights Organization, L.A., Ca.  
 Inglewood High School, L.A., Ca.

PREPARED FOR THE  
SIXTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME  
AND THE TREATMENT OF OFFENDERS

AGENDA ITEM 5  
ABUSE OF POWER: OFFENSES AND OFFENDERS  
BEYOND THE REACH OF LAW

**POLICE CRIMES  
IN THE UNITED STATES**

PREPARED IN ENGLISH BY  
LENNOX S. HINDS  
PERMANENT REPRESENTATIVE TO THE UNITED NATIONS  
INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

AUGUST 25, 1980

*"The designations employed, the presentation of material and the views expressed in this paper are those of the author and do not necessarily reflect the practices and views of the Secretariat of the United Nations in any of these respects."*

## ACKNOWLEDGEMENTS

The author wishes to express his appreciation to Anne Else for her research and support efforts in the preparation of this paper; to Attorneys Steve Paganuzzi and Adjoa Burrows of the National Alliance Against Racist and Political Repression, Jose Medina of La Raza Legal Alliance, and to Alan Boyd of the National Minority Advisory Council of the United States Justice Department for supplying many of the cases reported; and to Maureen Farrell for her efforts in researching documents.

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ABUSE OF POWER: OFFENSES AND OFFENDERS  
BEYOND THE REACH OF LAW  
POLICE CRIMES IN THE UNITED STATES

*"To some Negroes police have come to symbolize white power, white racism and white repression. And the fact is that many police do reflect and express these white attitudes. The atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in a double standard of justice and protection--one for Negroes and one for whites."*

--The National Advisory Commission on Civil Disorders, 1968, p. 11

*"After the staccato of machine-gun fire had died down and firemen in riot-ravaged Miami quenched the last embers of blazes that had reduced scores of business buildings to charred shells, as street crews hosed off the blood of 14 people beaten or shot to death, and 3,800 National Guardsmen withdrew from patrolling a 40-block by 60-block area of the shaken city, the nation had been jolted anew into a realization that Black outrage at 'a double standard of justice' still remains near flash point in many U.S. cities. While high unemployment, the ruinous impact of inflation, resentment at all the public help given the still rising tide of refugees inundating southern Florida from Cuba--all fed the fury of the Miami area's 233,000 Blacks. Yet perhaps more clearly than in any other recent race conflict, the rage in Miami focused on police, prosecutors and the courts.*  
(Emphases added.)

--Time, June 2, 1980, p. 10

## INTRODUCTION

The world is aware of the recent uprising of the Black citizens in Miami protesting the failure of an all-white jury to convict the police who brutally and unjustifiably murdered Arthur McDuffey. The world is not aware of the fact that McDuffey's murder is not an isolated incident. In fact, hundreds of Blacks and other minorities are killed by the police every year and their killers know that they can continue to maim, cripple and kill minorities without any expectation

of judicial reprimand or punishment because they operate behind the protective shield of racism.

McDuffey's murder differed from the thousands of unreported cases of police misconduct because enraged citizens took to the streets in open rebellion against police lawlessness and relentlessly exposed the facts of the case and managed to shatter the police efforts at a cover-up with the usual nomenclature of "justifiable homicide."

In an attempt to bring the racist and pervasive nature of police misconduct in the United States to the attention of the international community, this paper, ABUSE OF POWER: OFFENDERS AND OFFENSES BEYOND THE REACH OF THE LAW--POLICE CRIMES IN THE UNITED STATES, is being shared with you today at the Sixth United Nations Congress on Prevention of Crime and Treatment of Offenders.

The problem reaches every corner of America. And yet the American public, like the international community, is aware only of the most egregious and brutal abuses that garner the attention of the media. Seldom do local newspapers or national television provide information about its scope. If and when isolated incidents of gross abuses are reported, the primary source of information is the police department. Because police departments are considered more credible than the victims of abuse, the press and public media become unwitting tools to distort the truth and effectuate cover-ups by lawbreakers. Thus, what the majority culture views as an isolated incident which can be blamed on one or more "bad apples," the minority communities perceive as the reality of daily repression at the hands of the

agents of an oppressive economic and political system designed to keep them at the bottom of the social and economic ladder. Put another way, the white majority of America views the role of the police as protective while racial minorities view that role as dominating, repressive, and violent.

## I. DEFINING THE PROBLEM

The police have unique power. They are the only representatives of governmental authority who in the ordinary course of events are legally permitted to arrest citizens and use physical force against them. Other agencies of state power rely upon request, persuasion, public opinion, custody, and legal and judicial processes to gain compliance with rules and laws. Only the police can use firearms to compel the citizen to obey. The police are also in a special category in that they are sworn to enforce the law at all times, on or off duty in most jurisdictions, so that their power to arrest citizens and their access to firearms is constant and legal.<sup>1</sup>

The most frequent targets of police abuse of power are the powerless in society: Blacks, Browns, Native Americans and other racial minorities, the poor, the young, and people who challenge the existing social, economic, or political order.<sup>2</sup> Various forms of police misconduct

<sup>1</sup>Arthur L. Kobler, "Police Homicide in a Democracy," Journal of Social Sciences, v. 31, n. 1, Winter 1975, p. 163.

<sup>2</sup>Minority community witnesses told the National Minority Advisory Council on Criminal Justice that police often use excessive and deadly force against them to quell their political activities which are devoted to improving their status in American society; to evict people who are behind in their rent or mortgages; to arrest people who complain to or argue with a storekeeper who sells rotten foods at high prices. Minorities have watched police stand by or even aid in allowing right wing groups to beat, maim or kill minority peoples.

are widespread in the United States, ranging from extortions of false testimony and filing false charges against the victims to brutal beatings and the use of deadly force. Only when particularly atrocious incidents outrage an otherwise apathetic public is any official effort made to acknowledge the existence of a problem. And even in these few cases, the tragedy is that admission of a problem is substituted for a solution.

A survey in the Sourcebook of Criminal Justice Statistics reports that in 1975 third world peoples in the United States viewed the police more negatively than whites. Non-whites rated police performance "good" only half as often as whites; they used the rating "poor" twice as often.<sup>3</sup> Given the functional role the police serve in relation to the total society, these findings are not surprising.

"In 1964, a New York Times study of Harlem showed that 43 percent of those questioned believed in the existence of police brutality. In 1965, a nationwide Gallup poll found that 35 percent of Negro men believed there was police brutality in their areas; 7 percent of white men thought so. In 1966, a survey conducted for the Senate Subcommittee on Executive Reorganization found that 60 percent of Watts Negroes aged 15 to 19 believed there was some police brutality. Half said they had witnessed such conduct. A University of California at Los Angeles study of the Watts area found that...74 percent (of Negro males) believed police use unnecessary force in making arrests. In 1967, an Urban League study of the Detroit riot area found that 82 percent believed there was some form of police brutality.<sup>4</sup>

<sup>3</sup>Sourcebook of Criminal Justice Statistics, 1978, United States Department of Justice (Washington, D.C.), "Table 2.35 -- Ratings of Local Police by Demographic Characteristics, 13 Selected American Cities (Aggregate), 1975." p. 301.

<sup>4</sup>Report of the National Advisory Commission on Civil Disorders, Government Printing Office (Washington, D.C.) 1968, p. 158.

The cases selected for presentation in this report are illustrative of the deep and extensive nature of the problem. They reflect the outrage felt by the minority communities at the failure and unwillingness of governmental entities to remedy the situation.

The tensions and hostilities between police and minorities are further exacerbated by the system of economic exploitation in the United States which relegates minorities to the bottom of the barrel and relies on the police to keep them in their place. Minorities of all ages suffer greater unemployment than whites, but the 30-50% unemployment rate among inner-city youth which has existed for years creates a special problem that neither the local or national government has made a serious effort to address. Indeed, current government policy is designed to stimulate unemployment in order to slow inflation. And today's youth who are better educated and thus enter the job market believing they have a right to a job may "foreshadow a more assertive and rebellious generation of workers."<sup>5</sup> Thus increased unemployment brings with it increased community struggles confronting the inequities of the existing economic order, and increased community struggles are met with increased repression by police. It is a debilitating spiral downward that all too often leads to open rebellion, injury and death to those confronting the system that cripples their lives.

Whenever power is invested in persons, there exists the possibility of abuse. When the abusers of power comprise an entity, such as the law enforcement establishment in the United States and when, time and again, these abuses are not met with effective remedies, a

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<sup>5</sup>Paul Takagi, from his statement made to the consultation on "Police Practices and the Preservation of Civil Rights" sponsored by the United States Commission on Civil Rights, Washington, D.C., December 12-13, 1978, p. 34.

social problem of massive proportions develops. Under these conditions, it is inevitable that one segment of society--the powerless victims of pervasive police abuse--will view that abuse as lawlessness sanctioned by the ruling majority. Society is thus faced with offenses and offenders beyond the reach of the law.

## II. OFFENSES AND VICTIMS

Police have used and continue to use unwarranted force which includes physical and/or psychological abuse shocking to the consciences of citizens living in a democratic society. All too often the targets of these acts are the powerless within the society and are members of racial minorities and poor communities.

Examples of such practices include, but are not limited to:

- (1) Physically abusing people who have committed no crime;
- (2) Physically abusing arrestees and prisoners who are awaiting trial;
- (3) Physically or psychologically intimidating arrestees and prisoners to extract confessions;
- (4) Verbally abusing and detaining people without proper cause;
- (5) Conducting illegal searches and seizures;
- (6) Killing people who have committed no crime;
- (7) Killing people who are not threatening the lives of others (including those who are fleeing from apprehension)
- (8) Engaging in practices to deliberately cover-up their own abuses of power and that of fellow officers.

The widespread nature of the problem is documented by the fact that upwards of 10,000 complaints involving denial of a citizen's rights by a law enforcement agent were submitted to the Civil Rights Division of the United States Department of Justice in 1977.<sup>6</sup> And the problem is increasing. In the six months between October 1979 and March 1980, the Department of Justice received 142% more complaints of police abuse of force than it had in the same time period a year before.<sup>7</sup>

Even these figures are misleading because many incidents of police brutality are never reported since victims fear additional harrassment or reprisal or even lawsuits by the police themselves. Some police unions file counter lawsuits anytime charges are brought against them.<sup>8</sup>

Not only is the enormity of police abuse overwhelming, but the racist nature of it is undeniable. There are currently no nationwide data kept on all forms of police abuse. Data on police-caused deaths are somewhat more adequate than on other types of misconduct and thus we shall use this data to demonstrate here the disproportionate impact of these practices on minority communities.

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<sup>6</sup>From a statement by Drew Days, Assistant Attorney General, Civil Rights Division, United States Department of Justice, at a consultation on "Police Practices and the Preservation of Civil Rights" sponsored by the United States Commission on Civil Rights, Washington, D.C., December 12-13, 1978, p. 139.

<sup>7</sup>Brian Hudson, "Police Abuse and National Unrest," The Guardian, June 25, 1980, p. 6.

<sup>8</sup>Thomas M. Rollins, "Mean Beats: Police Brutality in America," Politics Today, p. 50.

In the 7-year period, 1970-76, 2,392 civilians were killed by legal intervention, averaging 343 deaths per year.<sup>9</sup> During that same 7-year period, 851 law enforcement officers were killed, averaging 122 deaths per year. From these figures, we can see that about 3 citizens are killed for each officer killed. A recent study by Lawrence Sherman and Robert Langworthy reveals the figures for citizen deaths are being under-reported by at least 50%.<sup>10</sup> Thus the ratio of citizens to officers killed is more like 6:1.

Table A in the Appendix shows that 50% of the civilians killed from 1970 to 1976 were Black males. Black males make up only 6% of the United States population.<sup>11</sup> It should be noted that Hispanics are included in the figures for whites in Table A which is derived from Public Health Service data. If one adjusts the figures for whites by excluding Hispanics, the statistics indicate that Blacks have been killed at a rate 13 times higher than whites.<sup>12</sup>

<sup>9</sup>Figures for the number of civilians killed by police have to be obtained from U.S. Public Health Service data. One indicator that killings and beatings of civilians by police are tacitly considered outside the framework of the justice system is that there are no statistics on these subjects in the U.S. Justice Department's Sourcebook of Criminal Justice Statistics. In contrast the Justice Department each year publishes two detailed sets of statistics about law enforcement agents who have been killed by citizens: one set in the Sourcebook and one set in a monograph entitled Law Enforcement Officers Killed.

<sup>10</sup>Lawrence W. Sherman and Robert H. Langworthy, "Measuring Homicide by Police Officers," The Journal of Criminal Law and Criminology, v. 70, n. 4, December 1979, p. 546-560.

<sup>11</sup>Blacks make up 12% of the U.S. population. We have estimated Black males are about half of that number to arrive at the 6% figure for Black male population.

<sup>12</sup>Paul Takagi, "Death by 'Police Intervention,'" A Community Concern: Police Use of Deadly Force, National Institute of Law Enforcement and Criminal Justice, Washington, D.C., p. 33.

Some people have tried to discredit this obvious discrepancy by arguing that Blacks have a higher arrest rate than whites.<sup>13</sup> This is done by comparing the percentage of Blacks killed by police to the percentage of Blacks arrested for violent crimes. To compare these two sets of statistics is totally inappropriate because victims of police use of deadly force cannot be equated with perpetrators of violent crimes. Kobler reports that 30% of the victims "were either involved in no criminal activity or in a misdemeanor....An additional 27% were engaged in property crimes including auto theft."<sup>14</sup> In a Philadelphia study covering a 9-year span, it was found that nearly 50% of the victims "were not engaged in any forcible felony or threatening serious bodily harm to the officer or others...."<sup>15</sup>

These findings reveal how ludicrous it is to compare the victims of police killings only with arrest rates for violent crimes. At most one should only compare victims with arrest rates for all categories of crime. Doing this, one finds that, while Blacks make up 50% of civilian deaths caused by police, Blacks only account for 26% of total

<sup>13</sup> Donald J. Black and Albert J. Reiss, "Patterns of Behavior in Police and Citizen Transactions," in Charles E. Reasons and Jack L. Kuykendall (eds.), Race, Crime, and Society (Pacific Palisades, CA: Goodyear, 1972) p. 203; and Irvin Piliavin and Scott Briar, "Police Encounters with Juveniles," in Donald Cressey and David Ward (eds.), Delinquency, Crime, and Social Process (New York: Harper and Row, 1969), p. 159.

<sup>14</sup> Arthur Kobler, "Figures (and Perhaps Some Facts on Police Killings of Civilians in the United States, 1965-1969)," from synopsis in A Community Concern: Police Use of Deadly Force, National Institute of Law Enforcement and Criminal Justice, Washington, D.C., p. 74.

<sup>15</sup> Statement of Anthony E. Jackson, Esq., Director, Police Project, Public Interest Law Center of Philadelphia, April 19, 1979, p. 1.

arrests.<sup>16</sup> The racist nature of the killings cannot be denied.

(1) Physical abuse of people who have committed no crime

Police engage in practices of inflicting severe physical injuries upon citizens who have committed no crimes whatsoever. These instances are provoked by the reckless abuse of power by the police. Their conduct and lack of regard for the rights of citizens is shocking, but seldom is it reprimanded and thus it continues. The following examples<sup>17</sup> illustrate this inexcusable practice; while the examples illustrate this category of offense, some also illustrate other offenses, such as filing charges in an attempt to blame the victim for the abuses perpetrated by the police.

--Wasco, CA, October, 1977: A verbal exchange resulted in the arrest of five youths, who were beaten and handcuffed tightly causing wrist bruises. Mr. Ramirez, a Hispanic friend of one of the youth's father, attempted to investigate the processing of the youths, which was carried out in secrecy. A couple of days later, officers Emerson and Sneed arrived at Ramirez' home without warrants, entered the property, and began to beat Ramirez with clubs. When Mrs. Ramirez attempted to hold her husband, officers began to beat Mrs. Ramirez. They also tossed the children into some rosebushes when the children attempted to aid their parents. Ramirez was never charged with anything and it was never specified why the officers had gone to his house.

--Washington, D.C., 1977: Officers were stopping cars to check drivers' licenses. When one Black man was stopped, he and the officers became embroiled in a verbal confrontation. The man was then knocked down by officers, kneed in the face, restrained and taken to the police station. There the officers began calling the man names and he became angry and hit at one. He

<sup>16</sup> See Tables A and B in the Appendix.

<sup>17</sup> For further information on any of the cases in this section, contact the author: Prof. Lennox Hinds, Rutgers University--University College, Department of Criminal Justice, Miller Hall, 14 College Avenue, New Brunswick, New Jersey 08903.

was put in a cell and subjected to further beating. The incidents at the police station were witnessed by a Black policeman who was willing to testify on the man's behalf. Charges of assaulting a police officer were dropped to prevent a public hearing at which one policeman would testify against another.

--Brownsville, TX, October, 1977: Mr. Beltran, a Hispanic, was an eyewitness to the police shooting of Ventura Flores. Two officers handcuffed Beltran and threw him to the ground. When he heard the shot that wounded Flores, he raised his head to get up, and Officer Hess kicked him in the face, causing abrasions.

--Bronx, NY, August, 1972: Two plainclothes policemen kidnapped a 20-year-old Golden Gloves boxer who was walking home. The officers roughed him up and forced him into a cab, drove him to a deserted area, beat him, and then as he fled, shot at him 11 times. The young man was a neighborhood hero and there were witnesses to the abduction. The District Attorney said the young man had done nothing wrong.

--Philadelphia, PA, 1977: A young Black man was beaten by 5 officers in view of 8 white witnesses. The young man begged to be told what crime he had committed, but was only clubbed repeatedly until he was unconscious. The victim was subsequently issued a citation, held in jail overnight, charged with resisting arrest, and assaulting three officers. Most of the witnesses did not know each other. One protested at the scene saying, "Don't think this is the end of it. You'll hear from us again." The officer responded indifferently, "Yeah, sister, just try it and see where it gets you." Other witnesses who called to complain got a similar verbal brush-off.

--Philadelphia, PA, February, 1977: Kevin McDermott, a 30-year-old with epilepsy, suffered a seizure on the street near his home. Officer Harold Singletary arrested and handcuffed him. Other officers responded to Singletary's call about a "demented man on Belfield Avenue." They denied Singletary his anti-epilepsy medication, beat him with batons, and jumped on him. After hospital treatment and lengthy detention, he was charged with aggravated assault and resisting arrest. The charges were dismissed. McDermott has filed a class action, still in its early stages, for relief against the police for failure to train and supervise officers to recognize symptoms of epilepsy and deal appropriately with epileptics.

--Philadelphia, PA, June 1976: A 25-year-old Hispanic, Louis Parrilla, was riding home with a friend after buying beer. Officers stopped the car, found the beer, and broke the bottle Parrilla was holding. When Parrilla protested, the officer grabbed him and punched him in the neck. When Parrilla's father and Anglo wife came to the police station, the police officer was apparently enraged at their presence; he then punched Parrilla in the right eye and beat him more. Parrilla was arrested for aggravated assault, resisting arrest, terroristic

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threats and disorderly conduct. This was his first arrest. About 2 months later, the charges were dropped through a pretrial diversion program.

In Philadelphia, in 1975 40% of the citizens who filed complaints of police abuse with citizens' groups had no criminal charges lodged against them. But the examples show that, even when the citizens are not committing criminal acts, charges are often filed against them to cover for police abuse. Between January 1968 and July 1970, only 22% of those charged with assault and battery on police officers or resisting arrest were found or pled guilty.<sup>18</sup> These figures give additional proof of the extensive nature of the totally unnecessary and arbitrary use of power by law enforcement agents--and to their efforts to cover-up their misdeeds.

(2) Physical abuse of arrestees and prisoners who are awaiting trial

Police officers engage in the use of excessive and unnecessary force before, during, and after the process of arresting citizens.

This unwarranted use of force is illustrated by the following cases:

--Louisville, KY, June 1979: Fred Harris, a 23-year-old Black man, was stopped by police who searched his car trunk. They handcuffed Harris without telling him that he was under arrest and hit him in the stomach with their flashlights. When he raised his leg to stop the blows, the flashlight broke on his knee. He was then hit in the face with the broken flashlight. This last blow made it necessary for doctors to remove Harris' eye. His bowels were paralyzed by the blows to his stomach. Harris was charged with theft of parts off an abandoned car which had been marked "junked vehicle" by the city.

<sup>18</sup> Figures from answers to interrogatories in the case United States v. City of Philadelphia et al., Civil Action No. 79-2937, Eastern District Court of Pennsylvania.

--Boston, MA, December 1979: Bellana Borde, a 21-year-old Black woman, decided to wait for the bus inside the entry foyer of an apartment building because it was such a cold, wintry day. A security guard saw her and called the police. When the police arrived, she tried to leave but instead was handcuffed, knocked to the ground, kneed in her stomach and breast by the officer who arrested her for trespassing. In the car on the way to the police station, the officer pinched her legs. At the station, when Ms. Borde refused to give her name, saying that she had done nothing wrong, the officer stood on her feet. She was then placed in a holding cell and the officer came in and sprayed mace in her face and slammed her against the wall. At that point Ms. Borde bit the officer's finger to get him to stop torturing her. The charges against Ms. Borde were dropped by Judge Harry Elam who said, "With all the crime in this state, I am appalled that I am here today because a police officer of 29 years [experience] doesn't have the judgment to say to a security guard with no experience and no training that this woman is just waiting for the bus."<sup>19</sup>

--Albuquerque, NM, July 1977: After being arrested, Mr. Moya, a Hispanic man, ran into his house. Police kicked the door in. Officer Babich went over to Mr. Moya who had made no movement (according to Babich's own testimony) and struck him over the head with a flashlight. After being dragged outside and beaten repeatedly with the flashlight, officers reported that Mr. Moya grabbed for the officer's gun. Officer Torbett choked Mr. Moya until he passed out. Mr. Moya was convicted and sentenced; no action was taken against either officer. Before Mr. Moya was sentenced, Officer Babich killed Andrew Ramirez in a similar flashlight beating.

--Gordon, NE, September 1976: Mrs. JoAnn Yellow Bird, a Native American woman who was 8-months pregnant, was kicked in the abdomen when she attempted to intervene in a fight between an officer and her brother. Her baby was later born dead. The officer stated in a deposition the "higher class people" in Gordon receive preferential treatment from law enforcement agents. "Higher class people" meant "white people," the officer stated.<sup>20</sup>

<sup>19</sup>"Up Against the Law," Equal Times: Boston's Newspaper for Working Women, v. 5, n. 80, February 3, 1980, p. 9

<sup>20</sup>"Gordon Police Told Not to Stop Couple, Ex-officer Testifies," North Platte Telegraph, North Platte, Nebraska, July 2, 1979.

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--Detroit, MI, February 1980: Fred Warren, 39 was found dead in his cell a few hours after he was arrested for burglary. Two prisoners in the cell block charge that Warren was struck with a blackjack after he spit on a officer. When citizens began raising questions about Warren's death, it was discovered that electric cattle prods had been used on numerous occasions on prisoners in the Second Precinct. This precinct is made up primarily of Mexican-Americans and Appalachian whites.

--Philadelphia, PA, May 1977: Edward Duck, a 23-year-old Black who works as a potter, was driving on Chestnut Street when he was stopped for a traffic violation. He was with a white woman. The two officers who stopped him fractured his nose and handcuffed him so tightly that he suffered nerve damage to his right hand. Duck was charged with disorderly conduct but acquitted.

--Philadelphia, PA, January 1977: Richard Canady was arrested and taken to the Police Administration Building. Canady was placed in a cell and later handcuffed to a chair. While handcuffed, Canady was punched and beaten by Detective Chitwood and Detective Strohm.

--Philadelphia, PA: Kevin Carter, 17 Black male, reported that he was taken from the House of Corrections to the 35th District for a hearing and put in a cellblock with James Gaddy. He was taken from the prison with William Bolden. After the hearing, when he was put back in the cell, the officers came to unlock the cells and transport them back to the House of Corrections. Officer Seddon grabbed him by the shoulders and threw him against the bars saying, "Put your hands up." He then began patting down his legs.

Carter told Seddon that he had stitches in his leg. The officer then said: "Shut the fuck up. This is my turf." He grabbed the area on the left leg where the stitches were. Carter complained again that he had stitches in the leg. Then Officer Wolk grabbed him by the front of the shirt and choked him. When Wolk let go, Seddon grabbed him again and hit him repeatedly in the left leg. Cuffs were then put on Carter and he was taken out of the cellblock. Seddon then pushed Carter into the doorway as they were leaving the building and said: "Oops, better watch where you are walking." Carter was then taken to the wagon. The other prisoners in the wagon were handcuffed together but Carter was handcuffed alone with his hands behind him. He was pushed by Officer Wolk as he climbed into the wagon and fell all the way to the front. Carter then sat on a bench at the back of the wagon and Seddon came up and said, "You're a wise ass, aren't you?" Then Seddon poked him in the face with a

finger. Carter told the officer to leave him alone. Seddon then said, "Come here, smart ass, we're going to teach you a lesson."

Carter was then pulled from the wagon by his arms and taken back into the police station to the empty courtroom. Seddon threw him into the chair and he fell down. Seddon jumped on top of him with his knees in his chest, hands around his neck, choking him saying, "Don't you know I'll kill you, nigger?" Seddon kept shaking him. Officer Wolk was walking around kicking him in the back and sides and told Seddon to take the handcuffs off Carter. Wolk then pulled Carter up off the floor saying, "Put your hands up, punk, put your hands up." Carter said, "No, man, I told you I'm not going to fight."

A sergeant walked in. Carter asked him to tell the officers to stop; the officer left. Wolk then put the handcuffs back on Carter very tight and Seddon, as they were leaving the building, said, "I thought we had a hard guy. He's a pussy. You know where we stand, right." Carter was then put back in the wagon and all prisoners were driven to the detention center. The other inmates were taken out of the wagon at the detention center, but Officer Wolk closed the door on Carter, saying, "Hold on, chump, you're going for a ride." Then the officer got into the wagon, stepped on the gas, slammed on the brakes, and Carter flew all the way to the front of the wagon. This happened twice. Then Carter was taken into the House of Corrections.

The examples cited above, horrible as they are, represent only a minute number of the thousands of victims of such abuse. The results of a study in one American city, which we believe can be replicated across the country, is included below to demonstrate the pervasive nature of this problem. This data, in addition to the examples above, clearly provide evidence of the heavy impact of police brutality upon members of oppressed minorities.<sup>21</sup>

<sup>21</sup>

The data is taken from answers to interrogatories in the case, United States of America v. City of Philadelphia (note 18 *supra*). Data of this sort is available for each of the categories of offenses discussed in this paper. We are only including this one set just to convey the enormity of the problem of law enforcement officers who abuse their power.

Citizens Who Have Suffered Physical Abuse at the Hands of  
Philadelphia Police Officers While Being Arrested or Held for Trial

<u>Name</u>	<u>Date of Incident</u>	<u>Race of Victim</u>
Edward David	7/14/74	Black
Joseph Lee O'Neill	1/8/75	Black
Gregory Gallman	12/27/74	Black
Louis Africa	1/23/75	Black
Alberta Africa	1/12/75	Black
John J. Cush, a/k/a John E. Cush	8/17/73	White
Carmine DeNardis	3/9/75	White
Garfield Hedgman	4/17/75	Black
SunduSu Mohammad Loroma	6/18/75	Black
Edward Patrick Fields	7/11/75	White
Edward John Douglas	7/11/75	White
Kenneth Eugene Shostak	7/11/75	White
Paul Joseph Tannello	9/18/75	White
Veloso Jackson	9/24/75	Black
William Rot Hoskins	11/5/75	Black
John Joseph Naulty	11/16/75	White
James Warren Wyatt	11/20/75	Black
Leon Harasnowics	6/27/76	White
William Robert Hanna, Sr.	12/15/76	White
William Robert Hanna, Jr.	12/15/76	White
Earl Franklin	9/28/76	Black
Robert Jackson	1/3/79	Black
William L. Cradle	4/29/77	Black
Richard James Rozanski	12/29/77	Black
Joseph James Kedra	12/22/75	White
Michael John Kedra	12/22/75	White
Patricia Kedra	12/22/75	White
Kenneth Kedra	12/22/75	White
John Andrew Clifton	4/22/77	Black
Bernard Cyril Meaton	6/12/76	White
Alvestuse Goode	4/26/77	Black
John J. Copelella	5/24/77	White
Robert Crenshaw	8/23/76	White
Joseph Bross	8/23/76	White
George Cassidy	8/23/76	White
John Moore	1/15/77	Black
Ronald E. Anderson	4/25/77	White
Charles Edward Thomas	3/5/77	White
Ralph Wynder		
Sheik Bishara Bey	6/15/77	Moorish/American
Theodore Pendergrass	11/22/76	Black
Clemon Jo Perry	12/21/76	Black
Everett J. Day	3/1/77	Black

- continued -

<u>Name</u>	<u>Date of Incident</u>	<u>Race of Victim</u>
William H. Williams	6/15/77	White
Edgarpo Ralph Ortiz	6/18/77	White
Phillip Shepard Young	10/6/76	Black
Robert Rodriguez	1/12/76	Puerto Rican
Perry Joseph King	Easter Sunday 1976	Black
Michael Wilber	3/24/77	White
Maryanne Hornberger	6/30/77	White
Mark Kenny	5/13/77	White
Louis Roach	3/16/72	White
Joseph Ronald Bilhardt	9/19/76	White
Jon Davis Kennedy	11/1/75	Black
John Wardlow	6/9/73	Black
William Henderson Meekins	7/3/77	Black
Charles A. Murray	8/28/76	White
Delores Terry	8/2/75	Black
Clarence Terry, Sr.	8/2/75	Black
Clarence Terry, Jr.	8/2/75	Black
Andre Terry	8/2/75	Black
Tyrone Terry	8/2/75	Black
John States McKinney	6/5/66	White
Samuel D. Jackson	8/18/77	Black
Robert Thomas	6/21/77	Black
Geo Robinson	6/22/77	Black
Joseph J. Berthesi	8/27/77	Black
Kevin Zienkevica	8/13/77	White
Howard Seiss	8/20/77	White
Leroy Davis	8/31/77	Black
Melvin S. Stacks	8/11/77	Black
Annette Bush	9/1/77	Black
Lindell Swinson	9/20/77	Black
Raymond S. Pratt	9/8/77	Black
Steven Borek	9/26/77	Black
Leroy Smith	12/16/75	Black
Lawrence Joseph O'Neill	10/1/77	White
Peter Frycyk	11/3/77	White
John Joseph Quinn	11/3/77	White
Augustine Acevado	11/3/77	White
Royal Oscar Chambers, Jr.	11/19/77	Black
Joseph James Ebbinger	9/28/76	White
Margaret Dolores Ebbinger	9/28/76	Black
Arthur M. Smith	12/3/78	Black
John Bans Lima, Sr.	10/16/77	Black
William Thomas Kane	10/5/77	White
Joseph Lee Grace	2/2/78	Black
Joseph Rouse, Jr.	12/9/75	Black
Norman Wojciechowski	9/5/77	

<u>Name</u>	<u>Date of Incident</u>	<u>Race of Victim</u>
Arthur Reid	4/2/78	Black
Lesley Charles Beasley	3/29/78	Black
Steven P. Newman	5/15/78	
Robert Lawhorn	5/13/78	Black
Mark Lamar Golden	11/20-21/71	Black
Franco Philip Montenegro	5/29/78	
William Paul Macchianerna	7/30/78	White
Harry Joseph Charlesworth	8/6/78	White
Delbert Orr Africa	8/10/78	Black
Cornell Warren (Deceased)	9/23/78	Black
Harry Joseph Burt	12/12/78	
Frank Clarence Leans	1/24/79	White
Will M. Claxton, Sr.	8/28/78	Black
Victoria Dawn Haffernan	2/25/79	White
Barry Young	6/15/77	Black
Jon Lelyn Douglas	2/28/77	Black
Monserate Colon	5/6/77	Hispanic
Thomas J. O'Connor	6/76	
Randolph Pitts	7/2/76	
Angel Sanchez	5/7/76	
William Simmans	10/2/76	
Stephen Barkley	5/30/76	

(3) Physical or psychological intimidation of arrestees and prisoners to extract confessions

The Philadelphia Inquirer

...documented that between 1974 and 1977, at least 80 criminal cases (of the 433 that the newspaper examined) were thrown out of court because of the tactics police used during interrogations to extract statements and confessions from suspects. Many of their grillings had gone on for as long as nine hours. And some of these 'illegally interrogated' suspects ended up in hospitals. Spencer Cox of the American Civil Liberties Union in Philadelphia is convinced that: 'abuse is...the policy of the department....Torture has been practiced....Judges know it.'"<sup>22</sup>

Case examples of physical intimidation to extract confessions are:

<sup>22</sup> Thomas M. Rollins, "Mean Beats: Police Brutality in America," Politics Today, p. 49. Rollins points out that six detectives convicted of criminal charges for excessive use of force during interrogations are still working for the Philadelphia police.

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--Philadelphia, PA: Norman Legg, a 24-year-old Black male, complained that his left arm was handcuffed to a chair while he was interrogated; that he was kicked in both legs, burned with a cigarette on the back of his left hand and forearm, hit in the back with a chair, and choked until he blanked out. These measures were taken by Detective Robert Murphy in a 12-hour attempt to get Legg to make a statement and sign it.

--Philadelphia, PA, December 1975: Joseph Rouse was punched in the jaw after he refused to sign a statement admitting a theft.

--Philadelphia, PA, 1976 or early 1977: Joseph Bilhardt said detectives punched him in the ribs, chest, and lower back while his right arm was stretched out and his left arm was handcuffed to a chair. This beating occurred for a couple of hours because he refused to answer questions until a lawyer was contacted on his behalf. His head was pounded with a book until he gave a statement.

In South Dakota, FBI agents utilized a form of psychological intimidation to obtain testimony from a Native American woman. She was shown the autopsy pictures of a murdered woman and told that she and her children would suffer a similar fate if she didn't give false testimony at a trial.

(4) Verbal abuse and detention of people without proper cause

Stopping and holding people without cause and calling them names does not rank with maiming and killing. But, precisely because it is of a less violent nature, it is frequently used, becoming the daily fare of millions of Blacks, Browns, Native Americans, and other minorities and poor people. Several examples related to this category have already been given above under other categories. Some additional examples are:

--Washington, D.C., July 1980: A young Black mother with a child was standing on a curb. A white police officer who was backing up his cruiser told her to move. She indicated she was on the sidewalk and didn't need to move, to which he replied, "Fuck you, bitch."

--Omaha, NE, May 1980: Helen Hiatt, a Native American woman, was stopped by officers looking for a Spanish-speaking suspect. Ms. Hiatt was taken to the police station and questioned at length with officers insisting that she was able to speak Spanish.

--Los Angeles, CA: Gilbert Castillo, a light-skinned Chicano, came out of a movie and was asked for identification by an officer. When the officer read his name, he asked derogatorily, "You Mexican?" The officer threw Castillo's identification on the ground and ordered him to pick it up and leave.

The following example from Philadelphia files "plainly grew out of improper police persistence in a confrontation, and erroneous police views that 'boisterous' expression of resentment and peaceable departure when the police desire to continue questioning amount to offenses for which they may and should arrest."<sup>23</sup>

"Police stop to question two black men pushing an automobile on a lot. They are told that the automobile has just been purchased by the father and brother of one of them, the purchasers having just gone off to a notary to conclude the formalities. The father and brother return with the seller, a white man, who confirms that there is no occasion for police concern. The police nevertheless insist on 'identification.' According to the police account itself, the brother became indignant, loud, and disrespectful, but not profane or physically aggressive. The police then made the critical decision, to 'take the whole job [that is, all four men] into the district where we can settle this quietly.' The brother then walked away towards his own car and drove off. He was followed by police cars, stopped, and severely beaten in the course of arrest. The arresting police and, later, the police investigator in his report, indicated that the arrest was proper on the ground that the complainant walked away from the police when they had indicated they proposed to take him into the district 'for investigation.'"<sup>24</sup>

<sup>23</sup>Louis B. Schwartz, "Complaints against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office," University of Pennsylvania Law Review, v.118:1023, 1970, p. 1033.

<sup>24</sup>Schwartz, p. 1032-1033.

(5) Illegal searches and seizures

In 1978-79, the rampant misuse of illegal strip search procedures by the Chicago Police Department was exposed. The victims were women, many of whom had not even been arrested. It is interesting to note that this practice had gone unchecked for many years. Only because the police unknowingly selected as one of their victims the wife of a white judge did the matter get brought to the attention of the public.

The judge's wife had been arguing with a taxi driver about a cab fare. Police called to the scene took her to the station where she was subjected to a strip search. Even the judge's wife felt so humiliated by the incident that she, at first, was frightened into silence. Fortunately she protested and, once she did, large numbers of victims of this same police crime emerged out of their fearful silence.

The Illinois chapter of the American Civil Liberties Union received some 200 calls. "Women in their sixties reported being strip-searched. Disabled women were strip-searched. One woman was arrested because she was with a known crime figure. He was patted down. She was strip-searched."<sup>25</sup>

This particular example of abuse of power by law enforcement agents points again to the fact that the victims selected are members of the powerless groups in the United States. Only because one of the victims happened to belong to the powerful segment of society did this matter become a concern needing correction. The Chicago

<sup>25</sup>"Chicago Police Methods Exposed," Ms. Magazine, June 1979, p. 23.

Police Department adopted a new set of guidelines on strip-searches and state legislation was introduced to curb these offenses.

Notwithstanding the availability of constitutional protections against illegal searches and seizures,<sup>26</sup> the stark reality of daily existence in the ghettos and barrios throughout the United States evidences a constant and flagrant disregard of those protections for minorities. In fact, the police often break into homes of minority citizens with no search warrants and questionable justification.<sup>27</sup> Moreover, while the "exclusionary rule" has never served as an effective deterrent to these abuses, the United States Supreme Court in recent cases have limited the access to the courts by such victims,<sup>28</sup> resulting in a further insulation of the police from judicial review arising out of constitutional deprivations perpetrated by police.

(6) Killing people who have committed no crime

Killing of citizens by police is, of course, the most serious offense for there is no way a person's life can be restored. To kill a person who has committed no crime is doubly inexcusable.

Figures collected by the Public Interest Law Center of Philadelphia (PILCOP) reveal that between 1970 and 1978, "50% of Philadelphia police shootings were contrary to state law...the Philadelphia Police Department, on the average of once every two weeks, shoots a citizen who is

<sup>26</sup>The U.S. Supreme Court in the landmark decision in Mapp v. Ohio, 367 U.S. 643 (1961) read the exclusionary rule into the Fourth Amendment, as incorporated against the states: "The exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments...."

<sup>27</sup>See examples of Mr. Ramirez in category (1) and Mr. Morris in category (6).

<sup>28</sup>See Stone v. Powell, 428 U.S. 465 (1976).

either engaged in no crime, or is charged with non-forcible felonies or misdemeanors."<sup>29</sup> In Philadelphia 2 out of 3 victims of police killings are Black or Hispanic; the same is true in Los Angeles. Again we see incontrovertible evidence that police crimes impact most severely on members of the oppressed minority communities.

--Los Angeles, July 1980: Larry Morris, a 28-year-old Black man, was choked to death in the bathroom of his own apartment by police who had illegally entered his apartment. There had been no illegal activity in progress nor could any be inferred from the conduct of the individuals in front of the apartment. The police had heard firecrackers and asked Morris' brother, who was on a second floor balcony, "Hey, boy, where are the firecrackers?" When the brother replied that he wasn't a "boy," the officers charged into the apartment building and forced their way into the Morris apartment. A witness described the scene: "The cops came in...and we went into the bathroom. The next thing I saw was the police who had Larry's head hanging over the toilet bowl, with clubs on his neck and in his stomach...We didn't hear any arguing, no shouting. He had never been in trouble. He wasn't that kind. He didn't fight back, he didn't have the chance."<sup>30</sup>

--Boston, MA, July 1980: Levi Hart, a 14-year-old Black youth, was shot and killed while being arrested for alleged car theft. Levi Hart was a slow learner student, a "little thin guy," whom police say tried to grab the policeman's gun. People who knew Levi Hart do not believe the police story.

--Philadelphia, PA, 1980: Breaking into a home to investigate a gas leak, police killed a 94-year-old man armed with a starting pistol.

--Omaha, NE, August 1979: On orders to stop a car with Iowa license plates with three whites in it, police stopped a car with Nebraska plates driven by an unarmed 27-year-old Black man and killed him.

--Laredo, TX, July 1978: A 32-year-old Mexican citizen was killed at the border by an off-duty policeman. The officer held a shotgun to the victim's head while searching his companions, and the gun "went off."

--Seattle, June 1978: A Black man, 21-years-old, was shot in the back and killed by a police officer. There was not even a claim that the man was armed or dangerous.

<sup>29</sup>Anthony Jackson, note 15 supra, p. 3.

<sup>30</sup>"L.A. Cops Use of Deadly Force Rises," The Guardian, July 23, 1980, p. 7.

(7) Killing people who are not threatening the lives of others, including those fleeing from apprehension where failure to apprehend poses no serious threat to the lives of others

Police officers engage in irresponsible and unjustified use of deadly force when people are not threatening the lives of others or are not fleeing from arrest. Even in cases when people are fleeing from arrest, if such flight prevents immediate apprehension but does not pose any serious threat to the lives of others, the use of deadly force is unnecessary. It is true that some states have laws permitting police to shoot anyone who flees from arrest, but stolen or damaged property should not be seen as more valuable than a person's life. Thus we submit that deadly force should only be used when there is an immediate threat to the life of others.

--Birmingham, AL, August, 1979: A 20-year-old Black woman, unarmed, was murdered by police investigating a disturbance at a grocery store in a Black community.

--Los Angeles, December, 1979: A Black youth, 16-years-old, was shot in the head and killed by police after climbing on a fence near the home of a person who was under police protection.

--New York City, August, 1979: A 26-year-old Hispanic man was shot 21 times by five police officers. He had allegedly threatened them with a pair of scissors.

--Los Angeles, CA, January, 1979: A Black woman hit a representative of the utilities company with a shovel when he came to turn off her gas. The police were summoned. When the police arrived, the woman brandished a knife. Two officers each fired six rounds at her.

--Flint, MI, July, 1980: A 15-year-old Black youth was shot in the back of the head by a policeman who said the youth did not halt while allegedly leaving the scene of a burglary.

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(8) Engaging in practices to deliberately cover-up their own abuses of power and that of fellow officers

Illustrations of extensive use of cover-charges by police have been included in previous categories above. An additional example is found in the next section. A few officers are beginning to break the "code of silence" and speak out about misconduct by their fellow officers. If an officer protests only within his department, administrators often ignore such protests. Furthermore, the officer who is courageous enough to speak out is usually subjected to harrassment by his colleagues.<sup>31</sup>

One tactic used by police to cover-up killings is known as the "throw-away gun." This involves police planting on the victim a gun which will not be easily traced to the officers. One such case occurred in Houston, Texas in February 1977. A 17-year-old was shot by one officer as the youth was held on the ground by another officer. To make it appear that the victim had been armed so the officers could claim self-defense, a 22-caliber pistol was planted on the body. Eventually the gun was traced to the police property room; it was one of a number of weapons supposedly destroyed in 1968.

Cover-charging, failure to speak out or actually giving false accounts of events in order to protect fellow officers, and creation of false evidence are some of the crimes police engage in to hide their own misdeeds.

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<sup>31</sup>Lawrence Sherman, "The Breakdown of the Police Code of Silence," Criminal Law Bulletin, Mar./Apr. 1978.

### III. MYTHICAL REMEDIES UNDER THE LAW

*Throughout the history of the United States, law has been the politically motivated instrumentality of racism. It has been used both overtly and covertly to enforce and legitimize enslavement, segregation, murder, and theft of land as well as for systematic political, social and economic oppression of minorities...As a Black lawyer, teacher, and student of history, this author could no longer participate without comment in the illusions of justice, in that endless and intricate labyrinth of legal process which holds tantalizing promises of relief, but which in practice merely validates the results of proceedings tainted with racism and political expediency.*

#### A. Criminal Sanctions

Because of the interrelated rôles of the police and the District Attorney's Office, that Office has not been and cannot be an effective instrument for controlling police violence.<sup>32</sup>

In theory, police misconduct can be deterred by the possibility that an officer may be prosecuted under state criminal statutes for complaints ranging from murder in the first degree to simple assault and battery. Also, federal statutes provide for the imposition of criminal sanctions under 18 U.S.C. §241-242.<sup>33</sup> But police agencies in the United States make the arrests and gather the evidence upon which government prosecutors rely. Consequently, under these circumstances, District Attorneys and U.S. Attorneys are reluctant to

<sup>32</sup>Louis B. Schwartz, note 23 supra, p. 1024.

<sup>33</sup>The legislative history of 18 U.S.C. §241-242 demonstrates that, although these provisions were designed to provide protection to all inhabitants of the United States without regard to race, the level of violence visited upon Black citizens in the southern states continued to rise. Congress finally passed the Klu Klux Klan Act, 17 Stat. 13 (1871) in a further attempt to address the problem. Notwithstanding these provisions, Black citizens continued to suffer severe deprivations of their constitutional rights under the color of law--and they still suffer today.

prosecute officers upon whom they must depend for the successful completion of other prosecution they initiate. Thus an atmosphere of protection from external investigation settles in, and the police, unlike other citizens, are freed from the fear of punishment. Prosecutors exercise their discretion by not filing charges against officers whose actions make them liable for criminal prosecution.

Illustrative of the degree of hesitancy of prosecutors to file charges against police officers is the fact that there were no indictments against police officers in Los Angeles from 1950 to 1967. When this lack of prosecution is coupled with the fact that a majority of the victims were non-white, it is apparent why minorities view the courts and law enforcement establishment in the United States as being indistinguishable.

Prosecutors also collaborate with police in filing "cover charges"-- i.e., charges against the victims of police abuse rather than charges against those who perpetrated the brutality. A vivid example of cover-charging is the case of Wallace Davis, a 25-year-old Black man living in Chicago. Davis had surprised two men in the act of robbing the restaurant he owned and called the police for assistance. The police did not respond promptly to the call and the robbers managed to flee. Finally Davis left his business, only to have the police arrive and assume he was one of the culprits. He tried to explain that he was the owner of the restaurant, but complied with the officers' orders. After the officer searched Davis, he was kicked to the ground and shot in the back. As Davis pled with the officer not to shoot or kick him again, the officer put his gun between Davis' eyes and said, "Die, Nigger, die or else I'll kill you." Subsequently, charges

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were filed against him for attempted murder. No criminal charges have been placed against the officer involved in the shooting.<sup>34</sup>

Even if the intrinsic conflicts of interest arising from the inter-related roles of prosecutors and police officers in prosecutions of police crimes were abated, the federal criminal statutes, 18 U.S.C. §241,242, were never designed adequately to curb the widespread, arbitrary and unreasonable physical abuse described in the preceding section of this paper. U.S. Federal District Judge Jon O. Newman has pointed out the limitation of those statutes which make it difficult to successfully prosecute a criminal case against law enforcement agents under these statutes: the statute "requires not only evidence that a constitutional right was denied, but proof beyond a reasonable doubt that the wrongdoer acted with a specific intent to deny such a right. That requirement, never easily met, coupled with the understandable reluctance of jurors to brand as criminals those who, however misguidedly, are seeking to enforce the law, assures that, even when prosecutions are brought, convictions will be rare."<sup>35</sup>

The process of insulating police from external investigation and imposition of sanctions if further entrenched by the investigative processes used in the few cases where charges are filed. Police departments and the officers within these departments have initiated, approved, enforced and pursued internal investigative practices and procedures which are calculated to and do result in the acquiescence

<sup>34</sup> Payne, Ethel L., "The Judge Said 'No,'" The Chicago Defender, Oct. 14, 1977.

<sup>35</sup> Jon O. Newman, "Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct," Yale Law Journal, v. 87, n. 3, January 1978, p. 449-450.

to and approval of denials of citizens' rights by police officers.<sup>36</sup>

One researcher<sup>37</sup> discusses the following investigative procedures which constitute additional protections for police against successful prosecution by the District Attorney's Office:

1. An unusually heavy initiative and burden of proof is placed on the complainant. It is customary that, when a complaint of criminal conduct is made against anyone other than a police officer, a positive effort is made to follow-up, find supporting witnesses, and so forth. In the case of complaints against the police, the bulk of the file is made up of statements by police witnesses.
2. Witnesses against the police are generally examined in a hostile atmosphere and their testimony unfairly deprecated.
3. Police never take lie detector tests and always insist that the complainant take one. Refusal by officers to take lie detector tests, even those administered by the police department itself, is understandable in light of the refusal of the

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<sup>36</sup>Police investigations of police are not and cannot be neutral. They tend to be defensive of the police and slanted against complainants. Assuming that investigating officers are attempting to do a good job in most cases, the conflict of interest which frustrates a fair and credible disposition of citizens' complaints by the District Attorney's office operates even more strongly when the police department investigates itself on complaints filed by persons whom the police department has already identified as violent criminals, some with long records. The investigating officers or the commanding officers who report on the incident are often superiors who have previously given favorable performance ratings to the subject policeman and who are likely to continue in a daily working relationship with him.

<sup>37</sup>Schwartz, note 23 supra, p. 1028-1031.

Fraternal Order of Police to supply free counsel to an accused police officer if he submits to such a test.<sup>38</sup> When a complainant agrees to take a test, it is administered by a police lieutenant under circumstances not disclosed in the files. The lieutenant's report of the complainant's performance is entirely summary: "Complainant appears to be lying."

4. While the police investigators are free to interview anyone during the course of the investigation, officers involved in an incident of police brutality are under orders not to talk with anyone outside the police department while the investigation is pending. This restraint prevents the complainant from acquiring a freshly recalled account of what happened, even though the police can obtain such an account. By the time anyone else is allowed to interview the accused officer(s), the insulation has solidified, contradictions have been ironed out, and informal pressures have been brought to bear on fellow officers to keep them from saying anything which would prejudice the hearing against the officer.

Notwithstanding the availability of the criminal statutes which provide relief from violations of law at the hands of law enforcement agents, very few officers are convicted and, if convicted, the sentences imposed are so inappropriate the victims and the community interpret them as a miscarriage of justice.<sup>39</sup>

<sup>38</sup> Schwartz, note 23 supra, p. 1029.

<sup>39</sup> The most recent, widely known example of such a miscarriage of justice was the acquittal of the officers involved in the flashlight bludgeoning of Arthur McDuffey in Miami.

Another widely publicized case was that of Jose Campos Torres. Torres was arrested for drunkenness, handcuffed and beaten severely

It is a myth that remedies under the law currently exist to prevent abuse of power by law enforcement officers in the United States. It is a myth because:

1. The interrelated roles of police and prosecutors constitute a built-in conflict of interest preventing the impartial initiation of prosecution against law enforcement officers who perpetrate physical and psychological abuse on citizens.
2. The federal criminal statutes require a nearly impossible defense to be presented by the complainant.
3. Investigation procedures carried out by the police department which also hires the accused officer are designed to give maximum protection to the officer and little, if any, aid to the complainant.

by three Houston police. One of them then pushed Torres, still handcuffed into a bayou, saying, "Let's see if this wetback can swim."

The three officers received no punishment from the state court that tried them. They were then tried in federal court for violating Torres' civil rights and sentenced to one-year. "I thought the federal government was going to take care of everything," said the victim's mother. "It's just a slap in the face."

In stark contrast to the despair of Ms. Torres was the jubilation of a fellow Houston police officer, "That ain't bad at all. They won't be there [in prison] but six months." (These responses of Ms. Torres and the police officer were reported in The Washington Post, March 29, 1978)

One study by Arthur Kobler found that, out of 1500 police-caused deaths, only 3 resulted in a criminal conviction of a police officer for homicide. (Kobler, "Police Homicide in a Democracy," Journal of Social Issues, v. 31, n. 1, 1975, p. 177.) This is a conviction rate of 0.2%. In contrast, between 1965 and 1974, of 1,337 civilians identified in killing law enforcement officers, 827 were convicted of murder or a charge related to murder or committed to a mental hospital; this is a 62% conviction rate. In addition to this remarkable conviction rate, an additional 175 people (13%) were killed on the spot and another 44 either committed suicide or died in custody. Thus 78% of people identified were either killed on the spot, died, or were convicted. (Based on figures found in Table 3.103, "Persons Identified in the Killing of Law Enforcement Officers, by Type of Disposition, U.S., 1965-1974 (Aggregate)," Sourcebook of Criminal Justice Statistics, 1978, p. 464.)

### B. Civil Remedies--Suing the Lawbreakers

When victims of police abuse seek relief in court for police misconduct, they find that the burden of proof required to establish a case against the defending police officer is almost insurmountable. The high burden of proof placed upon the complainant, the jury's racial bias, the ignorance and poverty of the victim and the prevailing nationwide clamour for law and order all operate to foreclose the courts as an effective forum for relief.<sup>40</sup> Furthermore, the availability and application of civil damages in federal courts have been severely restricted<sup>41</sup> and similarly, but to a lesser extent, civil damages do not serve a compensatory or deterrent function in the federal or state court context.<sup>42</sup>

As a practical matter, the principal federal statute authorizing a damage suit for deprivation of constitutional rights is 42 U.S.C. §1983.<sup>43</sup> The use of damage action became a virtual necessity after the U.S.

<sup>40</sup>U.S. Commission on Civil Rights Report, v. 5, p. 25, note 63 (1961). (Hereinafter cited as 1961 Civil Rights Report.) Figures given by Drew Days (note 6 supra) reveal that of 10,000 complaints filed in 1977, 26 officers were convicted; this is a 0.2% conviction rate.

<sup>41</sup>See 1961 Civil Rights Report, supra, p. 25 at note 70-71.

<sup>42</sup>1961 Civil Rights Report, supra note 25 at 80. The President's Commission on Law Enforcement and Administration of Justice Task Force Report: The Police 199 (1967).

<sup>43</sup>Section 1983 provides: "Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. §1983 (1970).

Supreme Court in a series of cases slammed the court doors shut in the faces of victims of police crimes by severely restricting the power of the federal courts to intervene through injunctive actions into patently gross illegal patterns of police crimes.<sup>44</sup>

Newman<sup>45</sup> argues that whenever it appears that the Constitution or laws of the United States have been violated, the United States itself should be permitted to sue to redress the wrong. That proposition has been dealt a very serious setback by the incredible decision of the United States District Court for the Eastern District of Pennsylvania in its decision in United States v. City of Philadelphia.<sup>46</sup> In dismissing

<sup>44</sup> See, for example, Rizzo v. Goode, 423 U.S. 362 (1976). In the Goode case, the plaintiffs contended that certain police officers were biased against Blacks and other minority groups and habitually violated their legal and constitutional rights; that the proclivities of these officers were well known to their superiors in the department; and that the persons in control of the supervision of police conduct, by failing to take appropriate disciplinary action, condoned these illegal and unconstitutional activities as a matter of policy. Plaintiffs in Goode offered a mass of evidence, including expert testimony, to show that the existing complaint procedure was inadequate and that departmental resistance to the creation or implementation of adequate complaint procedures justified the conclusion that it was the policy of the department to condone racially discriminatory actions by the police.

<sup>45</sup> Newman, p. 453.

<sup>46</sup> In this far-reaching lawsuit, the United States, through its Attorney General, attempted to secure broad declaratory and equitable relief against an allegedly pervasive pattern of police abuse in Philadelphia, the effect of which was to deny basic federal constitutional rights to persons of all races, colors and national origins. This abuse was said to consist of such practices as, for example, using deadly force where it is unnecessary, physically abusing arrestees and prisoners, extracting information and confessions by means of physical brutality, stopping persons without probable cause and conducting illegal searches and seizures.

this law suit, the Court held that the Attorney General of the United States lacked the constitutional authority to bring such a law suit<sup>47</sup> and further accused the Justice Department of "abuse of power."<sup>48</sup>

Since the efficacy of a civil action depends upon adjudication before an impartial jury, the impact of intrinsic race and class biases affect the ultimate decisions of the fact-finders. A group of researchers reporting on their findings on racial prejudice in jury determinations in Connecticut noted that white plaintiffs won approximately 43% of their cases while Black plaintiffs won only 19% of their cases.<sup>49</sup>

Racism unquestionably impacts the difference in damage awards between successful white and Black plaintiffs. This conclusion is supported by the results of the Connecticut study which revealed that, although the total number of verdicts in favor of plaintiffs in general was small, the award differential was unmistakable; for example, the

<sup>47</sup> In his decision, Judge Ditter, at page 36 of his opinion in United States v. City of Philadelphia et al., Civil Action No. 79-2937, says the following:

"While pondering all this, it is important to remember that the Attorney General and his subordinates are not elected officials. They are not subject to the sobering influence of the ballot box, and they never need to worry about the whim or desire of any electorate. Yet they stand before this court today and claim the power to decide what will serve the nation's 'interest' and the people's 'welfare.' I am persuaded that such a power was never intended to lie in the hands of an executive appointee. Rather, I hold that these decisions are best made by Congress alone....

"It is clear to me, therefore, that the authority to bring a lawsuit of this kind should never be vested in the Attorney General. This conclusion is fully in accord with the decisions of the Courts of Appeals for the Fourth and Ninth Circuits in Mattson and Solomon, supra."

<sup>48</sup> See Judge Ditter's opinion supra at p. 39.

<sup>49</sup> See "Project: Suing the Police in Federal Court," Yale Law Journal, v. 88, n. 4, March 1979, note 62 at p. 794.

average award for the three successful whites was over \$7600; the average award for the three successful Blacks was \$1400.<sup>50</sup>

It is important to examine this pattern of damage awards against the backdrop of an inherent racial bias in the jury selection process in the United States. In many court districts, juries are selected from a pool of names drawn from voter registration lists from that area. Blacks do not register to vote in the same proportions as do whites, and thus fewer are included on the juror lists. Since jurors, when interviewed, explain their inability to reach a verdict as a function of racial attitudes, different lifestyles, backgrounds, and dealings with the police, and because defense attorneys concede they prefer all-white, middle-class juries, it is clear that a jury selection process that regularly includes few Blacks systematically discriminates against members of oppressed minorities, whom we have already seen are disproportionately the victims of police misconduct. Thus entrenchment of racism which characterizes police abuse of power is given additional support through court responses to the victims' attempts to gain relief.

If one of the objectives in civil suits against the police is to compensate individuals for violations of their constitutional rights, then major impediments operate to nullify that objective. It has been argued that a more significant objective, albeit more theoretical than actually obtainable, is to deter police misconduct.<sup>51</sup> However, to

<sup>50</sup>ibid.

<sup>51</sup>Takagi argues with some persuasion that "to pay money to the victim or someone else representing him is distributive justice and not social justice. Distributive justice means simply 'what's good for the goose is good for the gander.' Social justice, on the other hand, means that the rights of liberty, equality, and security are not elements to

the extent that the deterrent effect depends chiefly upon holding those responsible for police crimes financially accountable, the facts demonstrate that the realization of this objective is also unattainable.

In most jurisdictions, police officers are provided free legal counsel and are indemnified for any settlement or judgement by the municipality or its insurance carrier. Some municipalities are self-insured; others purchase insurance from a carrier for the benefit of their employees. Under these circumstances, the general procedure followed once a complaint is filed against an officer requires that the insurance company be notified, and it retains an attorney to represent the police officer. If the municipality is self-insured, its corporation counsel handles the police officer's defense.

In summary, when looking at civil remedies available to victims of police abuse, it is again clear that, while the remedies may exist in theory, in actuality they are myths. This is true for three reasons:

- (1) Victims must overcome substantial impediments to present an adequate defense;

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be exchanged for money or for property rights; nor should they be expressed in relative terms, that is, greater or less than property rights. One person's life and liberty is the same as the next person's. But in a society that equates the right of private property with human rights, they become inevitably reduced to standards and consequences that value some lives less than others. The system of coercion and punishment is intimately connected with the unequal distribution of wealth, and provides the legitimation under the perverted notion that 'ours is a government of laws' even to kill in order to maintain social priorities based upon property rights." Note 12 supra, p. 37.

- (2) Financial awards do not adequately compensate victims for the violations of their constitutional rights;
- (3) Both individual police officers and police departments are insulated from the financial burden consequent to a civil law suit.

The inescapable fact facing the victim of police crimes, therefore, is that efforts to sue the lawbreaker in court have almost no impact on controlling or alleviating patterns and practices of police abuse.

Obviously, minorities and the poor who become victims of police crimes in the United States realize that the biased legal process is manipulated to subvert national standards of decency and democracy and to encourage an increasing national tolerance of domestic indifference to brutality and injustice which places the wrong doer beyond the reach of the law.

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## APPENDIX A

TABLE A

## CIVILIAN DEATHS BY POLICE

YEAR	TOTAL CIVILIAN DEATHS BY POLICE	WHITE	BLACK
1970	333	156	177
1971	412	215	197
1972	296	132	164
1973	372	185	187
1974	370	183	187
1975	330	177	153
1976	286	146	140
TOTAL	2399	1194	1205
AVERAGE	343	171	172

Source: *Vital Statistics of U.S. Mortality, Tables 1-23, Volume III, Part A.*

## POLICE DEATHS BY CIVILIANS

YEAR	TOTAL POLICE DEATHS BY CIVILIANS		
1970	100		
1971	129		
1972	116		
1973	134		
1974	132	TOTAL:	851
1975	129	AVERAGE:	122
1976	111		

Source: *Statistical Abstract of U.S. Bureau of Census, 99th & 100th editions.*

## APPENDIX B

TABLE B

## TOTAL ARRESTS IN THE UNITED STATES

YEAR	TOTAL ARRESTS	WHITES*	BLACKS*
1970	6,257,000	4,373,000 (69.9%)	1,688,000 (27.0%)
1971	6,626,000	4,624,000 (69.8%)	1,791,000 (27.0%)
1972	6,706,950	4,664,220 (69.5%)	1,847,566 (27.5%)
1973	6,248,286	4,458,567 (71.4%)	1,636,237 (26.2%)
1974	5,853,060	4,112,443 (70.3%)	1,561,781 (26.7%)
1975	7,671,000	5,539,000 (72.2%)	1,935,000 (25.2%)
1976	7,383,960	5,336,889 (72.3%)	1,870,206 (25.3%)

\*Hispanics are included in the figures for whites.

\*The percentages in the last two columns will not add to produce a total of 100% because Native Americans, Japanese, Chinese, and other minorities are not included in either of these two columns.

Sources: *Sourcebook of Criminal Justice Statistics*,  
*Statistic Abstract of the U.S.* -- 99th & 100th Eds.

APPENDIX C

BRUTALITY BY LAW ENFORCEMENT AGENCIES: Case Summaries ( by State)

CALIFORNIA

	<u>Case Type</u>	<u>Legal Status</u>
1) Name: BENAVIDEZ, Barlow Date: 6/11/76 Location: Oakland, CA	Benavidez' car stopped in relation to stolen car investigation by officer Michael Cogely. In "spread-eagle", Benavidez searched by officer with cocked shotgun in one hand to his head. Gun fired, Benavidez killed. Eyewitness arrested for same car robbery, charges later dropped. Officer violated all of Oakland PD's procedures for such a search, and there is evidence of a police dept. cover-up.	Civil suit by Benavidez family in Alameda County Superior Court for wrongful death, Federal cause of action (\$3 Million). Current efforts to get Federal indictment. Since June '77 Justice Dept. and FBI investigations. Drew Days in Washington has committed the Justice Dept. to expedite proceedings. Benavidez' attorney is Ed Roybal of Centro Legal de la Raza.
2) Name: DOMINGUEZ, David Date: 2/28/77 Location: Los Angeles, CA	Dominguez was known gang member. Lured into the home of retired police officer (LAPD) Billy Joe McIlvain, who had had many run-ins with local gang members while with LAPD. McIlvain held Dominguez hostage, and attempted to make it seem as if Dominguez had kidnapped him. He shot ( 9 times ) and killed Dominguez, reporting to investigators that he had pulled out a hidden gun. Reports show that Dominguez was shot with two (2) different weapons.	McIlvain found guilty of 1st degree murder and kidnapping. Sentenced to life in prison by L.A. Superior Court Judge Wm. B. Keene. McIlvain's attorney is Charles Gangloff. No information on Federal involvement.
3) Names: HERNANDEZ, Jesse REYES, Adolfo Date: 3/20/77 Location: San Fernando, CA	Victims arrested for some street disturbance. City police officer Eric Kahmann beat Hernandez and Reyes with baton and fists, with Lt. Wm. Trachsel (acting police chief) looking on. Beatings occurred at the city jail.	Charges against Hernandez later dropped for lack of evidence. Reyes guilty of misdemeanor charge of carrying a loaded firearm. L.A. Grand Jury indicted officers on charges of assault in the beatings of the 2 jailed prisoners. Each officer faces two felony counts. Trachsel fired after a one month police investigation. Investigation of Kahmann still pending. No Federal inquiry.

BRUTALITY CASES (continued)

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4) Name: RAMIREZ, Crescencio  
Date: 10/29/77  
Location: Wasco, CA

Verbal exchange resulted in the arrest of five youths, who were beaten and handcuffed tightly causing wrist bruises. Mr. Ramirez, a friend of one of the youth's father, attempted to investigate the processing of the youths, which was carried out in secrecy. A couple of days later, officers Emerson and Snead arrived at Ramirez' home without warrants, entered the property, and began to beat Ramirez with clubs when Mrs. Ramirez attempted to hold her husband. Officers began to beat Mrs. Ramirez, and tossed her children into some rosebushes when they also attempted to aid their parents.

Miguel Garcia is the attorney for Ramirez and the youths. Ramirez was never charged with anything, and it was never specified why the officers had gone to his house. Youths, and the father of one of them, were charged with the California law of lynching, but all charges have been dismissed. Bakersfield D.A. investigated and concluded that the only negative behavior he found on the part of the youths was foul language. Garcia has filed a petition with the Supreme Court (state) dealing specifically with violations by parole officials with respect to one of the youths. He hopes to bring attention to the abuse generally faced in Wasco.

5) Name: RAMIREZ, Edward  
Date: 4/16/77  
Location: Los Angeles, CA

Undercover officers in Downtown L.A. dressed like hoboes, beating a suspect as Ramirez approached. Unaware that they were officers, Ramirez went to the aid of the suspect. Without identifying himself, Officer Lony Hammond fired, killing Ramirez.

Informational source is the Coalition Against Police Abuse in L.A. Family has no money to file suit, but have filed a formal complaint with the LAPD. LAPD reports incident as Justifiable Homicide. No Federal inquiry.

TEXAS

6) Name: BELTRAN, Noe  
Date: 10/21/77  
Location: Brownsville, TX

Beltran was eyewitness to the shooting of Ventura Flores (See FLORES, Ventura). Officers Hess and Avitia handcuffed him and threw him to the ground. When he heard the shot that wounded Flores, he raised his head to get up, and Officer Hess kicked him in the face, causing abrasions.

Beltran taken to the Police Station where he gave his statement. He requested that the abuse by Officer Hess be included in the statement. Officer taking the statement refused to include this, stating that the matter would be taken care of in court. Beltran was immediately released. Ruben Bonilla of LULAC is actively involved with this case. FBI investigating.

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BRUTALITY CASES (continued)

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7) Name: FLORES, Ventura  
Date: 10/21/77  
Location: Brownsville, TX

Warrant was issued for Flores' arrest by Justice of the Peace, Ed Sarabia, for felony charge of retaliation. Detectives Robert Avitia and Chris Hess arrived at the scene at which Flores and others were talking. There was an altercation, and Hess shot and wounded Flores in the chest. Flores, drunk at the time, was reported to have attacked Avitia. While in ICU, Flores remained handcuffed. Reports conflict as to whether police used proper identifying procedures upon arrival at the scene.

Police investigation in progress. Grand Jury indicted Flores for aggravated assault on a police officer (misdemeanor). Original felony charge received no indictment. Grand Jury investigating police abuse, but the affidavits of eight eyewitnesses were all lost, never received by the Grand Jury. Evidence of a police cover-up. FBI investigating as of December for possible civil rights violation, at the request of U.S. Attorney Canales. Attorney for Flores is Jerry Davidson.

8) Name: GALAVIZ, Juan  
Date: December 1977  
Location: Big Spring, TX

Police report that Galaviz abducted a woman, robbed her, then led police on a chase. When trapped between two police cars, Galaviz reached for his coat pocket, and Sgt. Leroy Spires fired and killed Galaviz. His pocket contained a pocket knife.

District Attorney Rick Hamby investigating the shooting. Texas Rangers also investigating, and will present results to Howard County Grand Jury. Report by Journalist Carlos Morton, states that Galaviz had been harassed by police previously, and "were out to get him." Witnesses who claim police abuse, not testifying because of fear of reprisal. No Federal involvement.

9) Name: GARZA, Pablo  
Date: 3/23/76  
Location: Bexar County, TX

Garza arrested for drunken driving by San Antonio Police. Garza charges that three Bexar County Jail guards, Charles Harris, Robert Collins, and James Lovings threw him into a small cell and kicked him repeatedly, beating him severely. He was hospitalized only after his release from jail. Defense states that upon his arrest, Garza took a swing at the arresting officer, who struck Garza repeatedly to subdue him. Once in jail, guards claim that Garza was abusing other inmates.

Misdemeanor assault indictment by Bexar County Grand Jury. Guards fired. Judge, County Court-at-Law, Raymond Wietzel, finds guards not-guilty of any wrongdoing. Guards reinstated, with back pay, by the Civil Service Commission. Garza began proceedings (served notice) for filing of civil suit, but no further action taken. Reportedly, Garza is an alcoholic, and epileptic, perhaps being a problem in securing support for his case. No Federal inquiry into the matter.

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BRUTALITY CASES (continued)

- 4 -

10) Name: MORALES, Ricardo  
Date: 9/14/75  
Location: Castroville, TX

Castroville Marshall, Frank Hayes, picked up Morales at his home on an arrest warrant regarding an investigation into a series of burglaries. Another Marshall was with Hayes, but left after Morales picked up. Hayes drove out to the country, and shot and killed Morales on a deserted road. Hayes' wife, Dorothy Hayes, with the collaboration of a friend, Alice Baldwin, took the body and buried it some distance away from the scene.

Hayes found guilty of aggravated assault, sentenced to 10 years. His wife given one year sentence, probated, for burying the dead body. Tremendous community pressure, including that of Governor Dolph Briscoe, prompts Federal Grand Jury probe for violation of civil rights. Case presented to Grand Jury by Assn't U.S. Attorney John M. Pinckney and two Civil Rights Division attorneys from Washington, Dan Rinzel and Karen Moore. Attorney for Hayes is Marvin Miller. There was a change of venue to San Angelo for the civil rights trial. Hayes convicted on 9/77 for civil rights violation for the murder of Morales and sentenced to life by Chief U.S. District Judge Adrian Spears. He is presently not serving sentence due to psychological tests to determine Hayes' ability to withstand the punishment (90 day testing period ordered by Judge). Mrs. Hayes and Alice Baldwin were also convicted as accessories after the fact. No information on their sentencing.

11) Name: PRIETO, Eduardo  
Date: 4/3/77  
Location: El Paso, TX

Officers received a call for disorderly conduct at a bar. Complaint against Prieto, who officers escorted out of the bar. Officers claim that Prieto offered confrontation, so Francisco J. Gonzalez kneed him in the groin, and pattered him repeatedly with his flashlight in order to get the already seriously injured Prieto into the car. Prieto hospitalized for ruptured testicle, only after he was taken to police headquarters and refused medical care until his release on bail hours later.

Upon leaving the hospital, Prieto filed complaint with Police Dept. Officer Gonzalez dismissed from the force. El Paso County Grand Jury investigate and No-Bill Gonzalez on aggravated assault complaint. Attorney for Prieto is L. Taylor Zimmerman who is presently still considering filing a complaint with the FBI, or a civil suit.

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## BRUTALITY CASES (continued)

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- 12) Name: RODRIGUEZ, Santos  
Date: 1973  
Location: Dallas, TX
- Police officer Darrell Cain stopped and questioned Rodriguez about a service station robbery. In the back seat of his car, "Russian roulette" style, Cain put a loaded gun to his head, pulled the trigger and killed Rodriguez.
- Cain's trial had a change of venue to Austin. Convicted, got 5 year sentence for criminally negligent homicide. He appealed to the Court of Criminal Appeals in Austin. Judge Ed Gossett confirmed the lower court decision on 3/77. A community committee has formed to pressure for a Federal Grand Jury investigation. Dan Rentzel, from the Civil Rights division at the Justice Dept. is also investigating.
- 13) Name: SANTOME, Tiburcio  
Date: 11/6/77  
Location: Glasscock County, TX
- Santome picked up for drunk and disorderly, reportedly pulled out a knife and went after Sheriff Royce Pruitt who was driving the car. Retired West Texas deputy sheriff, G.B. Therwanger, a passenger in the back seat, shot and killed Santome. Santome was not handcuffed, and police report that a patdown search was done before Santome entered the car, although Mrs. Santome stated that there was no patdown search. Santome was a Mexican national from Juarez. Four shots were fired.
- Texas Rangers investigating the shooting. Don Richard, Assistant D.A in Big Spring, Howard County, is present - ing the case to the Grand Jury, but he is not recommending any charge against Therwanger. Special Assistant to the U.S. Attorney General, Ed Ibar is investigating possible civil rights violation
- 14) Name: TORRES, J. Campos  
Date: 5/5/77  
Location: Houston, TX
- Officers received a complaint from cafe owner about drunken Torres. Police arrest for disturbance and take Torres to the jail. En route, police report that Torres used abusive language and began to kick windows on car, so took him to parking lot, and beat him severely, kicking, hitting with flashlight, while Torres handcuffed. Six officers were involved. Upon arrival at the jail, duty sgt. ordered Torres to hospital. En route to hospital, officers took Torres to bayou, and Officer Terry Denson pushed him in. Body found drowned in bayou several days later.
- Attorney for Torres is Percy Foreman. Officers given one year probated sentence for criminally negligent homicide. Community outcry brings Federal Grand Jury indictment for violation of Torres civil rights (10/77). Federal Judge of U.S. District Court is Ross W. Sterling. Jury convicted Officers Denson, Stephen Orlando, and Joseph Janish (2/8/78) for violation of civil rights leading to the death (felony), and for beating and intimidating, a misdemeanor. Sentencin will be 3/28. Officer Louis Kinney received severance for his role as state witness, and will be tried at a later date. Jurors rejected charges that Denson pushed Torres into the bayou, and that there was a conspiracy to cover up. Federal prosecutors were Brian McDonald and Mary Sinderson.

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## BRUTALITY CASES (continued)

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- 15) Name: VASQUEZ, Danny  
Date: 1/22/78  
Location: Moon City, TX
- Deputy Sheriff called to Moon City reported fight in progress. Officer began to frisk a friend, and Vasquez attempted to explain that this individual had not been involved in the fight. The officer, Sergio Guzman, pointed his shotgun at Vasquez. Vasquez attempted to push the barrel away from himself. Officer stepped back and fired, killing Vasquez. There is evidence of negligent delay in taking Vasquez to the hospital, since he did not die immediately. Vasquez had not been involved in the fighting.
- El Paso Sheriff, Mike Sullivan suspended Guzman with pay, pending a department investigation. Grand Jury will investigate. Chicano Unidos spokesman, Ramon Aroyos, demands murder charge against the officer. No Federal involvement at this point.
- 16) Name: ZARAGOZA, Albert  
Date: 8/15/77  
Location: San Antonio, TX
- Police officer Eloy Gonzalez was shot and killed. When officer George Castenada arrived at the scene, Zaragoza was there holding a police revolver. He was arrested and handcuffed. Zaragoza had been trying to capture a suspect in the killing. This other suspect was also arrested by Sgt. Richard E. Dominguez, and both were ordered to strip naked. A female witness was brought to identify nude suspects, and both were taken to headquarters still nude. Zaragoza received beating.
- Zaragoza eventually released and credited with assisting in the capture. Juan Garza, illegal alien, indicted for capital murder and is awaiting trial. There was a police investigation. Castenada was suspended for 15 days without pay, and Dominguez was given a 30 day suspension. No suit has been filed.
- 17) Name: ZEPEDA, Juan  
Date: 2/20/77  
Location: Bexar County, TX
- Zepeda arrested at a disturbance at a bar. Arresting officers, Michael J. Henderson, and Clifford Cedotal beat him with blackjacks, reportedly to subdue him. Once at the jail, four guards carried Zepeda into a cell, threw him in, and kicked and beat him. Zepeda was later found dead in his cell.
- Bexar County Medical Examiner Dr. Ruben Santos ruled homicide, that death was cause by a blunt force to the abdomen. Police and prison investigation. FBI investigation, forward reportsto the civil rights division of the Justice Dept. D.A. investigation (Bill White) after Chief Deputy Sheriff, Rudy Garza, finished his investigation. Probe also continues by Justice Dept.

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BRUTALITY CASES (continued)

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18) Name: ZUNIGA, Juan Veloz  
Date: 5/19/77  
Location: Hudspeth County, TX

Zuniga detained at Sierra Blanca four days before his death. Police arrested him for drunken driving. Sheriff Claymon McCutcheon reported that Zuniga went "berserk" in his cell, actually striking another inmate in the Hudspeth County Jail. Sheriff McCutcheon struck Zuniga repeatedly over the head with a sawed-off pool cue. Witnesses report that beating was unjustified. Zuniga died as a result of the beat-ing.

Hudspeth County Grand Jury investigation. Texas department of public safety investigation. No action taken or recommended by Grand Jury against McCutcheon. FBI investigation indicates possible violation of civil rights. Report forwarded to Washington by Jamie Boyd, U.S. Attorney for Western District of Texas. Entire Hudspeth County investigation a sham. State Representative Paul Moreno and community pressuring Justice Dept. for action.

NEW MEXICO

19) Name: BARRERAS, Chris  
Date: 11/19/77  
Location: Albuquerque, NM

Barreras' wife called police to report a fight she was having with her husband. Upon their arrival Barreras was driving out, and high speed car chase ensued. Car broke down, and Barreras ran on foot until police surrounded him and began to strike on the head. Barreras was handcuffed while he was being beaten.

Barreras booked on felony assault on police officer, resisting arrest, drunk driving, and assorted other charges. There has been an internal affairs investigation by Albuquerque police. It has been completed and is now in the hands of the Police Chief for his decision regarding any wrongdoing by the officers. Barreras has not yet come to trial in the Bernalillo County District Court. D.A. is Ira Robinson.

20) Name: CORRIZ, Larry  
Date: 9/76  
Location: Rio Arriba County, NM

Corriz and friends arrested on heroin charge. Corriz told to get into his car and leave the scene. As he was driving away, Deputies Steve Martinez and Canuto Martinez opened fire on Corriz, one of the bullets striking Corriz in the back. Two deputies made no attempt to help Corriz after they had shot him.

Corriz charged with trying to escape, but charges later dropped. Corriz filed civil suit for \$350,000. in damages. Suit assigned to District Judge, Edwin Mechem. Suit pending.

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## BRUTALITY CASES (continued)

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- 21) Name: DAVIS, Jose L.  
HEMBREE, Daniel P  
Date: 8/20/77  
Location: Albuquerque, NM
- Officers respond to call about a loud party. An altercation ensued involving both Davis, and Hembree. Officer James Babich beat both with flashlight
- Davis and Hembree have misdemeanor charges pending against them in magistrate court, for assault on a police officer, and resisting arrest. No charge filed against the police officer.
- 22) Name: DEVARGAS, Antonio  
Date: 9/76  
Location: Rio Arriba, NM
- Devargas, Raza Unida Party leader, challenged with a gun at a bar by off-duty officer Anthony Griego. Devargas knocked Griego down and punched him. Devargas sent to the state penitentiary for safe-keeping. One of the prison guards told Devargas to shave moustache and sideburns. Since Devargas was a County prisoner, state guards had no jurisdiction over him, so he refused. Eight of the guards then knocked him down and beat him.
- Devargas charged with aggravated battery against prison staff, but Santa Fe County Grand Jury dismissed those charges in June of '77. Attorney for Devargas is Richard Rosenstock, who has filed a civil suit against the state penitentiary. Suit is now pending. According to Rosenstock, the arrest and jail incident are very political since Devargas very active in trying to oust political boss, Sheriff Emilio Naranjo, and was candidate for Rio Arriba County Commissioner.
- 23) Names: GAMBOA, Jose  
GAMBOA, Virginia  
GAMBOA, Simon  
TRIGUEROS, Raymond  
TRIGUEROS, Romona  
Date: 3/1/74  
Location: Columbus, NM
- These individuals crossing the border ordered to halt by customs and border patrol agents. The five were then beaten by these agents.
- These individuals have filed a \$10,000,000 suit for damages. Suit is pending. The five were charged with assaulting Federal officers, taken before the U.S. Magistrate in Deming. Then taken to Albuquerque for trial, and charges were dismissed. Part of the suit by the five involves the harrassment and inconvenience caused by these unfounded Federal charges.

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## BRUTALITY CASES (continued)

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24) Name: MONTROYA, Alven  
Date: 8/75  
Location: Albuquerque, NM

Montoya and his son were working on their pick-up truck. Officers investigating an auto burglary. Montoya charged that police officer knocked down his son and kicked a tire into the boy's stomach. A skirmish evolved and Dr. Keith Harvie testified that his examination showed that Montoya had three broken ribs and a bruised lung the next day as result of beating.

Montoya filed a \$200,000 civil suit charging city police officers James Rogers, Cliff Jenkins, and John A. Sanchez with the beating. The Federal Jury ruled in a unanimous verdict that officers were not liable. Attorney for the officers was Mark Metering, and for Montoya, Manny Aragon, who has filed an appeal.

25) Name: RAMIREZ, Andrew  
Date: 11/10/77  
Location: Albuquerque, NM

Ramirez' mother called police to have them remove her son from the house since he was drunk and being abusive. In the house, Police began to beat Ramirez repeatedly over the head with flashlight (Officer James Babich). Ramirez was dragged out of the house, administered no first aid by the officers, and was dead on arrival at the hospital

No suspension of Officer Babich. Internal Affairs Division conducting an investigation. A preliminary autopsy by the Medical Examiner shows that Ramirez died from brain hemorrhage, "possibly" from blow to the head. Results of investigation pending. Babich has definite history of such behavior (SEE DAVIS, Jose, above).

COLORADO

26) Name: ESPINOZA, Arthur  
HINOJOS, James  
Date: 7/30/77  
Location: Denver, CO

Officers arrive at park after reports of shootings. Witness state that plain clothes, vice officers John O'Dell, Gary Graham, and David Neil, with no identification, jumped out of their cars, shooting at Espinoza and Hinojos who were lying on the grass. Both were killed. Officers say that Espinoza moved as if drawing for a gun. Both victims were well over the legal level of intoxication.

Community uproar over the killings, calling for Justice Dept. investigation. Grand Jury has indicted David Neil, but cleared both O'Dell and Graham. Neil has not been suspended from the department. Investigating D.A., Dale Tooley, has had a poor record concerning Chicano-Anglo matters. Attorney for victim's families, Kenneth Padilla, has called for a special prosecutor. Children of Espinoza have filed a civil rights damages suit of \$4 million. Attorney handling this suit is Walter Gerasch. Similar suit expected for Hinojos. Community convinced of cover-up. Detectives who did shooting, left the scene immediately.

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## BRUTALITY CASES (continued)

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- 27) Name: FERNANDEZ, Robert  
Date: 8/26/77  
Location: Pueblo, CO
- Fernandez' wife called police to enforce restraining order she had obtained to keep her husband away when he was abusing her. Officers Henry Chapman and Timothy Pepin arrived and placed Fernandez under arrest. Wife states that Fernandez indicated that he was going to put down his beer can and in the process accidentally touched the sleeve of one of the officers. At this point officers began to beat with clubs and did not stop until Fernandez was dead.
- D.A. Joe Losavio filed criminal charges against patrolmen for criminally negligent homicide, based on coroner's inquest. Trial set for March 1978. Community outcry at the lesser charge, a misdemeanor. Widow has filed a \$16.6 million civil suit for wrongful death against the City of Pueblo, the D.A., the Chief of Police, and the officers involved. The D.A. was at the scene of the killing shortly after, and he is accused of collaborating with police to cover-up the evidence. There is presently a motion to recall the D.A. Attorneys for the widow are Edwin K. McMartin and Michael Kelly. Officers Chapman and Pepin transferred to desk jobs, generally considered a promotion. No federal involvement.
- 28) Name: LUCERO, Dennis  
Date: 5/5/76  
Location: Denver, CO
- Lucero was walking home, and had an exchange of words with James Connely. Connely, a private citizen, went into his house, brought out his shotgun, shot and killed Lucero. State law enforcement whitewash ensued (see opposite).
- Judge ignores community pressure to change original manslaughter charge. Police Dept. melted the shotgun used to kill Lucero, so charges against Connely were dropped, since shotgun was the main piece of evidence.
- 29) Names: MONTOYA, James  
MONTOYA, Roger  
MONTOYA, Robert  
Date: 4/10/76  
Location: Albuquerque, NM  
(NOTE: This case out of geographical sequence)
- Reported fight at LULAC Club 2823. Officer claims that Robert Montoya, the father of James and Roger, attacked him. Chief of Detectives for Bernalillo County Sheriff's office, Orlando Padilla, shot and killed Robert and James, and shot and wounded Roger.
- On November 13, 1976, Padilla acquitted for the killing of Robert, but convicted by the jury of voluntary manslaughter in the shooting death of James, and for aggravated battery in the wounding of Roger. District Judge Joseph Baca sentenced Padilla to two concurrent prison terms of 2-10 years. Padilla out on \$25,000 property bond pending appeal. Padilla's attorney is Leon Taylor. The Chief Deputy D.A. is Robert Martin.

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BRUTALITY CASES ( continued)

- 11 -

30) Name: SANCHEZ, Joe Roy  
Date: 6/2/77  
Location: San Luis, CO

Sanchez, who had been drinking, was in a local store waving around a .22 he had in his possession. Deputy Dave Marcus arrived at the scene, and there was a verbal exchange between the deputy and Sanchez. The officer purchased a pack of cigarettes. The girl at the counter testified that the deputy had his gun in hand while he was paying for the cigarettes. Marcus struck Sanchez in the head with the gun. Sanchez fell back, and his gun discharged. Marcus fired six shots, striking and killing Sanchez.

Coroner's inquest ruled that there was no cause for charges. Community felt that the testimony allowed was biased in favor of the deputy since court presented personal background of Sanchez in detail, but none at all on Deputy Marcus. The Sanchez family will file a civil suit in the state court for the sum of \$1 million, naming the county commissioner, the Sheriff, and Marcus. Petition for suit has already been filed. Deputy Marcus was reinstated into the department after having been on temporary leave with pay.

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THESE CASES WERE COMPILED BY THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, 28 GEARY ST., SAN FRANCISCO, CA. 94108  
For further information please call (415) 981-5800 or write.

BRUTALITY BY LAW ENFORCEMENT AGENCIES: Case Summaries, PART II (in order by state)

CALIFORNIA

	<u>Case Type</u>	<u>Legal Status</u>
31) Name: BLANCO, James Date: 2/20/76 Location: Los Angeles, CA	On the night of the incident, Blando was fearful of gang reprisals against him, related to a previous incident. He called for police protection. The unit did not arrive until one hour later at the S. Hoover St. location. During this time Blando purchased a knife for his personal protection. Officers Norman Rouillier and James Wright immediately began to display aggressive behavior against Blando, who ran, eventually falling exhausted. Witnesses say that at no time did Blando threaten officers with the knife. Officer Rouillier fired one shot, wounding Blando, and Wright then proceeded to fire six shots, re-load, and fire six more shots into the body of Blando, killing him. Officer report states that Blando was strangling a young boy with his knife when they arrived, and turned to stab Rouillier. Immediately after the shooting, witnesses were physically abused by the officers.	Blando's family filed a formal complaint with the LAPD. Police investigation concluded that killing was justifiable homicide. Blando's defense committee called for a D.A.'s investigation. Coroner's inquest denied. Blando's family has filed a wrongful death suit, which is pending. D.A. investigation is pending. No knowledge of Federal involvement.
32) Name: CORTAZ, Ruben Date: 1/19/77 Location: Los Angeles, CA	Cortez was taken hostage by a gunman at his place of employment, and forced to drive. Officers gave chase with an exchange of gunfire. Officers were aware that there was a hostage in the car, and the units involved had complete radio communication with other units. Car lost control and crashed. Numerous witnesses stated that neither Cortez nor the gunman moved after the crash. Coroner's inquest indicates that Cortez was unconscious immediately after the crash. One officer then approached the crashed car and fired 4-5 rounds into the car, killing Cortez, who was unarmed. Coroner's report indicates that Officer Small's unit was that which gave pursuit. Officer R.V. Montigo was also involved.	Police and D.A. investigation still in progress. Coroner's inquest concluded that the officers were guilty of homicide. FBI has made inquiries.

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BRUTALITY CASES (continued)

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33) Name: GARCIA, Tony  
          AMADOR, Bill  
      Date: 4/4/78  
      Location: San Bernardino, CA

The young-boys were driving in the area of 7th and Roberts, when they were stopped by two marked police units for allegedly driving without lights. Angel Leon, an off-duty officer in one of the units, approached Amador and struck him in the face with his fist and challenged him to a physical confrontation, without any provocation. He then hit Garcia in the face area with his flashlight, and on a backstroke, struck another youth also present, breaking his nose. He struck a fourth youth in an attempt to provoke an altercation. Leon has had a well-known history of brutality against Chicano youth. He had previously been involved in gang investigations, which he conducted with such physical abuse. Leon was promoted to Homicide Division, which the Latino community has interpreted as encouragement of such activity. Two weeks previously, Leon's son had been killed, and he has been utilizing this to embark upon a personal shakedown of known gang members. Four on-duty officers stood by and watched throughout the incident.

The youth's injuries were photographed, and they gave full statements at the police station. The Police Dept. is investigating. A formal complaint by the victim has not yet been filed. No charges were made against the youths. Booklet Mail from the Community Relations Service of the Justice Dept., is currently trying to mediate between the police and the community. He was called onto the scene of the tension by MULEF. There has been no disciplinary action against Officer Leon.

34) Name: MONTES, Armando  
      Date: 5/5/77  
      Location: Los Angeles, CA

At 11th and Main Streets, Officer Frank Long, an off-duty, Central Division desk officer, claims that he observed a robbery in progress while driving his private vehicle. Long pursued the alleged robbers on foot, and as a witness has stated, he grabbed Montes by the back of his shirt, and spun him around. Montes then pushed the officer in the chest, and turned to run. Long drew his gun and shot point blank into Montes' back killing him. Research by the Coalition Against Police Abuse (CAPA) has shown that the police reports do not indicate that there was ever a robbery in progress as initially stated by Long. The question nevertheless remains that if Long did observe a robbery, why did he not call for help, which is police procedure? Statements by the witness clearly indicate that Montes' apprehension did not require such an excessive use of force, especially since no warning was given.

Formal complaint against the LAPD filed by Montes' family. Police have ruled the killing to be justifiable. A D.A.'s investigation is reportedly pending. No knowledge of Federal involvement.

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## BRUTALITY CASES (continued)

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35) Name: RIVERA, Luis  
Date: 10/12/76  
Location: National City, CA

City police officer, Craig Short, responded to a report of purse-snatching at a local church. One and one-fourth miles away from the church, Short and his partner encountered Rivera, who began to run when he saw Short approaching. Short drew his .357 Magnum and shot and killed Rivera in the back. The community is concerned at the fact that Rivera was walking toward the church at the time he saw Short; and that Short had threatened Rivera previously. The stolen purse was not found in Rivera's possession.

Grand Jury charged Short with second degree murder, but Judge Hoffman himself dropped the proceedings. There was a community uproar at the decision, and at the evidence of a cover-up by the police dept., e.g., Officer Short was sent on vacation immediately after the shooting, and police refused to identify the officer until the Committee on Chicano Rights pressed for such. The family has filed a wrongful death civil suit, which is pending. Some federal inquiry has been reported, but no official investigation is in progress.

36) Name: TERRONES, Alberto  
Date: 4/19/74  
Location: Union City, CA

Terrones allegedly held up a store for some canned ham, at knife point. He then fled the scene on bicycle, at which time officer began to pursue. Terrones dismounted and ran into a trailer park. Officer John Miner, in pursuit, claimed that Terrones attacked him with a knife, and that he was forced to shoot him dead. There was serious dispute over whether Miner had used proper procedures in subduing his alleged attacker. There is strong community sentiment that events which occurred four days previously were very much linked to the case. At that time, an Anglo woman claimed that she was burglarized, and that one of her children, Gina Angelo, was stabbed to death. She said that the killer was a Latino. There is evidence that Miner linked Terrones with that slayer, and he was in fact, identified as such after his death. When the woman later admitted that it was she who had killed her own daughter, and that there had been no burglary, police denied that Terrones had ever been implicated. Community members feel that it was the anti-Mexican hysteria, whipped up by the death of Gina Angelo, which led Miner to overreact in his encounter with Terrones. Miner has had a history of abuse in the Latino community.

After Terrones' death, the Latino community was in an uproar. The new Chief of Police, William Carr, met with the community in a conciliatory, fact-finding move. He was shot and killed by a sniper. Community members felt that his death was part of a cover-up by the city, since Carr was sympathetic to the needs of the Latinos in Union City. There was a Police Dept., D.A., and Coroner's investigation. All exonerated Miner. Grand Jury ruled that Miner was not indictable. He was assigned to a desk job by the department. A representative from the Civil Rights Division of the Justice Dept. reportedly visited twice but no official investigation was reported.

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## BRUTALITY CASES (continued)

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37) Name: TREVINO, Daniel  
Date: 1/22/76  
Location: San Jose, CA

Police responded to disturbing the peace complaint by friends of Trevino and Maria Duarte (Trevino's girlfriend) who were involved in an altercation. When the officers arrived, Trevino and Duarte were reportedly sitting calmly in Trevino's car. Upon arrival, officers ordered both to get out of the car. As Maria opened her passenger door to exit, shooting started. Both officers fired, killing Trevino. Although no weapons were found in the car, police allege that Trevino made motions as if to fire at them. Maria Duarte testified that Trevino was semi-conscious when the police arrived, as he had been drinking. Witnesses report that Trevino did not die immediately, but was left unattended on the street.

The Santa Clara County Grand Jury ruled that they had insufficient evidence to indict the officers involved, Lt. Don Edwards and Craig Smith. D.A. Louis P. Bergna presented evidence that put Trevino on trial instead of the police officers, according to Rebecca Trevino's attorney Everett Rose. There is evidence of a cover-up, e.g., Rebecca Trevino hired a private pathologist, who could not determine Trevino's cause of death due to the fact that parts of his body were not found in the coroner's office, and no one in that office knew of their whereabouts. Attorney Rose has filed a \$2 million lawsuit on behalf of Mrs. Trevino, which is pending at this time. Community pressure arose for a Federal investigation. The U.S. Justice Dept. ordered the FBI to inquire in April '76, but found no reason to carry out a full investigation. Earlier, in February '76, Phil Hanes, director of the regional U.S. Commission on Civil Rights stated that he could be of no help in investigating Trevino's death, but also promised to investigate some of the problems between the Chicano community and the local government. This investigation was never begun.

TEXAS

38) Name: ARGUELLO, Oscar P.  
Date: 11/24/76  
Location: San Antonio, TX

Off-duty patrolman (wearing uniform), Lorenzo Sanchez, has been working security at a skate center. According to his report, he saw four men arguing in the parking lot, and he told them to leave. A verbal exchange resulted between Arguello and Sanchez. Officer threatened to arrest Arguello for disorderly conduct. Officer claims that Arguello then started his car and grabbed the officer, pulling his body into the car, and began to drive away. According to the officer, Arguello then allegedly unstrapped the safety strap on Sanchez' service revolver. Sanchez grabbed the revolver and brought it into the car, since his lower body was entirely out of it. Arguello aimed the car, and with the officer running alongside, they began to wrestle for control of the gun. While the officer tried to turn off the ignition, he shot and killed Arguello. According to Ruben Sandoval, a Texas attorney, witnesses have refuted this improbable story, indicating a cover-up of an unattended police killing.

Police investigation concluded that the officer was guilty of no wrongdoing, and Sanchez was not suspended. The police report was forwarded to the D.A.'s office as well as for Bexar County Grand Jury, which is standard police procedure. That investigation is pending. No knowledge of Federal involvement.

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## BRIDALITY CASES (continued)

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39) Name: CAMPOS, Fernando  
Date: 2/29/76  
Location: El Paso, TX

A surveillance team of City Police Officers were involved in a stake-out at a local Pizza Hut, the site of a series of previous burglaries. Francisco Sotelo entered the back of the Pizza Hut, armed, in an attempt to commit robbery. He was shot by undercover officer Al Jones. Campos and Robert Dominguez, who were patronizing the Pizza Hut, were frightened at the gunfire since at no time was there identification by the officers. They fled, fearing that the shots were fired by an armed robber. Officer Ernesto Avalos, waiting outside, shot and killed Campos as he ran. There is serious dispute whether the officer used proper warning before firing.

Grand Jury refused to indict officer involved. He was no-billed. Attorneys for the Campos family, Joseph Sib Abraham and Luis Lelas, have filed a civil rights action in state court against the city of El Paso and the El Paso Police Dept., as well as Pizza Hut, for wrongful death. The action is directed towards the duty both the city and the establishment in question, with respect to the customer's safety. No federal involvement has been reported.

40) Name: DURAN, Carlos  
Date: 3/18/77; 8/17/77  
Location: El Paso, TX

During massive drug sweeps in the latino sector of El Paso, Duran was arrested on various drug charges. His complaint states that he was then beaten in the streets. He was taken to the City-County Building, into a room with officers Cruz Jacques and Guillermo Acosta. There, he was forced to strip naked, and while stripping Duran was beaten. Once stripped, he was beaten for another 10-15 minutes. Three other officers looked on while insulting and laughing at Duran.

Duran filed a complaint with the Police Dept 's internal affairs office. The officers involved were suspended for 10 days with no pay. The FBI did make some inquiry, but ruled that there was no substantiation for civil rights charges against the officers.

In a separate incident, 8/17/77, Duran was beaten by Patrolman Guillermo Acosta, who reportedly struck Duran repeatedly with his fist while he was handcuffed and on ground. Duran was one of many protesting the Board of Directors of La Fe Clinic over an issue of real concern to the Latino community. Police responded to a call that Duran and Mario Lopez were breaking windows at the clinic. Police report says that Duran did not stop his protesting when the officers called him over. The beating ensued as a result. No windows were found broken.

Duran filed a formal complaint with the Police Department, and that hearing is still pending. No reports of Federal involvement regarding this matter. There is evidence that Duran has been harassed since filing his original complaint for the 3/18/77 incident. Duran's attorney is Russel Aboud.

## BRUTALITY CASES (continued)

-17-

41) Name: LOZANO, Lorenzo Ortega  
Date: 1/22/78  
Location: Austin, TX

On January 10, 1978, Lozano's car slid off the road. Officers (Ector County deputies Lee Roy Murphy and Gene Kloss) arrived and beat Lozano with a flashlight when he went to take out his license upon their request. Once handcuffed, Lozano was beaten once again, severely. While booking Lozano on two counts of aggravated assault, the booking deputies again beat him severely, again, while handcuffed. His handcuffs were removed, officers engaged him in a fight, and he was beaten still further. Lozano was held in jail for 12 days, and according to witnesses, faced severe harassment from jailors. On January 22nd, Lozano was removed from isolation. He complained about poor cell conditions, and was immediately taken to a hospital and sedated, whereupon he was returned to a padded cell. That same night, eight officers entered into Lozano's cell, and beat him until he died. Officers include Ector County Sheriff Elton Faight, a Dept. of Public Safety patrolman, a reserve deputy, and a state game warden. The others were Sheriff's Deputies.

FBI initially refused to investigate, deferring to the Texas Rangers. Community pressure has since initiated a federal investigation from the office of the U.S. Attorney, Tony Canales. That investigation, however, is waiting on the inquest by Justice of the Peace Virgil Linspe, who had initially ruled Lozano's death a suicide on January 22nd. Linspe is currently awaiting the third Medical Examiner report. First examination concluded that the death was homicide. Local prosecutor, John Green, has promised prosecution if the verdict of the inquest is homicide. Strong evidence of attempted cover-up, e.g. after Lozano's death, the officers involved met at Faight's request to, as one witness stated, "get their stories straight." Faight claims that Lozano was mentally ill, but the question remains, why was he not taken to the hospital after 24 hours, which is Texas law?

42) Name: RODRIGUEZ, Modesto  
Date: 6/20/75  
Location: Frio County, TX

Rodriguez active politically with the Voting Rights issue in Frio County. He met with other Chicanos on this night to discuss information for Justice Dept. attorneys. About 11:00p.m., six police officers from the Texas Alcoholic Beverage Control Agency (ABC), and state and local police forces entered the bar, arrested many present, ordering them outside. Without provocation, Rick Dennis of ABC, approached Rodriguez and struck him hard from behind on the head, after having said some very unfriendly words to him. Dennis and several other officers proceeded to beat and kick him to the ground. At Frio County jail, Rodriguez was processed but not charged, and was denied badly needed medical attention. He was removed for proper treatment in a San Antonio hospital only after many hours, when his medical condition had become grave.

Rodriguez was prosecuted on three criminal counts, including resisting arrest and assaulting an officer. Prosecution dropped these charges after the trial ended in a hung jury. Civil Rights Division of the Justice Dept. has decided not to pursue its investigation. Private action has been filed on Mr. Rodriguez' behalf by San Antonio attorney Gerald Goldstein, and MALDEF. That suit is pending in federal court.

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BRUTALITY CASES (continued)

-18-

NEW MEXICO

- 43) Name: LOPEZ, Richard  
Date: 10/20/74  
Location: Albuquerque, NM

City officers, Edvigan Luzra and Jimmy Steele, stopped Lopez for drunken driving. As officers approached the stopped car, Lopez rolled up his windows and ocked the doors, refusing to emerge upon the orders from the officers. He eventually opened the lock, and a witness states that immediately the officers opened the door and began to beat Lopez without provocation. As a result of the beating and clubbing, Lopez received severe wounds to the face and head. On the way to the police station, Lopez has testified that the officers actually stopped on the freeway and struck him repeatedly.

According to his attorney, Ronald Taylor, Lopez' beating was never investigated by a Grand Jury, or the Federal government. Lopez filed a damage suit in U.S. District Court against the officers, which was settled out of court. Officer Luzra, who had a history of such abuse, was forced out of the department.

- 44) Name: MOYA, Robert Max  
Date: 7/14/77  
Location: Albuquerque, NM

Officers stopped Moya's father for Driving While Intoxicated. James Babich was one of the arresting officers. EE RAMIREZ, ANDREW, #25). Robert went outside of his house, where the events were occurring, to investigate. Robert was arrested for concealing his true identity, stemming from a previous encounter with Officer Babich. Robert then ran into his house, with the officers in pursuit. Officers kicked the door in, and Babich walked over to Robert and struck him with his flashlight over the head, without any movement by Robert (this according to Babich's own testimony). Babich grabbed Robert by the hair, dragged him outside, and beat him repeatedly with his flashlight. According to officers, Robert grabbed Babich's gun, at which time Officer Steve Turbet choked him until he passed out. Babich continued to beat Robert with his flashlight until he was unconscious. Robert's mother and sister ran to Robert's aid, were pushed across the room, and arrested for interference.

Robert Moya was convicted and sentenced to five days in jail for interference, resisting arrest, and concealing his true identity from a police officer, all misdemeanors. He was indicted on 3 counts of aggravated assault on a police officer, but was convicted, not for the charged felony, but for misdemeanor assault on an officer. He is now serving a one year sentence, pending appeal by his attorney Joseph Riggs. Before sentencing, Babich killed Andrew Ramirez in a similar flashlight beating. The judge denied Riggs' motion at that time to re-interrogate Babich. No action was taken against Babich. No federal involvement reported.

BRUTALITY CASES (continued)

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COLORADO

45) Name: ABEYTA, Richard R.  
CRUZ, Barbel  
Date: 10/5/75  
Location: Central City, CO

Abeyta, Cruz, and Cruz' husband were drinking at a bar when a fight erupted among the group. Officers George Ambright and his brother Paul, city officers, were also drinking at the bar. A bar employee asked the Cruzes and Abeyta to leave, and they did, escorted out by the officers. The officers ordered them out of town. As they were getting into their van to leave, George Ambright approached the van, and during the ensuing confrontation, the window was broken. Officers report that they thought Abeyta had a gun, and as the van drove away, officers fired 11 shots. Officers were some distance from the van when the shooting occurred, however, they claim that the van was used to try to run them down. Abeyta was shot and wounded 3 times, and Barbel Cruz was wounded once.

Attorneys for Abeyta and Cruz are Michael Makaroff and Claude Wilde. They have filed suit in Federal Court in Denver, against the two Central City officers, who they have charged with being intoxicated while on duty. According to the attorneys, they are now working towards an out of court settlement. Jefferson County D.A. investigation concluded that the officers committed no wrongdoing, and took no action. No Federal involvement reported.

46) Name: GONZALES, David  
JACKSON, Lawrence  
Date: 11/1/74  
Location: Pueblo, CO

David involved in an altercation at a local establishment. Hours later, he and brother Lawrence returned to the establishment, at which time police arrived. Without warning City Officer Steve Sutton approached David, swearing at him. He then began to strike David with his club. In defense, David wrestled Sutton to the ground, quickly allowing him to rise. Sutton called for more units, and handcuffed David. At this time, Officer Tepin was chasing Lawrence, and beat him with his flashlight, while handcuffed. Officer claims that Lawrence lunged at him with a mess-kit knife, which the brothers claim Lawrence had dropped upon the arrival of Police. Both brothers were placed in separate cars. In the front seat of one of the units, David was struck repeatedly in the face by Sutton until he passed out. Upon arrival at the jail, David was not accepted due to severe wounds. He was hospitalized. Lawrence received no medical attention. At the jail Lawrence was forced to strip from the waist down, and officers threatened to burn his male organ if he did not sign a statement saying that he had assaulted police with a knife. No officer was reported stabbed.

No private suit filed against officers and there is evidence of court-police collaboration. Lawrence convicted of resisting arrest and 1st degree assault in District Court. He was sentenced to 7-10 years in the state penitentiary. He appealed to the State Supreme Court, which affirmed the lower court decision. This was Lawrence's first offense. David was convicted of resisting arrest and sentenced to one year in the county jail, and this was his first offense. There was no D.A., or Grand Jury investigation. D.A. Joe Losevio has had a very poor record, as there have been many recall actions. Sutton has had a history of brutality (SEE RAZL, FRED, #49, infra).

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## BRUTALITY CASES (continued)

-20-

47) Name: LUCERO, Richard Joseph  
Date: 7/22/72  
Location: Denver, CO

At Curtis Park, in the Chicano community of Denver\*, officers called in to rescue a lady trapped in the restroom. Police radioed for more units to assist in opening the door, this according to police reports. As it was Saturday, there were a great many people at the park. Arriving shortly thereafter, assembled in full view, were a dozen police units. They cruised, lights flashing, and the officers dressed in full riot gear. Fear became widespread among the people in the park. Lucero, fearing his son's safety, went in search of him. He stopped to ask an officer what was going on. The officers proceeded to strike Lucero several times, beating him with clubs, fists, and kicking him as well.

Lucero filed a complaint with the police department, which ruled that the actions did not require disciplinary action. He took the case to the Colorado Civil Rights Commission, where he was informed that it had no jurisdiction over the incident. The U.S. sent in the FBI to investigate, but no action was forthcoming. In July '74, attorney for Lucero, James Breesa, filed a damage suit on behalf of his client, against the mayor, the police chief, and the officers involved, Fisher and Mollack. The mayor and the police chief were exonerated of any charges, but a local judge (no jury) found one of the officers had violated Lucero's civil rights by use of excessive force, and ordered a fine of \$750.

48) Name: MONTOYA, Raymond  
Date: 2/28/74  
Location: Denver, CO

Montoya was joyriding in a stolen car. He encountered a police car in an alley. Police were not pursuing him but Montoya was frightened, stopped his car and ran. He went down on his knees and hands, and then lost consciousness. He has charged that the officers in pursuit, Warren T. Montoya, and Ross Munahan, clubbed him initially to the ground, and beat him severely while on the ground. He woke up with numerous cuts, bruises on his body and head, broken front teeth, and needed 25 stitches on his head.

Montoya filed a damage suit against the officers in the State District Court. Court ruled that Officer Montoya had used excessive force, but awarded only \$500. on a \$175,000. complaint. Munahan found not-guilty of any wrongdoing. Prosecution of Raymond Montoya was dismissed on the stolen car charges. In the officer's report it is stated that Raymond fell only once, that he made no resistance, and that he received all his injuries from the fall. In court the officers testified that Raymond resisted greatly. Attorney for Raymond, James Breesa, filed a motion for a new trial, which was denied by the judge, even after Breesa, the Judge, and Officer Montoya met in private chamber, and the latter admitted that he had smashed Raymond's head into the sidewalk. Judge dismissed this admission with criticism of the attorney's "pursuit of this information."

\* Curtis Park was also the scene of the deaths of Arthur Espinoza and James Rinojos (7/30/77, SEZ case number 26). Although this case is somewhat dated, the continuing brutality in the Chicano community, e.g. Curtis Park, is of serious concern.

BRUTALITY CASES (continued)

-21-

49) Name: RAEL, Fred  
 Date: 3/11/76  
 Location: Pueblo, CO

Police stopped Rael at his home for allegedly driving without lights. Rael, with his wife and baby, claims that he turned his lights off while entering his driveway. Rael took his wife and baby into the house, and returned to where the officers waited. Officer struck him, at which time Rael ran into the house. Officers Lukabill and Steve Sutton (SEE GONZALEZ, David, item #46, *infra*), kicked open the front door, entered the house, and beat Rael severely. Sutton had had a previous encounter with Rael when the officer had worked for Narcotics Division. As a result of the beating, Rael was hospitalized.

Officers involved were no-billed as a result of a Grand Jury investigation. It is felt that D.A. Losavio presented a very weak case, and one biased against Rael. Attorney for Rael filed a civil suit for damages. The suit was filed against the officers and against the Chief of Police. Both were found not liable. Carol Middle is Rael's attorney. No Federal involvement has been reported.

ARIZONA

50) Name: HERRERA-MEDA, Bernabe  
 GARCIA-LOYA, Manuel  
 REYES-ZAVALLA, Eleazar  
 Date: 8/18/76  
 Location: Douglas, AZ

Prominent Douglas rancher and his two sons, the Hanigans, accused three undocumented Mexican alien farmworkers at gunpoint, cattle-tied them at their four limbs, and tore off both their clothes and hair with hunting knives. The aliens were then dragged through the desert sand naked. The ranchers built a bonfire, and threw their clothing into the flames. They then beated an iron rod and branded one of the farmworkers. This branded victim was then hung by the neck from a nearby tree, but escaped death by supporting the weight of his body against a ravine wall. The other two Mexicans were forced to run bleeding and naked, and as they ran, they were shot in the back with shotgun pellets. Fifty pieces of ammunition were embedded in one of the victims and 127 in the other. The three were severely beaten throughout the encounter with the Hanigans, and repeatedly threatened with castration and death. The tortured victims were hospitalized in Mexico.

In Superior Court, jurors told reporters that they believed that the Hanigan ranchers had tortured the farmworkers, but that the prosecutors did not do as good a job in prosecuting as they should have. They acquitted the Hanigan ranchers on 22 felony counts, after the trial judge denied the all-white jury's request to allow the panel to convict the ranchers on reduced charges carrying lesser penalties. There is a private action pending against the Hanigan ranchers, and there is work by community groups, including MALDEF, and Antioch School of Law, to secure the involvement of the Federal government. There is also evidence that local law enforcement agencies were very active in a systematic cover-up of the incident.

1982

BRUTALITY CASES (continued)

-22-

51) Name: SORRELL, Jose  
Date: 7/2/77  
Location: S. Tucson, AZ

Altercation at a local Jack-in-the-Box brought an officer to the scene. Although the parties involved had left the scene before he arrived, the officer's aggressive behavior upon arrival provoked derogatory remarks from the youth present, which in turn resulted in the arrest of a few individuals. The youths protested and the officer panicked, sending in an unnecessarily inflammatory report for assistance, i.e. officer-in-trouble call. Units from four jurisdictions quickly arrived (reported 50 units), and began arresting and beating the youth indiscriminately. Tucson police arrived with police dogs, a very provocative action for such an incident. Adding to the chaos was the fact that no one took overall command of the various jurisdictions present. Officer Christopher Dean was escorting one young person to the police van when Dean stepped in front of a truck, driven by Stohal, traveling at 5 m.p.h. Stohal was not involved in the confusion outside, as he had been patronizing the establishment, and was leaving the scene. All the witnesses stated that Stohal stopped for the officer, and let him pass. Dean claims that Stohal tried to run him down. He assumed a kneeling position, fired six times, and killed Stohal. Dean had previously been fired from the Sheriff's Dept. for arresting a man, taking him into a cessary, and beating him severely. Dean's actions were centered around a personal matter in this beating.

Community pressure forced the indictment of Dean, the first such action taken in South Tucson against a police officer. Three officers testified in the Superior Court trial against Dean, and there were 50 other witnesses. The charge was involuntary manslaughter. An all-white jury acquitted Dean of the charge on 1/23/78. John Ball, the deputy county attorney (prosecutor) presented more mitigating evidence than incriminating evidence, and made no recommendations and took no position to the trial jury. There are presently two civil suits for damage by the Stohal family, and the passenger Mario Gonzalez. Senae Butler III, the Assistant U.S. Attorney has formally requested the Justice Department to investigate.

1988  
CCC

BRUTALITY CASES (continued)

-23-

ILLINOIS

52) Name: MUNIZ, Salvador  
Date: 7/2/77  
Location: Chicago, IL

In the Puerto Rican community in Northeast Chicago, Muniz was standing on a street corner drinking beer. Officers arrived and ordered him to take the beer inside a club nearby. Muniz told them that he could not since there was some personal problem with the bartender. He then proceeded to pour the beer on the street. He was immediately arrested by the officers, and while driving to the station, was punched in the face. At the station, he was hit with great force in the stomach for no apparent reason, and then put in a jail cell. Muniz suffered severe pain in his stomach at the time he was bonded and sent home. The next morning the pain drove him to the clinic, where he was quickly rushed to the hospital where he was operated on for a ruptured liver and pancreas as a result of the beating. He was in the hospital for 2-3 months, undergoing 2 operations.

Charges against Muniz for disorderly conduct were dropped. Police admit that Muniz offered no physical provocation, but claim that they never touched him. Witnesses dispute that claim. His attorney, Flint Taylor, has filed a civil rights brutality suit on Muniz' behalf, which is pending. An FBI agent was sent in to investigate, but the community felt that this agency had not investigated in good faith a previous incident (SEE OSORIO, CRUZ). They rejected such an investigation since they charged that the FBI had used such a situation before to harass the community regarding unrelated issues.

53) Name: OSORIO, Julio  
CRUZ, Rafael  
Date: 6/4/77  
Location: Chicago, IL

During Puerto Rican Day festivities at Humboldt Park in the Puerto Rican community, a minor incident resulted in Police surrounding the park in great numbers, and in full riot gear. Added to the existing tension between police and the community was the harassing and beating of the youth, and their subsequent arrests. Police began to fire their guns, causing the terrified people to flee. Witnesses observed Sgt. Thomas Walton take aim and shoot and kill Cruz in the back. At almost the same time, Osorio, who was with Cruz (they were friends), was shot in the back of the neck. The bullet exited through his throat, killing him. Walton claimed that Osorio fired a gun at him, but that the shots missed and killed Cruz. He then fired at Osorio, killing him. This contradicts all testimony by eyewitnesses who report that both Cruz and Osorio were together when killed. No gun was ever found on either Cruz or Osorio. Witnesses maintain that the shooting was unprovoked. Ballistics show that the bullet in Cruz came from Walton's gun. This incident included numerous other beatings by Chicago police afterwards, spreading terror throughout the community by entering homes illegally, and arresting and beating indiscriminately.

Officer Walton is still on the job. There is evidence of a police cover-up and the fabrication of evidence. There is a Grand Jury investigation pending, but City officials want to kill the proceedings. Eyewitnesses have testified before the Grand Jury, but there has been no indictment because officials claim that the Puerto Rican community has been uncooperative, even though it has promised to produce witnesses and documentation. The U.S. Attorney's office, and the FBI are investigating, but the community is very angered over the failure of the U.S. Attorney to act, and at the FBI for using the investigation as a pretext to harass community members about other issues. The U.S. Attorney is Thomas Sullivan. There is a private civil suit for damages by the families of Osorio and Cruz now pending against the city, the Police Chief, the mayor and the officers involved.

1984

BRUTALITY CASES (continued)

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PENNSYLVANIA

54) Name: ORTIZ, Edgardo  
Date: 6/18/78  
Location: Philadelphia, PA

Officers arrived at the scene of a disturbance call in the Puerto Rican sector of Philadelphia. Police reported that upon arrival there was no disturbance in progress, but claim that Ortiz began to curse the officers and punched one of them which resulted in a fight. Several witnesses deny this version, saying that after a verbal altercation and without a warrant, police smashed through the glass panels of Ortiz' front door to open it. Once in, the officers slammed Ortiz through a window, and beat him with night sticks. During the beating, according to witnesses, Ortiz' overalls fell to the floor, and after asking permission to pick them up, the handcuffed victim was beaten with a blackjack as he bent over. Police never showed a warrant to enter Ortiz' home, and shouted obscene, racial epithets at the victim.

Ortiz convicted by a Municipal Court judge, 11/9/77, on charges of assaulting 3 police officers, resisting arrest, and disorderly conduct. Three officers, Thomas Giraldi, Robert Pawlos and Robert Leahy, were indicted by a federal grand jury on charges of violating Ortiz' civil rights. Federal charges against the officers were dropped. Ortiz and all of the civilian eyewitnesses have identified Gerard Salerno as the officer that was responsible for the beating. U.S. Attorney David K. Marston promised to investigate this police cover-up, but when two of the eyewitnesses could not identify one of the indicted officers, who has been utilized to cover-up Salerno's role, and who was not at the scene of Ortiz' beating, the investigation was dropped. Attorney for Ortiz, Anthony Jackson, has filed an appeal on his client's conviction, which is pending. Gerard Salerno has a well-known history of brutality in Philadelphia (SEE NEWS, JUNE, issue #55, infra), and is well-recognized by the community. Since he has been named in a number of previous brutality cases, the community feels that the police department wants to hide any further harmful publicity.

BRUTALITY CASES (continued)

-25-

55) Name: REYES, Jose  
Date: 7/77  
Location: Philadelphia, PA

Police report states that officers called to Reyes' block to investigate a complaint of windows being broken. Upon arrival, police claim that Reyes came at them with an axe. Officer Gerard Salerno (SEE OKULZ, EDGARDO) fired at him through the front windshield of the van he was in, since both officers were still inside the moving vehicle. The shot missed and officers followed Reyes into his house. According to the officers, inside the house, Reyes tried to hit Salerno with a long iron bar. Salerno fired twice killing him. Twelve witnesses have testified that Reyes did nothing to provoke the Police attack. When they arrived, Reyes ran, and in doing so, dropped the axe with which he was dismantling an old car, which he owned. Witnesses further state that as Reyes entered the house, he fell and never moved from that position. Officers ran up to the house, and Salerno fired two quick shots as Reyes lay there unresisting. He was not killed instantly, yet officers made no attempt to call in medical help. None of the witnesses saw an iron bar near Reyes, and one of them testified that one of the officers took a long iron bar from the kitchen of the house, after Reyes' body had been carried away, smeared it in the victim's blood, and carried it out to the street as evidence. Reyes had been the victim of many previous police beatings, and was very frightened of such harassment and physical abuse.

Police Department, D.A., and Grand Jury investigations are pending. In January of 1978, the District Attorney, in a very unusual move, subpoenaed the officers involved. Lawyers for the officers appealed this action, and that is now pending in the Commonwealth Court. The FBI and the U.S. Attorney's office are investigating.

NEW YORK

56) Name: Rodriguez, Israel  
Date: 6/13/75  
Location: New York, NY

Rodriguez suspected in a previous robbery incident. Officers arrived at his home on a gun call. Rodriguez barricaded himself in his room, and police officers allege that he fired a shot through the door. Officers then broke into the room and handcuffed Rodriguez. Officer Thomas Ryan then proceeded to ram the victim's head into a stove, and again into a sink. Other officers testified that Ryan beat Rodriguez again, on the way to, and also at the local South Bronx precinct. He died as a result of the beating.

Ryan was indicted by the State Grand Jury and in November of 1977 found him guilty of criminally negligent homicide. He was sentenced to 0-4 years in prison, the minimum sentence for that offense. Officer is appealing that decision. There is a civil suit pending on behalf of Rodriguez' wife for damages. That suit is pending. The gun that Rodriguez was alleged to have had was never produced at the trial. No report of Federal involvement.

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Mr. CONYERS. Thank you, Mr. Chapman. Mr. Berrill.

**TESTIMONY OF KEVIN BERRILL, DIRECTOR, NATIONAL GAY TASK FORCE VIOLENCE PROJECT**

Mr. BERRILL. My name is Kevin Berrill, and I am director of the National Gay Task Force Violence Project. NGTF is the Nation's oldest and largest national gay and lesbian civil rights organization. Mr. Chairman and members of the Criminal Justice Subcommittee, we want to thank you for calling these hearings today and for recognizing the importance of bringing a gay and lesbian perspective to your examination of police practices.

This issue cannot be tackled unless we all work together and that is why we are here today. Police harassment and attacks against us are longstanding problems, extending back well before the time we developed visible communities. We trace the real beginning of gay pride and self-respect to a night in June 1969, when the patrons of a Greenwich Village bar called Stonewall fought against those who had for years violated their civil rights with impunity. After one too many raids on gay bars and countless incidents of verbal abuse, threats, blackmail, extortion, and brutality, so-called sissies and queers of every race rioted against the New York City Police Department.

Our community looks back with pride at that explosion of anger, and we remember those who fought that night at marches and rallies every June.

To be a victim of crime, especially of violent crime, is a terrible ordeal, but when that crime against you is committed by those who are responsible for protecting you, the pain and rage are even greater. We still feel that pain and rage because police harassment and brutality against our community still persist.

It is true that police-gay relations have improved in some communities, but the September 1982 police attack on Blue's—a Manhattan bar patronized primarily by gay men of color, demonstrates that Stonewall is not just an event of the past. In that raid black gay men were brutalized and subjected to racist and homophobic epithets.

Fifteen months later, not one officer involved in that attack has been identified and not a single investigation has produced a conclusive report.

James Credle of Black and White Men Together, to my left, will be speaking to this incident in more detail in his testimony.

Our community is still haunted by the unanswered questions surrounding the death of Michael Stewart, a friend to many of us, who was arrested by New York City Transit Police for spraying graffiti in a subway station. As you know Michael arrived at Bellevue Hospital in the early morning hours of September 15, legs bound, in a coma that ended in his death 13 days later.

Just 1 week ago, the National Gay Task Force received calls from several gay people, who reported antigay epithets and unnecessary use of force by police against gay men outside a strip of bars on West Street.

Complaints about police harassment and brutality are hardly confined to New York. In many cities and States across the coun-

try, complaints of police harassment and brutality are far more frequent.

In 1982, the National Gay Task Force initiated its violence project to document, publicize, and combat antigay, antilesbian violence. In the first 8 months of this year, nearly 1,700 acts of antigay harassment, threats, and attacks were reported to 12 local violence projects or to our national toll-free crisisline. One hundred and nineteen of these, or 7 percent, involve police as the perpetrators. They include reports of physical assault, entrapment, verbal abuse, vandalism, unequal enforcement of the law, and failure to respond to or follow up on reports on antigay, antilesbian violence. These incidents are only the tip of the iceberg. Only 12 local communities right now have local projects that document antigay violence, and our crisisline is still not widely publicized. I think that it is fair to say that large numbers of gay and lesbian Americans still do not know about NGTF's Crisisline and its efforts to document violence.

One of these incidents was reported to our crisisline by a lesbian who had been the victim of a police attack in Florida. One night this past July, she and three friends were walking arm in arm out of a lesbian bar, when a patrol car approached, slowed down, and stopped. The officers got out of the car, accosted one of the women and called her a pervert.

When our caller protested the remark, one officer threw her to the ground and sprayed mace in her face. Both she and the first woman were then arrested for disorderly conduct and a liquor law violation. Since then our caller reports that she now fears being seen near the bar and experiences repeated and intense feelings of helplessness and rage.

Last winter we received a report from Indiana about two gay men who were attacked by local police and then arrested. The incident began when a police patrol car followed the men as they drove from a local gay bar to a nearby diner. As one of the men opened his car door to get out, a police officer approached him, and without so much as a word, banged his head against the steering wheel, dragged him out of the car and assaulted him.

Stunned by what was happening, and afraid that he would suffer an even worse beating if he hit back, the victim did not resist. In the attack his arm was pulled out of its socket and he suffered numerous cuts and bruises which later required hospitalization. Both of the men were hauled off to jail without any explanation of the charges against them, and were repeatedly subjected to homophobic epithets. The victims eventually filed a complaint against the arresting officer, who received only a mild reprimand and a change of police duties.

At the time of this report, we were informed that police brutality, especially against gay people, was common practice in that Indiana community.

From a city in Mississippi, we have received reports about police officers who routinely park at an intersection near a local gay bar, stop all departing patrons and issue them summonses for driving while intoxicated. There are numerous straight bars in that city, but only patrons of the gay bar are subjected to this kind of harassment.

These accounts are just a few of those reported to NGTF. We have long maintained that violations such as these are not isolated incidents, but part of a persistent and widespread problem. Survey data we have recently compiled suggest that this is indeed the case:

In June 1988, the National Gay Task Force, in cooperation with gay and lesbian organizations in eight cities across the United States, conducted a survey of antigay, antilesbian violence. Of the nearly 2,100 gay men and lesbians surveyed at gay events in Atlanta, Boston, New York, St. Louis, Dallas, Denver, Los Angeles, and Seattle, 23 percent of males and 13 percent of females indicated they had been verbally harassed, threatened with violence or physically attacked by the police because of their sexual orientation.

The highest level of police harassment and violence was reported in Dallas, where 33 percent of gay men and 25 percent of lesbians reported such abuse. Los Angeles, Denver, and Atlanta were not far behind.

Survey participants in New York City gay pride day march experienced the least police abuse; 12 percent of males and 11 percent of females reported such victimization. These percentages from New York are low relative to the other cities, but by any other standard are unacceptably high.

The toll of police harassment and brutality cannot be measured solely in terms of these statistics. These numbers cannot measure pain, anger, fear or loss, nor should these statistics be evaluated solely in terms of those individuals they represent, because the impact of police harassment and violence is felt not only by those directly experiencing it, but by our entire community. When just one of us is called "dyke", "faggot" or "queer", when one of us is enticed or entrapped, when one of us is shoved up against a wall, kned in the groin, strip searched and ridiculed, when one of us is beaten with a billy club, our entire community is violated.

Any act of police hostility, even an epithet, can serve to create a climate of mistrust and hostility which makes many gay and lesbian people much less likely to report antigay crimes which in turn makes our whole community more vulnerable to crime.

Some criminals specifically target gay people because they know many of us fear and mistrust the police and will not report incidents. They also correctly assume that police will not bother to investigate crimes against queers.

In some cities, such as Seattle, police have responded vigorously to reports of antigay violence, and have worked with the local lesbian and gay community to curb further incidents. However, many gay victims elsewhere have charged that their police departments do not take such incidents seriously, and some report that they have suffered even more abuse when they went to the police. When asked to evaluate police response to their reports of antigay violence, 46 percent of our Crisisline callers said officers were "sympathetic or helpful". However, most indicated otherwise. Forty percent said the police were "indifferent" and 14 percent described them as "hostile".

In Washington, D.C., and a few other cities and towns across the country, increased gay political influence has led to fairer treatment of gay and lesbian people by the police. That is good news. But the bad news is that in towns, cities and even entire States

where gay people are invisible or lack political clout, the personal prejudices of politicians and law enforcement officials often determine whether or not we are treated fairly or brutally. This is contrary to law and to the very principles upon which this country is based.

Mr. CONYERS. Excuse me. Can you begin to summarize because I have got to recognize the final speaker and we are already 12, 13 minutes.

Mr. BERRILL. I can very briefly summarize my recommendations. There are five of them.

It is our hope that when the Criminal Justice Subcommittee examines ways to remedy the problem of police harassment and violence, it will remember those who have no voice and power. And to assist you in that effort, we submit the following recommendations:

One, an end to discrimination on the basis of sexual orientation in the hiring of law enforcement personnel. The U.S. Commission on Civil Rights has said that one way to minimize confrontations that commonly take place between the police and the homosexual community is the hiring of police officers, and yet the International Association of Chiefs of Police continue to uphold the resolution calling for a nohire policy against gay people.

We believe that that resolution upholds nothing more than ignorance and bigotry. We reject the IACP's assertion that a gay or lesbian presence in police police forces would destroy internal morale and public confidence and wish to point out that there are already many gay people working in every level of law enforcement. However, because of IACP's discriminatory policies, these men and women cannot come out without jeopardizing their careers.

We also reject notions that gay people do not have the character or constitution to handle law enforcement work. New York, San Francisco, Washington, D.C., and elsewhere, openly gay officers have served with distinction. According to Richard Hunguisto, who is a San Francisco County supervisor, "gay employees in the San Francisco Police Department are as good or better than their heterosexual counterparts."

Two, we also call for mandatory minority-awareness training for police officers; and regular contact between the police and the gay and lesbian community—on the precinct level, in committees or task forces, and at public forums. Where there is a significant gay or lesbian population and/or a history of police harassment and brutality against gay people, police departments should have a liaison to the gay community to respond to complaints and requests for assistance. Gay people and all minority constituencies should also have input into the hiring of their local chief of police. In at least two cities, Washington, D.C., and Chicago, members of our community have had that opportunity and we believe it should be common practice everywhere.

Three, the National Gay Task Force calls for the establishment of an independent civilian complaint review boards to assure police accountability for police practices.

Four, finally, we recommend passage of Federal legislation that guarantees the civil rights of all gay and lesbian people. As long as gay men and lesbians risk losing jobs, homes, and child custody by coming out, many will not report antigay crimes committed against

them by civilians or police. Fear of discrimination silences many who would otherwise step forward and speak out.

In failing to guarantee gay and lesbian civil rights, our Government sanctions antigay violence by making it impossible for many of us to fight back through the criminal justice system.

We therefore ask that your committee support NGTF's sister organization, the Gay Rights National Lobby, in its efforts to secure a Federal gay and lesbian civil rights bill.

I also submit to you written testimony, journalistic documentation of antigay violence, along with a sampling of our crisis-line report forms.

We appreciate the opportunity to raise our concerns and we stand ready to offer any additional information or assistance you may need to continue your investigation and also to effect the changes that are so needed.

Mr. CONYERS. Thank you, Mr. Berrill.

[Prepared statement of Kevin Berrill and materials submitted by NGTF follow:]

Testimony submitted by  
Kevin Berrill  
Violence Project Director  
National Gay Task Force

Mr. Chairperson, I want to thank you for calling these hearings today and for recognizing the importance of bringing a gay and lesbian perspective to your examination of police practices. Police harassment and attacks against homosexuals are a longstanding problem, extending back well before the time we developed visible communities.

We trace the real beginning of gay pride and self-respect to a night in June, 1969, when the patrons of a Greenwich Village bar called Stonewall fought against those who had for years violated our civil rights with impunity. After one too many raids on our bars and countless incidents of verbal abuse, threats, blackmail, extortion and brutality, so-called "sissies" and "queers" rioted against the New York City police department. Our community looks back with pride at that explosion of anger, and we remember those who fought that night at marches and rallies every June.

To be a victim of a crime, especially a violent crime, is a terrible ordeal. But when that crime against you is committed by those who are responsible for protecting you, the pain and rage are even greater. We still feel that pain and rage because police harassment and brutality against our community still persist. To be sure, police/gay relations have improved in some communities. But the September, 1982, police attack on Blue's bar--a Manhattan establishment patronized primarily by gay men of color--demonstrates that Stonewall is not just an event of the past. In that raid, black gay men were brutalized and subjected to racist and homophobic epithets; physical damages to the bar were estimated at \$30,000. Fifteen months later, not one officer involved in that attack has been identified, and not a single investigation has produced a conclusive report.

Our community is still haunted by the unanswered questions surrounding the death of Michael Stewart, a friend to many of us who was arrested by New York City Transit Police for spraying graffiti in a subway station. Michael arrived at Bellevue hospital early one morning last September, legs bound--and in a coma that would end with his death thirteen days later.

Just one week ago, the National Gay Task Force received calls from several gay people who reported anti-gay epithets and unnecessary use of force by police against gay men outside a strip of gay bars on West Street.

Complaints about police harassment and brutality are hardly confined to New York City. Indeed in many cities and states across the country complaints of police harassment and brutality are far more frequent.

In 1982, the National Gay Task Force initiated its Violence Project to document, publicize and combat anti-gay/lesbian violence. In the first eight months of this year, 1,682 acts of anti-gay/lesbian harassment, threats and attacks were reported to twelve cooperating local violence projects or to our national toll-free Crisisline. 119 (7%) of these incidents involved the police as perpetrators. They include reports of physical assault, entrapment, verbal abuse, vandalism, unequal enforcement of the law and failure to respond to or follow up on reports of anti-gay/lesbian violence.

One of these incidents was reported to our Crisisline by a lesbian who had been the victim of a police attack in Florida. One night this past July, she and three friends were walking arm in arm out of a lesbian bar when a patrol car approached, slowed down and stopped. The officers got out of the car, accosted one of the women and called her a pervert. When our caller protested the remark, one officer threw her to the ground and sprayed mace in her face. Both she and the first woman were then arrested for disorderly conduct and a liquor law violation. Since then, our caller reports that she now fears being seen near the bar and experiences repeated and intense feelings of helplessness and rage.

Just a week and a half ago, a gay man from Alabama called to tell us that he had been falsely arrested for soliciting sex. In his report to us, he used the facilities of a local men's room and promptly returned to his car. A plain-clothes officer who was in the men's room at the same time as he, followed him out to his car and asked him, "Are you a faggot?" Without waiting for a reply, the officer ransacked his car. He then handcuffed the victim and booked him for "lewd behavior." After the arrest, the officer called the victim's employer, who has since fired him. Our caller has hired an attorney and intends to fight the charges and his dismissal from work.

In September, we received a report from Massachusetts about a gay crime victim who was abused by the police. After having been mugged near a local gay bar, he flagged down a passing patrol car and explained to the officers what had happened. He was told to get into the car so they could drive around the vicinity of the crime and perhaps identify the perpetrators. However, when the officers discerned that he was gay, they verbally abused him, ordered him out of the car and drove away.

Last winter we received a report from Indiana about two gay men who were attacked by local police and then arrested. The incident began when a police patrol car followed the men as they drove from a local gay bar to a nearby diner. As one of the men opened his car door to get out, a police officer approached him and, without so much as a word, banged his head against the steering wheel, dragged him out of the car and assaulted him. Stunned by what was happening and afraid that he would suffer an even worse beating if he hit back, the victim did not resist. In the attack his arm was pulled out of the socket, and he suffered numerous cuts and bruises, which later required hospital treatment.

Both of the men were hauled off to jail without any explanation of the charges against them, and repeatedly subjected to homophobic epithets. The victims eventually filed a complaint against the arresting officer, who received only a mild reprimand and a change of police duties. At the time of this report, we were informed that police brutality--especially against gay people--was common practice in this community.

From a city in Mississippi, we have received reports about police officers who routinely park at an intersection near a local gay bar, stop all departing patrons and issue them summonses for "driving while intoxicated." There are numerous straight bars in that city, but only patrons of the gay bar are subjected to this kind of harassment.

The above accounts are only just a few of those reported to NGTF. We have long maintained that violations such as these are not isolated incidents, but part of a persistent and widespread problem. Survey data we have recently compiled suggests that this is indeed the case:

In June, 1983, the National Gay Task Force, in cooperation with gay and lesbian organizations in eight cities across the United States, conducted a survey of anti-gay/lesbian violence. Of the nearly 2,100 gay men and lesbians surveyed at Gay Pride events in Boston, New York, Atlanta, St. Louis, Dallas, Denver, Los Angeles and Seattle, 23% of males and 13% of females indicated they had been verbally harassed, threatened with violence or physically attacked by the police because of their sexual orientation. The highest level of police harassment/violence was reported in Dallas, where 33% of gay men and 25% of lesbians reported such abuse. Los Angeles, Denver and Atlanta were not far behind (see Appendix 1). Survey participants at the New York City Gay Pride Day March had experienced the least amount of police abuse: 12% of males and 11% of females reported such victimization. These percentages from New York City are low relative to other cities surveyed, but by any other standard are unacceptably high.

The toll of police harassment and brutality cannot be measured solely in terms of these statistics. These numbers cannot measure anger, pain, fear or loss. Nor should these statistics be evaluated solely in terms of those individuals they represent, because the impact of police harassment and violence is felt not only by those who directly experience it, but by our entire community. When just one of us is called "dyke," "faggot," or "queer;" when one of us is enticed and entrapped; when one of us is shoved up against a wall, kned in the groin, strip searched and ridiculed; when one of us is beaten with a billy club, our entire community is violated.

Any act of police hostility, even an epithet, can serve to create a climate of mistrust and hostility, which makes many gay and lesbian people much less likely to report anti-gay crimes, which in turn makes our entire community more vulnerable to crime. Some criminals specifically target gay people because they know many of us fear and mistrust the police and won't report incidents. They also correctly assume that police often won't bother to investigate crimes against "queers."

Mistrust and lack of communication can also hinder police investigations into crimes against gay people. In Indianapolis, several local observers have charged that the investigation of a series of sex-related murders was needlessly

hampered by police ignorance of gay lifestyles. Although there is better communication between the Indianapolis police department and gay community, how many murder victims there and elsewhere might still be alive today had there been more respect and cooperation at the outset?

In some cities, such as Seattle, the police have responded vigorously to reports of anti-gay violence, and have worked with the community to curb further incidents. However, many gay victims elsewhere have charged that their police departments don't take such incidents seriously, and some report that they suffered even more abuse when they went to the police. When asked to evaluate police response to their reports of anti-gay violence, 46% of our Crisisline callers said officers were "sympathetic" and "helpful." However most indicated otherwise: 40% said the police were "indifferent," and 14% described them as "hostile."

Where gay men and lesbians have have acquired some degree of political power, reports of police harassment have decreased and cooperation between gay people and the police has increased. For example, in the Washington, D.C. mayoral race, gay people played a key role in the election of Marion Barry, who promised to be more responsive to the concerns of their community.

Before Barry's election, police/gay relations in that city were poor: A 1978 white paper prepared by the local Gay Activists Alliance cited numerous instances of police harassment, verbal abuse, unequal enforcement of the law and lack of response/follow up to reports of crime by gay people. Since Barry's election and the appointment of Maurice Turner as Chief of Police, only one report of alleged anti-gay brutality by a police officer has been received by the Civilian Complaint Review Board. In addition, an official police liaison to the gay community has been appointed, and gay and lesbian awareness training is now mandatory for all new recruits.

Until two years ago, gay people and members of other minority groups complained of numerous violations of their civil rights by the Houston Police Department. According to the Houston Gay Political Caucus, police harassment and violence against our community has decreased by 80% since 1982. The reason

is simple: gay people helped to elect Kathy Whitmire, who promised to use the full weight of her office to make the police deal fairly and responsibly with all minority groups, including the gay community. Since her election and the appointment Chief of Police Lee Brown, a police liaison to the gay community has been appointed, gay and lesbian awareness training sessions are mandatory for new police recruits and a police advisory committee task force has been established to explore the relationship between the gay community and the Houston criminal justice system. While reports of police misconduct have not ceased altogether, there clearly has been marked progress.

In Washington, D.C., Houston and a few other cities and towns, increased gay political influence has led to more fair treatment of gay and lesbian people by the police. That is the good news. But the bad news is that, in towns, cities and even entire states where gay people are invisible or lack political clout, the personal prejudices of politicians and law enforcement officials often determine whether we are treated fairly or brutally. This is contrary to law and the very principles upon which this country is based. The constitution does not guarantee freedom and justice merely to those who have some measure of political power, but to all citizens.

It is our hope that when the Criminal Justice Subcommittee examines ways to remedy the problem of police harassment and violence, it will remember those who have no voice and no power. To assist you in that effort, the National Gay Task Force respectfully submits the following recommendations:

**1.) An end to discrimination on the basis of sexual orientation in the hiring of law enforcement personnel.**

In its 1981 report on police practices, the United State Commission on Civil Rights made the following statement on this issue: "Although homosexuals presently do not enjoy the protection of federal civil rights laws accorded to racial minorities and women, this does not prevent cities and police departments from taking steps to remove hiring barriers and to ensure that police services are provided in a fair and unbiased way and that all members of the community are treated with respect regardless of actual or perceived sexual orientation. One step that could be taken to minimize the confrontations that commonly take place between the police and the homosexual community is the hiring of police officers."

Despite this recommendation, the International Association of Chiefs of Police continues to endorse the following resolution:

"WHEREAS, the life-style of homosexuals is abhorrent to most members of the society we serve, identification with this life-style destroys the trust, confidence and esteem so necessary in both fellow workers and the general public for a police agency to operate efficiently and effectively; now therefore, be it

RESOLVED, That the International Association of Chiefs of Police... endorses a no hire policy for homosexuals in law enforcement."

The IACP and all those who uphold this resolution uphold nothing more than ignorance and bigotry. The National Gay Task Force believes this resolution and the prejudice it represents contributes to an atmosphere of intolerance and even hatred that causes the very violence about which I have spoken today. It is our hope that the Criminal Justice Subcommittee, elected officials and citizens everywhere will support our efforts to convince the IACP to rescind this unjust resolution.

We reject the IACP's assertion that a gay or lesbian presence in police forces would destroy internal morale or public confidence, and wish to point out that there are already many gay people working in every level of law enforcement. However, because of IACP's discriminatory policies, these men and women cannot "come out" without jeopardizing their careers.

We also reject stereotypical notions that gay people do not have the character or constitution to handle law enforcement work. In New York, San Francisco, Washington, D.C. and elsewhere, openly gay police officers have served with distinction. According to Richard Hongisto, San Francisco County Supervisor, "gay employees are as good or better than their heterosexual counterparts." After serving as a San Francisco police officer for ten years and as Sheriff of San Francisco for six years, Mr. Hongisto is supremely qualified to assess the effectiveness of gay officers in the police department.

NGTF believes that where police departments reflect the diversity of the communities they serve, they are better able to meet the needs of that community. We believe that the presence of openly gay and lesbian officers in law enforcement agencies helps to break down the prejudices and stereotypes of their associates, and thus helps to reduce tensions between the police and the gay and lesbian community.

2.) Mandatory gay and lesbian awareness training for police officers.

Police officers should receive training to help them understand all the minority communities they serve, including the gay and lesbian community. In San Francisco, Houston, Chicago, New York, Los Angeles and Boston gay and lesbian awareness training has helped to sensitize new recruits to our issues and concerns. These sessions often focus on situations where the police and gay people commonly interact, such as when an officer deals with a victim of anti-gay violence or with the lover/partner of a gay crime victim. Response to gay and lesbian awareness training has been positive: For example, last year in Chicago, 94% of the officers who took part in the training rated it as "good" or "very good."

Minority awareness training should be provided to all officers, not just new recruits. Furthermore, it should be mandatory. We believe that were such training is optional, those who need this education most are least likely to seek it out.

3.) Regularized contacts between between the police and the gay and lesbian community.

Representatives from local police departments should be available to meet with the gay and lesbian community--on the precinct level, in committees or task forces, and in public forums--to hear our complaints, complements and to discuss issues of mutual concern. Such contact benefits not only us but can engender the mutual trust and understanding that makes police work in our communities easier. ✓

Especially where there is a significant gay and lesbian population and/or a history of police harassment and brutality against gay people, police departments should have an official liaison to our community to respond to complaints and requests for assistance. S/he should be a ranking officer, but not so high ranking as to be too busy or inaccessible.

In such towns and cities, the gay community and other minority constituencies should have input in the hiring of their local Chief of Police. In at least two cities--Washington, D.C. and Chicago--members of our community have had that opportunity, and we believe it should be common practice elsewhere.

4.) Civilian review of police practices.

NGTF believes the best way to assure police accountability is through civilian review of police practices. Where there are persistent complaints of police harassment and brutality, civilian complaint review boards should be established that reflect the diversity of the communities they serve. In order for these boards to be effective they need to have the authority to decide cases and, where police misconduct is judged to have occurred, impose punishment.

**5.) Passage of federal legislation that guarantees the civil rights of all gay and lesbian people.**

As long as gay men and lesbians risk losing jobs, homes and child custody by "coming out," many will not report anti-gay crimes committed against them by civilians or police. Fear of discrimination silences many who would otherwise step forward and speak out. In failing to guarantee gay and lesbian civil rights, our government sanctions anti-gay violence by making it impossible for many of us to fight back through the criminal justice system.

If every recommendation except this last one was implemented, the problem of police harassment and brutality would still not be effectively addressed. For as long as our government legally permits bigotry and discrimination, so will our guardians. We ask, therefore, that your committee support NGTF's sister organization, the Gay Rights National Lobby, in its effort to secure a federal gay and lesbian civil rights bill.

Once again, the National Gay Task Force thanks the Criminal Justice Subcommittee for holding this hearing concerning police practices as they affect all minorities. We appreciate the opportunity to raise our concerns, and stand ready to provide you with any additional information and assistance you may need to continue your investigation and affect the changes that are so needed.

\* \* \*

APPENDIX I: Question: *Have you ever been harassed, threatened with violence, or physically attacked by the police because of your sexual orientation?* YES NO

If answer was "YES" has this happened MORE THAN ONCE MANY TIMES ONCE

CITY	YES			NO		
	male	female	total	male	female	total
Atlanta	58 26.4%	6 13.0%	64 24.1%	162 73.6%	40 87.9%	202 75.9%
Boston	22 20.0%	4 8.9%	26 16.8%	88 80.0%	41 91.1%	129 83.2%
Dallas	78 33.3%	12 25.5%	90 32.0%	156 66.7%	35 74.5%	191 68.0%
Denver	34 27.4%	5 12.5%	39 23.8%	90 72.6%	35 87.5%	125 76.2%
Los Angeles	35 31.8%	15 18.8%	50 26.3%	75 68.2%	65 81.3%	140 73.7%
New York	29 12.1%	21 10.5%	50 11.4%	210 87.9%	179 89.5%	389 88.6%
St. Louis	10 38.5%	0 0.0%	10 32.3%	16 61.5%	5 100%	21 67.7%
Seattle	44 16.6%	17 12.4%	61 15.2%	221 83.4%	120 87.6%	341 84.8%
TOTAL	310 23.3%	80 13.3%	390 20.2%	1018 76.6%	520 86.7%	1538 79.8%

CITY	ONCE			MORE THAN ONCE			MANY TIMES		
	male	female	total	male	female	total	male	female	total
Atlanta	38 69.1%	3 50.0%	41 67.2%	16 29.1%	3 50.0%	19 31.1%	1 1.8%	0 0.0%	1 1.6%
Boston	10 45.5%	4 100%	14 53.8%	11 50.0%	0 0.0%	11 42.3%	1 4.5%	0 0.0%	1 3.8%
Dallas	46 63.9%	7 70.0%	53 64.6%	26 36.1%	3 30.0%	29 35.4%	0 0.0%	0 0.0%	0 0.0%
Denver	16 47.1%	4 80.0%	20 51.3%	14 41.2%	1 20.0%	15 38.5%	4 11.8%	0 0.0%	4 10.3%
Los Angeles	15 42.9%	5 33.3%	20 40.0%	18 51.4%	10 66.7%	28 56.0%	2 5.7%	0 0.0%	2 4.0%
New York	16 55.2%	9 42.9%	25 50.0%	11 37.9%	12 57.1%	23 46.0%	2 6.9%	0 0.0%	2 4.0%
St. Louis	8 80.0%	0 0.0%	8 80.0%	1 10.0%	0 0.0%	1 10.0%	1 10.0%	0 0.0%	1 10.0%
Seattle	22 53.7%	11 64.7%	33 56.9%	16 39.0%	5 29.4%	21 36.2%	3 7.3%	1 5.9%	4 6.9%
TOTAL	171 57.4%	43 55.1%	214 56.9%	113 37.9%	34 43.6%	147 39.1%	14 4.7%	1 1.3%	15 4.0%

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# NEWS FROM NGTF

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## NGTF

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**FOR IMMEDIATE RELEASE**  
October 19, 1983

### NGTF DOCUMENTS EPIDEMIC OF ANTI-GAY/LESBIAN VIOLENCE

The National Gay Task Force (NGTF) reports that in the first eight months of this year, 1682 incidents of harassment, threats, and attacks against lesbians and gay men were reported to its Violence Project. Documented by the NGTF Crisisline and twelve local violence projects across the country, these incidents will be included in NGTF's first annual audit of anti-gay/lesbian violence, scheduled for publication early next year.

During this same period, the gay community was hit by the first wave of violence attributed to "AIDS backlash." According to San Francisco's Community United Against Violence (CUAV), fear and hatred associated with AIDS was a motivating factor in nearly 20% of all incidents reported this year. The Dorian Group in Seattle also reports that gangs of youths seeking to beat up "plague-carrying faggots" were responsible for 22 brutal attacks this summer.

In Northampton, in central Massachusetts, homophobic assailants have laid siege to the town's sizable lesbian community. According to Northampton's Gay and Lesbian Activists (GALA), over the past year lesbians were singled out for sexual assaults and other physical

- MORE -

attacks; lesbian-identified establishments were vandalized, and hundreds of phone threats and other verbal harassment against lesbians were reported.

Comments Virginia Apuzo, Executive Director of the National Gay Task Force, "As our communities have become more visible, so have the numbers of those who want to bludgeon us back into the closet. NGTF's Violence Project and other local efforts are working to make being openly gay or lesbian safe--by documenting homophobic crimes, by demanding that the criminal justice system hold perpetrators accountable, and by responding to the needs of survivors."

Of the incidents reported to NGTF thus far, 37% (963) are verbal harassment/intimidation, 28% (478) are physical assaults (including sexual assaults and attacks with weapons), and 1% (15) are homicides. 4% (59) are incidents of arson or vandalism against the property of lesbian/gay people, and 10% (165) are other types of crimes not yet classified. 7% (119) of all incidents reported involved police harassment or brutality.

According to Kevin Berrill, Violence Project Director, "These figures represent only a small fraction of the total number of incidents that actually occurred during this period. The great majority of lesbian and gay victims do not report attacks against them, and far too many still suffer the aftermath in silence and isolation. Nevertheless, these statistics are an important step forward in our effort to document the extent of anti-lesbian/gay violence. They are the product of close ties and increased cooperation between local anti-violence projects and NGTF, and will enable us to educate the police, the criminal justice system, victim service agencies, legislators, and the public about this problem and how to address it."

- MORE -

NGTF's audit of anti-gay/lesbian violence will provide a detailed breakdown of all incidents reported in 1983, and will include incidents reported in the press, as well as those documented by the Crisisline and local anti-violence projects. Anyone who sees articles about incidents of homophobic violence are encouraged to clip and send them to NGTF.

NGTF urges all victims of anti-gay/lesbian harassment or violence to make a report to their local violence projects (see enclosed list). Those without a violence project in their community should call NGTF's toll-free Crisisline at 800-221-7044 (in New York, Alaska, and Hawaii only, call 212-807-6016). The Crisisline is open Monday-Friday, 3-9 p.m., Eastern Time. Specially trained Crisisline staffers will take a confidential report and refer callers to local support services.

Gay life

22 Sept '83

**Police brutality charged by Minn. youths**

MINNEAPOLIS— An openly gay man here has charged the Minneapolis Police Department with brutality after a Sept. 3 incident in which he claims he was beaten by two police officers. The man told *GLC Voice* that he and about eight other people were having a party in a Minneapolis apartment when the incident took place. David Dahlquist charged officers R. J. Druk and Jack Hanson with telling him, "I'm going to kill you. Gays deserve to hurt and I don't like gays." The incident, according to Dahlquist, took place around 4:30 a.m., and both he and the host of the party were booked.

# Police Assailed In Symposium on Racism

NCLNATIVE 6/6/83

If the treatment which police and other governmental agencies dish out to lesbians and gay men has changed over the years, change can be measured only in the smallest of degrees. Today's more common methods of harassment—entrapment, false charges, bar raids, beatings, refusal of services—continue a tradition which is also familiar to racial minorities and to many women. These patterns of abuse have long been indistinguishable for those lesbians and gay men without race or monetary privileges; events in the past 12 months have extended those patterns even to New York's gay middle class. Exactly what can be expected of police and other governmental forces is not often seriously discussed at forums which are open to the public, as a panel sponsored by DARE (Dykes Against Racism Everywhere) did on May 17. That panel's evidence is best considered in light of the New York gay community's experiences of late.

The toll in the metropolitan area since last summer includes several women's bars closed by the State Liquor Authority; the infamous Blue's bar raid by members of the New York City police department; the entrapment of as many as 1,200 gay men at Rife Memorial Park by federal police; the shutdown of a pornography expo show by the city's vice squad; FBI harassment of NAMBLA (North American Man/Boy Love Association) members and former members, including searches of private homes and seizures of property; the abusive treatment of AIDS patients in local hospitals; numerous police beatings of lesbians and gay men reported from such locales as Washington Square Park and along Second Avenue in the 50s.

These are only the major incidents reported to gay organizations or in the gay press. Most of these actions are outright illegal; a few, at best, are discriminatory applications of the law.

Most recently it has been learned that Deja Vu, a predominantly black lesbian

bar on Washington Place in the Village, was again raided by the State Liquor Authority. The city's vice squad refused to confirm the report, and Deja Vu management will not discuss it. According to one witness, the bar was charged with operating without a liquor license (which was revoked by the SLA), the receipts, cash, and liquor were confiscated, and the bartender was arrested on or about April 30. The witness said that two women, one black and one white, had come to the bar early in the evening and "partied" until a knock at the door was followed by as many as 20 vice squad members. The two women flashed badges and made sure the troops could get in and that the bartender stayed behind the bar so she could be charged.

Another popular bar, Van Buren's on West 46th Street, suffered from regular "inspections" by the Fire Department at peak weekend hours before it abruptly closed in February. Understandably, the owners of the newly opened women's bar Network, on Sixth Avenue at 16th Street, say they expect to be closely scrutinized by state liquor and other authorities.

September's brutal police raid on Blue's, the black gay male bar which shares a block of West 43rd Street with the *New York Times*, resulted in a number of serious injuries, extensive damages, and no arrests. The widely publicized attack drew loud responses from the lesbian and gay community, but was defiantly repeated by police a week later. Four separate investigations were announced, including one by the police department and one by the Manhattan district attorney's office, with no results to date. The Federal Bureau of Investigation reportedly entered the case in early April. Is this good news? The FBI's unfriendly history with the lesbian/gay community includes extensive information dragnets as well as outright harassment.

It has been difficult to judge the impact, if any, of the large demonstration

*Continued on page 13*

WESTERN EXPRESS

6/8/83

San Francisco

**POLICE MUST READMIT  
GAY TO THE ACADEMY**

San Francisco (IGNA) — The San Francisco Civil Service Commission has ordered a man who complained he was harassed during police training because he is gay to be readmitted to the Police Academy.

P. Thomas Cady was ordered to be readmitted by a vote of 3 to 2. The vote is believed to be the first time a gay has won reinstatement to a city job after complaining that he was discriminated against because of sexual preference.

Cady, a former police chief of a small town in Kentucky, said graffiti mocking him and other gays in general were scrawled on the wall of Northern Police Station, where Cady was stationed.

"Kill Cady and All Faggots" was written on the Northern Station's bathroom wall. Cady was also referred to as a "girl" by another officer. Another called out: "Is your asshole sore?" to the trainee, while another asked, "Are you the fair officer?"

Cady said he resigned under such pressure during his field training two years ago after being told that his instructors would recommend that he be dropped from the force.

A police department representative argued at the Civil Service Commission hearing that Cady's on-the-job performance was not satisfactory.

But Cady's attorney, Matt Coles, said the issue was whether Cady was "treated like everyone else."

In recent weeks, the San Francisco Police Department has come up for criticism from the gay community because of a health bulletin about AIDS that has been issued. A bulletin said to be inaccurate by health officials. The police have also issued plastic gloves and face masks to officers who may have to deal with AIDS patients.

Despite efforts by civilian forces to introduce gay male and lesbian officers into the police force, with some forty actually on the force at present, relations between the police department and gays continues to be adversarial and troubled.

Victims - 6/5/83: Western Express

Gay Community News  
January 22, 1993  
Vol. 16 No. 26  
Police Brutality  
Houston TX  
January 1993

C-V

C-V

**brutality insurance**

HOUSTON - A human rights organization in this city is offering gay people an insurance plan against police abuse, the Montrose Voice reports.

Named after Fred Paez, a gay activist murdered by an off duty cop in 1980, the Fast Release Emergency Defense (FRED) plan will provide \$800 for bail bond and \$500 for cash appearance bond to policy holders arrested in red light areas and additional benefits in cases with clearly evident circumstances of civil or human rights violations on the part of the legal authorities involved."

Benefits also include notification of a lawyer, family member, friend or any other designated individual in case of arrest or other emergency.

George Barakat of the Houston Human Rights League, the organization responsible for the insurance plan, predicts 5,000 to 10,000 Houstonians will sign up for the insurance by March. A Hispanic organization has also expressed interest in the plan.

The Houston Police Department has one of the worst records of police brutality and human rights violations of any department in the country and Latinos, Blacks and gay people are frequently the victims.

Police Harassment  
11/1/83 Las Vegas

On the Strip in 'Drag

## Two Locals Busted in Vegas

Two local Gay men reported this week that they were arrested in Las Vegas for nothing more than being in drag. This being 1983, even for Nevada, they are not going to take the insult lying down.

Don Jones, 21, and Robert Serran, 21, complained this week that their two day vacation to the fun city of the west ended in disaster. The pair were arrested last week at 1:30 a.m. in the morning as they exited a taxicab on Las Vegas Boulevard. They were about to enter a downtown casino when they were seized. They were charged with being public nuisances.

Taken to the police station they were strip searched, fingerprinted, and photographed. They were forced to strip off most of their costumes.



Two days of Las Vegas holiday fun turn into a horror tale for turning out in drag



Lola Berry and Kitty Litter

Jones said they were subjected to a constant stream of homophobic remarks. They

were held until 6:30 a.m. when they were turned out on the street.

Jones, who is a drama student at State University at San Francisco, said that he and his friends often turn up in drag in the Castro. He, known as Kitty Litter, and Serran, a manager of an East Bay restaurant, known as Lola Berry, are planning a female impersonator act.

Jones said that they were neither being outrageous nor shocking during their Las Vegas outing. "We were just trying to have a good time," he said. Said Serran, "We were not drunk. We were keeping a very low profile."

The pair will meet their accusers again in a courtroom: January 20 at 1:30 p.m. ■

ALABAMA FORUM  
197, 1983

**Gays Often Target  
Of Police Harassment**

*Index  
... 2/11/83  
5/5/83*

MONTGOMERY — Police departments in the south are in general the least trained, least educated and least sophisticated of all departments nationwide, and have a greater tendency toward harassment of minorities, according to a local attorney.

Vanzetta Penn Durant, former assistant to the state attorney general, and now engaged in private legal practice in Montgomery, spoke to a meeting of Unique But United March 21 in Montgomery.

Ms. Durant explained that the environment in which we live here in the south contributes to the lack of highly trained professionals involved in law enforcement. The south has a different crime situation than one finds in the north. In general, she stressed, the south has fewer problems in the types of crime than may be found outside the south.

Traditionally children are more thoroughly trained to respect authority.

Higher education is generally not emphasized as much in the Bible Belt as in other parts of the country. We do not produce highly educated people to move into positions of authority. In Alabama, police officer candidates receive only six weeks of training that includes little criminal law instruction.

The absence of good police community relations is a barrier that the police department itself has created. Ms. Durant stressed that a lack of foot patrols, and a lack of police officers who know virtually everyone in their neighborhood beat as is common in northern cities, reinforces this wall between the police and the community it is supposed to serve.

**Gays seen as threat**

The average police officer probably regards gays, especially gay men as

threatening. Ms. Durant felt that gays, as well as blacks and other minorities, were often singled out as targets for harassment. There seems to be a prevailing attitude that certain neighborhoods of the city, and certain establishments, are trouble spots. It is common to see several police cars parked or patrolling around HoJon's on any given night; They seem to go "where the action is," and if nothing is happening, they may create an incident.

Ms. Durant offered some advice to those who are stopped or taken into custody by the police.

The first thing is to at least remember the officer's name, and if possible his badge number and patrol car number. This information will be necessary if you later want to file an official complaint.

The second thing is do not resist. Resistance may lead to physical injury. It is not uncommon for some police officers to use force initially, and ask questions later.

Filing a complaint is the most important thing to do if one has been harassed or beaten by a police officer. It is especially important to have a record of complaints in an officer's file to have a winable case in a future civil rights suit.

A complaint should be a sworn, notarized statement, naming the officer involved, presented to the Internal Affairs Division of the police department. A copy should be sent to your city council representative.

*P/S Relations,  
General*

GOTHAM—26DEC79

## Instant Reservations at the world's finest gay resorts

- OFFICIAL REPRESENTATIVES FOR
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# GOTHAM

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Gotham is published every other week by the Area Communications Group, 847 North Avenue, New York, NY 10019.

Publication of the name of photographer, artist, person or organization in articles or advertisements in Gotham is not to be construed as any violation of the "right" of privacy or invasion of privacy or identification.

Manuscripts, photographs, and letters are welcomed but they are not returned. Please enclose SASE address and return of envelope.

## Poor Response from 109th Precinct

A Queens man has asked the Commission for Lesbian and Gay Rights (CLGR) to assist in opening a more thorough and sensitive response from complaints lodged with the 109th police precinct in Flushing Queens.

Gay men who report robberies, or violence, especially are usually and are not usually questioned about their sexuality when they report.

Clayman said a taxi driver asked to a recent commission, described the situation to **Gotham**.

Clayman said the 109th precinct police did directly a task from the A&S super market, which is between 37th and 40th Aves. on Union St. in Flushing. The A&S store is the only store on the block. Its large parking lot has been a gay cruising hangout for eight for the past 20 years.

The precinct's direct view of the entrance at Union Street is almost obscured from the A&S store. Also, a building that has helped block the line of sight from the highway.

The police precinct is aware of the cruising scene, but "Cops generally don't bother anyone," the teacher reported.

The recent robbery and slaying of a gay man by two youngers prompted the request for CLGR to ask that investigations of crimes against gay men be handled with more thoroughness and sensitivity.

In the instance of the slaying, the victim's car was also stolen. When the car was located, the gay man was told that if he wanted the car, finger printing for possible identification of his attacker, he would have to pay between \$150-\$200 for having the car towed. He declined to pay and, reportedly, finger printing was not done on the car.

The victim was also shown a drawing of a young man who detectives said was involved in the slayings of the gay man.

The teacher wondered why the young man was still unapprehended.

The teacher and another gay man familiar with the 109th precinct said:

Police discourage us gays from reporting crimes by asking too many personal questions. Sometimes they ask outright if a person is gay or they

ask: What were you doing there at that time of night? or Were you bothering the kid?

Gays are put on the spot for reporting the crimes. The cops should be concerned with catching the criminals instead of asking personal questions about the victims, they said.

The situation was described as similar to reports of how female rape victims are often treated by authorities.

Gays in Flushing do not want police patrols in the A&S parking lot.

The gay men want the police to stop asking so many personal questions and get onto the mugger's instead.

One of the men stressed that gays should "fight back" against young hawks and come to the defense of one another.

## National March Media Info

A package of news clippings from over a newspaper has been prepared by the March on Washington Media Committee. The photocopied articles are available for anyone interested in seeing how the mainstream straight media cover the march.

While several major newspapers gave poor coverage to the event, Eric Rofes, Media Consultant to the March, said, "...many news papers, particularly in rural areas, gave impressive coverage to the march."

Rofes requested that clippings about the march from local newspapers be sent to him "so we can assess the history of how we were covered."

A \$5 donation per city is requested to cover the costs of preparing 1 march booklet and any additional per from sales will be used to pay off debt owned by the march's organizing committee.

Copies of the media package can be ordered from Eric Rofes, March Washington, 45 Garden St., #203, Boston, MA, 02114.

G.L.C. VOICE  
Sept 1983

## Sgt. Hanson Brutalizes Gay and Indian Youths after Labor Day Weekend Party



David Dahlquist, age 22, weight 140 lbs.

by Tim Campbell

The long Labor Day weekend was just getting started Saturday morning, September 3rd, when a mixed group of south Minneapolis college-age youths, including a large percentage of gay and American Indian youngsters, threw an apartment party at 2420 Pleasant. The group had dwindled down to about seven boys and two girls by 4:30 a.m. when Officers Jack Hanson and R.J. Druk came bursting in.

The partiers admit that their small stereo was a little too loud for an apartment at 4:30 in the morning, but claim other building residents had been at the party and were out sitting on the porch.

In a signed statement written the morning after the bust, David Dahlquist pictured above claims the cops came in and

started throwing people around with virtually no warning or no provocation other than the fact there was a late party. Various partiers were telling the cops they didn't need to be so rough.

Dahlquist claims his fatal mistake was to yell to someone to get Hanson's badge number. "Then it was just me and Tony (Tony Stately, former editor of *The Circle*, an Indian newspaper) in the entry way. They were pulling Tony by his hair and I said 'You don't have to do that!' He (Hanson) said 'Is he your lover?' I said 'yes' and he started pounding my head into the floor. He kept saying as he hit me I'm going to kill you. Gays deserve to hurt and I don't like gays."

Dahlquist and party host Darin Bender were booked.

(Continued on page 4)

# Hanson Beats Up Gay & Indian Youngsters

(Continued from page 1)

Stately managed to leave the scene and the other party drifted home. Dahlquist, 22, weighing 140 pounds, was treated for abrasions and blows to the eye and head at Hennepin County Medical Center.

He picked up the name of the offending cops from the conversation of the officers who drove him in. The police reports confirm that Hanson and Druk originally made the call.

Hanson, a 250 pounder in his mid-thirties, was under fire about two years ago for a case of brutality against a Chicano male. On June 7, 1977 Hanson was accused of starting one of the largest brawls ever to hit the Gay 90s. At that time, Hanson is said to have entered the bar off-duty and out of uniform, accompanied by a brother-in-law and two females. The Internal Affairs Unit did nothing.

Police Chief Tony Bouza admits he knows Hanson's reputation but says "My impression is he has rimmed his sails. I think he's afraid of me." The record reflects that although the City of Minneapolis paid \$10,000 to one victim of police brutality (Blaine Wesley), since Bouza took office, the offending officer was not disciplined.

## Officer threatened his life, Gay man charges

by Lou Chibbare Jr.

A Gay man is charging that a D.C. police officer stopped him in Rose Park, held a pistol to his head, cocked the hammer of the pistol, and threatened to kill him because the officer hates "faggots."

James Thurston, 36, a resident of the 1800 block of Biltmore Street, N.W., said the incident, which he said occurred at about 4 a.m. on August 18, has left him so frightened that he experiences frequent attacks of anxiety and has been forced to seek assistance from a therapist.

Thurston, with the assistance of an attorney, this week filed a complaint against the officer with the D.C. police Civilian Complaint Review Board.

In his complaint, Thurston charges Officer R.T.B. Doyle, of the police department's Second District, with harassment, brutality, assault and battery, and with the intent of inflicting upon him emotional distress.

According to accounts by both Thurston and Second District Police Capt. Rodney Murray, Thurston had been stopped by Officer Doyle while Doyle and other officers were looking for a suspect in an attempted robbery, which was reported by a resident from a

my groin and frisked me," Thurston said in the complaint.

"He then put his gun to the back of my head, where I felt it touching me," Thurston continues in his complaint.

"Officer Doyle cocked the gun and said, 'I haven't killed a faggot in over a year and I'm going to kill one tonight.'

"He then put the gun into my left ear and asked me if I could feel it. I felt that he was going to kill me right then and there," Thurston states in the complaint. Thurston said he protested that he was simply on his way to his bank and urged Officer Doyle to inspect his plastic bank card.

"Officer Doyle told me he was fed up with faggots and he just kept angrily making several anti-Gay remarks," Thurston said in the complaint.

Thurston noted that at this time, Officer Doyle noticed that Thurston's friend, Rodney Jackson, had been standing nearby observing what was happening. Thurston states in his complaint that Officer Doyle ordered Jackson to "get the hell out of the park," an order which Jackson said he promptly obeyed.

Jackson, in an interview, said he saw Officer Doyle point his pistol to Thurston's head and heard Doyle use

nearby home.

Murray said he identified the officer who questioned Thurston by tracing a radio communication between the officer and police headquarters, which occurred when Doyle requested a criminal records check on Thurston.

Murray, who serves as the Second District police liaison to the city's Gay community, said he could not comment on details of Thurston's allegations but pledged to "cooperate completely" with any investigation into the incident by the Civilian Complaint Review Board. Murray also said that department policy prohibits Doyle from discussing the allegations made against him.

Thurston said the incident began when he was walking through Rose Park, located in Georgetown near 26th and O sts., N.W., with a friend while on his way to an automated money machine at his bank on M Street. He said he was ordered to stop by Officer Doyle seconds after he walked toward the headlights of a car, which he said he noticed had entered the park.

Thurston states in the complaint that Officer Doyle told him to lie face down on the ground.

"While I was lying face down, Officer Doyle kicked me between the legs near

the word "faggot" on several occasions. Jackson and Thurston said they had walked to the park from Mr. P's, a Gay bar on the 2100 block of P Street, N.W., where Jackson works.

Thurston said Officer Doyle also asked him if he was "of the homosexual variety." He said he did not reply.

Officer Doyle next escorted Thurston to a squad car, where he searched him and radioed his name into headquarters, Thurston said in his complaint. Thurston said he was released after an unidentified female voice told Officer Doyle that he was not the suspect being sought in the robbery investigation.

"He told me to get out of the park and also said that if he ever saw me in the park again he would blow my head off," Thurston said in his complaint.

Thurston's attorney, Stephen Weinberg, said Thurston is considering the possibility of filing a civil suit in connection with the incident.

Rose Park has been used as a cruising spot by Gay men and nearby residents have often complained to police about noise and loitering in the park in the late evening hours. D.C. police and U.S. Park Police have arrested men on sex-related charges in the park in the past.

WASHINGTON, D.C. ADL  
SEPTEMBER 29, 1978

MOHR  
Sept '83

Police harassments  
Mid-June, 19  
Grand Rapids, Mich

### The Grand Rapids 61

Sixty-one men were arrested at a Grand Rapids area rest stop during police sweeps in mid June. Most had never been in trouble with police before and were frightened and confused about how to react. The police loitered about the rest area and encouraged men to follow them off into the woods, where the arrests were generally made according to several victims.

The victims of this arrest were generally advised to plead guilty, and every one of them did so! Each who did was fined \$300 and put on probation. The Kent County coffers were made instantly \$18,300 richer by this action.

Several of the men said that they could not afford a lawyer nor to get involved with fighting these arrests. Yet, it seems to us at MOHR that \$18,300 could have much more than adequately paid for excellent representation—all the way to the Supreme Court if necessary.

The police have revealed that many of the alleged offenders were married. Obviously, they do not identify with the gay lifestyle or gay community institutions, and outreach to this segment of the population is extremely difficult, either in terms of prevention or legal aid. MOHR's experience with the "Kalamazoo 42" several years ago reflects this. On that occasion, then Executive Director Don Mager and MOHR challenged the use of videotape cameras. Court ruled that such entrapment measures in rest areas could not be used, and convictions were set aside.

MOHR believes that efforts must be continued to curb such police abuses, but only with the cooperation of victims of this type of police activity can court cases be brought. Unfortunately, none of the Grand Rapids 61 came forward to allow help.

Not Again?!

## Yes, Loft Raided Again, Club Officers Charged

**By Larry Goldsmith**  
**BOSTON** — Denouncing the remarkable persistence which has become their trademark, the Boston vice squad again raided The Loft, a private, after-hours club located on Stanhope Street just behind police headquarters. The raid, directed as usual by vice squad Sgt. Edward McElroy and featuring the accustomed assortment of vice officers, came in the early morning hours of Sunday, April 10, just ten weeks after plea-bargaining and fines brought the last round of raids to a conclusion.

Last January 28, Joseph D'Onofrio and Paul Cadore, officers of the club, pleaded guilty to one count each of selling alcohol without a license, selling soft drinks without a license, over-crowding, and conducting an unlicensed Sunday dance (see *GCN*, Vol. 10, No. 29). In return, prosecutors agreed to drop a number of other charges against the two.

According to D'Onofrio, police arrived about 2:30 a.m. to find the club full and a large crowd of people gathered outside waiting for admission. After calling for reinforcements, police presented two warrants authorizing searches for alcohol and soft drinks.

Unlike in previous raids, D'Onofrio said, members of the club made some attempt to resist police efforts to clear the premises. A number of patrons responded to homophobic slurs from police, he said, and several started chanting "Stonewall, Stonewall." Police arrested five officers and employees of the club for licensing violations, D'Onofrio said. In addition, two patrons were arrested and charged with performing unnatural acts. All were arraigned on April 11 in Boston Municipal Court.

Officers executing the search warrants used sledgehammers to add in their inspection of the premises and they confiscated records and receipts belonging to the club. D'Onofrio was arrested and charged with possession of marijuana and cocaine, unlicensed sale of alcohol, unlicensed sale of soft drinks, overcrowding and conducting an unlicensed Sunday dance.

The sensationalistic headlines in mainstream media accompanying previous raids on The Loft were noticeably absent this time. As far as *GCN* could determine, not one account of the raid appeared in local newspaper, radio or television coverage. According to D'Onofrio, the absence of coverage may have to do with the fact that allegations of unfair publicity were a major part of The Loft's defense in its last trial. Police may have decided to keep the latest raid quiet, he said.

Three days after the raid, the Massachusetts Appeals Court upheld a motion by The Loft to have illegally-obtained evidence suppressed. Attorneys for the club had argued that searches made at the club on March 8 and March 15, 1981 without warrants were illegal and that evidence seized on those dates could therefore not be used by the prosecution.

"In the instant case the premises were raided at least three times -- either five or six police officers were involved on two of those occasions. See *Commonwealth v. Cadore*, 386 Mass. 148 (1981), where the Supreme Judicial Court mentions an additional instance. Apart from the unlawfulness of the activities of the law enforcement officials here, there are other troubling aspects to their improper conduct. Not only were scarce judicial resources needlessly wasted, but the allocation and use of precious law official enforcement resources is shown to be peculiar. For another peculiar example, see *Commonwealth v. Grant*, 7 Mass. App. Ct. 203, 204 (1979) (on his seventy-sixth visit to lounge, 'in the line of duty,' undercover vice officer observed an obscene act -- 'simulated masturbation').

Of particular interest in the Appeals Court brief is a concurring opinion by Judge Frederick Brown, who remarked:

"I agree fully with the views expressed in the principal opinion. I am, however, moved to comment on a matter, manifest here, that too often appears in our cases.

"It seems strange that so many police officers, five on one occasion and six on another, were involved in raids of a building where

it was believed that the occupants possibly were unlawfully dispensing food and beverages, and operating a Sunday dance without a license.

"Without blessing in any way the activities of these defendants, I wonder how much assistance and crime prevention those police officers might have provided by patrolling in high crime areas, along violence-prone MBTA routes, and at other locations where past experience demonstrates the likelihood of great physical danger to the general citizens," the judge wrote.

Gay Community  
 News  
 April 30, 1981  
 Vol 10, No. 40  
 Entrapment  
 Raids  
 Boston  
 April 10, 1983

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**NEWS**

• **Boise**—Two Gay men are alleging that four Boise police officers physically and verbally abused and harassed them last month.

Jay E. Swenson, a 36-year-old U.S. Postal Service clerk, said he and a friend were approached by four police officers as they were leaving a Gay bar at about midnight on August 13. Swenson said he and his friend were "subjected to a constant stream of verbal abuse, obscene language, and manhandling" from the officers. Boise Mayor Dick Eardley has said he would discuss the allegations with the city's police chief.

C-V

Bay Area  
Reporter6/9/83  
SAM FRAMBay Area  
Reporter  
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CUAV

## Recent Incidents

by Randy Schell

## HAIGHT/CENTRAL

The victim took the 24 Divadero from Castro to Haight Street and disembarked. As he was walking near Buena Vista Park, a group of 35-40 teens were walking towards him. The victim, sensing danger, crossed the street to avoid the crowd. Someone from the gang yelled at the victim and the victim began running up Haight. A rock was thrown and the victim was hit in the head. The group of teens attacked the victim, hitting him in the face and body with their fists and bottles. The victim again attempted to flee and he was hit with a kick in the chest. One of the assailants screamed, "Look at that faggot run." He continued running with the group in pursuit. About 50-60 people were watching the incident and no one came to his aid. At Haight and Masonic the victim saw a police car and attempted to flag the car down, to no avail. Two motorcycle police drove by and did not offer to assist the victim. The victim ran into a neighborhood bar to avoid any further confrontation.

## METHUEN

Two victims were walking home and passed a group of six people standing on the corner of 98th and Eurka. One of the assailants ran in front of the second victim and tackled him. The victim was thrown into a stop sign pole and hit. The first victim then grabbed the second victim and began to run with the crowd of assailants in pursuit. The group was yelling, "God damned faggots." The assailants had boards, sticks, and baseball bats. The assailants were throwing the weapons at the victims. The second victim tripped over one of the boards and broke his arm. He sustained a black eye and a gash to the forehead and the leg. The first victim turned around and put up his fists and challenged the crowd. The sec-

ond victim grabbed the first victim and they continued running up the street and managed to get home. The first victim sustained a strained arm. The victim called the police. The police had already obtained a report from a witness. The police took an additional report from the victim and were combing the area for the assailants. The assailants were never found. The following day, the first victim went to San Francisco General Hospital and the second victim to St. Mary's.

GREYHOUND  
H 8 196197

This victim was in the Greyhound bus depot and was arrested by a Greyhound security official. The victim demanded to see the badge and wanted the name of the officer. The officer pushed the victim and handcuffed him. The victim was taken to the security room. The victim was in the stomach and began hitting the body of the officer. The officer, who was smoking a large cigar, put it out in his cigarette. The victim was taken to jail at 850 Bryant

and charged with several offenses. Inside the jail, the outraged victim called the Internal Affairs Bureau who took a report complete with photographs of the victim's injuries. The victim stayed four days in jail and was released and will appear in mid-June on two charges. Two felony charges were dropped by the District Attorney and two misdemeanors remain to be heard. It should be noted, the Greyhound security official was moonlighting. He is a police officer for the San Francisco Police Department with a notorious record for brutality. **SAN FRANCISCO**

The victim was walking home from the Mint when a teenage attacked her. The victim was pulled to the ground, hit, and the assailant attempted to grab her purse. The victim began screaming at the top of her lungs. A neighbor of the victim heard the commotion and she began screaming and also called the police. The assailant, hearing the screaming of the neighbor and the victim, quickly left the area of the altercation. The police arrived within minutes but the assailant was not apprehended. The victim suffered scratches and bruises. This is a good example of how your lungs or a whistle or both can intimidate an assailant. If you need a whistle, call CUAV at 864-3112 or stop by our offices at 514 Castro Street.



Chris's self-defense class in an "attack formation." (Photo: Rink)

# Harassment Reports Ignored

VAIKY WOMEN  
VOICE

by Rebecca Logan

On April 4, Dee Dee (last name withheld) received the first in a series of harassing phone calls. The voice, accompanied by heavy breathing, said he wanted to meet her.

The calls continued for several days and were recorded on her telephone answering machine. Fifteen to twenty times the caller just hung up. Three times messages were left. It was obvious from the voices that two different men were doing the calling.

On April 8, Dee Dee's car was vandalized — the windshield wipers were mangled, the antenna was ripped out, the hood was scratched, and the tires were flattened.

Dee Dee went to the Northampton police with a copy of the phone tapes, filled out a complaint, and talked to the three officers who were on duty; one was Detective Fierenside, another was Detective Luce. They advised: get a new and diluted phone number. She was told a phone trap could be used only in a life-threatening situation, and her case wouldn't qualify.

The detectives refused to keep the tape she offered and did not look at the car. They felt there was no connection between the incidents. They told her she could come back if she had any more trouble.

On June 6 she moved down the hall,

The phone rang as soon as she reconnected it in her new apartment. The caller, who identified himself as Jack Murphy, told Dee Dee he wanted to meet her. She replied that that was impossible. Jack said, "Why — because you're not that kind of girl?" He laughed and hung up. From then until June 12, twenty to thirty hang-ups and messages were recorded on Dee Dee's answering machine. The calls began at 6:30 AM and continued until 12:30 at night. Two male callers actually left phone numbers where they could be reached.

Dee Dee made a new tape and took it to the Northampton police. Officer Jasinski was on duty. He refused to listen to the tape; he said they didn't have a tape machine. When Dee Dee pointed out that indeed they did have one because they used it the first time she came in, Jasinski said the tape wouldn't fit. Dee Dee insisted, because the phone numbers of the callers were on the tape. But Jasinski wouldn't budge. He said he was too busy. The department had received too many complaints to be able to work on them all.

Early in June, Dee Dee got in touch with the Northampton Gay and Lesbian Task Force, a body set up to look for solutions to the harassment of gays and lesbians in this community. This task force has been disbanded by Mayor Rousseau, but members continue to meet because they feel there is still a need for

it. Through this group, Dee Dee met with State Police Trooper, John Gibbons, who works with the Task Force. He talked with Dee Dee, took a copy of the recorded tapes, interviewed her and assigned himself the task of following up on the obvious leads in her case.

On July 14, Dee Dee and three others from the Task Force went to speak with Northampton Police Chief Labato. This group went through the whole story and asked Labato what he thought of the way his officers were handling this case. His response was that there really hadn't been anything new and there was not enough evidence to work with. He did say, in contradiction to his detectives' advice, that a phone tap was a good way to deal with the problem and that the phone company should be contacted if the calls continued. He also said he would speak to Jasinski; and, he added that Dee Dee was wise to take the case to the state police as they had more "man" power.

The Police Chief was obviously sympathetic with Dee Dee and the gay community's plight, though unwilling or unable to help. But he was heard to address this group that night in to question him as "You gays and 'lezzies'".

Since this interview, Boston's Channel 4 did a two-part special (July 26 & 27) on the harassment of the gay and lesbian community in Northampton. One of the focuses of this documentary

is the different ways the Northampton Police and the lesbian and gay community see this problem.

As of this writing:

Dee Dee has received no more phone calls since mid-June.

The Northampton Police have not moved on her case.

Trooper John Gibbons only began to work on her case July 30.

"Moral":

"What all of this tells us is that the most effective way to get action on an incident of harassment is to go all routes. Report the incident to the local police, to the Task Force, and to the State Police.

The Task Force is most interested in hearing about harassment cases and sincerely wants to help direct you to the right channels. They can be reached through GALA at 584-9340.

The State Police, notably Trooper John Gibbons, are also interested in these cases, though it may take some time and prodding to get results from them.

The Northampton Police are plainly not interested ... but that's no reason to give them a break. Keep the pressure on. Don't let them forget about this problem. Don't allow them to say, "Well, we have received no complaints; so, it must not be a problem." Let the local police continue to be flooded with legitimate complaints and maybe they'll finally take us seriously. ■

New Women's Times  
3/83 v. IX, #3

176

Lesbian beaten +  
arrested by NYC police.

NEW YORK CITY

-update-

## Police Attack Lesbian

Robin Porter, a 26-year-old Black lesbian, was beaten and arrested by three policemen in New York City after she whispered a remark to a friend when she saw the police using a nightstick to choke a man sitting on a park bench. The police then turned to her and demanded her ID. According to more than 15 witnesses Robin produced six pieces of identification but the police responded that these were not enough and began to beat her. Some witnesses said that the beating continued with nightsticks in the back of the patrol car. Robin was later taken to a hospital with multiple contusions and hemorrhaging in her left eye. The attack took place in an area of a park where many young Black and Latin lesbians and gay men gather. Witnesses followed the patrol car to the sixth precinct station, where police came out and began insulting and intimidating them.

Page 16

New Women's Times

Gay Community News  
 vol 0, #32 - 3.5.83

Vidence : bar  
 harassment

OKLAHOMA CITY 1.19.83

### oklahoma gays file suit against Cops

OKLAHOMA CITY — A lawsuit alleging brutality and harassment at a gay bar was filed February 11 in federal court against four police officers and the city, according to the *Oklahoma Times*.

The suit claims that police officers participated in a "campaign of intimidation, harassment and abuse" against customers and employees at Angles, a local gay bar. The suit also names the city and claims that officers are not adequately trained to respect the constitutional rights of citizens and that the officers are "one lawless page which is beyond the control of their superiors."

The suit was filed after several months of police harassment which was capped by a January 19 incident at Angles. On that night, a cop "opened a door with a customer's head" and "beat one customer between the legs with a flashlight or nightstick or both," according to the suit.

New Jersey 7/83

## Charlie's West Sues East Orange Police

Charlie's West, a major gay bar, has filed a \$2.5 million lawsuit against the city of East Orange and police officer Frank Cocchia of the East Orange Police Department for alleged "discrimination, harassment, and loss of business" following raids on May 13th and May 14th.

Tommy Matarese, owner of the 4 1/2-year-old establishment, said the officer harassed patrons on both Friday evening, May 13th, and Saturday evening, May 14th, and continues to "illegally search cars" entering the parking lot behind the bar.

According to Matarese, the officer entered the parking lot on May 14th and began ticketing patrons' autos. "A short time later he entered the club and ordered me to turn up all the lights and turn off the music," one employee told Matarese later. "I asked him why I had to do this," the employee continued, "and he answered, because I told you to, so do it now or I'll close you down."

The employee related that "I complied with his demand and he then proceeded to go through the club pushing and shoving customers asking for ID and generally upsetting and harassing anyone in his path."

One witness told Matarese the officer said "I'm going to close this fag bar and all the other fag bars in New Jersey."

On June 2nd, the management mailed a flier to persons on the bar's mailing list. It reminded them that if an officer approached them, they should (1) ask the officer to show proper identification, (2) make sure the police officer has a proper search warrant for home and auto, (3) turn over any resulting traffic ticket to the management, and (4) cooperate even if the officer appears to be in the wrong (to avoid giving the officer legitimate cause to make an arrest).

The bar owner also appealed to lesbian and gay men throughout New Jersey to phone Captain Robert Van Cleeves of the internal affairs unit of the East Orange Police Department (201) 266-5021, to complain about harassment.

Matarese also appealed to patrons to "continue the policy, as you have in the past, of keeping both Charlie's West and the parking lot drug free.

Charlie's West is represented in the harassment suits by former Assemblyman Eldridge Hawkins, an East Orange lawyer recommended by Arthur Warner, of the legal committee of the New Jersey Lesbian and Gay Coalition.

Charlie's West draws 800 to 1,000 persons on a typical Saturday. Matarese declined to say to what extent business has declined.

Contacted by News Jersey, East Orange Police Chief George Daher said: "Since this is a subject of litigation, we won't have anything to say until it's adjudicated."

LAVENDER  
EXPRESS

7/83

POLICE / LEGAL  
RAID / PROCT

EAST ORANGE

NJ

5/13/83

163

LAVENDER EXPRESS \$10.00/year

New Jersey's  
Lesbian JournalMs. Pat Freeman  
P.O. Box 285  
Keyport, NJ 07735

July, 1983

• Philadelphia—Five former police officers were convicted on May 16 for attempting to extort at least \$125,000 from two Gay clubs and some 14 other businesses in Philadelphia's Center City section.

Jack Friel, former manager of the Gay club, Rainbows, told a federal court jury he met with the former commander of the city's Central Police District and another officer at a Center City restaurant to discuss pay-offs. Friel said he was told he had to pay \$1,000 a month in payoffs to police.

Diane L. Lee, another former manager of Rainbows, said money paid to the police was supposed to protect the club's Gay clientele from police harassment, to allow the club to remain open and serving liquor until 4 a.m., and to ensure that police would show up in a timely fashion if trouble developed at the club such as fights or harassment from outsiders.

Washington Blade 6-3-83  
 vol 14 # 22

Gay News  
May 20, '83

# Five Police Officers Guilty of Extortion

by Tommi Avicelli

Five former Philadelphia policemen were convicted on Monday, May 16, of attempting to extort more than \$125,000 from some 16 businesses in Center City, including two after-hours gay clubs.

Gay club owners have been paying off police for years, former Rainbows manager, Jack Friel, told a federal court jury on May 9th. The testimony was part of an investigation by the U.S. Attorney's office into corruption charges against five former Sixth District police officers, including John DeBenedetto, former commander of the Central Police District.

Friel said that he and Diane Lusk, another former manager of Rainbows, met with DeBenedetto and a former police officer named Lawrence Molloy at a restaurant in Center City during the summer of 1981 to discuss payoffs. At that meeting, Friel and Lusk were told they must pay \$1000 a month in payoffs to the police, \$400 of which would go to DeBenedetto and his officers, \$500 to patrol officers, and \$100 for Sixth District police.

Friel also testified that DeBenedetto showed them a list of other bars and businesses in Center City that were paying off. Payoffs "have been a way of life in our police department for all the years I remember," Friel said.

Lusk testified that the money paid to DeBenedetto was to protect the gay clientele of the club from harassment by police, and to allow it to remain open and serving liquor until 4 a.m. She related an incident in which police came into the club and threatened to throw a doorperson over a railing. She said the incident occurred before the meeting with DeBenedetto.

Before the meeting with DeBenedetto, Friel said he was paying \$1150 a month.

"It's nice everybody (in the gay community) cooperated and let the police know they can't blackmail and harass us anymore," Friel told the *Gay News*. He said that as far as he knows, no club or bar is now paying off police.

Friel also said he feels a "sense of relief" about having brought things out into the open.

He explained that clubs were paying off police for three reasons: to keep police from selectively enforcing the 3 a.m. limit on serving liquor to customers; to ensure that if the establishment had a problem, police would respond immediately; and to prevent police from harassing clientele.

Pennsylvania law states that clubs must stop serving liquor at 3 a.m. and not allow any more customers into the establishment. Patrons already in the club may stay until 4 a.m.

Asked whether he thought police might harass those club managers who testified, Friel said he felt "10 years ago maybe (but) I think police harassment (has gone) from a majority 10 years ago to a minority today. It's the exception now, not the rule."

However, if a club should get harassed, Friel said the community "should stick together. We made a united front (at the hearing), now we should keep it." (See related editorial on page 13.)

NYC  
file: violence

**Entrapment Reported Widespread  
in Ritz Park; Hotline Looking  
for New Volunteers** *MAN 5/10/74*

The Chelsea Gay Association Anti-Violence Project is calling for additional volunteers for its Five-Borough Hotline. Training sessions will be conducted on three consecutive Tuesday evenings, starting September 28.

Among the most serious calls the hotline is now receiving, according to spokesman Russell Nutter, are reports of entrapment by plainclothes police patrolling the bathhouse in the gay section of Ritz Park. "Apparently, 1,200 arrests have been made this summer," Nutter said. "Federal park police even broke down the door of a private changing room and arrested a man who was inside, alone, quietly dressing. The man was charged with public lewdness and [was] piled into a paddy wagon with two other men."

"These arrests are illegal," Nutter asserted, "and we're trying to find out what's going on and why." Anyone who has been a victim of such arrests should call the anti-violence hotline, (212) 772-0404.

Nutter said the Anti-Violence Project has also been monitoring gang beatings which have been occurring in the vicinity of the Billy the Kid bar in Jackson Heights, Queens. A number of men have been beaten, and in one case a man was hospitalized and required surgery.

Nutter said that since June 1 the hotline's present group of volunteers has handled 239 calls: requests for information from New York City detectives, requests for advice from gay organizations in other parts of the country, and reports of more than 157 incidents of assault, murder, robbery, and entrapment of gay people throughout the metropolitan area. Within a one-month period, six murders, all still unsolved, were documented.

No experience is required for prospective volunteers. However, they must be willing to attend at least one monthly meeting with other hotline members and make a weekly commitment of two to

four hours talking over the phone to survivors of anti-gay violence. Essential characteristics for volunteers would include patience, understanding, flexibility, accessibility, and the ability to follow through on certain cases over a period of several weeks.

Individuals interested in monitoring court cases involving anti-gay violence are also invited to attend the September 28 meeting. To sign up or to receive more information, call the new hotline number, (212) 772-0404.

Mr. CONYERS. We will now have Dean James Credle.

**TESTIMONY OF DEAN JAMES CREDLE, BLACK AND WHITE MEN TOGETHER**

Mr. CREDLE. Thank you, Chairman Conyers, distinguished members of the subcommittee, participants, observers, and people in the communities of Brooklyn, Greater New York, and other cities throughout the United States, for indeed the issues we are attempting to address here are issues affecting us all, and indeed must therefore be of concern to everyone.

I come to you as a black gay man, an assistant dean of students at Rutgers University, an active member of my community, a Vietnam veteran, and a member of Black and White Men Together. BWMT is an interracial, gay male antiracist organization. Our statement of purpose reads:

The effects of racism are all too evident in the gay community. We, as black and white gay men, are concerned that racism affects our personal lives as well. To open up channels of communication between black and white gay men, to provide a forum for discussion and confronting issues of racism in our community and in our lives and to create a supportive environment for less oppressive interracial relations among gay men, Black and White Men Together was formed in June of 1980.

BWMT recognizes that as we personally struggle against racism in the gay community, racism in society at large is at the heart of this struggle. BWMT also realizes the importance of police brutality as an issue on which we must speak on behalf of our gay brothers and lesbian sisters. For while we are often stereotyped as members of a single community, our roots emerge from and encompass multiethnic and racial identities.

We have suffered and continue to suffer brutalities as blacks, as Hispanics, as Asian, and native Americans, in addition to our third-class status as lesbians and gay men. All of us who have been maimed, physically and emotionally abused, unlawfully arrested, yes, even tortured, and killed, have yet to receive any note of recognition or acknowledgement that we, too, are victims of police harassment and brutality.

If we are serious about eradication of such brutality from our community, then we must acknowledge the widespread abuses which occur daily against lesbians and gay males. Such acts of harassment and brutality occur in Brooklyn and Manhattan, throughout New York City, other cities, and across the United States. These daily acts of police harassment and brutality begin with the yelling of antigay and racist epithets at us. We are then stopped and questioned in an attempt to further humiliate and ridicule us. Often, regardless of our answers, we are detained, arrested, and kicked or beaten with nightsticks, fists, gun butts, any other weapons in the policeman's possession.

Given that we survive this heinous behavior, and many of us do not, we are then fined and imprisoned, where we are further subjected to brutality and, yes, we are subjected to rape.

But this process of hostility and violence against lesbians and gay men, does not begin the moment a police officer perceives a stereotypical faggot or dyke, either alone or in the company of others. Like racism, homophobia, the hatred of lesbian and gay men, pervades American society, and can lead to our annihilation

at the hands of police. These racist and antigay attitudes are constantly reinforced by the same society which bestows upon the police the job of protecting the citizens.

The point is that as a black gay man, I am often asked, From whom do I need protection? And more often than not, the answer is I need to be protected from the police. We come today to speak not only as victims of brutality, but also as a concerned community, determined to break the yoke of oppressive behavior committed against us while many in our society stand by allowing these acts of violence to happen.

Today I am here to inform you about our history of and current struggle against police brutality. I have talked about acts of police abuse against the lesbian and gay community as something which occurs daily. Most of these acts are never heard about nor seen by the general public. However, at least one incident of police brutality against the lesbian and gay community was heard around the world.

Mr. CONYERS. Excuse me, Dean. Can you submit the rest of your testimony and just make a conclusion statement? We are really way overdue now. I apologize for you ending up as the last witness like this, but we are really completely out of time.

Mr. CREDLE. I will attempt to summarize. I must state that I am very disappointed that I will have to do so, given the nature of the fact that we are the two people here—after countless discussions of the issue of police brutality, are the only two who have raised the issue of lesbian and gay people.

Mr. CONYERS. At the last hearing, the subject was gone into in very thorough detail at the last hearing.

Mr. CREDLE. I will try to summarize.

Mr. CONYERS. But this has been gone into before, I want to assure you of that.

Mr. CREDLE. I appreciate that knowledge. I was not aware nor have we received that kind of information.

Let me talk a little bit about Blues, which I think is an important incident, and I have copies of the situation regarding Blues and information about Blues for your perusal at some point in the future.

Despite the uprising at Stonewall and because homophobia is so deeply rooted within the fabric of this society, daily acts of police brutality continue, sometimes reaching such blatant proportions, they seem unreal.

On September 29, 1982, by all accounts currently a matter of public record, 30 to 40 of New York City's finest stomped into Blues Bar, a gay bar located at West 43d Street in Manhattan, patronized primarily by black and Hispanic gay men and lesbians. These police officers locked the door and proceeded without provocation or justification to line up the patrons and employees against the wall and brutally beat them. Heads, faces and bodies were hit, groins were kicked, requiring many to seek medical care afterwards. These police officers supposedly responding to a call that there was a fight in the bar, went on a bloody rampage, shouting gay, antigay, and racist epithets. They threw bullets on the floor and called them gay suppositories, which, next time, they would shoot up gay asses.

They battered a disabled man on a bar stool because he could not walk to the back wall fast enough. They destroyed the interior of the bar. The sad truth is that no arrests were made, either of any patrons who were alleged to have been involved in a fight, nor of any police officers who engaged in these acts of violence.

The sad truth is that no one, including Mayor Ed Koch, or those in his administration, felt compelled to address this issue. Although tomorrow it will be exactly 1 year and 2 months since this brutal incident occurred.

I entered Blues Bar around 5 p.m. on September 30, the day following the police raid. I had never seen such total destruction since my days in the jungle of Vietnam. It was as if a powerful, deadly tornado had wreaked havoc within the framework of the building, while allowing the outer structure to stand. Broken bottles, glasses, and mirrors were strewn about the floor. The pool and game tables overturned, bashed in and strewn across the floor. The DJ booth was dismantled with records broken, turntables busted and speakers destroyed. Blood was everywhere, splattered on the floor, on the walls, on equipment—a total wasteland.

Some patrons, the bartenders and the bouncer were there to tell us about what happened. Their story is one in which a police force, because of its racist, sexist, and homophobic attitudes can, on pretense, raid a bar in the heart of Manhattan, virtually next door to the New York Times, lock the patrons in the bar, beat and kick them about the body with night sticks, clubs and boots, shout racist, sexist, homophobic epithets, wreak total havoc and destroy a place of public accommodation, and return again and again without fear of punishment from the people who are responsible for the general safety and security protection of all citizens in New York.

This violent raid was ignored by the straight media. Even the Times refused to report this total violation of civil and human rights.

Mr. CONYERS. Excuse me again, but I thought you were going to summarize.

Mr. CREDLE. I have summed up my statement, but I read it in total because I think the picture of the incident is very important and very clear.

Mr. CONYERS. We accept it into the record and I want to thank you very much for your testimony, both of you.

Many of you have been here quite a long period of time and I want to thank all of you. There have been a lot of people working on this, behind the scenes with the committee and in their individual capacity. To all of you I say thank you, and I would announce that the subcommittee hearings are now adjourned for the day.

[Whereupon at 5:46 p.m., the hearing was adjourned.]

## ADDITIONAL MATERIALS

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BLACK AND WHITE  
MEN TOGETHER,  
NEW YORK

TESTIMONY OF JAMES CREEDLE FOR  
CONGRESSIONAL HEARINGS ON POLICE BRUTALITY  
BROOKLYN, NEW YORK  
NOV. 28, 1983

BWMT/NY, BOX 148, ANSONIA STATION, NEW YORK, NY 10023; 212/799-9432; 212/222-9794

(1481)

CHAIRMAN CONYERS, DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, PARTICIPANTS, OBSERVERS, AND PEOPLE IN THE COMMUNITIES OF BROOKLYN, GREATER NEW YORK AND OTHER CITIES THROUGHOUT THE U.S.--FOR INDEED, THE ISSUES WE ARE ATTEMPTING TO ADDRESS HERE ARE ISSUES AFFECTING US ALL, AND INDEED MUST THEREFORE BE OF CONCERN TO EVERYONE.

I COME TO YOU AS A BLACK GAY MAN, AN ASSISTANT DEAN OF STUDENTS AT RUTGERS UNIVERSITY, AN ACTIVE MEMBER OF MY COMMUNITY, A VIETNAM VETERAN, AND A MEMBER OF BLACK & WHITE MEN TOGETHER. BWMT IS AN INTERRACIAL GAY MALE, ANTI-RACIST ORGANIZATION. OUR STATEMENT OF PURPOSE READS: THE EFFECTS OF RACISM ARE ALL TOO EVIDENT IN THE GAY COMMUNITY. WE, AS BLACK AND WHITE GAY MEN, ARE CONCERNED THAT RACISM AFFECTS OUR PERSONAL LIVES AS WELL. TO OPEN UP CHANNELS OF COMMUNICATION BETWEEN BLACK AND WHITE GAY MEN, TO PROVIDE A FORUM FOR DISCUSSING AND CONFRONTING ISSUES OF RACISM IN OUR COMMUNITY AND IN OUR LIVES, AND TO CREATE A SUPPORTIVE ENVIRONMENT FOR LESS OPPRESSIVE INTERRACIAL RELATING AMONG GAY MEN, BLACK WHITE MEN TOGETHER, NEW YORK WAS FORMED IN JUNE 1980.

WE IN BWMT RECOGNIZE THAT AS WE PERSONALLY STRUGGLE AGAINST RACISM IN THE GAY COMMUNITY, RACISM IN SOCIETY AT LARGE IS AT THE HEART OF THIS STRUGGLE. BWMT ALSO REALIZES THE IMPORTANCE OF POLICE BRUTALITY AS AN ISSUE ON WHICH WE MUST SPEAK IN BEHALF OF OUR GAY BROTHERS AND LESBIAN SISTERS. FOR WHILE WE ARE OFTEN STEREOTYPED AS MEMBERS OF A SINGLE COMMUNITY, OUR ROOTS EMERGE FROM AND ENCOMPASS MULTIPLE ETHNIC AND RACIAL IDENTITIES. WE HAVE SUFFERED, AND CONTINUE TO SUFFER, BRUTALITY AS BLACKS, HISPANICS, ASIANS AND NATIVE AMERICANS, IN ADDITION TO OUR THIRD-CLASS STATUS AS LESBIANS AND GAY MEN. ALL OF US WHO HAVE BEEN MAIMED, PHYSICALLY AND EMOTIONALLY ABUSED,

UNLAWFULLY ARRESTED--YES, EVEN TORTURED AND KILLED--HAVE YET TO RECEIVE ANY NOTE OF RECOGNITION OR ACKNOWLEDGEMENT THAT WE TOO ARE VICTIMS OF POLICE HARRASSMENT AND BRUTALITY. IF WE ARE SERIOUS ABOUT THE ERADICATION OF SUCH BRUTALITY FROM OUR COMMUNITY, THEN WE MUST ACKNOWLEDGE THE WIDESPREAD ABUSES WHICH OCCUR DAILY AGAINST LESBIANS AND GAY MALES. SUCH ACTS OF HARASSMENT AND BRUTALITY OCCUR IN BROOKLYN, IN MANHATTAN, THROUGHOUT NEW YORK CITY, OTHER CITIES, AND ACROSS THE UNITED STATES.

THESE DAILY ACTS OF POLICE HARASSMENT AND BRUTALITY BEGIN WITH THE YELLING OF ANTI-GAY AND RACIST EPITHETS AT US. WE ARE THEN STOPPED AND QUESTIONED IN A FURTHER ATTEMPT TO HUMILIATE AND RIDICULE US. OFTEN, REGARDLESS OF OUR ANSWERS, WE ARE DETAINED, ARRESTED AND / OR KICKED AND BEATEN WITH NIGHTSTICKS, FISTS, GUN BUTTS AND ANY OTHER WEAPONS IN POLICEMEN'S POSSESSIONS. GIVEN THAT WE SURVIVE THIS HEINOUS BEHAVIOR-- AND MANY OF US DO NOT--WE ARE THEN FINED AND IMPRISONED, WHERE WE ARE FURTHER SUBJECTED TO BRUTALITY AND RAPE.

BUT THIS PROCESS OF HOSTILITY AND VIOLENCE AGAINST LESBIANS AND GAY MEN DOES NOT BEGIN AT THE MOMENT A POLICE OFFICER PERCEIVES A STEREOTYPICAL FAGGOT OR DYKE--EITHER ALONE OR IN THE COMPANY OF OTHERS. LIKE RACISM, HOMOPHOBIA--THE HATRED OF LESBIANS AND GAY MEN--PERVADES AMERICAN SOCIETY AND CAN LEAD TO OUR ANNIHILATION AT THE HANDS OF POLICE. THESE RACIST AND ANTI-GAY ATTITUDES ARE CONSTANTLY REINFORCED BY THE SAME SOCIETY WHICH BESTOWS UPON THE POLICE THE JOB OF "PROTECTING THE CITIZENRY". THE POINT IS, THAT AS A BLACK GAY MAN, I OFTEN ASK, "FROM WHOM DO I NEED PROTECTION? AND MORE OFTEN THAN NOT, THE ANSWER IS, "I NEED TO BE PROTECTED FROM THE POLICE!"

WE HAVE COME TODAY TO SPEAK NOT ONLY AS VICTIMS OF POLICE BRUTALITY, BUT ALSO AS A CONCERNED COMMUNITY DETERMINED TO BREAK THE YOKE OF OPPRESSIVE BEHAVIOR COMMITTED AGAINST US, WHILE MANY IN OUR SOCIETY

STAND BY ALLOWING THESE ACTS OF VIOLENCE TO HAPPEN.

TODAY, I AM HERE TO INFORM YOU ABOUT OUR HISTORY OF AND CURRENT STRUGGLES AGAINST POLICE BRUTALITY. I HAVE TALKED ABOUT ACTS OF POLICE ABUSE AGAINST THE GAY AND LESBIAN COMMUNITY AS SOMETHING WHICH OCCURS DAILY. MOST OF THESE ACTS ARE NEVER HEARD ABOUT NOR SEEN BY THE GENERAL PUBLIC. HOWEVER, AT LEAST ONE INCIDENT OF POLICE BRUTALITY AGAINST THE LESBIAN AND GAY COMMUNITY WAS HEARD AROUND THE WORLD.

IN JUNE 1969, AFTER SUFFERING YEARS OF POLICE HARASSMENT, ABUSE AND BRUTALITY, GAYS AND LESBIANS FOUGHT BACK AGAINST YET ANOTHER POLICE RAID AT THE STONEWALL BAR. FOR THREE DAYS, WITH HANDS, FEET, BOTTLES, STICKS AND WHATEVER ELSE WAS AVAILABLE, WE SENT THE POLICE A CLEAR MESSAGE: "WE'RE FIRED UP, WE WON'T TAKE IT NO MORE! WE WON'T BE YOUR VICTIMS! WE WON'T SUFFER YOUR BRUTALITY! WE WON'T ALLOW OUR BROTHERS AND SISTERS TO BE ARRESTED, BEATEN AND KILLED! WE DEMAND OUR RIGHTS AS CITIZENS!"

IT WAS NO ACCIDENT THAT OUR COMMUNITY'S MOST VULNERABLE MEMBERS-- LESBIANS AND GAY MEN OF COLOR, AND TRANSVESTITES --WERE AT THE FOREFRONT OF THIS BATTLE.

DYKES, FAGS, BUTCH, FEM, WOMEN, MEN, BLACKS, WHITES, HISPANICS, OTHER PEOPLE OF COLOR, TRANSVESTITES... WE WERE ALL AT STONEWALL, STANDING TOGETHER TO SAY TO THE POLICE: "I HAVE PRIDE! I HAVE DIGNITY! I HAVE RESPECT! I WILL NOT ALLOW YOU TO DESTROY NOR CHANGE ME!"

THIS OUTBREAK OF GAY PRIDE--THIS "STONEWALL REBELLION"--BECAME THE CATALYST FOR THE LESBIAN/GAY RIGHTS MOVEMENT. IT TRIGGERED A REACTION TO POLICE BRUTALITY FELT AROUND THE WORLD. WHEN YOU HEAR, "REMEMBER STONEWALL", YOU SHOULD ALL REMEMBER THAT IT WAS BECAUSE OF POLICE BRUTALITY AGAINST OUR GAY COMMUNITY THAT STONEWALL IS CELEBRATED TODAY, TOMORROW, AND WILL BE FOREVER!

DESPITE THE UPRISING AT STONEWALL, AND BECAUSE HOMOPHOBIA IS SO DEEPLY ROOTED WITHIN THE FABRIC OF THIS SOCIETY, DAILY ACTS OF POLICE BRUTALITY CONTINUE--SOMETIMES REACHING SUCH BLATANT PROPORTIONS THAT THEY SEEM UNREAL. ON SEPTEMBER 29, 1982, BY ALL ACCOUNTS CURRENTLY A MATTER OF PUBLIC RECORD, 30 TO 40 "NEW YORK CITY'S FINEST" STORMED INTO BLUES BAR, A GAY BAR LOCATED AT WEST 43RD STREET IN MANHATTAN, PATRONIZED PRIMARILY BY BLACK AND HISPANIC GAY MEN AND LESBIANS. THESE POLICE OFFICERS LOCKED THE DOOR AND PROCEEDED, WITHOUT PROVOCATION OR JUSTIFICATION, TO LINE UP THE PATRONS AND EMPLOYEES AGAINST THE WALL AND BRUTALLY BEAT THEM. HEADS, FACES AND BODIES WERE HIT, GROINS WERE KICKED, REQUIRING MANY TO SEEK MEDICAL CARE AFTERWARD.

THESE OFFICERS, SUPPOSEDLY RESPONDING TO A CALL THAT THERE WAS A FIGHT IN THE BAR, WENT ON A BLOODY RAMPAGE, SHOUTING ANTI-GAY AND RACIST EPITHETS. THEY THREW BULLETS ON THE FLOOR AND CALLED THEM "GAY SUPPOSITORIES", WHICH NEXT TIME THEY'D SHOOT UP GAY ASSES". THEY BATTERED A DISABLED MAN ON A BARSTOOL BECAUSE HE COULDN'T WALK TO THE BACK WALL FAST ENOUGH. THEY DESTROYED THE INTERIOR OF THE BAR.

THE SAD TRUTH IS THAT NO ARRESTS WERE MADE, EITHER OF ANY PATRONS WHO WERE ALLEGED TO HAVE BEEN INVOLVED IN A FIGHT NOR OF ANY OF THE POLICE OFFICERS WHO ENGAGED IN THESE ACTS OF VIOLENCE. THE SAD TRUTH IS THAT NO ONE, INCLUDING MAYOR ED KOCH OR THOSE IN HIS ADMINISTRATION, FEEL COMPELLED TO ADDRESS THIS ISSUE, ALTHOUGH TOMORROW IT WILL BE EXACTLY ONE YEAR AND TWO MONTHS SINCE THIS BRUTAL INCIDENT OCCURRED.

I ENTERED BLUES BAR AROUND 5 pm ON SEPTEMBER 30TH, THE DAY FOLLOWING THE POLICE RAID. I HAD NEVER SEEN SUCH TOTAL DESTRUCTION SINCE MY DAYS IN THE JUNGLES OF VIETNAM. IT WAS AS IF A POWERFUL, DEADLY TORNADO HAD WREAKED TOTAL HAVOC WITHIN THE FRAME OF THE BUILDING WHILE ALLOWING THE OUTER STRUCTURE TO STAND. BOKEN BOTTLES, GLASSES AND MIRRORS WERE SPEWED ABOUT THE FLOOR. THE POOL AND GAME TABLES OVERTURNED, BASHED IN

AND STREWN ACROSS THE FLOOR. THE DJ BOOTH WAS DISMANTLED, WITH RECORDS BROKEN, TURNTABLES BUSTED AND SPEAKERS DESTROYED. BLOOD WAS EVERYWHERE-- SPLATTERED ON THE FLOOR, ON THE WALLS, ON EQUIPMENT--A TOTAL WASTELAND. SOME PATRON, THE BARTENDER AND BOUNCER WERE THERE TO TELL US ABOUT WHAT HAPPENED.

THEIR STORY IS ONE IN WHICH A POLICE FORCE BECAUSE OF ITS RACIST, SEXIST AND HOMOPHOBIC ATTITUDES CAN, ON PRETENSE, RAID A BAR IN THE HEART OF MANHATTAN--VIRTUALLY NEXT DOOR TO THE NEW YORK TIMES--LOCK THE PATRONS IN THE BAR; BEAT AND KICK THEM ABOUT THE BODY WITH NIGHT-STICKS, CLUBS AND BOOTS; SHOUT RACIST, SEXIST, HOMOPHOBIC EPITHETS; WREAK TOTAL HAVOC AND DESTROY A PLACE OF PUBLIC ACCOMMODATIONS--AND RETURN AGAIN AND AGAIN WITHOUT FEAR OF PUNISHMENT FROM THE PEOPLE WHO ARE RESPONSIBLE FOR THE GENERAL SAFETY, SECURITY AND PROTECTION OF ALL CITIZENS IN NEW YORK.

THIS VIOLENT RAID WAS IGNORED BY THE STRAIGHT MEDIA. EVEN THE TIMES REFUSED TO REPORT THIS TOTAL VIOLATION OF CIVIL AND HUMAN RIGHTS. WE IN THE LESBIAN AND GAY MALE COMMUNITY ASK WHY, BUT ALREADY KNOW THE ANSWER. AS THIS SOCIETY'S MOST VULNERABLE MEMBERS, GAYS AND LESBIANS OF COLOR, ARE TOO OFTEN REJECTED BY OUR ETHNIC AND RACIAL COMMUNITIES AND EXCLUDED FROM THE WHITE-DOMINATED LESBIAN AND GAY COMMUNITY. CONSEQUENTLY, THE POLICE BELIEVED THEY COULD ACT WITH IMPUNITY AND FEARED NO REPRISAL.

MORE THAN A YEAR HAS PASSED, AND WE HAVE NOT RECEIVED ANY ACTION WHICH WOULD IDENTIFY THOSE 30 TO 40 OFFICERS WHO PARTICIPATED IN THE BLUES RAID. NOR HAS POLICE COMMISSIONER MURPHY (THE COMMISSIONER AT THE TIME OF THE RAID) DONE ANYTHING WHICH ASSURES US THAT A SERIOUS RESPONSE WILL BE FORTHCOMING. NOR HAVE ANY MEASURES BEEN TAKEN TO PREVENT ANY REOCCURANCE OF VIOLENT POLICE RAIDS.

THEREFORE, I PRESENT TO THIS SUBCOMMITTEE MY STATEMENT, PLUS COPIES OF NEWSPAPER ACCOUNTS AND PICTURES OF THE BAR. I URGE YOU TO BE SERIOUS ABOUT YOUR INQUIRIES. THE SPECTRE OF RACISM, SEXISM, AND HOMOPHOBIA ARE INEXTRICABLY LINKED.

AND WHILE THE BLUES RAID IS CERTAINLY THE MOST VICIOUS ATTACK ON OUR COMMUNITY, IT IS NOT AN ISOLATED INCIDENT. IT REFLECTS A PATTERN WHICH, THOUGH UNRECORDED, PERVADES OUR SOCIETY. WHEN RACISM AND HOMOPHOBIA IN THE POLICE FORCE INTERACT FOR LESBIANS AND GAY MALES--AND PARTICULARLY THE PATRONS OF BLUES BAR--THE RESULTS ARE DEVASTATING AND DEADLY. IF WE DON'T FIND WAYS TO STOP ALL FORMS OF POLICE BRUTALITY, AND PARTICULARLY ITS MOST BLATANT FORMS DIRECTED AGAINST THE LESBIAN AND GAY MALE COMMUNITY, BE ASSURED IT WILL CONTINUE TO OCCUR IN SOCIETY AT LARGE. AND YOU, AS ELECTED REPRESENTATIVES OF SOCIETY, HAVE A RESPONSIBILITY TO ENSURE THAT ALL THE CITIZENRY ARE PROTECTED--BE THEY BLACK, HISPANIC, ASIAN, NATIVE AMERICAN, WHITE, FEMALE, MALE, GAY OR STRAIGHT.

AS GAYS AND LESBIANS, WE ARE HERE TO ASK: WHAT IS YOUR RESPONSE, WHEN THE POLICE OFFICER SWINGS HIS NIGHTSTICK A FEW MORE TIMES BECAUSE THE TARGET IS GAY OR LESBIAN? WHAT IS YOUR RESPONSE, WHEN THE POLICE SHOUT RACIST AND ANTI-GAY EPITHETS AS THEY HARASS, BEAT UP, THROW INTO JAIL AND FURTHER VIOLATE THE RIGHTS OF LESBIANS AND GAY MEN? WHAT IS YOUR RESPONSE, WHEN THE BULLET IS FIRED AND ANOTHER LIES DEAD OR DYING BECAUSE THE COP BELIEVES THIS ACT "PROTECTS" THIS SOCIETY FROM UNDESIRABLE ELEMENTS--US, LESBIANS AND GAY MEN.

NOBODY KEEPS STATISTICS ON THE DEATHS AND INJURIES TO PEOPLE WHO ARE SUSPECTED OF BEING OR ACTUALLY ARE LESBIANS OR GAY MEN. INDEED, WE CAN BE AND ARE SUBJECTED TO ADDITIONAL ABUSE SOLELY BECAUSE WE ARE LARGELY INVISIBLE AND DEEMED MORE EXPENDABLE.

A CONCERTED EFFORT MUST BE MADE TO EDUCATE AND INSTRUCT THE POLICE OF THIS CITY THAT GAYS AND LESBIANS ARE NOT EXPENDABLE TARGETS. THAT THIRD WORLD PEOPLE ARE ENTITLED TO ALL THE RIGHTS AND PROTECTIONS AFFORDED WHITE CITIZENS. UNLESS IMMEDIATE AFFIRMATIVE ACTION IS TAKEN BY OFFICERS IN THE POLICE DEPARTMENT AND THE ELECTED OFFICERS WHO SUPERVISE AND ESTABLISH THIS POLICY--WE CAN ANTICIPATE A REOCCURRENCE OF INCIDENTS LIKE THE BLUES RAID, AND A CONTINUED EROSION OF OUR MOST BASIC RIGHTS AS CITIZENS.

FINALLY, WE ARE READY TO WORK WITH YOU TO ENSURE THAT THE RAMPANT POLICE BRUTALITY IS ABATED. HOWEVER, WE, AS MEMBERS OF THE LESBIAN, GAY MALE, AND THIRD WORLD COMMUNITIES, STAND READY TO MAKE CERTAIN THAT POLICE OFFICERS ARE HELD ACCOUNTABLE FOR INSTANCES OF BRUTALITY, ABUSE AND HARASSMENT.

WE SEE OUR PRESENTATION HERE TODAY AS THE BEGINNING OF THE KIND OF SUPPORT AND COMMUNICATION WHICH MUST BE ESTABLISHED IF THE HORROR OF POLICE BRUTALITY IS TO BE STOPPED ONCE AND FOR ALL. THANK YOU.

OCT 15, 1982

## 400 NEW YORKERS PROTEST 'BRUTAL' BAR RAID

More than 400 chanting demonstrators marched through the Times Square area of New York City on Friday evening, Oct. 15, to protest a violent police raid on the village, a predominantly black gay bar on West 43rd Street. An estimated two dozen customers were injured during the Sept. 29 police action, and approximately \$30,000 worth of furniture, supplies and sound equipment were destroyed.

Hours prior to the raid, rally leader Gwendolyn Rogers voiced the demands of a broad coalition of local gay rights groups for an independent investigation of the raid, an official apology to the bar owners, and to the black and gay communities, and reparations for the destroyed bar owners. Her organization links the raid to recent incidents in which the State Liquor Authority (S.L.A.) suddenly closed The Duchess and Don't You, two lesbian bars in Greenwich Village whose licenses were revoked following charges of discrimination against their patrons.

Ironically, the raid on Blue's occurred during the same evening that former Vice President Walter Mondale was in town courting gay support at the Human Rights Campaign Fund banquet at the prestigious Waldorf-Astoria Hotel. According to eyewitnesses, 20 to 25 officers entered Blue's at 11 p.m. with guns drawn. Witnesses said officers forced everyone present to face the wall, and proceeded to empty the cash register, smash bottles and mirrors, and attack patron-customer individuals, including a hand-wrapped man and several women. D.J. Dorsen and customer Joseph Smith were among the injured, about a dozen in all, who were taken to area hospitals. Both Dorsen and Smith required stitches to close head wounds.

Police officials claimed they were acting in response to a telephone complaint about a disturbance at the bar, but patrons deny any such provocation. According to Smith, the bar was quiet when police entered shouting: "This is a mother-fucking raid—every faggot and ballbagger to the rear!" Later, as police were leaving, one officer reportedly fired several bullets to the floor and ceiling out, "These are faggot supporters." Bar manager Lew Olive said that police had visited Blue's several times before the actual raid, frisking customers and threatening to drive away business by issuing summonses to transvestites and other patrons.

Allegations that the raid was motivated by racism and homophobia are supported by the fact that police made no arrests, claims attorney Enid Gerling, who represents the bar and 12 victims who are suing the city government for damages. "Usually in these cases they make one or two arrests for 'disorderly conduct' or something, just to cover themselves," said Gerling. "But this time they were in such a hurry to bust up the place, they forgot to arrest anyone."

The closing of the only two lesbian bars



**AFTERMATH:** Wounds and destruction were readily visible after the police raid on Blue's. Demonstrators took to Times Square two weeks later to express their anger. Sgt. Cochran led the police guarding the route.

in the Village also raised serious questions in the community. Although charges of discrimination against the two bars had recently been upheld in court, the abrupt closing of the two establishments was said to be a highly unusual procedure. Informed sources said that the S.L.A. generally issues warnings or levies fines in such circumstances. And even in cases of license revocation, sources said, it is not customary for authorities to remove liquor and cash from an establishment and handcuff a bartender, as was done in a raid on The Duchess late last summer.

Gay community leaders note that the Blue's raid comes in the midst of an apparent citywide surge in sentiment to

"clean up the streets." Village residents, however, only organized to press for removal of transvestites and other street people.

Herb Beckman, Mayor Koch's liaison to the gay community, has offered to assist those injured in the Blue's raid in filing a grievance with the Civilian Review Board. But at present, city officials had not responded to any of the demands put forth at the demonstration.

It was not clear what message the police department was sending by placing Sgt. Charles Cochran, the city's only openly gay officer, at the head of the contingent of officers guarding the Oct. 15 rally route through Times Square. Cochran did not respond to questioning.

Is there a cover-up? See Page 2.

## JUSTICE SLOW IN ANTI-GAY ATROCITY

The New York City News  
Feb 9, 1983  
Issue 64  
RARE  
Sept. 29, 1982  
Blues BAR, NYC



Aftermath of Blue's bar raid.

By Andy Humm

Assistant District Attorney John Fried has assumed authority over the investigation into the police raid on Blue's bar last Sept. 29. After the Civilian Complaint Review Board's investigation was terminated in October by the Central Internal Affairs Division of the Police Department, rapid progress has been made by the vigorous pursuit of facts by A.D.A. Fried. Witnesses are being subpoenaed by Lt. Puka of Internal Affairs for the D.A.'s office.

The Coalition for Lesbian and Gay Rights wrote to Manhattan D.A. Robert Morgenthau last month demanding a report on the investigation and has received no reply. [For a look at some unsettling aspects of the D.A.'s handling of the Blue's case, see the News Analysis in this issue.]

Police Chief of Operations Patrick Murphy reported to the Mayor's Council on Lesbian and Gay Issues on January 20th that "witnesses are reluctant to cooperate" and that Fried had issued the subpoenas. Lew Olive, supervisor of Blue's and a survivor of the attack, says that the investigators don't understand that "the people involved with

Blue's move, change their names, and are hard to find. Some have records and are afraid to testify." Olive has offered to help find the witnesses and to get them to testify.

Also reported by Murphy and corroborated by Olive was an incident at the bar on Dec. 30, when two off-duty policemen, not from Midtown South (the source of the September attack) caused a fracas in the bar. "We thought they were cops from the start," says Olive. "They tried to leave with beers and were stopped by the doorman because it's illegal." A melee ensued with one cop pulling a gun and the other trying to arrest a customer using handcuffs. 911 and the Midtown South precinct were called and police from Midtown South were on the scene within a few minutes, apprehending the troublemakers across the street. Murphy says that the officers received charges and were transferred out of Manhattan. Olive was pleased with the speed of the answer to his call. "We needed a quick response," he said, noting that the Sergeant and officers who came were "very courteous." (By order of the Manhattan Borough Commander, a Sergeant must respond to all calls or incidents at Blue's.) (Cont'd. on Page 2)

# Militant Blue's Rally Draws 1,100

A crowd of about 1,100 people marched on Times Square Friday, October 15, to protest recent police actions at Blue's, a predominantly black gay bar located on West 43rd Street. According to police estimates, about 800 of the marchers remained on the scene for a rally at Father Duffy Square which featured a variety of gay and Third World speakers.

Activists Gwendolyn Rogers and the Rev. Magora Kennedy led the marchers. Rogers listed the following demands in her speech to the crowd: that an independent investigation be conducted of the Blue's raid; that "an immediate end to police terrorism be established"; that official apologies be issued to the owner and patrons of Blue's, the Third World community, and the lesbian and gay community; and that reparations be made to the bar and to the victims of the September 29 police attack.

Rogers raised the marchers' fervor with the chant, "You're racist, sexist, anti-gay, Koch and cops go away!" Kennedy reminded the crowd of the police raid that preceded the 1969 Stonewall riots: "We cannot let this happen again. This [what happened at Blue's] is ten times worse than what happened at Christopher."

The angry marchers proceeded from Times Square west on 12nd Street, north on Eighth Avenue, east on 43rd Street past the bar, and then north on Broadway to Father Duffy Square for the rally.

Openly gay police officer Charles Cochran, in uniform, led a contingent of policemen walking in front of the marchers. Many female officers were positioned among the police patrolling the demonstration route. No violent incidents involving either police or demonstrators were reported during the event.

However, it was reported at a follow-up meeting of the demonstration committee that plainclothes police had photographed many of the demonstrators. An organizer recounted that, as a media liaison, she



a movie camera who floutly identified himself as being with the police.

In response to the reported police photographic surveillance of the demonstration, Dorothy Samuels, executive director of the New York Civil Liberties Union, has written to New York City Police Commissioner Robert McGuire requesting that justification be given for the surveillance. The letter also demands that any photos taken be destroyed so that they can not be placed in anyone's file. Samuels also voiced concern about alleged police photographing of marchers on Gay Pride Day last June.

When the marchers stopped in front of Blue's, a speaker reminded them, "Not only are we in front of Blue's, but we are also in front of the *New York Times*. We want to tell the *Times* that we exist. There are outraged people here who demand justice." Neither the *Times* nor the city's other two major dailies covered the September 29 raid.

Although speakers as diverse as Ed Murphy, Allen Roskoff, and Naomi Azuly delivered speeches, the emphasis re-



Demonstrators at the Blue's rally. Top photo by Richard C. Wandel; bottom, Steve Zinn/1982

portant that we see the significance of an attack on a black gay and lesbian bar. If racism were not the bottom line, any gay bar would have worked. Let us not close our eyes to the racism that has infested our world."

McCoy also addressed the police: "I hope you enjoyed your days of glory because they are coming to an end. I promise you that. The black community will not tolerate your racist brutality any longer. We are a people who have survived your racist attacks for 400 years. . . . We will not quit and you will not win."

Supportive telegrams came from Toronto's Right to Privacy Committee and from activists in San Francisco, who promised a solidarity demonstration. [See related story, "Rally on Coast Protests NYC Raid," this page.]

Gay representatives attended from several city offices, and Eric Roskman, Mayor Ed Koch's gay liaison, marshalled several gay leaders to work with the police as monitors.

At a follow-up meeting conducted by the demonstration organizers on October 19, there was generally a sense of satisfaction that so many people by New York gay community standards had been spared to come to the demonstration. It was noted, however, that the Black United Front and other non-gay Third World organizations had not taken part, and the organizers said that, in their view, more white gay men from the bar crowd should have attended.

In other follow-up action, Kennedy and Mitchell Karp of Black and White Men Together volunteered to act as liaisons to the Blue's victims with regard to impending legal action. A fact sheet on legal options has since been distributed to Blue's patrons.

The organizing committee's next meeting is scheduled for Tuesday, November 9; call (212) 242-1212 for more information.

## Brutal Gay Bar Raid Draws NYCLU Fire

On Wednesday, September 29, while former Vice-President Walter Mondale was addressing a gay rights dinner at the Waldorf hotel, thirty to forty New York City officers stormed into Blue's, a gay bar on West 43rd Street. According to eyewitness accounts, the raiders went on a bloody rampage, beating patrons over the head with nightsticks and shouting racial and anti-gay epithets. Many of the victims required medical treatment, and the bar's

disc jockey needed fifteen stitches for a head injury. Police officials later claimed that officers had been sent to the bar to stop a fight between patrons, but no one was arrested. And no explanation has been given for why so many police officers showed up that there were more of them than terrified patrons.

Soon after published reports about the raid, NYCLU Executive Director Dorothy Samuels wrote New York City Police Com-

missioner Robert McGuire to request "a thorough investigation regarding these serious allegations of police misconduct." She also cautioned the Commissioner to make certain that an upcoming demonstration against the Blue's Raid "is handled by police in the proper manner."

Informed in a reply by McGuire that a "comprehensive investigation" of the raid was underway, NYCLU Staff Attorney Richard Emery wrote to the Assistant District Attorney in charge of the investigation to urge that he obtain all relevant police records. "It is imperative," Emery wrote, "that whatever police misconduct occurred in relation to Blue's Bar and its patrons be punished so that this sort of incident will not be repeated."

The demonstration against the Blue's violence, which took place on October 15 in Times Square, raised another set of civil liberties problems. The NYCLU received numerous reports that police were in the crowd during the demonstration photographing the demonstrators. Dorothy Samuels again wrote to Commissioner McGuire, requesting that any such surveillance program be halted, and that immediate steps be taken to destroy any records that may have been created.

"Frankly," wrote Samuels, "I cannot imagine any rationale for such a program of surveillance other than to intimidate individuals from exercising their First Amendment freedoms. The picture-taking by itself is bad enough. Perhaps more chilling, however, is the knowledge on the part of the person photographed that his or her picture is likely to remain on file with local, state or federal authorities to be used without limitation in the future."



Times Square demonstrators protest police violence at Blue's.

Photo: Mark Fishburne

# The City

## Marchers Protest Raid on 434 St. Bar

Several hundred demonstrators marched through the Times Square area last night to protest what they called "police brutality" aimed at homosexual patrons of a bar on 434 Street east of Eighth Avenue.

"Hey, hey, ho, ho, police brutality has got to go," members of the crowd chanted as they marched from Times Square south on Broadway, then west one block on 42d Street, one block north on Eighth Avenue and then east on 43d, west back to Times Square.

Protesters carried signs and banners with such slogans as "Fight Lesbian and Gay Oppression" and "Hands Off Blues."

The demonstration, from 8 P.M. until after 10 P.M., was in protest of a raid of Blues bar Sept. 23, according to Sgt. Joseph Wilson, a police spokes-

man.

## Rally On Coast Protests NYC Raid

SAN FRANCISCO (via GPA Wire Service)—Despite pouring rain, more than 100 people turned out for an October 25 rally here in support of the New York victims of a brutal police raid on Blue's, a black gay bar. The demonstration took place on Fols Plaza, in front of a building that houses the San Francisco bureau of the *New York Times*, to protest that paper's refusal to cover the September 29 police attack.

Two candidates for San Francisco's Board of Supervisors were among the rain-soaked demonstrators: openly gay candidate Greg Day and Spartacist League candidate Diana Coleman. Other demonstrators included members of groups from the Revolutionary Socialist League to the Gay Olympic Flag Corps.

All the speakers at the rally protested the racist and anti-gay nature of the police attack on the bar; several also faulted the *New York Times* for failing to cover

the event, which is now being covered by the newspaper's headquarters in midtown Manhattan.

Pat Norman, co-chair of the Coalition for Human Rights, said that the coalition she represented felt "outraged and in ulted by the incredible lack of information the *New York Times* has given."

Jim Ivory of Black and White Men Together, referring to the alleged illegal seizure by New York police of bar patrons' personal belongings, suggested that not only sexuality but "racial invisibility" had been attacked by the police officers. He stressed that the Blue's patrons "will not suffer in isolation" and that "the abuse and pain would be radiated" through a national network of sympathizers.

"Racism can be beaten," insisted Tom Cahill, also of BWMT. "Otherwise, we might as well give up and let the bastards have it all."

*Los Angeles Herald*

NEW YORK  
Nov. 8-21, 1982  
Vol. # 2  
RAID  
Oct. 25/1982  
Blue's Bar, NYC

# Police Enter Blue's Again; Investigations Opened

On Friday, October 8, eight uniformed police officers and two plainclothes officers with their guns drawn entered Blue's bar, the second violent intrusion by police in less than two weeks. According to bar manager Lew Olive, the officers refused to state what they were doing in the bar. One customer reportedly was kicked in the groin by the police.

Before leaving, one of the officers, badge number 11437, who has been identified as Paul Zurlick, announced that since the first incident at Blue's made headlines in the *Village Voice*, "We're out to make the headlines again. We're going to break up this bar."

Afterward, Olive found out from the Midtown South Precinct that police were sent to Blue's that night allegedly because of a report that a man in the bar had a gun. "There was no man with a gun," Olive said.

The police return to Blue's is not the only ominous event to occur in the aftermath of the September 29 police raid of that predominantly black gay bar. In that raid, police beat and allegedly robbed patrons and employees. According to the attorney representing Blue's and its clients, Enid K. Gerling, one of the victims also received a death threat against testifying from a man on the street. Ed Murphy, the bar activist who organized an October 5 meeting to discuss what should be done in response to the raid, has received several threatening phone calls. "Nigger lover, get out!" Murphy quoted the callers as saying.

Gerling said in a phone interview, "This makes me sick to my stomach. Blue's is a licensed premise, a clean place. They [the police] can't get away with this. Maybe they felt because the victims

didn't quite seem upright citizens, they'd be too frightened to talk." Gerling is filing a class action suit against the City of New York on behalf of the victims.

She has also filed the victims' statements with the Manhattan district attorney's office, the Police Civilian Complaint Review Board, and Police Internal Affairs.

Gerling claims that neither the Civilian Complaint Review Board or Police Internal Affairs opened their investigations until Manhattan Borough President Andrew Stein contacted them. Stein's involvement began through a meeting arranged by his gay community liaison, Tom Burrows, between the borough president, Ed Murphy, David Penza (owner of Blue's), and a victim of the first raid. According to Burrows, Stein "was shocked by the devastation at Blue's. He was particularly upset by the reports that the police stole money."

Herb Rickman, Mayor Ed Koch's liaison to the gay community, contradicts Gerling. He insists that no one immediately came forward to press a complaint with the Civilian Complaint Review Board, which has power to press charges and take disciplinary action against police officers. Manhattan Borough Police Commander Milton Schwartz has also opened an internal police investigation into police behavior at Blue's on September 29.

Meanwhile, Rep. Ted Weiss (D-Manhattan) sent a letter to New York City Police Commissioner Robert J. McGuire supporting the investigation by the Civilian Complaint Review Board and urging him to ensure that it "is conducted with thoroughness and sensitivity."

According to Olive, since the September 29 raid, "Business is one-third to one-half off. It's mostly the regulars who

aren't showing up, although there were not many regulars here the night of the raid. The people who were involved in the raid have been coming back.

"The bar was completely restored within two days after the raid. In fact, it looks better now than it did before the raid," Gerling estimates that \$40,000 in physical damage was perpetrated by police on September 29.

The police action has been met by anger in the gay community. Burrows reports that his office has received numerous letters and telephone calls from "outraged" gays.

However, Ed Murphy, who arrived at Blue's to help the victims 15 minutes after police had left, points out, "This is not just a black issue, or even a gay issue. If the police get away with this, you could be sitting in any bar anywhere and they could do it to you too. . . . The police violated these people's rights. These police are criminals."

One of the results of the October 5 meeting was the planning of a march on Times Square, scheduled for October 15 at 8 p.m. as this issue of the *Nature* went to press. Plans called for the march to move west on 43rd Street to Eighth Avenue, south on Eighth Avenue to 42nd Street, east on 42nd Street to Broadway, and north to Duffy Square, at 46th and Broadway, for a rally.

Spokesman David France did not expect his group's request for a parade permit to be granted because the march will move against traffic on two streets. "The permit represents only a symbolic act," he said. "The parade will not be hinged on whether or not we get a permit. I expect a very militant and very angry demonstration."

Rickman said that his office, along with members of the Police Advisory Board, planned to have monitors at the demonstration to help ensure that neither the demonstrators nor police acted improperly.

Plans for the march have spurred misgivings about its value among some of those involved in the aftermath of the Blue's raids. Among them is Burrows, who feels that the march could serve to draw attention away from those who suffered. "The bar people feel it is their situation, and they feel that others are trying to take advantage of it to serve the political positions."

Burrows believes it is of primary importance that the Blue's victims make an effort to identify the officers who harmed them, and he urged the victims to aggressively press their complaints through legal channels. "If there is a band of generous cops out there, they have to be removed as soon as possible," he emphasized. Rickman said that anyone who comes forward to press allegations of police misconduct at Blue's will be protected.

In addition to the Civilian Complaint Review Board, Police Internal Affairs, and the D.A.'s office, Human Rights Commissioner David Rothenberg and representatives of the New York City Liberties Union have begun investigations for their organizations. Also, the Mayor's Problems Council on Gay and Lesbian People met on October 8 (its first meeting since last May) to discuss what happened at Blue's. However, not one of the victims was present, and only one third-world person, Joyce Hunter, took part in that meeting.

Eric Lerner

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### **Bureaucrats bury blues busts inquiry**

NEW YORK, NY — Four months after Blues, a black gay bar, was raided by 25 police and several patrons were severely beaten, it appears that city officials are content to leave the gay community's questions about the incident go unaddressed, reports the newsletter of Black and White Men Together, New York.

At its January meeting, the Gay Community Council invited representatives from both the District Attorney's office and the office of Mayor Ed Koch to speak to the concerns of gays and lesbians. The DA's office declined to send anyone and Herb Rickman, the mayor's liaison to the gay community sent an assistant, Steve Rossario.

Rossario was unfamiliar with the raid and could not explain his office's lack of interest in Blues and raid victims. He only promised to make public the findings of the DA's investigation. Rossario consistently referred to gays as "you" and the mayor's office and city officials as "we."

BWMT has promised to monitor the investigation and to pressure officials to ensure that the attacks on Blues and its patrons not be whitewashed by the police.

# FBI Enters Blue's Investigation

Manhattan District Attorney Robert Morgenthau reportedly announced at a closed meeting in late February that he was prepared to make a public statement that police were guilty in the September 29 raid on Blue's bar in midtown Manhattan even if his office found that no charges could be brought against the police who were involved in the incident. However, informed sources have told the *New York Native* that dissatisfaction with the district attorney's investigation was a factor in the decision of the Federal Bureau of Investigation to enter the case. The FBI opened an investigation in early April, exploring possible violations of federal civil rights law in the case of the raid, in which a phalanx of uniformed policemen entered the predominantly black gay bar, damaged property and beat several patrons without making any arrests.

During the late February meeting between Morgenthau and several gay activists—including Jim Levin, Bill Hirsch, and Ginny Vids of Gay and Lesbian Independent Democrats and Herb Rickman, Mayor Ed Koch's gay liaison—representatives of the DA's office highlighted some of the difficulties inherent in investigating and prosecuting the actions of police. Although specific officers have been placed at the scene of the raid, the prosecutors said they have not been able to ascertain from witnesses which of these officers committed criminal acts. Without proper identification, culpability cannot be es-

tablished. Criminal charges cannot be brought.

If, nevertheless, some sources believe the investigation is carried out by the Manhattan DA's office has been less than adequate. The photographs from which witnesses were asked to identify officers were said to often be out of date, in some cases dating from the officers' days as fresh recruits. Police officers reportedly have not been required to appear in a lineup for witnesses.

According to Lew Olive, manager of Blue's, the DA's office has not taken great pains to question witnesses. He said that he had provided prosecutors with a witness's home and work phone numbers, only to be told later that the witness could not be located. Olive then gave that information to the FBI, in order to establish it in the public record, before presenting it once more to the DA's office.

Olive recalled that there had been a pattern of police harassment of the bar before the September 29 raid. "Chief [Patrick] Murphy has said that it is a troublesome bar," Olive said. "The records might show that the police came to the bar several times on calls made by disgruntled persons on trumped-up accusations, but never have these calls turned out to be real. They were always a signment of someone's indignation. The normal reason was 'a man with a gun.' Not only did they never find a man with a gun, they did not have the basic infor-

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## FBI Enters Blue's Investigation

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mation such as a description to substantiate a reasonable expectation to ever find such a person." It was because the bar was "clean" on the night of the raid that no arrests were made and the police have found themselves cast in the roles of criminals.

Still, there has been a marked improvement in the DA's attitude toward investigating the assault on the bar since the February meeting, according to Jim Levin. Levin has volunteered his services as a lawyer to Blue's and its clients.

The bar has reportedly been doing well since the raid, with no further run-ins with Midtown South, the precinct that has been implicated. An incident that oc-

curred a couple of months ago, Olive said, demonstrates the improved relations between Blue's and the precinct house. Two white off-duty police officers from another precinct entered the bar intoxicated. They ordered some beers; then one of them pulled out his gun and the other hit handcuffs to arrest a customer for no apparent reason.

Olive said. "They never showed their badges. A call to Midtown South Precinct resulted in a quick response by several police. They apprehended the two officers, verified their identities and confirmed the state of their intoxication. This matter was left entirely to the discretion of police to handle, and we are gratified with their handling of an extremely delicate situation."

...ther said Lambda has not helped in

Steven C. Arvanette

## Police Assailed in Symposium on Racism

NEGATIVE 6/6/83

If the treatment which police and other governmental agencies dish out to lesbians and gay men has changed over the years, change can be measured only in the smallest of degrees. Today's more common methods of harassment—entrapment, false charges, bar raids, beatings, refusal of services—continue a tradition which is also familiar to racial minorities and to many women. These patterns of abuse have long been indistinguishable for those lesbians and gay men without race or monetary privileges: events in the past 12 months have extended those patterns even to New York's gay middle class. Exactly what can be expected of police and other governmental offices is not often seriously discussed at forums which are open to the public, as a panel sponsored by DARE (Dykes Against Racism Everywhere) did on May 17. That panel's evidence is best considered in light of the New York gay community's experiences of late.

The toll in the metropolitan area since last summer includes several women's bars closed by the State Liquor Authority; the infamous Blue's bar raid by members of the New York City police department; the entrapment of as many as 1,200 gay men at Rits Memorial Park by federal police; the shutdown of a pornography expo show by the city's vice squad; FBI harassment of NAMBLA (North American Man/Boy Love Association) members and former members, including searches of private homes and seizures of property; the abusive treatment of AIDS patients in local hospitals; numerous police beatings of lesbians and gay men reported from such locales as Washington Square Park and along Second Avenue in the 50s.

These are only the major incidents reported to gay organizations or in the gay press. Most of these actions are outright illegal; a few, at best, are discriminatory applications of the law.

Most recently it has been learned that Deja Vu, a predominantly black lesbian

bar on Washington Place in the Village, was again raided by the State Liquor Authority. The city's vice squad refused to confirm the report, and Deja Vu management will not discuss it. According to one witness, the bar was charged with operating without a liquor license (which was revoked by the SLA), the receipts, cash, and liquor were confiscated, and the bartender was arrested on or about April 30. The witness said that two women, one black and one white, had come to the bar early in the evening and "partied" until a knock at the door was followed by as many as 20 vice squad members. The two women flashed badges and made sure the troops could get in and that the bartender stayed behind the bar so she could be charged.

Another popular bar, Van Buren's on West 46th Street, suffered from regular "inspections" by the Fire Department at peak weekend hours before it abruptly closed in February. Understandably, the owners of the newly opened women's bar Network, on Sixth Avenue at 16th Street, say they expect to be closely scrutinized by state liquor and other authorities.

September's brutal police raid on Blue's, the black gay male bar which shares a block of West 43rd Street with the *New York Times*, resulted in a number of serious injuries, extensive damages, and no arrests. The widely publicized attack drew loud responses from the lesbian and gay community, but was defiantly repeated by police a week later. Four separate investigations were announced, including one by the police department and one by the Manhattan district attorney's office, with no results to date. The Federal Bureau of Investigation reportedly entered the case in early April. Is this good news? The FBI's unfriendly history with the lesbian/gay community includes extensive information dragnets as well as outright harassment.

It has been difficult to judge the impact, if any, of the large demonstration

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Continued from page 11

staged in support of Blue's last October. Some gay anti-violence activists speculate that the demo capped a worrisome trend in behavior toward gays, which seemed to begin while Mayor Ed Koch was campaigning for governor. Throughout the summer, says one activist, complaints about the police were increasing, and at the same time, the city's Police Advisory Council—headed by Herb Rickman, Koch's gay liaison—refused to hold its usual meetings with those lesbians and gay men who tend to meet with governmental bodies.

The audience and six invited speakers at DARE's panel are not among those lesbians and gay men who generally meet with any police advisory council. The speakers each presented incidents from their own lives of police abuse or brutality. Their common conclusion was, as James Credle of Black and White Men Together said, "These institutions are not for us."

"Blue's is still an unresolved situation," Credle said. He was called there shortly after the police attack on September 29. "When we talked to the people the police picked to beat—it was the transvestites, the lesbians, the more effeminate men," Credle said.

Credle also emphasized, as did the other black speakers, that distinctions between getting harassed for race or for sexuality seem unimportant. Many said they often check their responses to police and other authorities from a well-learned fear of heavy reprisals.

"I never let anything slide, so I'm at danger of getting shot or killed at any time," Candice Boyce told the small audience.

Boyce related that just before she was to join the military in 1962, she was attacked by a cop while she was making out with her girlfriend in a park. Boyce's response to the attack temporarily injured the cop but had more long-term effects for her. She was handcuffed to a pipe at the local precinct house but continued to give mouth to the police there. One cop "blackjacked the shit out of me... mostly where it wouldn't show," Boyce said. When later reprimanded by a judge, "I had to take it in my body not to jump across the bench and drag his ass out of there."

The result of the charges was that Boyce was prevented from joining the service: the whole experience "became the crux of the new me," she said. "I didn't trust a soul and I didn't care about too many of them either."

More than a dozen years later, an argument with a white, anti-gay storekeeper in Queens led to a fight and to charges of attempted murder. "The cops came in and all they saw was black on white," Boyce said. By then she had support from numerous gay friends, who bailed her out and helped her win the case. "The women there kept me going," said Boyce. But, she warned, "I can't fight no other fight. I can't be beat. I can't be stomped on. You can do it maybe, but you'll be in the best fight of your very life."

Jean Nestle of the Lesbian Herstory Archives related the constant threat a mere decade ago of police intrusion into the private lives of lesbians. "I can't explain to lesbians today how completely under police surveillance we were," Nestle said. Working-class women who "used the streets" were especially vulnerable. She told of undercover police trying to entrap women in the Sea Colony, a '50s classic among New York lesbian bars. During raids, "police would thrust their hands into women's dresses" and grab their breasts to "prove" they were women. "The vice squad was an occupying force in the '50s," Nestle said.

DARE members also discussed the event—which is now being held at the Lesbian Herstory Archives—because lesbians and gay men need to be reminded of when the police really serve. Earlier Joan Gibbs had criticized the presence of openly gay police officer Charles Coyle as a speaker at last year's Lesbian and Gay Pride rally as an indication that gay community leaders are often misguided in their efforts. "What we need is that increased police presence being met with increased acceptance of the police within the gay community. The experience of those present at the panel discussion indicates that this is not the way to protect ourselves in a homophobic society."

The discussion following the presentations tended more toward threats about the police-as-the-army-of-the-State and some even suggested that to ask the police

for help with directions was to be duplicitous. This still did not diminish the power of the evidence presented. The evening's only real shortcoming was a lack of information about the recent spate of anti-gay attacks. Such elusive information is an important weapon for the disenfranchised. A NAMBLA member, for example, mentioned the intensified surveillance and imprisonment of boys; however, the issue was ignored—while lesbians and gay men can ill afford to do. Homophobic attacks are underreported and undercast, but when information is there it must be shared and discussed in the community and traded across organizational and ideological lines. Like a class war society, the representation was from Gay and Lesbian Democratic Party with the district attorney to discuss the investigation of the police behavior at the rally, that information must make it way to activists at a DARE site soon.

The organizers of New York's gay community is a fragmented one that when posed back on the topic of lesbian and gay rights, has a wide range of opinions. The New York Civil Liberties Union, for example, the donors who paid \$1000 to the Fund to Harmlessly Destroy the "Nefarious at the Plaza Hotel. If gay men and lesbians are to "sweat out our opponents in the rest of society, it would be helpful if the fragments of our community overlapped now and then, rather than angrily receding to each other in the abstract.

Pete Byrne

PARALLEL LINES presents Genderolla PART NINE

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1983 GOLDIE

## Firing of Attorney Disrupts Blue's Suits

The owner of Blue's bar, David Penza, has dismissed the services of attorney Enid Gerling, thus abruptly ending legal proceedings on behalf of the bar to claim reparations for approximately \$30,000 in physical damage to it perpetrated by police during a raid on September 29. The dismissal also leaves in doubt the status of a class action suit that had been filed for the victims of the raid.

At least 11 of the people injured by police at Blue's are interested in pressing civil suits, according to Mitchell Karp of Black and White Men Together. Analyzing the legal situation at a November 9 meeting of the Blue's demonstration committee, he observed that the victims' prospects for collecting substantial cash settlements are dim. They can ask for compensatory damages from the City of New York in state court; however, none of them were injured seriously enough to lose income due to their injuries, although nine required some hospitalization.

To ask for punitive damages, which



About 50 people demonstrated outside the State Liquor Authority offices in downtown Manhattan Wednesday, November 10. The demonstration was called by Lesbian Feminist Liberation and the Coalition for Lesbian and Gay Rights to protest the Liquor Authority's decision to take liquor licenses away from the Duchess and Deje Vu, two lesbian bars. Speakers included gay activist Allen N. Roskoff and City Council members Miriam Friedlander and Henry Stern. The vocal crowd carried posters and leafleted passersby. There was no response from the Liquor Authority. Photo by N.E. Karp

would entail greater cash settlements, the Blue's victims would have to press their charges through federal courts. In federal court, however, a plaintiff can sue only individuals, not a city, which means that suit would have to be brought against the individual police officers.

A major problem lies in identifying the officers involved in the raid. Since the victims were lined up facing the walls of the bar while they were being clubbed, they did not have much opportunity to identify those who were beating them.

The necessity of identification—combined with the fact that police officers are not often wealthy—decreases the chances of the Blue's victims receiving significant cash settlements.

Still, there remains strong interest on the part of the New York Civil Liberties Union in pursuing the Blue's incident as a violation of civil rights. Representatives of civil liberties groups, including the NYCLU's police brutality project, met October 26 with Karp and with Lew Olive, manager of Blue's. According to

Dorothy Samuels, NYCLU executive director, the meeting helped her to get the "feeling of the incident being part of a pattern. There were several other abusive raids on Blue's."

In order that a pattern of harassment might be proven by those pressing civil suits against police because of their behavior at Blue's, Samuels said she got assurance from the Manhattan district attorney's office that no police records concerning Blue's would be destroyed. Police often destroy records of 911 and patrol car calls.

Karp, among others, feels that a police harassment campaign against Blue's has been partly successful, pointing out that, according to Ohff, business is still 30 to 40 percent off. "If a harassment campaign is squashed by the courts but business falls off significantly, then economic harassment has been successful," Karp said.

Currently investigations into the police raid on Blue's are being continued by Police Internal Affairs, the Manhattan district attorney's office, and, most recently, the Federal Bureau of Investigation, which is investigating charges of federal civil rights violations.

Also related to the Blue's incident and aftermath, the *New York Native* has filed a request under the Freedom of Information Act for copies of surveillance photos that are believed to have been taken by New York City police during the Blue's demonstration on October 15. The request is still pending as this issue goes to press. *Eric Lerner*

Preliminary Report

**National Minority  
Advisory Council  
on Criminal Justice**

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**POLICE USE OF  
DEADLY FORCE**

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# POLICE USE OF DEADLY FORCE

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## Preliminary Report

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August 1978

BY:

Dr. Gwynne W. Peirson

National Minority Advisory Council  
Senior Researcher  
on Criminal Justice

Points of view or opinions stated in this document do not necessarily represent the official position or policies of the U.S. Department of Justice.

This report, *Police Use of Deadly Force*, is the first publication of the National Minority Advisory Council on Criminal Justice.

The National Minority Advisory Council (NMAC) is a 15 member multiracial council created on June 18, 1976, by the Administrator of the Law Enforcement Assistance Administration. In addition to geographical representation, the Council is composed of Blacks, Hispanics, Asian, and Native Americans. Its establishment represents the first time in the history of the nation that an all minority council has been assembled by an agency of the Federal Government to explore, in detail, the problems of crime and criminal justice as they impact on the minority community. In addition to being advisory to the Law Enforcement Assistance Administration relative to the impact of its program on the minority community, the Council is also charged with the responsibility of advising federal, state, and local governments on the issues of crime and criminal justice as they relate to minorities throughout the nation.

In carrying out its charge, the Council has a research staff, has commissioned experts to prepare position papers, and has held public hearings throughout the various regions of the nation.

The information gathered from the literature reviews, research papers, and public hearings clearly pointed out that a major and most pressing concern in the minority community was the police use of deadly force and the disproportionate number of minorities killed by the police.

The police are in the unique position of being legally sanctioned to use firearms as a means of social control. Whereas traditionally, there has been an attitude and philosophy which tended to automatically view the use of deadly force by the police as justifiable, the Council found that the minority community considers this a major problem and vocally questioning the killing of citizens by the police.

The Council saw two fundamental issues emerge from its examination of the police use of deadly force: (1) are the rights and lives of citizens being forfeited without due process by police officers charged with enforcing the law, and (2) what is the response of the criminal justice system itself to such instances and particularly, considering the fact minorities are vastly over represented in the ranks of those killed.

Because of the seriousness of the problem, and the widespread concern that exist in the minority community, the Council decided to cover this matter in a separate report rather than waiting for the release of its major report during the first part of 1979. In addition to covering the nature and extent of the problem and how it is responded to by the criminal justice system, this report also presents a number of recommendations designed to address the issue.

The views and recommendations presented in this report are those of the Council and do not necessarily represent those of the Department of Justice. Although LEAA provided funds for the work of the Council, it did not direct the work and had no voting participation on the Council

The Council expresses its sincere thanks to the many people who presented both written and oral testimony before it. We are extremely grateful to Dr. Gwynne Peirson and Dr. Reid Montgomery and the members of their staff for their dedicated work in putting this report together.

Lee P. Brown  
Chairperson

## POLICE USE OF DEADLY FORCE

## INTRODUCTION

It is belatedly coming to the attention of the public at large that many more people are killed by the police than there are police killed in the line of duty, and that a sizeable number of citizen deaths at the hands of the police are neither legally nor morally justifiable. The police are unique in that they are not limited to taking a human life in self-defense, but are also legally empowered to kill in some circumstances because the "suspect" failed to obey the officer's order to halt, or was "believed" to be in the act of committing a serious crime. Although in theory police regulations covering the right of the officer to use deadly force are more limiting than the criminal law, in actuality there is little indication that the great majority of departments stringently enforce those rules. In practice there is overwhelming evidence that the system, including police, prosecutors and courts, functions to protect police officers who have killed citizens. Moreover, there is strong evidence to indicate that many of these killings and their "legal" justification are the result of racism.

Homicides committed by police officers are of particular concern to racial minorities because they continue to be the victims of these killings at a very disproportionate rate. Statistics obtained from the United States Public Health Service indicate that killings by the police - which are listed under both Death by Legal Intervention and Homicide or Injury by Intervention of Police, remained fairly constant through the 1950's and then began a dramatic increase during the 1960's and into the 1970's. A statistic that has remained constant throughout the entire period, however, is the percentage of blacks among those killed at the hands of the police. Based on the U.S. Public Health Services statistics, blacks represent approximately 45% of more than six thousand individuals who died at the hands of the police between 1950 and 1973. (See tables I & II.)

It should be noted that even these statistics do not accurately measure the degree of minority involvement as to victimization at the hands of the police. Both the F.B.I. and the Department of Public Health Statistics tabulate Hispanics both as whites and as "others." This was noted in one study which made the observation that:

The proportion of Hispanic people in the various groupings, for example, is subject to considerable error. Many persons listed by the Census Bureau as Hispanics, brought up in homes where Spanish was spoken, may be listed by the police as black. On the other hand, many persons from Puerto Rico and Cuba consider themselves in the "white" category rather than in the Hispanic.

In contrast to the ease with which information can be gained about the killings of police officers (see the annual reports issued by the Federal Bureau of Investigation), data on killings by the police is extremely difficult to obtain from official criminal justice sources. Official detailed information

covering homicides committed by police officers is seldom made available to outsiders by police departments without a court order.

In defense of the high percentage of blacks and other minorities among those killed by the police, authorities are quick to point out that these statistics closely approximate the percentages of these minority group members among the arrest totals for violent crimes. In 1973, partially in response to a public outcry over the police killing of an eleven (11) year old black youth in Staten Island, the New York City Police Department did make available to the New York Times a sampling of arrest records and other documents for 100 homicides, 200 rapes, 200 felonious assaults and 200 robberies that took place in 1971. The Times' analysis of these seemingly carefully selected cases found that:

In a city where 34% of the population is estimated to be black or Hispanic, 59% of those arrested in homicide cases were black, 25% Hispanic, and 16% white.<sup>2</sup>

The newspaper study then went on to cite police department statistics which showed that the racial statistics on victims of police killings closely approximated the racial statistics on arrests for violent crimes. Obviously the intent here was to justify the inordinate number of racial minorities who were killed. If the intent had been to provide information from which an objective and more accurate analysis could have been made, the killings would have been compared to racial statistics on convictions rather than arrest. The inordinate arrest rates for minorities with no subsequent prosecution or without successful prosecution is well documented. The use of arrest statistics rather than conviction rates has long been used by the police - and the F.B.I. - to give a very slanted view as to what racial group is most likely to be involved in criminality. Again, the available evidence indicates that racism is a motivating factor in the continued use of this very dubious method of measuring criminal involvement by race.

#### INVESTIGATIONS AND CONCLUSIONS IN POLICE KILLINGS

In addition to the police investigation of a homicide committed by a police officer, the official language used in describing such incidents to the news media is intended to imply justification and necessity. Sorel (1950) pointed out that when a police officer kills a citizen, the official statements usually describe the act as "deadly force," thereby suggesting, before any investigation is conducted, that the force used was legitimate. By contrast, the killing of a police officer is referred to as "violence" or "murder," and therefore illegal. The police themselves band together to take part in a ritualism that is intended to emphasize their grief and their united anger over the death of their fallen comrade. Funeral services for police officers killed in the line of duty are usually attended by several high ranking public officials in addition to several hundred police officers from different cities and even from different states. The news media gives full coverage to such funerals, invariably showing a procession of police motorcycles leading the procession.

By contrast, the funeral of a citizen killed by the police, even in situations where it is determined that the citizen had committed no offense,

seldom receives attention from public officials, the police, or the news media. These practices imply a relative lack of importance of citizen deaths at the hands of the police, and have the effect of eliciting a similar conditioned response from the public at large.

An additional factor which tends to promote public acceptance of killings by police officers is that responsible officials, i.e., police chiefs, coroners, prosecutors, judges, etc., deliberately mislead the public by their statements and their actions involving such investigations. One of the most commonly used tactics of the prosecutor when faced with a situation where there are demands for some action following a questionable killing by a police officer is to submit the case to a grand jury. The great majority of such hearings result in the grand jury refusing to indict the officer. The prosecutor is then "off the hook." He can take the public position that he carried out his sworn duty and presented the case to the grand jury and that they ruled against him by their actions. The public does not know, however, what evidence and what witnesses the prosecutor put before the grand jury in presenting his case. When pressed as to these details the prosecutor/district attorney is prone to point out that by law jury proceedings are secret, and that as an officer of the court he is obligated to respect that secrecy and therefore cannot comment on any of the specifics of the case.

This scenario was carried out after the 1968 shoot-out between Oakland (California) police officers and members of the Black Panther Party. Panther member Bobby Hutton was killed by the police after he exited with his hands in the air from a house in which he had been hiding. The police claimed that Hutton suddenly ducked down and attempted to escape by running through a group of officers who had surrounded him.

The district attorney submitted the case to a grand jury after some community groups openly questioned the accuracy of the police version of the killing. Based on the evidence and the witnesses called before them, the grand jury ruled that the killing was a justifiable homicide. A local newspaper reporter continued to investigate the case, however, and learned that the only two black police officers who witnessed the killing had given statements, recorded by a stenographer in the District Attorney's office, in which they denied that Hutton had made any attempt to escape and that the reason he lowered his hands was because he lost his balance while being shoved and kicked by the officers surrounding him. These statements were not presented to the grand jury. In fact, it was learned that a year after the grand jury met to hear the Hutton case, the two statements had still not been transcribed from shorthand.

When the reporter attempted to inquire as to why these statements had not been used, and why the black officers had not been called before the grand jury, the district attorney, who had sole responsibility for presentation of evidence and witnesses replied that it would be "inappropriate" for him to discuss the grand jury proceedings.

Another method commonly used to determine justification in killings by police officers is to submit the case to a coroner's inquest. These inquests are not binding on any other judicial process, and in theory are intended to decide only the cause of death of the deceased. Inquests are generally held

by the coroner at his discretion, with or without a jury. This is not an adversary proceeding. The rules of evidence do not apply and only witnesses selected by the police or the coroner are called. In some such hearings legal representatives of the deceased appear, but their ability to ask questions is at the discretion of the coroner. In some such situations the attorney for the deceased's family will be permitted to submit written questions to the coroner. The coroner, however, has full discretion as to whether these questions will be put to any witnesses.

Some coroner inquests are held before a jury. Most jurisdictions have no particular requirements about the character of the jury, and it is therefore not uncommon for the jurors to be picked from the street, often from among those individuals who frequent the area around the coroner's officer in hopes of making the few dollars that is paid such jurors. Once the hearing is completed the jury is instructed by the coroner as to what their verdict will be. The jury makes no independent decision and is only a useless leftover part of ancient custom.

Whatever decision is reached by the coroner - or the jury, it has no legal effect on the prosecutor and his responsibility to decide whether there exists a basis for bringing criminal charges in connection with the killing.

Prosecutors still use the coroner's verdict, however, in arriving at a decision as to whether to bring charges against police officers involved in killings. The public is generally not sufficiently sophisticated to understand the ways in which this process is used to subvert the intent of the criminal justice process.

This system, which provides an institutional escape route for both police and prosecutor, has a well documented record of nonaction. Kobler (1975) notes that statistics gained in Seattle are similar to those in many other cities across the country and that in Seattle, "for at least 20 years, no coroner's jury had declared a police killing to have been criminal; for 35 years no prosecutor had made a judgment different from that of the coroner's jury." Kobler noted that one case was an exception; "...the coroner's jury declared that the police killing was criminal and the prosecutor refused to go along with the coroner's decision."

The public's ability to comprehend the mechanism which theoretically serve them is further inhibited by publications that infer that these mechanisms do in fact function in the interest of justice. The prestigious Journal of Criminal Law, Criminology, and Police Science (vol. 54, 1963) published an article which concluded that from the coroner's inquest "there emerged a complete and accurate description of the events leading to and the circumstances immediately surrounding the police killings."<sup>4</sup>

The author studied 32 cases involving killings by police officers in Philadelphia.

Thirty of the 32 cases were disposed of by the medical examiner, who at the inquest exonerated the officers involved in the killings on the grounds that death was due to justifiable homicide. In the two remaining cases the officers were held for the

grand jury, indicted, tried by a jury, and found not guilty.

The article then went on to note that 28 of the 32 individuals killed by the police officers were "Negroes," and that:

The large number of Negro justifiable homicides in Philadelphia, both absolutely and relatively, might be interpreted as indication of racial discrimination by the police. Such an inference, however, would be unwarranted.

This unsupported conclusion was reached despite statistics cited by the author which indicate the average annual rate of killings of blacks by police was 5.47 per 1,000,000 inhabitants, compared to a white rate of .25 - a ratio of 22 to 1. It would appear from such statistics that a valid conclusion would be that a primary factor in a police officer's determination that a person is "suspicious" is that person's race.

It should also be noted that according to data supplied by the Philadelphia District Attorney's office to the U.S. Commission on Civil Rights, during the period of 1960-1970, eighty citizens were killed by Philadelphia police officers. Of that number 20 were white (25%), 59 were black (73%), and 1 was Puerto Rican. (See tables II & III.) In the face of such voluminous evidence that race is such an integral factor in police killings, the very act of denying the existence of racism without supporting documentation is itself racist.

While it has been noted that police officials, prosecutors, and judges are all offenders in approving and condoning police killings, it is obvious that the police officers who commit these acts are most commonly the offenders in changing, disguising, manufacturing and eliminating evidence necessary to prove criminal misconduct against them.

One of the more common police practices involves the use of a "throw down" or "throw away" weapon by an officer. Some officers normally carry a second gun which is unregistered and which is used to manufacture evidence against a suspect. A typical case of this type occurred in Dayton, Ohio, in 1967. A police officer, dressed in civilian clothes and wearing a Shriner's Fez, shot and killed a black man who, according to the officer, attempted to flee when the officer approached him with his weapon drawn. The officer shot and killed the black man who he "believed" was carrying a gun in his belt. During the subsequent investigation, the officer turned in a gun which he claimed to have recovered from the body. It was later determined that the suspected weapon which the officer claimed to have seen in the victim's belt was a smoking pipe, and then after the killing the officer went home and got the weapon which he turned in as evidence after claiming to have recovered it from the victim's body.

An all white jury found the officer not guilty of first degree manslaughter. One juror later stated that "the fact that he ran and (the officer) thought he had a gun was the important thing."

A similar type killing took place in Los Angeles in 1976. The officer

stopped a black man for questioning because he "suspected" that the subject's car had been stolen. (A later investigation disclosed that the black man had no criminal record and the car was not stolen). The officer first questioned the "suspect," and then ordered him to show the car's registration. When the "suspect" reached into the car's glove compartment the officer shot and killed him because he "believed" the man was reaching for a gun. A weapon was recovered at the scene, but was later found to have been "planted" there by the police officer.

During a departmental investigation the officer resigned from the force. Misdemeanor charges involving possession of an unregistered weapon were then filed against him. He pled guilty and was placed on probation. No charges involving the death of the citizen were ever filed.

Still another killing by a police officer and the use of a "throw away" gun is pending at this writing. In 1977, a Houston Texas officer killed a 17 year old car theft suspect after the suspect reportedly pointed a gun at the officer. The youth was killed by being shot in the back of the head. The weapon allegedly in the possession of the young suspect was recovered at the scene. The prosecutor submitted the case to the grand jury and presented two witnesses who testified that the dead youth had not had a gun. A third witness, however, supported the police version of the killing, and testified that the youth had been armed. This witness later publicly admitted having lied before the grand jury and was himself indicted for perjury.

Federal investigators have now determined that the weapon attributed to the suspect had been recovered by the police in 1964 as the result of their investigation of a suicide. Police property records then indicated that the gun was "destroyed" in 1968.

Circumstances, of the type that surfaced in this case, lend credence to the charge that prosecutors do, in some instances, act - or fail to act - in such a manner as to protect police officers facing charges involving criminal homicide. To believe that the prosecutor in the Houston case was objectively attempting to present the true facts to the grand jury, one must not only believe that he unknowingly used a witness who has now admitted committing perjury, but that he presented a weapon into evidence without checking police records to ascertain its ownership.

The foreman of the (Harris) County grand jury that refused to indict any police officers in this case later stated that the grand jury did consider the possibility that the police had planted a gun on the dead youth's body, but that they were never given much information about the weapon. The prosecutor who presented the case to the grand jury was quoted as being "surprised and saddened" at the news that there was a possibility that the police had used a "throw down" pistol in the killing.

The prosecutor, in defending his presentation of the case to the grand jury, stated, "when a policeman comes in and swears on a Bible, you're going to believe him. You can't abuse the trust in him (emphasis added)."10

Another Houston case involved an officer who was judged to have acted reasonable because he "thought" a suspect was armed. This case resulted in the killing of a black disabled Viet Nam war veteran. The shooting occurred in

1976, and took place after two police officers spotted the black man walking down the street, and decided that he looked "wild-eyed." The officers swerved their car across the road to confront the suspect. According to the officers, the suspect began to pull something from his pocket that "in the dim light I believed to be a pistol." The officers pumped eight shots into the black man, seven from one gun (presumably a standard 6 shot police revolver). The "pistol" they "believed" the suspect had, turned out to be a Bible.

When the case was presented to the grand jury by the prosecutor, only the two police officers and the prisoner they had been hauling at the time were called at witnesses. Three civilians, including a couple whose auto windshield was struck by one of the police bullets - which indicated that at least 9 shots were fired - were not asked to testify. One of these witnesses had previously stated:

The police officer got out of his car, (the black man) raised his right hand and said something to the officer, and the officer fired one shot. (The black man) fell to his knees and the officer continued firing. 11

The grand jury declined to return any indictments in the case.

The firing of multiple rounds by police officers is not without precedent, particularly in Houston. In early 1977 officers responded to a burglar alarm at a local Firestone tire store there. The first officer spotted the suspect inside, grabbed him and a struggle took place. The officer was reportedly stabbed in the thigh with a pair of scissors. He then fired thirteen shots at the suspect. Medical examination disclosed that all the shots struck "within a relatively tight pattern in the dead man's torso."<sup>12</sup>

A case which provides a classic example of the problems to be faced in prosecuting police officers for homicide involved anywhere from two to six Buffalo, New York officers. According to witnesses, the victim was dragged by the hair from his sports car and fatally beaten. Reportedly, about nine men were involved in the beating. A medal of a type worn by Buffalo police officers was found at the scene after the suspects fled.

Among the factors which have blocked successful investigation and prosecution of the case are the following:

1. Three police officers suspected of involvement in the case refused to obey an order to appear in a line-up.
2. The chief at the department's Homicide Bureau allowed one of the officers to wear a bag over his head to avoid identification at the time of his arrest.
3. A State Supreme Court Justice barred both the press and the public from pre-trial proceedings in the case.

4. Another judge issued an order which barred the D.A.'s office and the police (emphasis added) from issuing photos of the suspects to the press. The order further allowed the suspects to wear hoods to conceal their faces and directed both police and the D.A. to assist the suspects in the use of a private passage way to avoid photographers.

The list of killings by police officers that are allowed to go unpunished seemingly grows longer by the day. A New York City officer shot a ten year old black youth in the back, "believing" him to be an adult robbery suspect. While standing trial for the killing, and in reply to the judge's question as to whether or not he could tell the difference between a ten year old boy and a fully grown man, the officer replied, "Your honor, all I saw was the color of his skin." The jury found the officer not guilty of the charges against him.

The degree to which officers who assault citizens are seemingly immune from criminal punishment is particularly emphasized in two cases in which innocent citizens were shot. In the first case, a young black businessman was shot in the back by a Chicago police officer. The victim of the shooting had found two men breaking into the juke box in his small cafe. He detained them and called the police. However, before the police arrived the suspects managed to flee. The young black man and a friend decided not to chase the suspects, and instead left the cafe after leaving word for the police as to where they could be found. A short time later they were stopped by two police officers who ordered them at gunpoint to put their hands on the top of a nearby car. Although both men complied with the order, one of the officers shot the businessman in the back with his 357 magnum pistol. The officer then kicked the still standing victim's feet out from under him, and while the wounded man was lying on the ground stated "Die nigger, die or I'll blow your brains out."

The young man spent seven months in the hospital. As a result of his injuries he lost part of his liver, spleen, gall bladder and appendix. For the first four months of his confinement he was shackled to his bed because he was charged with two counts of attempted murder.

He was later acquitted of the charges and the two alleged victims - the men who had been caught breaking into the juke box - gave statements in which they claimed that they would either be given probation or have the charges against them dropped if they helped convict the wounded man. To date no charges have been placed against the officer who did the shooting.<sup>13</sup>

The second shooting involved a Los Angeles police lieutenant who shot and wounded a suspect who had been arrested in connection with a reported rape of the lieutenant's 19 year old daughter. The suspects, both later found not to be involved in the offense, were brought into police headquarters. The lieutenant was notified of the arrests and when he arrived at the police station he immediately started shooting at one of the men, seriously wounding him. The officer then chased the second man through the building, but was subdued by other officers before firing any further shots.

In his trial for felony assault the prosecutor was seemingly unable to

convince the jury that the police lieutenant had wrongfully and illegally assaulted an innocent man. The jury found the defendant not guilty of the charges against him.

Another officer was found not guilty of the unprovoked cold blooded killing of a black youth. The jury found the officer to be insane - and therefore innocent - on the basis that he allegedly suffered an epileptic seizure which rendered him without control or responsibility for his actions at the time he drew his revolver, shot and killed the victim, reloaded the weapon and returned it to its holster, then turned and walked away.

A Chicago police officer, responding to a report of "rape in progress," fired his shotgun through the door of the rape victim's apartment, apparently in an attempt to shoot the lock off. The shotgun blast killed the victim of the rape. The officer was not charged criminally.

## RECOMMENDATIONS

All available evidence points to police homicides as a source of major and legitimate concern to minorities. Illegal police killings are continuing unchecked and unpunished. Without evidence that the criminal justice system as a whole intends to react forcefully against these criminal acts, minorities may well be forced to respond to police violence in the only manner left open to them. This very real possibility was noted by Takagi when he stated that:

Open warfare between the police and the citizenry might be one of the outcomes. Two recent attacks upon police station houses, one by a bomb and the other by shotgun wielding assailants resulting in the death of two police officers, are indicative.<sup>14</sup>

These killings under color of lawful authority must be brought to a halt. The factors which contribute to the steadily increasing rate at which police kill citizens, with no increase in the rate of successful prosecutions of police officers for criminal homicide can no longer be ignored.

Kobler states that:

Using the threat of death or severe injury to a person as criteria for justifiability of homicide, information on about 1500 incidents from 1960 through 1970 suggests that two-fifths of the police killings were justifiable, one-fifth questionable, and two-fifths unjustifiable. Such judgments are clearly academic, however, for less than one percent of police homicides are legally judged to be unjustifiable. (Emphasis added.)<sup>15</sup>

In order to be effective, changes must be made in the laws governing police use of deadly force. Additionally, and equally important, change must also come about in the methods of investigation and adjudication of killings by police officers. It is in these areas that our criminal justice system has shown the greatest weakness and the most marked inability to deal objectively, equally, and fairly.

These recommendations are intended to address these inequities and to make the criminal justice system more responsive to the rights of the citizens, particularly minority citizens:

1. That the police be legally authorized to use deadly force only when they themselves, or some other persons, are under immediate threat of death or serious injury.
2. In instances involving allegations of criminal misconduct by police officers, that there be a monitoring committee of at least two attorneys in private practice selected to observe and to evaluate both the pre-trial and the trial activities of the prosecutor which are related to the case in question. If requested, these "monitors" could also offer advice.

3. That there be established a modified form of determinate sentencing whereby all individuals employed by city, state or federal governments, who are convicted of crimes committed in their official capacity (violation of public trust) be ruled ineligible for probation and be sentenced under a formula based on the average sentence imposed in that jurisdiction for that particular offense against previous defendants.
4. In all instances where citizens are alleged to be the victims of police misconduct, and where there appears to be sufficient evidence to support the charge, whatever community type organization undertakes to represent the citizens' interests (ACLU, NAACP, MALDEF) routinely file civil suits in addition to any other action that is instituted.

Most important in addressing these problems is that a law be enacted limiting police officers to the use of deadly force. This particular recommendation has several changes in the laws rather than merely addressing departmental policy.

Based on research into the many departmental policies governing the police officer's use of his weapon, it is all too clear that enforcement of police department policy is too often applied, capriciously, discriminatorily, or not at all. An example of the decision not to enforce departmental policy was shown in a killing by a St. Louis police officer. Despite a prior ruling by the Chief of Police that the use of firearms was only justified when an officer's life was endangered by an armed person, or the lives of other persons were threatened, or the suspect was escaping after the commission of a serious crime; the officer killed a 21 year old black man who was suspected of being in possession of a stolen car.

The Chief decided to take no disciplinary action against the officer, stating that his own policies involving the use of weapons were only recommendations of an advisory nature. The Chief stated that:

I can't judge these men in this sort of thing.  
I know they are conscientious officers and did what  
they thought best.<sup>16</sup>

He then conceded that he believed any disciplinary action he attempted would not be upheld by the courts.

The second factor enhancing this recommendation's applicability is that it is concise in its meaning, clearly defined and uniformly understandable. It takes away from the police officer the right to punish suspects by invoking the death penalty because a "suspect" is "fleeing" from the commission of a suspected crime, or because the officer "thought" the suspect had a weapon.<sup>17</sup> Additionally, such a law would place the police officer, who is theoretically a professional, experienced in the use of weapons, in the position of being legally obligated, for the first time, to exhibit the same degree of discretion and reasonableness which the law requires of the average citizen.

Obviously such a recommendation addresses only a small part of the overall problem. It is equally important that the breakdowns within other segments of the criminal justice system be dealt with in a manner which will serve to

re-instill in minority communities a degree of faith in the willingness and ability of the criminal justice system to protect both their lives and their rights. The first step in addressing the inequities that exist in the prosecution of police officers charged with any criminal offense is to strengthen the prosecutorial mechanism. There is ample evidence to indicate that prosecutors are likely to put forward something less than their best efforts when prosecuting police officers. It has been noted that prosecutors rely on the police for assistance in the preparation of their cases. One source states that "it is therefore understandable that they never have been very enthusiastic about pursuing allegations of criminal wrongdoing against the police."<sup>18</sup>

The recommendation that a monitoring committee work with the prosecutor can serve multiple purposes. The presence of monitors can serve to insure that all available evidence and witnesses which can serve to strengthen the prosecutor's case will be considered for presentation to the court. More importantly, the presence of monitors can serve as a signal to both police who are suspects, police investigators, and police administrators that all investigations and negotiations will be open to objective, outside scrutiny.

Such monitoring would specifically include the prosecutor's presentation of cases before a grand jury. The secret, one-sided presentation of evidence intended to discourage grand juries from indicting police officers suspected of criminal offenses have been a time honored method by which prosecutors shirked their responsibility to uphold the law.

Judges also share in the criminal justice system's weak-kneed approach to prosecution and punishment of police officers. It is clearly evident that all too often the sentencing of police officers who have been convicted is based on race - both of the officer and the victim - and the fact that the courts exhibit a protectionist and sympathetic concern for the police officer rather than the victim. The judge in Houston who sentenced a police officer to one year for murder rationalized this light sentence by explaining that the crime was a "situational offense" that would not re-occur because the defendant was no longer a police officer. Contrast this attitude to that of the judge in a recent Maryland case that involves a black 15 year old who is charged with the murder of two police officers. In setting bail of one million dollars, the judge stated:

This crime is so shocking it has left the community in a state of disbelief. . . the community must be assured that the court understands the shock of these crimes. I'm going to set bond at \$500,000.00 for each life that was lost.<sup>19</sup>

Apparently the judge's expression of shock and sympathy were generated not entirely over the fact that two people lost their lives, but because it involved the lives of two (white) police officers.

The elimination of mis-use of judicial discretion during the sentencing process can best be gained by the establishment of the modified form of determinate sentencing.

While the previous recommendations have each addressed a specific element

of the criminal justice system, the last recommendation is aimed at holding the municipal or state government financially responsible for police actions. According to a survey conducted for the International Association of Chiefs of Police, liability suits against the police have increased more than four hundred percent since 1967. While it is true that only a very small percentage of these cases are decided against the police - less than four percent according to one source - local governments and their insurance companies are still obligated for the cost associated with investigation and defense of the suits in court.

The low success rate in suits filed against the police would seem to indicate that some of the same factors which inhibit fair and impartial adjudication of criminal accusations and charges against the police are also involved in the civil court process. Nevertheless, many insurance companies base their rates on claims made rather than claims lost. Because of this, many city governmental bodies are required to pay excessively high rates. As an example, policies that were available two years ago for \$65.00 an officer are now likely to start at \$200.00.<sup>20</sup>

Some law enforcement officials have expressed concern that the increase in cases against the police "may prevent the police from doing their jobs... for fear of being sued."<sup>21</sup>

Police departments and municipal governments are coming to recognize that civil suits are one of the most serious threats to their status quo. The invariable result will be that financial constraints alone will have a marked effect on local governments demanding a different standard of conduct from their police.

It is probable that the great majority of such cases filed revolve around allegations of excessive force. Although it is a sad commentary on our society, it is still true that social changes involving the police misuse of authority are easier to promote when city and police administrators recognize it as being in their financial interests.

Official violence against citizens, the majority against minority citizens, has reached epidemic proportions. Without positive actions by the criminal justice system to bring an end to these killings, both the citizens and the police will suffer. More violence on both sides can be expected because each side has come to view violence by the other side as the norm. The first step toward reducing the number of killings of and by the police is to enforce the law equally against the police.

Table I.

## DEATHS BY INTERVENTION OF POLICE

Year	MALES						FEMALES						TOTAL
	White		Black		Other		White		Black		Other		
	#	%	#	%	#	%	#	%	#	%	#	%	
1950	135	48	144	51	1		2						282
1951	115	51	107	47	3	1			2				227
1952	128	50	125	49			2		1				256
1953	124	49	125	49	5	2	1						255
1954	130	53	108	44	4	02			1		1		244
1955	111	49	111	49	3	01			2				227
1956	123	54	101	45	2								226
1957	119	52	106	46	3	01							228
1958	111	48	115	50	2				1				229
1959	109	48	115	51	2		1						227
1960													
1961													
1962	88	48	92	50	2	01	1		1				184
1963	111	46	127	52	2		1		2				242
1964	131	47	140	50	3	01	3	01	1				278
1965	154	57	114	42	3								271
1966	150	50	143	48	1		1		3	01			298
1967	200	52	177	46	5	01	2		3				387
1968	163	47	178	50	3		1		5	01			350
1969	160	45	188	53	2		2		2				354

Table I. (Continued)

Year	MALES						FEMALES						TOTAL
	White		Black		Other		White		Black		Other		
	#	%	#	%	#	%	#	%	#	%	#	%	
1970	154	46	174	52			2		3				333
1971	211	51	193	47	3		4		1				412
1972	136	45	156	52	4	01			4	01			300
1973	186	49	178	47	5	01	2		5	01			376
	3049		3615										

SOURCE: United States Department of the Census, Department of Vital Statistics

Table II.  
 PHILADELPHIA  
 CIVILIANS SLAIN BY POLICE  
 BETWEEN 1960 - 1970

YEAR	DECEASED			DISPOSITION
	BLACK	WHITE	PUERTO RICANS	
1960		1		Justifiable
	1			Arrest
			1	Arrest
1960 Total	2	1	1	Justifiable
1961	1			Justifiable
	1			Justifiable
		1		Justifiable
	1			Justifiable
1961 Total	4	1		Justifiable
1962	1			Justifiable
	1			Justifiable
	1			Justifiable
1962 Total	3			
1963		1		Justifiable
	1			Justifiable
	1			Justifiable
1963 Total	3	1		
1964	1			Justifiable
		1		Justifiable
	1			Justifiable
	1			Justifiable
1964 Total	8	1		
1965	1			Justifiable
	1			Justifiable
	1			Justifiable
	1			Arrest
	1			Justifiable
	1			Justifiable
1965 Total	6			

Table II. (Continued)

YEAR	DECEASED			DISPOSITION
	BLACK	WHITE	PUERTO RICANS	
1966		1		Justifiable
			1	Justifiable
			1	Justifiable
			1	Justifiable
		1		Arrest
1966 Total	2	4		Justifiable
1967		1		Justifiable
	1			Justifiable
	1			Justifiable
	1	1		Justifiable
	1	1		Justifiable
	1			Justifiable
	1			Justifiable
	1		1	Justifiable
	1		1	Justifiable
	1967 Total	7	5	
1968	1			Justifiable
	1			Justifiable
	1			Justifiable
		1		Justifiable
	1		1	Justifiable
1968 Total	4	3		Justifiable
1969	1			Justifiable
	1			Justifiable
1969 Total	7			Justifiable

Table II. (Continued)

YEAR	DECEASED			DISPOSITION
	BLACK	WHITE	PUERTO RICANS	
1970	1			Justifiable
		1		Arrest
	1			Justifiable
		1		Justifiable
		1		Justifiable
	1			Justifiable
	1			Justifiable
	1			Arrest
		1		Pending
1970 Total	13	4		Pending

SOURCE: United States Commission on Civil Rights

Table III.

PHILADELPHIA  
POLICEMEN SLAIN BY CIVILIANS  
BETWEEN 1960 - 1970

YEAR	DECEASED			DISPOSITION
	BLACK	WHITE	PUERTO RICANS	
1960		1		Arrest
1964		1		Arrest
1966		1		Arrest
1968		2		Arrest
1969	1			Arrest
1970	1			Arrest
		1		Open Case
		1		Arrest
1960-1970 Total	2	7		1 Open Case

SOURCE: United States Commission on Civil Rights

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# Appendices

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- I. The Michael Sherard Shooting
- II. The Gregory Coleman Shooting
- III. The Randolph Evans Shooting
- IV. The William Ray Shooting
- V. The Donald T. Herkes Shooting
- VI. The Joe Campos Torres Jr. Beating
- VII. The Randall Webster Shooting
- VIII. The Richard Morales Shooting
- IX. The Wallace Davis Shooting
- X. The Richard Long Beating
- XI. The Slain Drug Dealers Case
- XII. The Tiburcio Griego Santome Shooting
- XIII. The Louis Wallace Shooting
- XIV. The Carl E. Norman Shooting



## Appendix II

## The Gregory Coleman Shooting

Pender Cleared  
In Bike Slaying

By Stephen Green

Washington Post Staff Writer

A Superior Court jury yesterday found D.C. police Officer Charles L. Pender not guilty of involuntary manslaughter in the fatal shooting of a 16-year-old alleged bicycle thief on Aug. 11, 1972.

"You are free to go," Judge Norma Johnson told Pender, whose fate has been under a cloud ever since the shooting of Gregory J. Coleman.

Pender stood — at attention when the jury returned its verdict at the end of two days of deliberation. He breathed deeply as he heard the verdict announced and his wife, Beverly, began crying and buried her head in her hands as she sat in a front row seat in the courtroom.

During the five-day trial Pender testified that he shot Coleman in the back but that his 38 caliber revolver discharged accidentally when he tried to stop it from falling out of a holster that had been placed inside his pants. Pender was chasing Coleman as he rode away on a bicycle police had planted outside a Safeway store at 21st and L Streets NW in an effort to trap bike thieves.

The incident led to bitter denunciations of police by community organizations and police subsequently ended bicycle stakeouts.

Assistant U.S. Attorney Raymond Banoun asked Judge Johnson to poll the jurors individually. Each of the seven women and five men of the jury answered: "not guilty."

After Pender left the courtroom he embraced his



CHARLES L. PENDER

... "It's been so long."

wife and wiped her eyes with a white handkerchief.

Asked how he felt, Pender would only say: "It's been so long."

One juror came up to Pender afterwards, shook hands with him and said: "Officer Pender, I'm so happy for you." The jury had deliberated the case for two days after the five-day trial ended.

Pender was suspended without pay by the police department following his indictment last year for the shooting.

Pender's attorney, Joel Finkelstein, said he is confident Pender will be restored to duty. Pender was indicted two previous times for the shooting but the first two indictments were thrown out of court on the grounds they were improperly worded.

Coleman's family has filed a still-pending \$450,000 civil suit against Pender. In response to the suit, Pender said the youth "assumed the risk of serious bodily injury or death by committing a felony in the District of Columbia and attempting to escape from lawful prosecution."

The most recent indictment charged Pender with both voluntary and involuntary manslaughter. Judge Johnson threw out the involuntary manslaughter charge after Finkelstein argued there was insufficient evidence to support it.

Judge Johnson had instructed the jury that to convict Pender of involuntary manslaughter they would have had to find that his conduct was a "gross deviation" from what a normal course of action would have been under the circumstances.

Prosecutor Banoun said, "All along we wanted this case decided by the community and now the community has spoken."

The prosecution had urged Johnson not to dismiss the involuntary manslaughter charge. Banoun noted that three eyewitnesses testified that Pender had taken his revolver and in one smooth motion pointed it at Coleman's back.

The holster containing the revolver was not police issue and had no strap to retain the weapon. At the time of the shooting the holster was not clipped to Pender's belt, but was stuck inside Pender's pants.

C-2 Friday, March 11, 1974 THE WASHINGTON POST

Policeman Freed  
Of Slaying Counts

By Eugene L. Meyer

Washington Post Staff Writer

Charges against Charles L. Pender, the Metropolitan Police policeman accused in the shooting death of a 16-year-old alleged bicycle thief in August 1972, were thrown out yesterday by a D.C. Superior Court for the second time.

Judge George H. Goodrich ruled in a 12-page opinion that the indictment charging Pender with both voluntary and involuntary manslaughter was illegally "duplicitous." The government moved and appealed Thursday to the D.C. Court of Appeals. The appellate court ruled in the D.C. Court of Appeals that the duplicate terms of charging involuntary manslaughter and involuntary manslaughter were not intended to be separate offenses. The government's motion and reinstated Pender last November.

The second indictment was for the single charge of manslaughter. The government contended the jury could decide if the act was voluntary or involuntary. Either way, the maximum penalty would be 15 years in prison. Pender's lawyer immediately filed motions to dismiss the case on the grounds that the affair had been decided a speedy trial and that the dual indictment, though reinstated, was null and void.

"Mr. Pender didn't offer himself up as a guinea pig so the government could rewrite the law in the court of appeal," Finkelstein said at a pretrial hearing Feb. 21. "He wants to conduct. It is not over."

The shooting of Coleman, 6701 14th St. NW, occurred Aug. 11, 1972, outside a Safeway store at 21st and L Streets NW, where undercover police had planted a 16-year-old frequent bicyclist.

Accused officer Pender, 37, was demoted, fired and eventually discharged, while Gregory in the back. Pender pulled out his gun and shot Coleman from three feet away. All witnesses agreed that Coleman was riding away on the bicycle.

The case quickly became a political one with community groups who denounced the police and demanded action. Two weeks after the shooting, Police Chief Jerry V. Wilson ordered an end to such stunts.

Pender is answer to a \$450,000 civil suit filed by Coleman's mother, said that Coleman had "assumed the risk of serious bodily injury or death by committing a felony in the District of Columbia and at-

The U.S. attorney's office saw it differently and Pender was indicted by a grand jury a month after the incident. On Dec. 4, 1973, the day Pender's trial was to begin, Superior Court Judge Nicholas S. Tomasi ruled that Pender could be charged with involuntary manslaughter.

The government moved to the D.C. Court of Appeals. The appellate court ruled in the D.C. Court of Appeals that the duplicate terms of charging involuntary manslaughter and involuntary manslaughter were not intended to be separate offenses.

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Appendix III

The Randolph Evans Shooting

THE NEW YORK TIMES, WEDNESDAY, DECEMBER 1, 1931

Officer Indicted on Murder Charge In Shooting of a Brooklyn Boy, 15

By SELWYN BAER
A police officer who had never fired a gun in eight years on the force shot the 15-year-old Randolph Evans in the chest while the officer was in the act of shooting a 15-year-old Brooklyn boy on Thanksgiving night.

Officer Terney's lawyer, however, indicated for the first time that the 31-year-old policeman would attempt to prove that he had acted in self-defense during the "meekness" with which he shot Evans.
The shooting of the youngster in a block by a white officer had no street precedents in Brooklyn and was reported by the National Association for the Advancement of Colored People as possible racism.

On a related development, police officials said that a review of Officer Terney's personal record had disclosed the highest of moral and disciplinary offenses and they had no record for the "early rating system" used to indicate various forms of behavior.

Continued on Page 11, Col. 6

Whit. Star 12-1-31 15-Year-Old Shot on Street
Policeman Charged in Boy's Death

NEW YORK (AP)—A man of 31 who had never fired a gun in eight years on the force shot the 15-year-old Randolph Evans in the chest while the officer was in the act of shooting a 15-year-old Brooklyn boy on Thanksgiving night.

Officer Terney, who has been charged with the murder of the boy, was shot in the chest while he was in the act of shooting a 15-year-old Brooklyn boy on Thanksgiving night.

The officer's lawyer, however, indicated for the first time that the 31-year-old policeman would attempt to prove that he had acted in self-defense during the "meekness" with which he shot Evans.

Officer Indicted on a Charge of Murdering Boy, 15

Continued From Page 11

On the day of the hearing testimony from 15 witnesses in two days charged Officer Terney with the murder of the boy.

Young Evans was killed Thursday night shortly after 7 o'clock in a block at 415 Franklin Avenue, in the Crown Heights neighborhood, in the East River York section.

The \$20,000 bail for the officer, who had been fired since last Friday, was set by Judge Justice J. M. McLaughlin.

Case Called "Murder"
Arguing strenuously for bail, Officer Terney's lawyer, Edward Rappaport, said "killing" him in 1931 will prove that he was in a police officer's uniform in the act of murder.

Justice McLaughlin refused bail for the "murdered" policeman.

At the second bail hearing, Mr. Rappaport urged that Officer Terney be allowed to defend the boy's death.

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The D. A. may argue that his client had no right to be in the street at that time.

Mr. Rappaport told Justice McLaughlin that Officer Terney had been with his wife and children, aged 6 and 4, at 1150 Thompson Street, near the shooting.

He said the officer and his family had no right to be in the street at that time.

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At 11:30 A. M. on the morning of the shooting, Officer Terney was on duty at 415 Franklin Avenue.

Witnesses testified that Officer Terney was in the act of shooting a 15-year-old Brooklyn boy on Thanksgiving night.

Officer Terney's lawyer, however, indicated for the first time that the 31-year-old policeman would attempt to prove that he had acted in self-defense during the "meekness" with which he shot Evans.

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## The Randolph Evans Shooting (Cont'd.)

2 NEW YORK POST, THURSDAY, DECEMBER 15, 1977

# 2 MDs: Torsney's story 'impossible'

By MARC ROSENWASSER

Two prominent neurologists and epilepsy experts say it appears virtually impossible that police officer Robert Torsney was suffering an epileptic seizure when he killed an unarmed 15-year-old Brooklyn youth last year.

On Nov. 30, a Brooklyn Supreme Court jury judged Torsney insane, and therefore innocent of murder, after hearing testimony that the 32-year-old police officer suffered a psychomotor epileptic seizure when he shot Randolph Evans at close range.

The shooting of the black youth by the white patrolman touched off racial disturbances.

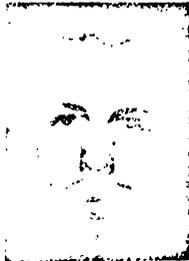
In a telephone interview yesterday with The Associated Press, Dr. Hart Peterson, associate professor of neurology at Cornell Medical School, termed the defense's description of the events prior to and after the killing "absolutely impossible" if Torsney was, in fact, suffering from a psychomotor epileptic seizure.

Dr. Eli Goldersohn, a professor of neurology at Columbia Presbyterian Medical Center and chairman of the professional advisory board to the Epilepsy Foundation of America, said portions of the testimony he saw showed that Torsney "remembered exactly what he was doing. He described his own reactions. That's what makes it just about impossible."

Both men said they would have been willing to testify at the Torsney trial if they had been asked by the Brooklyn District Attorney's office, which tried the case.

They stressed, though, they were relying on press accounts of the case for information.

Peterson, who also is chairman of the professional advisory board of the Greater New York Chapter of the Epilepsy Foundation of America, said it was highly unlikely although possible, that a person suffering a seizure could pull a gun, or fire it, or return it to a holster.



ROBERT TORSNEY

"What he couldn't do," according to Peterson, "is the whole connected series of events beginning with drawing the gun, in some way pointing it at the child, pulling the trigger and then putting the gun back into the holster. That's too complex an act to be considered a psychomotor seizure."

He continued "I can imagine a policeman who has a

psychomotor seizure pulling his gun and be found wandering aimlessly, but it's not possible to carry out this kind of complex activity."

Police officer Matthew Williams, Torsney's partner, testified that after Torsney shot the youth he took the spent shell from his gun, threw it away, and re-loaded the weapon.

Goldersohn said, "It's almost impossible to perform an act of that kind in a psychomotor seizure because one is in a depressed level of awareness."

The key to the defense case was the testimony of Dr. Daniel Schwartz, chief of forensic psychiatry at Kings County Medical Center, who said Torsney killed the youth when he suffered a seizure, then invented a story that the boy pulled a gun on him so that he could live with himself once he realized what he had done.

Repeated efforts to reach Schwartz for comment proved unsuccessful last night.

—AP

## The William Ray Shooting

W. Post      May 19, 1978

# Policeman Guilty Of Breaking P.G. Rules in Slaying

By Eugene L. Meyer  
Washington Post Staff Writer

Prince George's County Police Officer Peter F. Morgan was found guilty by a police trial board yesterday of violating departmental rules on the use of deadly force when he fatally shot an unarmed, fleeing shoplifting suspect last Christmas Eve.

The three-member panel reached its verdict with one dissent after 75 minutes of deliberation.

● Punishment could range from a reprimand to dismissal from the force. It will be determined by Police Chief John W. Rheads after the trial board makes its recommendation.

The two-day trial board hearing at police administration headquarters in Forestville climaxed yesterday with Morgan's defense that "I did what I had to do, in my mind, to protect the citizens of the community."

The shoplifting suspect, 23-year-old William Ray, who had been a drug addict, had stolen two items worth \$12.38 and was being processed at the Seat Pleasant station when he broke away from Morgan. Minutes later, in an alley across Madison Road from the station, Morgan fired Ray with a single bullet to the back of the head.

The shooting of Ray, who is black, by the young, white officer was followed by a second fatal shooting of another black suspect by a different Prince George's officer a few weeks later. The incidents revived old charges of racism against the Prince George's police.

Following the two incidents, Chief Rheads toughened guidelines on the discharge of firearms, banning "deadly force" except in cases of "clear and present danger" of serious injury or death to the policeman or someone else.

The old guidelines, which the trial board decided Morgan violated, permitted use of "deadly force" when an escapee endangered lives of others during escape or if an officer believed the escapee was dangerous to the community and would cause substantial injury to others before recapture.

Emerging from the hearing room after yesterday's verdict, Morgan bitterly described the entire proceeding as "insane."

See MORGAN, B2, Col. 6

## P.G. Officer Guilty Of Violating Rules In Slaying Man

MORGAN, From B1

"It's a political year," said Morgan, who was wearing a three-piece civilian suit. "I was a political pawn. I was guilty before I walked in the room. This was just a waste of time before I go to Circuit Court (to appeal the verdict) and get justice."

Morgan, 22, with less than two years on the force when he discharged his weapon for the first time in the fatal shooting, expressed confidence that he would ultimately "be reinstated. Naturally, I'm a little upset because it's embarrassing."

Earlier this year Morgan was found by a county grand jury to have committed no crime when he killed Ray Dec. 24.

Asked at the outset of his two hours of testimony yesterday whether he shot Ray "because he was black," Morgan declared, "absolutely not."

Morgan testified he was on duty at the desk at the Seat Pleasant station on the day of the shooting. Ray had failed to post a \$200 bond and so it was Morgan's task to place him in a holding cell pending his transfer to the jail in Upper Marlboro, Morgan said.

Ray was "nervous and jumpy," Morgan said, as he took a syringe from the prisoner's pocket. "He started he was shouting and trying to cut down. He was very jumpy," Morgan said. "I told him to be calm..."

He testified he was unsure exactly what happened next. According to other testimony, Ray pushed Morgan down and ran out the door, pursued by Morgan, who paused at the door to shout the first of three commands to halt.

Ray ran across Addison Road, nearly causing an oncoming motorcycle to overturn, according to testimony. Morgan said he thought that the motorcycle, which apparently sped on, had thrown its rider as he pursued Ray down an alley.

Morgan said he commanded, "Stop or I'll shoot!" but Ray continued running at full speed for a wooded area. Morgan described the chase as a "losing battle."

In his defense, Morgan said he considered Ray a desperate drug addict who needed a fix, had no cash to buy one, had exhibited a lack of respect for the law by pushing him aside in his escape, and had endangered the motorcyclist in his flight across Addison Road.

"I thought I got to stop him before something else happens," Morgan testified. "I figured a warning shot would stop him and it would possibly miss and there were houses and people. It was a clear shot. While running I stopped and pulled the gun up to the center of my body and shot and hit the defendant in the back. He fell immediately to the ground."

Asked to describe his state of mind at the time, Morgan said, "I was fearing if he got away he'd hurt somebody... It was a split second type of judgment. I'm not given time to sit down on a Monday morning and look at everything."

David Grover, the associate county attorney prosecuting the case, asserted that Ray "didn't endanger anyone in the process of his escape... This was not a Catch-22 incident."

## Appendix IV

## The William Ray Shooting (Cont'd.)

Thursday, Jan. 17, 1973 THE WASHINGTON POST

# Prince George's Policeman Faces Inquiry in Slaying

By David A. Mariani  
Washington Post Staff Writer

The Prince George's County Police Department disclosed yesterday it has charged county patrolman Peter F. Morgan with violating police regulations for fatally shooting a fleeing, unarmed shoplifting suspect in Seat Pleasant on Christmas Eve.

Morgan, a 35-year-old private, faces a disciplinary hearing before the police department's administrative hearing board next month. Mr. Robert M. Eidel, chief of the inspection services division, did not recommend a report what action the hearing board should take against Morgan. District 1-1 is the force in the most serious penalty that the board can impose.

In his report on Morgan's fatal shooting of 27-year-old William Ray, Maj. Eidel charged the young officer with violating two sections of the police department's general code on the use of deadly force.

According to Maj. Eidel's report, the key paragraph in those sections of the general code reads as follows:

"Firearms may be discharged only when the escape has endangered the lives of others during the process of the escape, or if the officer believes the escape is a danger to the community and will cause grievous bodily harm to others if he is not captured."

According to police accounts, Ray had been searched twice and was unarmored when he escaped from the Seat Pleasant district police station on the afternoon of Dec. 26 and was chased down Addison Street by Morgan. Ray was shot in the head by Morgan during this chase, after ignoring one order to halt, police said.

Morgan's attorney, Samuel Serio, said last night that the police department regulations on the use of firearms are "full of contradictions." He argued that another section of the code states that it is "lawful" to use deadly force "to prevent the escape of a felon attempting to escape lawful confinement."

See RAY, C3, Col. 3

## Officer in Slaying Faces Police Hearing

RAY, From C1

Morgan and his attorney were in Upper Marlboro yesterday in a heated argument over Morgan's actions in the shooting reported by the young Prince George's Officer when he opened a door to a shoplifting suspect, Morgan.

The grand jury heard testimony from three witnesses according to Morgan but not Morgan himself. He is willing to testify in his own defense.

A spokesman for State Attorney Lester A. Marshall said it is probable when Morgan is called to testify, he will be accompanied by the prosecutor in the grand jury. Morgan said at a press conference here in 1972 he had married a woman who decided to take a temporary leave of absence from her job in the county of Prince George's and to live with her parents in the city of Washington.

Morgan said he was in the city of Washington on the night of the shooting. He said he had to be in the city on the night of the shooting because he had to be in the city on the night of the shooting.

The grand jury panel of the Prince George's County Police Department is expected to meet in the Prince George's County Police Department on the afternoon of Jan. 18 to hear the testimony of the witnesses and to decide whether to return an indictment against Morgan.

Morgan will represent Morgan at the disciplinary hearing. The police department will be represented by a member of the County Attorney's Office, which is separate from the county prosecutor's office.

## Jury Votes Not to Indict P.G. Officer Evidence Insufficient in Killing of Shoplift Suspect

By William Jobs

Washington Post Staff Writer

A Prince George's County grand jury has refused to indict a police officer in the Dec. 24 shooting of a shoplifting suspect who allegedly attempted to escape from the Seat Pleasant police station.

The grand jurors, in a secret vote after hearing 10 witnesses in three days of testimony, decided there was insufficient evidence to indict Officer Peter F. Morgan on manslaughter charges.

The secret ballot was taken yesterday by 20 members of the 22-member grand jury panel. An affirmative vote of 12 of the jurors was needed to have been returned to return an indictment against Morgan.

The Morgan incident and the fatal shooting of burglary suspect Abraham Dickens less than a month later by Prince George's County Officer Lester J. Beitel have brought pressure on the department.

IN BOTH CASES the slain suspects were black and the accused officers were white. As a result, black leaders have vowed legal and political action against the white-majority county administration.

Both Police Chief John W. Rhoads and County Executive Winfield M. Kelly Jr. have dismissed insinuations that the shootings were racially motivated.

At a press conference yesterday, Rhoads said, "This isn't a racial issue."

Later in the day, Kelly said he is indeed sensitive to racial problems. Referring to black leaders' speaking out on the shootings, he said, "I assume that some of the things they are doing are for political purposes."

According to the police report, Morgan had arrested 33-year-old William Ray on charges of stealing \$100 worth of hams from a Coral Hills supermarket. After being booked and ordered held on a \$200 bond, police said, Ray pushed Morgan and fled from the police station.

In a nearby churchyard, police said, Morgan ordered Ray to halt, and when he did not, Morgan fired, striking Ray in the head. He died later in Prince George's General Hospital.

ALTHOUGH CLEARED by the grand jury, Morgan still faces

## MORGAN

Continued From D-1 administrative charges of unsatisfactory performance and using excessive force. He is to appear before a police trial board hearing on March 14.

Throughout the afternoon, Morgan, who was outwardly calm, waited outside Courtroom 4 on the second floor of the county courthouse, awaiting the grand jury's decision.

When he received word that he had cleared the court hurdle, Morgan said he was "relieved," and that he felt "very good." He conceded that he had been "somewhat worried."

Morgan added, "You start to feel like a criminal after a while, but I felt a majority of the people in the county felt there was more (to the case) than what was being printed."

He then defended his action, saying, "It's regrettable that a human life had to be taken . . . but it's the only course of action I had at the time."

Sylvester Vaughns, president of the county's NAACP branch, said last night that he was "not surprised" that Morgan was not indicted.

"We did expect it (the finding)," Vaughns said, adding, "The state's attorney's office is still battling 1,000."

Vaughns continued, "I'm convinced that the state's attorney's office didn't go after an indictment as vigorously as they could have."

AN NAACP ATTORNEY from New York has reviewed both shootings, Vaughns said, adding that the national NAACP is considering whether to file damage suits against both police officers and the county government.

## Appendix V

## The Donald T. Herkes Shooting

## POLICE KILL PLUMBER BY MISTAKE



Sheriff's deputies gather around the body of plumber Donald T. Herkes, 25, who was mistakenly shot and killed by police as he crawled from under a house with

a wrench in his hand. Police were hunting for a bank robbery suspect who had shot and killed a deputy at a suburban New Orleans bank. (Story on Page A-4.)

## Plumber Under House Mistaken for Gunman, Killed by Police

METAIRIE, La. (UPI) — Donald T. Herkes wasn't the armed man for whom police were searching. The plumber, tools in hand, was merely crawling under a house to repair a heater when police mistook him for the suspect and shot and killed him.

Herkes, 25, was shot in the chest yesterday by a plainclothes detective participating in a neighborhood search for an armed man who 20 minutes earlier had walked into the Metairie Bank and killed Deputy Robert E. Cochran, 32.

Cochran, the father of three and an eight-year veteran of the sheriff's department, worked as a bank guard while off duty. The bank had been robbed twice in the last two months and six times in the last 23 months.

Police theorized the gunman possibly intended to rob the bank, but panicked when he saw Cochran.

Eight blocks from the bank, Herkes was seen by police crawling beneath a house, said Jefferson Parish Sheriff Alwyn Cronwich. The sheriff said Herkes, who was repairing a heater, held a wrench and two screwdrivers in his hands.

Late yesterday Cronwich suspended the deputy who killed the plumber and refused to identify him.

The sheriff said the officer saw Herkes crawl beneath the house and fired at Herkes because he believed shots were fired at him.

"A deputy sheriff, assuming (Herkes) was the gunman armed and attempting to escape, and receiving no response to his order to halt, fired several shots, critically wounding Herkes," Cronwich said. "The deputy sheriff who fired the shot has been relieved from duty and a complete and intensive investigation is being conducted."

Richard W. Downs, 29, who lives next door to the home where Herkes was shot, said he heard gunfire and ran to his kitchen.

Downs said he stayed out of sight but opened a window beneath which police were crouched with guns drawn.

"The first thing that I kind of heard was 'I think you've got the wrong man' or 'They've got the wrong man,'" he said.

The bank gunman escaped.

### Police Shoot Wrong Man

New Orleans—A 25-year-old plumber working under a house near a suburban bank was shot and killed as police mistook him for the man who had killed a bank guard moments before.

A resident of the neighborhood said he heard seven or eight shots in rapid succession and then heard someone say, "I think we shot the wrong man." The lone gunman who tried to rob the Metairie Bank & Trust Co. got away.

The plumber, Donald T. Herkes, was shot as he crawled from under a house, a wrench in his hand. He died en route to a hospital.

Jefferson Parish Sheriff Alwyn Cronwich suspended the officer who killed Herkes, but refused to release his name. "A deputy sheriff, assuming (Herkes) was the gunman armed and attempting to escape and receiving no response to his order to halt, fired several shots critically wounding Herkes, a plumber," Cronwich said. The deputy sheriff has been suspended and an investigation was begun.

From staff reports and news agencies

W. Post  
Jan. 31, 78

## Appendix VI

## The Joe Campos Torres Jr. Beating

THE WASHINGTON POST Friday, Oct. 2, 1977

A 3

## 2 Ex-Policemen Convicted in Drowning

By Tom Curtis

Special to The Washington Post

HOUSTON, Oct. 2—Two former Houston policemen on trial for beating and drowning a Mexican American prisoner in their custody last May were convicted by a jury today of misdemeanor charges that will cost each no more than a year in jail and a \$2,000 fine.

The widely publicized case was moved on a chance of venue to Humble, a town of 20,000, about 70 miles north of Houston. It is the headquarters for the Texas prison system. All of the jurors were white, none was Mexican American and five either worked for law enforcement agencies or had relatives who did.

Outraged Mexican American spokesmen immediately called on the U.S. Justice Department to prosecute the case in federal court as a civil rights violation, for which the officers could receive up to life in prison. However, Houston's police chief issued a statement saying that the processes of justice have proceeded over 20 months.

The jury heard four weeks of testimony alleging that two police officers had taken Joe Campos Torres, 23, a laborer from a cheap housing project, where he was arrested for public drunkenness, to a secluded spot near a bayou where five of them beat him severely

while his arms were handcuffed behind his back.

After a jail booking officer refused to accept Torres because of his injuries and ordered him taken to a hospital, the officers returned to the secluded spot, where one of them allegedly pushed him over a 15-foot embankment into the water after saying, "Let's see if this wetback can swim."

The convicted former officers are Terry M. Denison, 27, and Stephen Grissold, 27. Two of their fellow officers were given immunity from prosecution in return for their testimony in state court against the pair: one other officer, Jason, relates misdemeanor charges, and one, a rookie who reported the incident to supervisors, remains on the 2,800-member Houston police force.

Denison testified that Torres had said he could swim and had jumped into the water. But Glenn L. Brinkmeyer, 23, one of those given immunity and an officer in whose wedding Torres had served as a groomsman testified that Denison had pushed Torres.

Brinkmeyer said Denison, although he boasted of throwing a man down a ravine and had beaten other handcuffed prisoners.

His men indicated that Orlando, who drove the patrol car in which Torres was transported, had encouraged Denison by "talking would be a good time" to see if "the wetback"

could swim. Torres, an American citizen and a former serviceman, was wearing combat boots at the time of the fatal plunge.

Torres' mother was quoted as saying "If five Mexicans killed a cop, it wouldn't be like this."

State Rep. Ben Reeves of Houston also a Mexican American called the verdict "pathetic" and "the worst miscarriage of justice that I've ever seen." He said it demonstrated once again that there is "a dual standard of justice" in Texas, adding, "Our only redress is the federal courts."

Reuben Bonilla of Corpus Christi who heads the League of United Latin American Citizens (LULAC) in Texas, called the verdict "the most deplorable and unconscionable in recent memory," and said he fears Hispanic American violence unless the Justice Department acts promptly to bring a federal case against the officers.

Hector J. Garcia of Houston, chairman of the Coalition for Responsible Law Enforcement, whose group has been meeting with police officials since last April, said violent police incidents here show no sign of abating.

Garcia said there had been progress to that Chief Harry Caldwell has required officers to register the extra weapons they carry with them, has banned the use of .30-caliber rifles, such as deer rifles, and has forbidden officers to shoot at fleeing suspects who aren't threatening their safety or that of others.

Nonetheless, Garcia said he is distressed by incidents, including the recent shooting death of a black police officer, erroneously believed to be an armed robber and of a 16-year-old unarmed Mexican-American burglary suspect.

In the case of the burglary suspect Garcia pointed out that a 16-year-old witness had disputed the officer's claim that the suspect had lunged at the officer. The 16-year-old had told police that the older boy was cowering against the wall when he was shot.

"The environment that created the Torres case continues to exist," Garcia said, "and we can expect a continuation of the same kind of thing."

The two officers convicted in the Torres' case are expected to be sentenced within a few days.

Their convictions were for criminally negligent homicide, a first-degree misdemeanor.

## The Joe Campos Tolles Jr. Beating (Cont'd.)

## Ex-Police Draw 1-Year Terms

THE WASHINGTON POST February 24, 1973

## Mexican-Americans Bitter Over Sentences Stemming From Torres Death in Houston

Bill Curry

Washington Post Staff Writer

HOUSTON — Three former city policemen who had escaped punishment in a state court trial, were given one year federal prison terms yesterday for violating the civil rights of a Mexican-American prisoner who drowned here after they had beaten him and now allegedly threw him into a bayou.

The sentences, which could have ranged up to life brought relief to the officers' supporters, but bitterness to the Mexican-Americans who had called to the cause of the victim, a hapless Vietnam war veteran named Joe Campos Torres.

Federal District Court Judge Ross N. Sterling explained the sentence by saying that the three men did not intend for Torres to die and that the three will never again find themselves in a position to repeat their crimes.

"That is an right," said a smiling Houston policeman, J. W. Zinn in a private office after the 23-minute sentencing. "That ain't bad at all. They won't be there 20 years but six months."

In fact, with time for good behavior, the three, Terry Wayne Denso, Stephen Orlando and Joseph James Jannish should each serve about nine months. They would then face five years of probation. The one-year term is little more than federal judges here usually hand down for imprisonment violations, according to the 16th district Office of U.S. Courts in Washington.

"I thought the (federal) government was going to take care of everything," said Margaret Torres, the victim's mother. "It's just a slap in the face. It's just getting away with murder."

"I got more than that when I broke probation as a kid," said an angry father, Gilbert Torres. "I don't think it was right. It wasn't right at all."

The federal civil rights charges were pressed under a new Carter administration policy calling for such prosecutions where state investigations or trials end in a manner that federal prosecutors consider unsatisfactory. That policy reversed a 20-year-old Justice Department practice of not acting where states already had

acted. That resulted in a life sentence for a former Castroville, Tex., police chief who earlier had received a 10-year sentence on a state charge of gunning down Rich Rucede Morales, a Mexican-American he had driven to a remote area.

The Torres case had become a rallying point among Mexican-Americans in Texas and the Southwest, where 13 of them have met death at the hands of lawmen in the past few years. Leaders in the Mexican-American community, citing alleged prejudice by police, prosecutors, and jurors, claim that these deaths go virtually uninvestigated, or happen when prosecution does result.

Orlando and Denso previously had been convicted of a minor homicide charge by a state jury that sentenced them to two years and then suspended that.

Mexican-American leaders had hoped that the Castroville case and a

still sentence yesterday would deter law officers from alleged mistreatment of Mexican-Americans. But Ruben Bonilla of the League of United Latin American Citizens said yesterday. "The progress Mexican-Americans had made in seeking the administration of justice has been lost."

Sterling said in imposing sentence that he felt "a long period of confinement would have little impact upon the operations of the Houston police department (where) I perceive the heart of the problem to lie." The department has come under increasing criticism for what some people see as repeated excesses in the use of force.

Federal prosecutors are now investigating the fatal shooting by Houston police of a 17-year-old Louisiana youth last year. They have learned that the gun the youth allegedly pointed at officers had been confiscated by police in 1966 after a parolee and had been listed as "destroyed" in police records.



STEPHEN ORLANDO



TERRY WAYNE DENSO



JOSEPH JAMES JANNISH

## Appendix VI

## The Joe Campos Tolles Jr. Beating (Cont'd.)

THE NEW YORK TIMES, WEDNESDAY, MARCH 29, 1978



Margaret Torres outside court in Houston after sentencing of former police officers in death of her son

### 3 Houston Ex-Officers Get Year in Death of Prisoner

HOUSTON, March 28—A Federal judge today imposed a one-year prison sentence on a former Houston police officer who was convicted last month of beating a Mexican-American prisoner and then pushing him into a bayou, where he drowned.

The former officer, Terry Wayne Denison, 27 years old, was also given a 10-year suspended sentence and five years probation by Judge Russ N. Sterling. Mr. Denison was convicted by a jury here Feb. 8 of having violated Federal civil rights laws. He could have received a life sentence under the statutes.

Two other former officers, Stephen Orlando, 22, and Joseph J. "Sonny" DeCeled, identical sentences today for their roles in the events leading to the death of Joe Campos Torres, a 23-year-old laborer, after his arrest in a barroom brawl.

All three officers were discharged from the Houston police force shortly after Mr. Torres's body was found floating in downtown Buffalo Bayou last May 8.

Mr. Denison and Mr. Orlando were found not guilty of murder charges in state court last October but were convicted of negligent homicide, a misdemeanor. Judge Sterling, just before imposing the

sentence, said that he believed "institutional incarceration would have little effect on the Houston Police Department."

One high Justice Department official said that he and his colleagues were "very disappointed" with the sentence. Local Mexican-American leaders also took issue with it.

"The Justice Department didn't fail, and the jury didn't fail," said Ruben Santistevan, a San Antonio lawyer a five-in-one repress cases. "The judge failed, and he failed miserably."

Judge Sterling was appointed to the federal bench by President Ford in 1976 after 18 years as a lawyer in the Houston law firm of Harris & Baker, where John B. Connally is former Texas Governor.

The judge closed the Torres case with a "vehement parol."

The officers "will never encounter again."

The three officers, along with two others also removed from the force and still facing prosecution for their roles, craves after a scuffle at a Houston tavern last May. Before taking him to the booking room, however, they drove him to an embankment overlooking the Bayou and beat him.

Mr. Torres then took him to the police station, but the admittance sergeant refused to book him because of his "saturated condition. Instead of driving the prisoner to a nearby hospital, as the sergeant had suggested, the officers returned to the bayou.

The court was told that Mr. Denison pushed Mr. Torres into the water where his body was found two days later.

"institutional offense" that the officers "will never encounter again."

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## Appendix VI

## The Joe Campos Tolles Jr. Beating (Cont'd)

4 Ex-Policemen Indicted  
In Death of Tex. PrisonerBy Bill Curry  
Washington Post Staff Writer

HOUSTON, Oct. 30—Two ex-police men who were convicted in local court of killing a Mexican-American prisoner, but who received sentences of one year in prison and \$3,000 in fines which were then suspended, were indicted today on federal civil rights charges that could bring three life imprisonments.

In addition, a federal grand jury today indicted two other former Houston policemen on charges of violating the civil rights of Joe Campos Torres. The four indicted ex-police men allegedly ganged up on the prisoner had beat him before one threw him into a Houston bayou while another allegedly said "this would be a good time" to see if "the waback" would swim. Torres drowned.

Today's indictments were hailed in the Mexican American community as public rebuffs to a law enforcement official on notice, as southern officials were a decade ago, that they may face federal action if local law enforcement fails to protect the rights of minorities.

The indictments reflected a Carter administration directive to reinstate an Eisenhower administration ban on federal prosecutions for civil rights violations on which state action had been taken.

The directive was issued specifically to bring about prosecution of another Texas law enforcement official who is accused of killing a Mexican American prisoner. And, another death of a Mexican American while in custody in Texas is under review by the Justice Department.

Today's indictments came as no surprise. After ex-officers Terry W. Lenson and Stephen Orlando, who had been charged with murder, were convicted of negligent homicide a misdemeanor, and their punishment suspended, the protest began. Even the city's police chief denounced a "tragic miscarriage of justice."

Gov. Dolph Briscoe, Attorney General John Hill, U.S. Sen. Lloyd Bentsen (D-Tx), representatives of a state that additionally treasures state rights as much as oil, all had called for legal action.

Denson Orlando, Joseph J. Janis, and Louis G. Kinney were charged with conspiring to injure and intimidate Torres—depriving him of his constitutional rights and resulting in his death. Conviction on that charge carries a maximum of life imprisonment.

Which officer Glenn L. Brinkmeyer was named an undicted coconspirator and was charged separately in a criminal information. After the indictments, he pleaded guilty to the federal charge, saying he was guilty of conspiring with the other officers to injure Torres as his conclusion.

Brinkmeyer had testified under immunity against the other four at the state trial. In the trial he testified



JOE CAMPOS TORRES  
drowned in a Houston bayou

that he had agreed with federal investigators to accept a one-year probationary sentence in exchange for his testimony on the federal charges, according to lawyers.

Other counts of the indictment charged deprivation of Torres' rights and that Denson, aided by Orlando, Kinne and Janish, pushed Torres into Buffalo Bayou last May 4 where Torres drowned.

The final count alleged that Lenson, Kinney and Orlando conspired with Brinkmeyer to obstruct justice by urging another policeman to misrepresent the facts of Torres' death to an FBI agent.

"We have to express our gratification with the indictment," said Ruben Bonilla, a Corpus Christi lawyer who is state director of the League of United Latin American Citizens. "I have faith the evidence will warrant a finding of guilty with appropriate prison sentences commensurate with the atrocious crime committed."

Bonilla praised U.S. Attorney General Griffin B. Bell for motivating the hard-core police that barred a federal prosecution following state court actions. The charge affects only civil rights cases and the U.S. Supreme Court has upheld the legality of second prosecutions.

Last month, James Hayes a former Castroville Tex. town marshal was convicted of violating the civil rights of Richard Morales with Morales dying. In a 1973 shooting it was that case that prompted Bell to change the Justice Department policy; a state court had convicted Hayes of aggravated assault and sentenced him to two to five years. He now faces a maximum on the federal conviction of life imprisonment.

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Wednesday, April 19, 1978 THE WASHINGTON POST

Judge Rejects U.S. Bid  
In Houston Police Case

By Bruce Curry

Special to The Washington Post

HOUSTON—U.S. District Court Judge Ross Sterling yesterday denied a motion by the Justice Department challenging the legality of probated sentences he gave three former Houston police officers convicted of felony civil rights violations.

The motion, which the government filed April 8, stemmed from the sentences received March 20 by ex-officers Terry Denson, Stephen Orlando and Joseph Janish, for their role in the death of Joe Campos Torres Jr., a prisoner who drowned while in their custody last year.

Sterling sentenced them to 10-year suspended terms, reduced to five years if probation for conspiracy to violate Torres' civil rights, a felony that resulted in Torres' death.

The three also received one year in prison on a misdemeanor count of violating Torres' civil rights by beating him. It was the maximum sentence permissible on the misdemeanor charge.

Sterling termed "entirely unprece-

dent" the government's motion, which contended that probated sentences are illegal in felony cases where the range of punishment runs to life imprisonment.

He said federal judges last year granted probation in 43 murder, rape and kidnap cases, all crimes for which life imprisonment may be imposed.

When asked if the government would appeal Sterling's ruling, C. Brian McDonald, the special assistant U.S. attorney assigned to the Torres case, replied: "I don't have an answer on that yet."

The government had called the probated sentences "entirely inappropriate" and had contended in its motion that "probation in this case will cause citizens of all races and backgrounds to believe the sentence was a result of the continuing inequality of treatment accorded to minorities." Torres was a Mexican-American.

The former officers were indicted on the federal civil rights charges last November after a state District Court jury sentenced Denson and Orlando each to one year's probation for criminally negligent homicide in the Torres case.

The state sentences led to protests by the Mexican-American civil rights leaders, as did the federal sentences the ex-officers subsequently received.

The League of United Latin American Citizens (LULAC) has urged that a three-judge panel be convened to censure Sterling for his sentencing in the case.

In explaining his decision to grant probation, Sterling had said "this is a situational offense which these defendants will never encounter again."

"They will never again be police officers and a long period of confinement would have little impact on the Houston Police Department, where I conceive the heart of the problem to lie."

The U.S. attorney's office here is also presenting evidence to a federal grand jury investigating two more cases of alleged civil rights violations by Houston police officers. Both cases involve police allegedly planting guns on suspects they have shot, to provide justification for the officers' use of deadly force.



## The Randall Webster Shooting (Cont'D)

12A / The Houston Post / Tues., May 16, 1978

## Webster slaying case figure pleads guilty to perjury

A Pearland man who admitted he had when he backed early police versions of the shooting death of Randall Alan Webster pleaded guilty in federal court Monday to committing perjury before a grand jury.

L.P. Duffers, 41, a truck company employee, told U.S. District Judge Carl D. Rice Jr. it was "true" he never saw an object he thought was a gun in Webster's hand before the 17-year-old Shreveport, La., youth was killed.

DAFFERS TOLD a federal grand jury Nov. 11 that he witnessed the slaying of Webster Feb. 8, 1977, following a high-speed chase in southeast Houston. For many police officers Duffers II. Rice said he faced in self-defense.

In his grand jury testimony, Duffers said Webster was driving facing the officer with his hands at waist level when he heard a shot and saw Webster fall to the ground.

WILLIAM K. Eitel, another former officer, pleaded guilty April 27 to supplying a "throw-down" gun

which a third officer at the scene planted on Webster's body. Duffers admitted Monday that Webster was already lying on the ground when he arrived at the scene at Telephone and Hall roads on his way to work.

HE TOLD The Post after his indictment that he made up his story of witnessing the shooting in order to impress fellow workers. He said he stuck to the version until March 31, when he first contacted the truth.

At that time, he said, he told investigators he knew late possible and right witnesses in the shooting that he had had in all his earlier arrests.

"RECEIVED UP his (grand jury) testimony, the investigation was delayed," said Louis Salinas, assistant U.S. attorney. "It appears that Webster was shot in self-defense."

Five officers have been fired and one has resigned in connection with the investigation. A grand jury is expected to take some kind of action in June.

## 5 Houston Policemen Are Fired, 1 Resigns In Death of Suspect

By Bruce Cory

Special to The Houston Post

HOUSTON—Houston Police Chief Harry Caldwell yesterday fired five police officers and accepted the resignation of a sixth reportedly involved in the February 1977 shooting death of a teen-aged burglary suspect by police.

One of the officers, William Byrd, 36, had said in federal court Thursday that he gave a "throw-down" gun to officer Marvel Holloway, which Holloway placed near the body of Randall Webster, 17, of Shreveport, La.

Officer D.H. Mays shot Webster after the youth led officers on a high-speed chase in a stolen van across the southeast side. Mays and other officers have contended the shooting was in self-defense.

Byrd's testimony did not explain how the unloaded .37-cal. pistol which police recovered in evidence from the scene of a 1971 murder, and which police recovered last year was exchanged in 1976, CALLED THE POST.

WILLIAMS fired Byrd, Mays, Holloway and officer John T. Olin and Lt. Paul Dillon. Officer James Estes resigned.

Caldwell refused to disclose what role Olin, Dillon or Estes played in the shooting or the initial cover-up of the incident.

In a plea bargaining move, Byrd, a five-year veteran of the Houston police force, pleaded guilty to "obstruction"—the concealment—of a felony, a charge that carries a maximum sentence of three years in prison.

In exchange, Byrd agreed to testify

against other officers who may be indicted for civil rights violations in the Webster case.

The grand jury has also indicted for perjury L.P. Duffers, a warehouse worker who claimed to have witnessed the Webster shooting and who, before a county grand jury last fall, backed up the police officers' accounts that the shooting was in self-defense.

Two other civilians who claimed to have witnessed the shooting told the officers pulled the unarmed Webster from a stolen van, held him to the pavement, and shot him.

Eleven Houston police officers now have resigned or been dismissed since mid-April.

On Wednesday, Caldwell fired three officers after an internal police investigation found they had conspired to plant another "throw-down" gun near the body of an 18-year-old burglary suspect shot by police in 1975.

On April 18, police Jailer Wallace Edwards was fired after he allegedly beat a fellow officer with brass knuckles during a fight at central police headquarters.

On April 10, FBI agents arrested assistant police chief Carroll Lynn on a charge of obstructing justice. He was fired last week. Lynn is accused of attempting to extort \$450,000 from a Houston businessman facing federal securities and mail fraud charges.

On March 28, three former Houston police officers each received one year in federal prison for their roles in the May 1977 death of Joe Campos Torres, a Mexican American who drowned while in their custody.

## The Randall Webster Shooting (Cont'd)

THE WASHINGTON POST Saturday, March 21, 1976

...2 A 3

### Suspect's Death Renews Tex. Police Controversy

By Bruce Cory  
Special to The Washington Post

HOUSTON—A federal investigation into the fatal shooting of a robbery suspect by a Houston police officer early last year has raised new questions about the conduct of the city's controversial police department.

Police Chief Harry Caldwell has confirmed that an unloaded .22-cal. revolver the suspect allegedly pointed at an officer had been in the department's possession after it was recovered from the scene of a 1964 suicide. Caldwell said police records show the gun was to have been destroyed in 1964, a normal police procedure. "It is pretty damn obvious to me now it was not destroyed," he said.

The case has aroused suspicion that the weapon was a "throw down gun" pointed at the shooting scene by police to justify their use of deadly force.

Some local defense attorneys have charged the district attorney's office here was less than vigorous in investigating the shooting, a problem they say is common in cases of alleged police misconduct.

"For years it was traditional that any police officer who shot someone would be no-billed" and no action would be taken, said Dick DeGuerrin, past president of the Harris County Criminal Lawyers Association. "Although that's changed somewhat it's not because of the grand jury but because of the public's outcry."

Coming on the heels of the federal court conviction last month of three former Houston police officers for conspiring to violate the civil rights of a prisoner who drowned while in their custody, this case has prompted appeals from minority group leaders for creation of a civilian police review board.

Two of the three officers convicted in federal court had also been indicted on state murder charges, but had subsequently been convicted of criminally negligent homicide, a lesser charge. Each was sentenced to one year on probation.

The Mexican American Bar Association here and Councilman Juston Robinson Jr., the city's only black elected official, say present investigatory safeguards are inadequate.

Mayor Jim McCombs, however, opposes review of police action by civilians not familiar with police work. "I think it

gets into a very political thing otherwise," he said.

The present federal investigation results largely from the efforts of John Webster, a Shreveport, La., homebuilder and the father of the shooting victim, Randall Webster, 17.

Webster said he contacted the U.S. attorney's office in Houston last fall after a Harris County grand jury cleared the officers involved in his son's death.

"I knew that Randy wouldn't commit suicide, and that's what pointing an unloaded gun at someone amounts to," said Webster. He says police and state prosecutors made only perfunctory efforts to investigate the case.

Webster's belief that his son was unarmed is supported by Billy Junior Dolan, a cab driver who said he saw Randall Webster attempt to surrender to police after leading them on a high-speed chase in a stolen van.

Dolan said two officers pulled Webster from the van, one held him face-down to the pavement, and a few seconds later he heard a muffled gun shot, "like when you shoot a watermelon."

Dolan's account of the shooting is backed up by another witness. A third man supports the story of three officers who were at the scene, who say Officer D. H. Slays shot Webster when he emerged from the van with a pistol in his hand.

District Attorney Carol Vance said his staff relied on a report from the police homicide division in presenting the case to the state grand jury.

The report said the pistol found at the shooting scene could not be traced beyond its shipment to a local discount store in 1964.

"Of course, hindsight is 20/20 but in light of the witnesses we had, we didn't have reason to do an independent investigation of the weapon," Vance said.

In future such cases, his staff "may do a little more h. e. work" rather than simply rely on police reports, Vance said, and he may bring perjury charges against the officers who testified before the grand jury.

However, he will await the outcome of the federal investigation before reopening the case. "We would not duplicate any substantive charges that may come from that investigation," he said.

## Appendix VII

## The Randall Webster Shooting (Cont'd)

The Houston Post/News, Mar. 30, 1978/3 A

## Webster case questions unanswered

By PHIL REYERER  
Post Reporter

Was Randall Alan Webster armed on the February night more than a year ago when he was shot to death by a Houston police officer?

A month after Police Chief Harry Caldwell said he learned the case still had a number of unresolved questions, this is the principal focus of the investigation.

Webster, 31, of Shoreport, La., was shot by officer D. H. Mays, 30, early the morning of Feb. 8, 1977, as Webster jumped from a stolen van moments after a high speed chase with a gun in his hand, police said at the time.

Months later it was determined that police records indicated the gun was in the police property room as of May, 1976, and was supposedly destroyed along with other confiscated guns during the same month.

The implications of the discovery were obvious to investigators: Was the weapon a re-issued throw-down gun, a pistol dropped at the scene to justify the shooting by Mays?

Caldwell clamped a lid on the case after a meeting with U.S. Attorney J.A.

## News analysis

Opinion and interpretation of the writer included

"Toys" Canales in late February and very little has been said publicly about such matters as why the case was even reopened.

These are some of the yet unanswered questions in the Webster case:

■ If police reports are not correct, then what were the circumstances surrounding the shooting? Was it an accident or was there intent involved?

■ What sort of information did officer J.T. Olin supply investigators that caused them to reopen the investigation? A state grand jury last year could not find evidence that Mays and other officers were guilty of any wrongdoing.

■ What is the explanation for the differing reports of what time Webster died? The police department's homicide report said he died at 4:03 a.m., but the medical examiner's report says he was the victim died at 3:53 a.m.

■ What is the explanation for the differences in the homicide written by the police and the medical examiner's explanation charting the course of the bullet that killed Webster?

The police said Webster had two wounds, an entrance and an exit in the back of the head and a cut on the left palm. The medical examiner says there was one entrance with no exit and that the bullet traveled from left to right with part of the bullet splintering off to hit Webster's right hand.

■ Was the gun Webster carried ever checked for fingerprints and do the quality wipers found in Webster's wallet have any bearing on the case?

A lab report shows the gun was examined but that the plastic handles on the grip made it impossible to run a trace metal test. There is no notation of fingerprints and an autopsy found no trace of drugs in Webster.

■ What is departmental policy on how to protect murder scenes? At least three people who were either witnesses to the shooting or were nearby at the time, said they were discouraged from remaining at the scene.

■ How did the nine-shot, long-barreled .32-caliber revolver found next to Webster's body get out of the police property room?

If the gun found next to Webster was a throw-down, then how many other such weapons have been removed from the property room over the years?

Property room procedures have been tightened considerably in recent months, particularly since a dozen photographic movies held as evidence were discovered missing last fall.

■ Why did the initial investigation of the gun's history last February result in a report that the gun could not be traced further than the Houston store where it was sold in 1967?

Regardless of what Caldwell and Canales now know, all they've admitted so far is that the weapon in question once was in the property room and weapon records show it was destroyed.

But nine years later, the weapon is found to exist. Caldwell has promised answers to some of these questions and says there will be discipline for anyone who may deserve it.

## 'The air-conditioned convenience' is over

By PHIL REYERER  
Post Reporter

John Webster wants to come back to the city where his son died.

"I don't want to come back to court or to victims," said the father of Randall Webster, a 19-year-old shot to death by police officers in February of 1977.

"I just want to look in the faces of all the doctors and surgeons who acted as if we and asked 'what the hell are you doing here' when all I wanted to know was how my son died," he said.

"Men of all I want to know was the face of Tom Canales," he said Thursday at his attorney's home after burning a police officer had admitted providing a three-day weapon that allegedly was

placed on his son's dead body.

"Doesn't he do his job? He didn't do right by me," said Webster. Done was the assistant district attorney who brought the shooting case before the Harris County grand jury last June. The grand jury no-acted Officer Danny Mays, who shot the youth after a police chase.

"I remember standing in the hallway that day in June. Lord, it was hot. . . I stood out there all day. And all the time I could see Mays, (Nobel) Hollaway and (John) Ole Moring in their air-conditioned offices going over documents to prepare their report. I didn't even have a chair. Had to sit on the floor with my legs out," he said.

Done, who once has left the district attorney's office, said Thursday, "I gave

him (Webster) every courtesy. I have the deepest sympathy for him and his loss."

Done said it was hard to talk about the case "in black-and-white" and explained that "it was a question of murder. We were looking for proof, not evidence to indict for murder."

"There's nothing I can add about the case now," said Thom. "It is no position to say anything."

"I'd have stood in that hall for a month," said Webster. "Even after they let me in to see him in the grand jury I had to have questions detrimental to my son. I could not walk into a room with the outside and they were, for the most part, going to believe me."

Webster said that despite his son's death he thinks "30 percent of the police

in Houston are fine people."

He said that among some officers there is the prevailing thought that "dope-taking hippies deserve to be shot." He added that he felt the actions of a few prevent the rest of the officers from performing well.

"I'm sure some of this goes on here and in every other city, although I don't see the record. It is in Houston, it sure wasn't the first time the cops in Houston planted a gun. Why was the officer carrying a three-day gun in the first place? If they would've never shot up all the other things they would've," he added.

Webster, 38, and his wife, DORIS, said they plan to attend any court trial that may arise out of the investigation being

conducted into their son's death.

"We'd much rather hear the testimony first-hand," said Mrs. Webster. "What we've tried to do for so long was get to the bottom of this and recover the money. They never helped us, but maybe now our work in getting the facts out will help someone else," she said.

"It won't be easy for us going through a trial because I know what happens when you have defense attorneys going on all the stages," Webster said.

"It's not going to bring my son back either. The air-conditioned convenience is over for their case, though. For my son's sake I'll go to be with a lawyer as dead as anyone else who wouldn't help a

## The Richard Morales Shooting

### Officer Held for Murder

By DON HEATH  
and BOBBI SCHOTT

Castroville's chief of police, Frank Hayes, 50, has been jailed in Hondo for the alleged shotgun slaying of a 28-year-old man.

Hayes was arraigned late Monday by Justice of the Peace Harold Herring on a charge of murder in the first degree of Richard Morales, a Castroville resident. He was remanded to the Medina County Jail without bond.

Also charged with murder in the case and held without bond is Dennis Dunford, 17, Geronimo Village.

Sheriff Charles J. Hitzfelder said he is conducting an "intensive search" for Morales' body, which has not been recovered.

Hayes, dressed in coveralls, was arrested late Monday at the sheriff's office in Hondo. Dunford was arrested earlier at his place of employment, a cafe in San Antonio.

Hitzfelder said statements by Castroville's Deputy Chief of Police, Donald C. McCall, led him to suspect that Morales had been shot to death on a gravel road seven miles northwest of Castroville late Sunday night. A search of the area by Hitzfelder and Deputy Alvin Santleben led to the discovery of a pool of blood in the gravel road and a shoe, identified as belonging to Morales.

Hitzfelder said McCall was "talking rather casually" outside the county jail Sunday night "about losing his prisoner." The sheriff said he heard McCall say he, McCall, did not know

where his prisoner was, and that his chief, Hayes, "might have shot him."

Monday morning, Morales' family called the sheriff's office when Morales did not come home.

Santleben went to Hayes' mobile home in a trailer park near Castroville to inquire about Morales. Hitzfelder said Hayes denied any knowledge of Morales' whereabouts.

Hitzfelder said he talked to McCall and learned that the officer had arrested Morales Sunday night on suspicion of having committed a burglary and theft in Castroville.

The sheriff said McCall told him that as he was placing the handcuffed Morales into the patrol car that Hayes drove up and ordered McCall to follow him. McCall said Dunford was in the car with Hayes.

McCall, the sheriff said, followed Hayes five miles on U.S. 90 West and then for two miles north on a gravel road known as the Dunley Pool Road. Hayes stopped in open country, McCall related, turned off his headlights and walked back to the patrol car. McCall said he was told to get his prisoner out of the car and unhandcuff him. McCall said Hayes then removed a .12 gauge double-barreled shotgun from the patrol car and ordered his deputy to go back to Castroville.

The deputy chief of police told Hitzfelder he drove the patrol car about 200 yards away, but turned around to go back. He said as he turned around he heard a "muffled" report, and saw the headlights on Hayes' car come on.

"McCall said he went back to the scene and asked Hayes what had happened," Hitzfelder said, "and he said Hayes told him that he, Hayes, had shot Morales."

The sheriff said Hayes broke the shotgun open, and McCall could see that one of the shells had been fired.

McCall said his chief told him Morales was "on the side of the road," Hitzfelder said, "but McCall could not find the body."

Hitzfelder said Dunford later told him that he helped Hayes put the body into the trunk of Hayes' car. The sheriff said a search for the car, a 1971 LTD, white with a blue vinyl top, is under way.

Texas Ranger Dan North, who worked on the case Monday with the Medina County sheriff's office, was issued a warrant late Monday in search Hayes' trailer home in an effort to find the shotgun, Hitzfelder said.

Hayes was arrested when the Castroville police chief came to the sheriff's office in Hondo to "find out what was going on," Hitzfelder said.

"Santleben and some other officers had been out to Hayes' home, talking to him about Morales, and Hayes came in, wanting to know what it was all about," the sheriff said. "I told Hayes he was under arrest and read him his rights."

Hayes was seriously wounded on the night of March 7, 1973, when he attempted to arrest several suspects during a liquor store robbery in Castroville.

The police chief drew his revolver and arrested one robbery suspect as he came out of the store carrying a sack. While he handcuffed the man and ordered a woman to get out of a waiting car, another man came up from behind and jumped Hayes. In the struggle, Hayes lost his pistol and was shot several times. Hayes radioed for help and one of the robbery suspects and an infant who was in the suspects' car were killed in an exchange of gunfire with San Antonio police near Lackland Air Force Base.



# The Richard Morales Shooting (Cont'd)

20-A

Wednesday, September 17, 1975

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## Morales Murder

(Continued from Page 1.)

team of officers headed by Texas Ranger Bob Favco.

The car was taken the Department of Public Safety crime laboratory in Austin and Favor and Texas Ranger Dan North of San Antonio then accompanied Mrs. Hayes on a car ride to Carthage.

Hitzfelder said he was told Mrs. Hayes left Castroville about 4 a. m. Monday in the car accompanied by her daughter, Dorothy.

He said she drove to Carthage, disposed of the body, then drove to San Antonio, picked up her sister there, and then went to Lake Buchanan where the trio rented a lakeside cabin.

Officers found the daughter at the cabin after they stopped Mrs. Hayes and Mrs. Baldwin. Mrs. Baldwin and the daughter were later released after questioning.

Hitzfelder said comments from Castroville's Deputy Police Chief, Donald McCall, led him to suspect that Morales had been shot to death on a gravel road, seven miles northwest of Castroville, late Sunday night.

A search of the area Monday

revealed a pool of blood and a shoe, identified as belonging to Morales.

Hitzfelder said McCall was heard talking at the County Jail, Sunday night "about losing his prisoner" and said his chief, Hayes, "might have shot him."

Morales' family called the sheriff's office Monday after they could not find him following his arrest by Castroville police on a misdemeanor theft charge Sunday.

Hitzfelder said Hayes denied any knowledge of Morales's whereabouts, but the sheriff said McCall told a different story.

Hitzfelder said McCall gave the following account:

McCall said he had gone to arrest Morales on a misdemeanor theft warrant Sunday night and was accompanied at the time by a friend, Stephen Worthy, an off-duty Bexar County Jail guard.

As McCall was placing Morales in his patrol car, the officer said Hayes drove up his personal car accompanied by Dunford.

McCall said the police chief appeared to have been drinking and ordered the handcuffs taken off Morales.

McCall refused, and Hayes ordered

McCall to follow his car. Hayes drove out of town and finally stopped on a deserted stretch of gravel on the Dunlay School Road.

The police chief then took a .12 gauge shotgun from his car and ordered McCall to leave Morales with him and return to Castroville.

The Castroville deputy said he drove about 200 yards away, but was turning around to return when he heard a muffled shot.

When McCall reached the scene, Hayes told him he "had to kill" Morales.

However, McCall said a search of the area failed to turn up the body.

After hearing that account, Hitzfelder said, Dunford was arrested and brought in for questioning Monday afternoon.

Hitzfelder said that Dunford later told him he helped Hayes put Morales' body in the car trunk.

Also Monday afternoon, Texas Rangers, executing a search warrant at the Hayes' home, seized a .12 gauge shotgun, matching the description of the gun McCall said Hayes had Sunday night.

Hayes was arrested at the sheriff's office in Hondo later Monday night.

## Morales Slain by Gun at Close Range

**CASTROVILLE** — A shotgun blast at close range killed Richard Morales Monday.

That was the ruling in San Antonio's Bexar County District Court after a jury heard testimony in a hearing Monday night after it was returned from a 10-hour jury trial in Carthage to San Antonio.

The incident occurred around 11:30 p. m. Sunday night when Morales was driving the empty Buick Wildcat.

Services for Morales were scheduled Thursday afternoon.

The police chief here, Frank Hayes, has been charged with murder in the death and has been jailed in Hondo in lieu of a \$25,000 bond.

Hayes' wife was arrested here Wednesday afternoon after passing the bond of \$25,000 on charges of harboring a fugitive.

Earlier Doreen Dunford, 27, of Comstock Village, was charged in the murder, was released on a \$25,000 bond.

Dunford is accused of helping Hayes slay his prisoner Sunday night.

Mrs. Hayes was arrested Tuesday near Lake Buchanan in Lake County by officers who found two shells and a gun in a head-on collision.

The later accomplice officers in a shotgun drove near her brother's home among Carthage where Morales' body was recovered.

Officers say she drove with her daughter, Dorothy, to Carthage and turned the body money.

Honorable County Sheriff Charles Eckhardt said he did not know whether he intended to return to the city. The sheriff said there was no statement from his arrest Monday.

Eckhardt said Morales was shot Sunday night on a deserted gravel road outside Castroville.

The sheriff said the shooting came after Morales was arrested on theft charges by Castroville Deputy Police Chief Donald McCall.

After the arrest, Eckhardt said, Hayes arrived at the Morales home accompanied by Dunford. The police chief ordered McCall to follow him to the gravel road where he ordered his deputy to open the prisoner, Morales, to him.

As McCall was leaving, Eckhardt said, McCall heard a shot, returned to Hayes' car and found the prisoner had been shot. However, a search of the area produced no body.

Serial for Morales was conducted in the Bexar County Courthouse.

Murder witnesses include the slain Maria Morales, Castroville, former, her and Mrs. Mike Morales, eight brothers and one sister all of Hondo.

## The Richard Morales Shooting (Cont'd)

San Antonio EXPRESS-NEWS—Saturday February 12 1977 H Page 3-A

# Hayes inquiry sets precedent

By VICKIE DAVIDSON

A Justice Department decision Friday to probe the shooting death of Richard Morales by Castroville Marshal Frank Hayes pleased officials who were seeking federal prosecution.

Newly appointed U.S. Atty. Gen. Griffin Bell said a federal grand jury would make an inquiry into the Sept.

14, 1975, death of 29-year-old Morales. In making that decision, Bell changed a 1959 U.S. attorney general's ruling that kept federal prosecution — in most cases — from pursuing a defendant who had been convicted in state court.

"Federal civil rights laws protect certain rights which should be enforced regardless of related state enforcement," Bell said.

## Conviction

Hayes was convicted of aggravated assault and sentenced to 10 years in prison by a San Antonio jury last July for the shooting death of Morales.

Bell also notified all U.S. attorneys in the future each allegation of a civil rights law violation will be evaluated on its own merits — and a felony there has already been a state court conviction.

"It's a precedent setting case, no question about it," said Ruben Sandoval, the attorney for the Morales family.

Sandoval said he was pleased with Bell's decision. "But I am concerned that we had to go all the way to Washington to get something done," Sandoval said.

"Clark (U.S. Atty. John Clark of San Antonio) should have initiated action from the very beginning," said Sandoval.

real's memorandum was not law, only policy.

Texas Atty. Gen. John Hill, who had also been seeking federal prosecution in the case, said, "I am very pleased with the decision of Gen. Bell."

Marvin Miller, the attorney for Hayes, said, "If he wants to put us on

**Bell's ruling changes a 1959 ruling that kept federal prosecutors — in most cases — from pursuing a defendant convicted in a state court.**

court, we'll see him in court."

"That sentencing brought an outcry from politicians and other persons, including Mexican American leaders who called it soft punishment."

## Admitted

Hayes admitted in court he had shot Morales, but he said the shooting was accidental.

Other court testimony showed Hayes and another deputy picked up Morales in connection with a robbery charge and took him to an isolated road.

According to testimony, Hayes told the deputy to leave him alone with Morales. The deputy later heard a shot.

Morales' body was found in a shallow grave in East Texas. Hayes' wife had driven the body to the grave site some 60 miles from Castroville.

U.S. Atty. Clark had turned down the request for federal prosecution because he felt it violated the 1958 Justice Department policy against dual prosecution.

"Mr. Clark's recommendation was based on the then existing policy on dual prosecution and was entirely proper," Bell said.

## New guidelines

Bell said the decision to prevent the Hayes-Morales matter to a grand jury stemmed from his department's reconsideration of the dual prosecution guidelines.

"The realignment of guidelines call for consideration of Justice Department civil rights cases on merit."

## Civil rights

In the Hayes case the federal grand jury will look into the alleged violations of Morales' civil rights resulting in his death.

The maximum penalty for a government official convicted of such a violation is life in prison.

In Austin, First Asst. Atty. Gen. David Krudall said if Hayes is indicted he would be tried in federal court in San Antonio.

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 The Richard Morales Shooting (Cont'd)
 

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# HAYES SEP 3 0 1977 Express GUILTY

By DICK MERKEL  
 OF THE EXPRESS STAFF

WACO — Former Castroville Police Chief Frank Hayes was found guilty here Thursday night of killing Richard Morales and violating his civil rights

The same federal court jury found Hayes' wife, Dorothy, and sister-in-law guilty of violating the civil rights of Morales who was shot and killed on a remote road outside Castroville Sept. 14, 1975, while a prisoner in Hayes' custody.

The jury returned its verdict at 10:43 p.m. after deliberating approximately three hours and 15 minutes.

### Calmly

The three defendants appeared to take the verdict calmly.

U.S. Dist. Judge Adrian Spears has set sentencing for October 28 in San Antonio.

Under the verdict, Hayes could receive a maximum sentence of life in prison. Mrs. Hayes and Mrs. Alice Baldwin could face maximum sentences of 10 years in prison on their convictions as accessories after the fact. They are being permitted to remain free on bond until sentencing.

Mrs. Hayes and Mrs. Baldwin were found guilty for transporting the body of Morales from Medina County to Panola County in East Texas and burying it on a farm belonging to Mrs. Baldwin.

Hayes was convicted for having violated the civil rights of Richard

Morales and for killing Morales with a blast from a 12 gauge shotgun.

The jury, by its verdict, rejected the claim of the defense that Hayes' killing of Morales had been accidental during a struggle in which Morales attempted to wrestle the shotgun away from the

See HAYES, Page 10A

## Appendix VIII

## The Richard Morales Shooting (Cont'd)

## HAYES

SEP 3 1977

Continued from Page 1A  
former police chief.

Under the terms of the charge given to the jury earlier by Judge Spears, the jury had the option of finding Hayes guilty only on violating Morales' civil rights and accepting his plea of accidental death.

If the jury had elected to convict Hayes of the lesser offense, it would have been a misdemeanor and Hayes could have received a maximum sentence of only one year in prison.

When he dismissed the jury, Judge Spears thanked the panel members and said, "I personally feel the verdict you have rendered are right."

In his final argument to the jury, Special Asst. U.S. Atty. Dan Rinaldi attacked the defense contention Morales' death was an accident caused when he had Hayes wrestled for possession of the lit cigarette.

"It is not a murder case," he told the jury. "It's the government's contention Hayes' violated Richard Morales' civil rights by depriving him of his constitutional rights to equal protection under the law."

"This violation led to the death of Richard Morales."  
"You have heard a lot about accidental death in this case," he continued.

**'Intimidate'**

"Frank Hayes has admitted he had no right to take Richard Morales out on that road. I say his purpose was to coerce, intimidate and scare a confession out of him, all violations of his right to equal protection."

"The self-defense claim is ridiculous. If anyone had a right to defend himself, it was Richard Morales. I think Frank Hayes fully intended to pull the trigger."

Rinaldi accused Mrs. Hayes of lying on the witness stand and "denying Richard Morales the right to a Christian burial."

**'Lied'**

He also said Mrs. Baldwin lied to her employer about why she couldn't get back to San Antonio from East Texas for work.

"There's no doubt she lied then and there's no doubt she lied on the witness stand."

Defense attorney Charles MacDonald of Waco told the jury: "You are reasonable people."

"If you have any doubt about the guilt of these defendants, then that doubt must be a reasonable one and grounds for acquittal."

**Reasonable**

"The government, I submit, has not proven their guilt beyond a reasonable doubt."

By far the loudest closing argument was delivered by Martin Miller of San Antonio, lead attorney for the defense.

In it, Miller continually reminded the jury, "You have civil rights, too. You have the civil right to the protection of your lives and property, and that is provided by the law enforcement people of this state."

He referred to Hayes' severe wounds in a 1975 shooting while attempting to break up a liquor store robbery in Castroville.

**'Terrible wounds'**

"Doctors have testified here to the terrible wounds this man suffered while protecting his community. How much more do we want from this man?" he asked.

"There is no civil rights violation if a policeman asks a few questions of a man, especially if that man is a known crook."

Miller continued, "The government is not satisfied with trying Frank Hayes. They want to convict a whole, God-fearing family. They want this jury to be their hatchet-man."

**'Mere shell'**

Finally, pointing to Hayes, Miller made an impassioned plea. "What you see there is the mere shell of a man. I hope you won't destroy what's left of him."

Before raising its case at 10 a. m., the defense recalled Mrs. Hayes to the stand as well as the final defendant in the case, Mrs. Baldwin.

**Riot**

Mrs. Hayes, under examination by attorney Charles MacDonald of Waco, testified she didn't take the body of Richard Morales to the county offices in Hondo because a riot was under way in the city on the night of Sept. 14, 1975.

She said the riot was instigated by Rita Urdia, a Mexican-American political party, and there were threats to tear the county jail down.

"That's why I was afraid to take the body there."

Summing up the events Mrs. Hayes said, "It was a very horrible experience. I just wanted to scream and scream. There was nobody to turn to. . . I don't even like to think about it today."

**No help**

She also repeated her earlier testimony no one helped her in digging the grave, taking the body from the car trunk and burying it.

Mrs. Baldwin's testimony corroborated her sister's, which she said was "true as I heard it."

For her part, Mrs. Baldwin said she was unaware of any of the events on the night of Sept. 14, until her sister arrived at her San Antonio home about 4 a. m.

"She (Mrs. Hayes) woke me up and told me there had been an accident. A man was dead and she thought Frank had done it. She asked me to go with her to East Texas and help keep her awake on the drive."

"I never questioned her. . . I went voluntarily."

**Couldn't help**

"Did you assist in any way in the burial of Richard Morales' body?" McDonald asked her.

"No, I did not. I couldn't. My health wouldn't allow it. I just sat off at a distance in the pasture."

Mrs. Baldwin also testified she wasn't aware Morales' body was in the trunk of car, but assumed it was.

Mrs. Baldwin told of returning from Frio County to her home at Lake Travis where both she and Mrs. Hayes were subsequently arrested.

**Clean trunk**

She admitted to helping Mrs. Hayes clean out the trunk of the car "because of the strong odor" as well as disposing of the two shirts and a bow in a vacant lot near her Sunrise Beach home.

She said when police arrived to make the arrest, "they handcuffed up with pistols drawn. I was frightened."

Asked if she made any statements to police at the time of the arrest, Mrs. Baldwin said she was "too scared to say anything at the time."

Under cross examination by Ms. Moore, the defendant admitted calling her employer — a banker in San Antonio — on Monday morning and telling him she had been in East Texas to visit friends, her car had broken down, and she would not be in to work.

**Repeated story**

She also said she repeated the story the next day to the bank's president, giving the name of the person she was supposed to have been with in East Texas — not Mrs. Hayes.

"In other words you lied to your employers?" Ms. Moore challenged.

"Yes, I did," was the reply.

Ms. Moore also challenged Mrs. Baldwin for not trying to talk her sister out of making the trip to East Texas with the body.

"Since you believed it was an accident why didn't you try and persuade Mrs. Hayes to contact law enforcement right then and there?" she asked.

**'Don't think'**

"At a time like that you don't think clearly," Mrs. Baldwin said.

The final witnesses for the government were A. E. Ramon, Jr., criminal investigator for the Bexar County Sheriff's Department, and Dr. Richard Coons, an Austin psychiatrist.

Ramon testified Frank Hayes had a bad reputation for treatment of Mexican-Americans.

**Examining**

Dr. Coons, a forensic psychiatrist, testified to examining Frank Hayes for the government following his arrest for the Morales killing in 1975.

He said Frank Hayes was sane at the time of the killing and any drug he was taking at the time had no effect on his ability to determine right from wrong.

In all, a total of 23 witnesses testified, 16 for each side.

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## The Richard Morales Shooting (Cont'd)

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SAN ANTONIO EXPRESS—Wednesday, April 19, 1978

Page 11-A

# Hayes move opposed

Federal prosecutors Tuesday opposed reduction of the life sentence handed former Castroville Police Chief Frank Hayes.

Hayes received the sentence for a criminal civil rights violation in connection with the shotgun slaying of construction worker Richard Morales in September 1976.

Morales was Hayes' prisoner when he was shot.

Defense attorney Marvin Miller asked for the

**Federal prosecutors argue against reduction of life sentence of former officer in rights violation.**

reduction after three Houston police officers received one-year prison terms for civil rights violations.

They were convicted in connection with the drowning death of a prisoner.

A Houston federal judge Tuesday rejected

government arguments the officers' sentences were illegal.

Miller contended Hayes' sentence was "cruel and unusual punishment" because of the disparity between the Houston and San Antonio cases.

U.S. District Judge

Adrian Spears, who sentenced Hayes, will rule on Miller's motion.

In their response to the motion, U.S. Justice Department attorneys stated Miller could not rely on the disparity of the sentences to prove Hayes' term was unconstitutional.

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## The Wallace Davis Shooting

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WALLACE DAVIS

### Snubs 200G's settlement bid, loses in court

Wallace Davis, 25, an alleged victim of police brutality, lost his second bid to win his million in damages from the Chicago Police Department yesterday. Federal District Judge Julius Hoffman denied a motion for a retrial in the civil suit brought by Davis. Earlier, an all-white jury had rejected his claim.

Davis was shot in the back in June 1975 following his complaint of the robbery of the rth house which he owned in the 2700 block of West Warren Blvd. He had intercepted the perpetrators in the act and physically subdued them while he called the police department. After they failed to respond to a second call and the robbers fled, Davis went to his other business, a body and fender shop, leaving word with his mother that he could be found there if the police came.

What followed for him was a nightmare miscarriage of justice. According to his sworn testimony, Officers Free and Darbe arrived at the body shop and with no word of explanation, proceeded to frisk him as a suspect and physically assault him. While he was spread eagled, Free shot him in the back and cursed and kicked him after he fell to the ground. Davis was taken to County Hospital,

presumably dead. When it was determined that he was still alive, he was manacled to the bed and booked on attempted murder. That charge was later reduced to two counts of aggravated battery.

Davis has undergone three major operations and has lost half his liver in the ordeal. His weight dropped from 200 to 125 pounds. Although he was exonerated of the charges, he has lost his businesses and was forced to go on welfare. He has a wife and four small children. Davis has refused settlements offered him from \$50,000 to \$200,000 to "forget" the whole thing. Instead, he chooses to fight for what he deems is justice in the case.

The National Minority Advisory Council on Criminal Justice after hearing his story recently brought him to Washington to talk with Justice Department officials and Rep. John Conyers of the House Judiciary Committee.

Lennox Hinds of New York, a member of the Council and director of the National Conference of Black Lawyers, said that he will work with Terence Hazarty, Davis' Chicago lawyer, on appealing the Hoffman ruling. They will seek a change of venue. They plan to call for a Federal investigation.

## Appendix IX

## The Wallace Davis Shooting (Cont'd)



At 25, about all that Wallace Davis has left for him is the thin hope that justice will prevail. He is among the growing legion of Americans, some white, but more often, blacks or Hispanics, native Americans and those of Asian background who get ground up by the very criminal justice system which is supposed to protect them.

The long nightmare for Davis began in June, 1974 when he was shot in the back as an alleged robbery suspect by a white policeman. Ironically, it was Davis who had surprised two men in the act of robbing the rib house which he owned on Chicago's West Side. He was also the proprietor of a body and fender shop. After subduing the pair with his bare hands, Davis called the police. He waited 15 minutes and called again. They said someone would be there in 15 minutes. Meanwhile, the robbers managed to flee the place. Davis, fearing for what might be happening at the body shop, asked his mother to wait at the rib house and if the police should come to direct them to his other business so that he could give an account of what had taken place.

As he was parking his car in the garage, two officers in a squad car drove up and with no word of explanation jumped out, grabbed Davis and proceeded to frisk him, cursing all the while that he was trying to explain that it was he who was the victim and not one of the robbers. They made him spread eagle while they searched him. Wallace said that he complied with their directives, but one of them viciously kicked his legs out from under him and as he fell on the ground, the Officer whose name was Joseph Free, shot him in the back. He would later claim that Davis had made a motion as if he were going for a weapon and that he shot in self defense. According to Wallace, as he lay bleeding and pleading with the cops not to shoot or kick him again, Free put his gun between Davis' eyes and said, "Die Nigger, die or else I'll kill you."

Davis closed his eyes and thinking he was in fact dead, the cops called for an ambulance to take him to Cook County Hospital. His wound was entered on the record as a chest injury, although the bullet had plainly penetrated his chest, worked its way through his chest and lodged in his liver. Davis was charged with attempted murder, but this was later reduced to two counts of assault and battery. He was manacled to his bed, between the series of operations which left him with half his liver. He was finally acquitted of all charges. Missing at the time of his arrest were his wallet and \$317, his watch and a ring.

Bitter and brooding over the miscarriage which let the two policemen go free and return to duty, Wallace took his story to Mrs. Ruth Davis, executive director of Chicago's Victims of Crime Council, an organization devoted to helping victims of criminal injustice. His case caught the attention of Chicago Tribune columnist Vernon Barrett who took it up as a cause celebre. Knowing little about the law and how it works, Wallace realized that he needed legal counsel and on the recommendation of an acquaintance, he retained the services of Terence Hagarty. When he decided to sue the two officers and the Chicago Police Department for \$15 million, strange things began to happen.

The two robbers who had long prison records and who had turned state's evidence in his trial, recanted their testimony. Free admitted that Davis had not provoked the shooting and that he could have fired into the ground rather than shoot him in the back. The suit was given to Judge Julius Hoffman, the octogenarian jurist, noted for his testiness. Davis charges that during the civil proceedings, Judge Hoffman repeatedly made prejudicial remarks to the all-white jury and even at times coached the defense lawyer. The latter summed up his presentation when he raised his voice, pointed to Wallace and said: "This man is trying to get \$15 million from the city, your tax dollars." The jury was clearly compromised by this racial inference and it promptly returned a verdict against Davis and freeing the two officers of all charges.

Since then, Judge Hoffman denied the motion for retrial, discounting all allegations that either he or the defendants had not acted within the letter of the law. But there are disturbing facts already established. 1. The police were abnormally slow in responding to Davis' call when he reported a robbery in progress. 2. Officer Free and his partner violated all rules of discretion when they failed to get the facts before apprehending Davis as the robber. 3. Free did admit shooting Davis in the back. 4. Important evidence was either discounted in the trial or was not admissible. 5. Judge Hoffman clearly gave favorable findings to the intent of the officers when there was a preponderance of evidence to the contrary. 6. The two robbers were made state witnesses in return for promises of immunity, even though they had long records and had been arrested again since the Davis case. 7. The city in making offers of settlement did clearly impugn itself as a co-partner in the cover-up. At this point, Davis sits and ponders the peculiarity of the law and asks a familiar question, "Whose law and whose order for whom?" Judge Hoffman's decision left the implication that it is not for Wallace Davis.

## Appendix IX

## The Wallace Davis Shooting (Cont'd)

## Man sues Chi. cops, finds home set on fire

Special to the Daily World

CHICAGO, March 18—A fire of suspicious origin severely damaged the residence of Wallace Davis, a young Black man who has a lawsuit against the city of Chicago coming to court soon as a result of being shot by a policeman in 1976.

The fire started in the middle of the night on Monday in the hallway of the apartment house owned by Davis's mother. Davis told the Daily World that although the fire department was called immediately, it took 15 minutes for fire trucks to arrive. By that time the fire had destroyed much of the roof. The residents of the building's 27 apartments were evacuated, no one was injured.

"I told the firemen that one of the tenants was still in the building," Davis said, "but they paid no attention. I had to wet my clothes and go into the burning building to get him myself."

Davis said that chemicals were found in the hallway, but that the fire department has not been responsive to his suggestion that this was a case of arson.

"My case is coming to court in a few weeks," he said, "and I feel sure that somebody tried to burn my house down."

### Lawsuit due soon

Davis' case stems from his near murder on the morning of March 8, 1976. He and Winston Fontenot had thwarted an attempted burglary of Davis's restaurant. They stopped the two thieves and called the police. The two men got away and went

to the police and told them they had been attacked by Davis and Fontenot. The policemen located Davis and Fontenot near an auto body repair shop owned by Davis. After leaning the two men against Davis' car, one of the cops shot Davis in the back.

Shot in the back March 8, 1976, he was on his way up. He said it was "through a lot of prayer and a lot of hard work and the support of my Mama..."

"I'm not only suing for damages, he says, "but I'm bringing criminal charges against that cop."

Meanwhile, the Chicago Committee to Defend Wallace Davis is mustering support to help Davis win justice. The committee is located at 53 West Jackson Blvd., Room 1382, Chicago 60604.

Perspective 8 Section 2 Chicago Tribune, Sunday, June 8, 1978

### Vernon Jarrett

## A familiar tale to Chicago blacks



"I DIDN'T come all the way up here from Louisiana just to be as writer. Sometimes that Public Aid check were more than the toilet holes in my stomach."

Wallace Davis, 31, migrated from Jennings, La., to Chicago in 1970. He didn't have much education but he had a lot of drive and ambition. He had heard of other blacks from the South making it big in the big city.

As still the morning of March 8, 1976, he was on his way up. He said it was "through a lot of prayer and a lot of hard work and the support of my Mama..."

"I'm not only suing for damages, he says, "but I'm bringing criminal charges against that cop."

Meanwhile, the Chicago Committee to Defend Wallace Davis is mustering support to help Davis win justice. The committee is located at 53 West Jackson Blvd., Room 1382, Chicago 60604.

Making the friends with him that morning was Winston Fontenot, 31, another Louisiana migrant. Davis would help him, too, but started in the big city.

When Davis and Fontenot left their friend's filling station, they went to the rd. joint to discover two strange men there, one on the floor with a car jack handle trying to pry open the money container of the juke box. According to Davis and Fontenot, the men wanted money for drugs.

A fight ensued. The two men were subdued and Davis and Fontenot waited a few minutes for the police, who didn't show. They then decided to drive to Davis' body and lender shop.

Moments after they arrived there and parked in a nearby vacant lot, two policemen, Joseph Frazier and Joseph Dunbar, drove up and ordered Davis and Fontenot to turn around and place their hands on a parked car.

Within seconds, Davis crumpled to the

ground. He had been shot in the back by Frazier, who admitted in court that he stood at Davis and that Davis was returned.

Frazier said he fired his Sig Sauer .44 when Davis moved his arm in a threatening manner.

The closing arguments have yet to be heard before Judge Hoffman and an all-white jury of six, with two alternates. One of the alternates is a Black man.

Some of my lawyer friends, along with many black policemen that I know, think me that there is nothing very surprising about what happened to Davis and Fontenot. Last fall, a Cook County judge found Fontenot guilty of assault and battery. He was given three years' probation for coming to the defense of Davis during the brawl in the restaurant.

The Frazier and Davis, both of the first Chicago's dispersed white lands. North from Tennessee was that calling the cops—been let your own protection from Joseph a hazardous gamble, possibly when the police force for your neighborhood.

THE AND TOOK little have tolerated situations where decent people hesitate to call the police when they are in trouble because they fear that "trigger-happy cops" may come into their neighborhoods and arrest or harm innocent blacks because so many white cops assume that all of us black people are the same.

Davis' friends are telling him that the worst mistake he made was calling the police after he had stopped the burglary at his restaurant.

"These cops know that they will be punished," a friend of Davis' said in the hallway of the Federal Building while the court was still in session. "The same thing is going to happen over and over again."

One of the saddest men in the courtroom was Father Grant Gallop of St. Andrew's Church on the West Side of Chicago. "One of the first things Davis did when he came to this city was join the church," said Father Gallop, who appointed Davis to his Bishop's Committee three years ago.

But on the morning of March 8, 1976, Davis might as well have been just another criminal. His two tubes hanging out of his body, he has been in and out of the hospital and receiving public aid over once.

## Appendix X

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 The Richard Long Beating
 

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## Police Officer Is Charged in Buffalo Death

**BUFFALO, June 28 (AP)—** A city policeman was charged with first-degree manslaughter today in the gang beating of a teenager.

Phillip C. Gramaglia was picked up at his home after his lawyer informed police that he could be found there.

He and two other officers had been suspended without pay Saturday night when they failed to appear at a court-ordered lineup.

Richard Y. Long, 18, son of a well-known local family, was pulled by his hair from a sports car early Saturday and was beaten and kicked by about nine well-dressed men, witnesses told police.

The attack, apparently provoked by a traffic incident between Long's Porsche and two luxury cars, took place next to the youth's apartment, police said.

Long's roommate, John Barden, said he intervened but was grabbed from behind. He told police he saw one of the nine, a man wearing boots, kick the prone victim in the head. Long died soon after arrival at Sisters Hospital.

A religious medal, "a type worn by Buffalo police officers," was found at the scene of the crime, according to court papers submitted by Erie County District Attorney Edward C. Cosgrove.

The medal "bore the initials P.C.G. and the number 311 and these initials are those of Phillip C. Gramaglia, and the number is the badge number of Phillip C. Gramaglia," the court papers said.

Homicide bureau chief Leo J. Donovan said Gramaglia, 30, of suburban Blasdell, had appeared at the hospital and "showed concern for the victim," and was "visibly shocked" when informed Long had died.

Authorities identified the other two suspended officers as Samuel Fusco, 26, of Buffalo, and Gary M. Aitt, 28, of suburban West Seneca. Officials said one witness to the beating gave police the license number of a white Lincoln that was traced to Fusco.

## Appendix XI

## The Slain Drug Dealers Case

## Files Linking Cops to Death Of 2 Drug Dealers Vanish

BY JACK KRESNAK

Free Press Staff Writer

Detroit police are investigating the mysterious disappearance from police headquarters of tapes and files dealing with the separate slayings of two alleged drug dealers who may have been murdered by a policeman.

Police sources said Monday that they believe the dead men may have been killed in October 1972 by a policeman using a 9mm gun.

Sources said that the suspect is still on the police force. Police officials and homicide detectives declined to disclose other details, but said an investigation will take weeks and perhaps months.

SOURCES ALSO said that the police investigation "appears to go hand in hand" with the current grand jury probe into alleged drug activities among Detroit police because "similar people are involved" in both probes.

Police discovered that the files and tapes were missing about two weeks ago when they re-opened the probe, based on an interview with an informant.

The files and tapes were in two folders in one of two homicide section squad rooms, easily accessible to numerous policemen.

High-level officers met for about 90 minutes late Monday afternoon with Chief William L. Hart to discuss the missing files. Attending were acting Deputy Chief Gerald Hale; Inspector John Lucke of Crimes Against Persons; Lt. Robert Hislop, commanding officer of the Homicide Section, and Lt. Fred Davis, of Squad 6, which investigates drug-related murders.

Sources said it was believed that some of the policemen named in the grand jury probe also were involved in drug dealings with the two slain drug dealers, Edward A. Chatman, 47, and Raymond Walker, 30, both of Detroit.

CHATMAN WAS killed on Oct. 5, 1972, as he sat in a car in the Linwood-Oakman area. Police said he was shot in the head, the left hand and the thigh.

Walker was killed Oct. 26, 1972, as he sat in his car near Hazelwood and Linwood.

## The Tiburcio Griego Santome Shooting

Wednesday, Nov. 9, 1977 THE WASHINGTON POST

### Texas Rangers Called In To Probe Fatal Shooting

GARDEN CITY, Tex., Nov. 8 (AP) — Texas Rangers have been called in to investigate the shooting death of a Mexican prisoner in the back seat of a sheriff's squad car Sunday night, an assistant district attorney said today.

Tiburcio Griego Santome of Juarez, Mexico, was shot to death in the car of Glasscock County Sheriff Royce Pruitt by a retired West Texas deputy, according to Don Richard, an assistant district attorney in the 118th Judicial District.

Richard said the Texas Rangers were asked to enter the investigation to provide "about as independent a source as there is. The way this thing is, we want people to know it's done right."

Richard said Santome had been arrested about 7:30 p.m. Sunday at a fee-

tival in Saint Lawrence, about 15 miles southwest of Garden City. He said Santome was placed unrestrained in the back of the squad car.

Richard said Santome "was kind of acting up, and they couldn't get him cuffed, so they just put him in the back seat. They thought he had cuffed down."

But on the drive to jail, Richard said, the man pulled a knife.

Richard said the sheriff and a passenger in the car, G.B. Therwanger, a retired deputy from Stanton, Tex., were slashed. Therwanger was severely cut, he said, but reached an automatic pistol in the front seat and fired four shots at the prisoner.

Santome was dead on arrival at a clinic in Big Spring.

An autopsy is pending.

## The Louis Wallace Shooting

### Mobile Sheriff, Aides Indicted In Prisoner's 'Escape' to Death

New York Times News Service

MOBILE, Ala. — The sheriff of Mobile County and eight of his assistants have been indicted by a federal grand jury on charges that they plotted to allow a prisoner to escape from jail and then shot him to death from ambush.

The prisoner, Louis Wallace, was killed last Oct. 12 as he crawled from a hole cut through the second-floor wall of the Mobile County Jail. He was serving a life sentence for first-degree murder and was being held in a county prison because of overcrowding in state prisons.

At a news conference last night, the sheriff, Thomas J. Purvis, said he was "shocked almost beyond belief" by the indictment earlier in the day. He said he was in Birmingham at the time Wallace was shot, then added:

"The situation is simple. A hardened criminal serving life imprisonment for first-degree murder of a black man escaped. He was not attempting to escape; he had escaped. He was shot and killed. He was shot and killed because it is the sworn duty of every member of this office to protect the public from criminals."

The other indicted officers could not be reached for comment. Federal officials were said to be serving papers on them.

If convicted, each of the indicted men could be sentenced to up to life imprisonment. Pending arraignment in a few days, all were expected to remain free, a not unusual federal procedure when dealing with indicted police officers.

Purvis held his news conference upon returning from Gadsden, where he had attended a meeting of the Alabama Peace Officers Association. The association raised more than \$3,600 yesterday for his defense.

The grand jury indictment did not specifically charge the nine officers with murder since there is no federal statute directly relating to a slaying on state or private property. Rather, it charged that the officers had "conspired together" to violate Wallace's constitutional right "not to be deprived of life without due process of law."

MOBILE, Ala. — Mobile County Sheriff Tom Purvis and eight aides were indicted yesterday by a federal grand jury for allegedly allowing a convicted murderer to escape and then killing him in an ambush.

The men are accused of conspiring to violate the constitutional rights of Louis Wallace, killed by a shotgun blast Oct. 12.

Attorney Charles Haas, who represents one of those indicted, disputed a Justice Department statement on the indictments, saying, "I don't see how they could call it an ambush when a convicted murderer knocks a hole in the wall and escapes."

Haas is under indictment for allegedly trying to influence a cousin, who served on the grand jury that returned the indictments.

The grand jury investigation was prompted by published reports that Purvis and his aides had prior knowledge of the escape attempt, staked out the jail and gunned Wallace down when he emerged.

Appendix XIV

# The Carl E. Norman Shooting

## Officer Shoots Suspect in Attack on Daughter

### Police Lieutenant Goes Berserk, Opens Fire on Alleged Hell's Angels Members

BY HOWARD HETTEL AND ART BERMAN  
Times Staff Writers

A veteran police lieutenant whose 19-year-old daughter was sexually attacked by a gang believed to include Hell's Angels motorcyclists went berserk Friday and shot one of the suspects in the West Valley Police Station.

Lt. Thomas E. O'Neal sprayed seven shots down the station house corridor. Three of the bullets critically wounded Carl E. Norman, 31, of 8009 Chimney Ave., Reseda.

Norman was among 11 men rounded up since Tuesday afternoon when O'Neal's daughter was attacked in a Northridge home as she was working as a door-door cookbook saleswoman.

The girl, Shirley Diane O'Neal of Long Beach, has become mentally unbalanced as a result of the assault, police said.

O'Neal, who has been participating on his own time in the investigation of his daughter's attack, was helping move two suspects from the jail section of the police station to the detective bureau when he suddenly began screaming and opening fire.

The suspects began running down the corridor. Det. Sgt. John E. Sublett jumped in front of O'Neal and screamed:

"My God, Tom, no! Norman fell with bullets in the right chest, hip and arm.

The other suspect, Alan Bruce Smith, 18, of 10901 Mason St., Chatsworth, ran into the squad room, where he was grabbed by two uniformed officers who thought he was trying to escape.

O'Neal chased Smith down the hallway, but made a wrong turn and ended up in the watch commander's office. He was disarmed without a struggle.

Police said O'Neal had fired a 9 mm. Browning sub-

14 Port-L.A.T., MAY 8, 1964 Eve Register Times 23

## OFFICER SHOOTS SUSPECT IN ATTACK

Continued from First Page  
tonic which he was carrying in addition to his regular caliber snub-nosed revolver.

Sublett discovered later that a bullet had passed through his right coat during the assault. He said he did not know who shot him. O'Neal just started yelling and screaming and shooting. He was frantic.

Norman, taken to the Central Hospital prison ward, had been booked with Smith on suspicion of possessing narcotics.

They had been arrested in a roundup of suspects in the attack on Miss O'Neal.

A police spokesman said most of those arrested were known members of the motorcycle club, Hell's Angels, or two car clubs, the Challengers and the Kings Men.

Chief of Detectives Thad Brown said that Miss O'Neal positively identified two suspects as members of the gang that attacked her.

However, said Brown, she collapsed after making the identifications and she has been unable to view the other suspects. She now behaves as though she has lost the memory of a Bryant.

One suspect, George Utawski, 16, of 6432 Amigo Ave., Northridge, has been charged with forcible rape and burglary. Another, Michael Melvin Skinner, 17, 1100 S. Reseda, is being held on suspicion of rape.

The narcotics accusations against Norman and Smith were made after officers said they found them with marijuana.

Seven of the 11 suspects have been released, police said. O'Neal, 41, watch commander of the University Division was seized, reportedly didn't discuss his daughter's

Friends said she was earning money for college expenses in the fall. She is enrolled at Long Beach City College.

Miss O'Neal was working on Amigo Ave. when she reportedly met Utawski on the street and he invited her into 5533 Amigo Ave., Northridge, telling her that his wife would buy a cookbook from her.

Orksh by Young Men One friend, she said police, she saw five or seven men, two of them with hands and feet bound up in black plastic.

O'Neal was a model police-dressed. He said the youths grabbed her, tossed her around on the crack strepps on to the other and strapped off her clothes. She was

She was one of the best girls ever had," said Capt. Joseph E. Stephens, commander of the police.

Officers said O'Neal never smoked, drank or swore and was "hooked up to lines" fed by many younger officers.

He didn't state certain indications to which the girl was subjected until he broke down and sobbed out the story after the shooting.

The lieutenant was taken to Central Receiving Hospital for treatment of hypertension booked at Van Nuys station on suspicion of assault with a deadly weapon.

O'Neal was freed on \$1,500 bail after attorney Max Rosen, a retired robbery detective, obtained a writ of habeas corpus.

"This will be handled like any other case," said Police Chief William H. Parker, who personally ordered the booking.

Police said O'Neal and his wife Beatrice have four children, including Shirley and her twin brother Daniel, who were 18 Thursday. They also have a daughter, Kathleen, 16, and a son Thomas Jr., 12.

Shirley, who was graduated from Lakewood High School last month, was working with a group of young persons on a summer book-

lended into a bedroom and raped by at least three of the youths, she told police.

The attack ended when a girl friend of one of the youths tried to, she said. Then Miss O'Neal ran to a neighboring house for help.

She was treated at Northridge Receiving Hospital and has been staying at a friend's home in the San Fernando Valley, where she is under a physician's care. Her father had been staying with her, but worked Thursday.

On Friday morning, Miss O'Neal and her father were transported to emergency services in the district attorney's office in Van Nuys to seek a formal complaint against the



Lt. Thomas E. O'Neal Carl Edward Norman

went into a house where a felony was about to be committed. Utawski had told the officers that the Amigo Ave. house belonged to his wife.

Utawski was arraigned before Municipal Judge George Ramon on Friday afternoon and was held in a \$10,000 bail pending a preliminary hearing July 16 at 10 p.m.

But for Smith was set at \$2,000. Utawski will be charged with forcible rape and burglary and Smith's preliminary hearing was set for July 16 at 10 p.m.

Shirley's case is being handled by juvenile adviser on the grounds that Utawski

## Appendix XIV

## The Carl E. Norman Shooting (Cont'd)



LT. TOM O'NEAL  
Fired and surrendered

## Gunfire At Valley Station

WORLD-TAMMEN  
JUL 4, 1955

An enraged police lieutenant today shot and critically wounded a prisoner at West Valley police station who was suspected of raping the officer's daughter.

Other officers said Lt. Tom O'Neal, 41-year-old veteran of 15 years on the force, fired five shots at close range into Carl E. Norman, 31, of Northridge.

Norman, struck in the chest, hip and back and arm, was rushed to Northridge Receiving Hospital before being transferred to General Hospital prison ward.

O'Neal, lieutenant in command of the vice squad at University Division, was known as a model officer holding several commendations.

Police Chief William H. Parker ordered him booked on assault with intent to commit murder. He is automatically relieved of duty.

### WALKING DOWN HALL

Lt. Charles P. Hughes, of West Valley detective, said O'Neal and Det. Sgt. John Sublette had removed Norman and Allen Smith, 31, 1901 Dixon St., Chatsworth, (Cont. on Page 4, Column 1-2)

## Suspect in Attack On Daughter Shot

(Continued From Page 1)

from a cell to take them to the district attorney's office for questioning.

The officers were walking down a back hallway behind suspects when O'Neal suddenly drew an automatic and opened fire on Norman, according to Sublette. Norman slipped to the hallway floor and O'Neal turned to Sublet and surrendered his gun.

Norman and Smith were among some 15 suspects arrested after a mass attack on Shirley Diane O'Neal, 16, last Tuesday in a home at 5825 Amigo Ave. in Northridge, police said.

Smith gave this account of the shooting:

"We were walking down the hallway when out at the corner of my eye I saw Officer Sublette whirl around, and then Norman and I saw the gun in O'Neal's hand.

"We started running down the hall . . . I turned the corner but Norman was hit.

"I heard Officer Sublette yell out, 'My God, Tom, no!' and at least seven shots rang out."

"I ran into a squad room and the officer in there knocked me down. I think they thought I was trying to escape."

Police said the girl was giving away tamper cookbooks when she encountered a youth later identified as Vincent on the street. Vincent told her to "come on down the street to my house—my uncle will buy some of those from you."

When she went to the door she was pulled inside by several of the men, she told police. They tore off her clothes and approximately five of the 15 assaulted her, she said.

She made her escape at this point because the group, mistakenly getting the idea that officers were surrounding the house, split up and fled, she said.

Northridge police said, the girl, under a doctor's care for severe mental disturbance since her ordeal, will not be told of her father's action.

She was described as "having the mind of a child" since the assault. As a result, police said, she was able to identify only two of the 15 suspect taken in custody during the investigation. Seven since have been released.

She did, however, identify George C. Ustowski, 18, of 5825 Amigo Ave., Northridge, and Michael M. Skinner, 17, of 1304 Sallow St., Reseda, as two of the assailants. Skinner is held on a rape booking by juvenile authorities. She did not identify Norman, the shooting victim, or Smith.

The girl has been staying with friends in San Fernando Valley since being released from Northridge Hospital where she was given emergency treatment after running from the house where she was attacked.

In the roundup which followed, police said some of the suspects, ranging in age from 15 to 28, were identified as members of motorcycle clubs.

Norman's home address, at 5800 Chimelias Ave.

O'Neal joined the police department in June, 1953. He was promoted to sergeant in December, 1954, and to lieutenant a year ago. He was booked for assault with intent to commit murder.

## Appendix XIV

## The Carl E. Norman Shooting (Cont'd)

### Daughter Identified 2 Others

The possibility that police Lt. Thomas E. O'Neal may have shot the wrong man when he gunned down a prisoner he believed involved in the gang-rape of his teenage daughter was disclosed yesterday by detectives.

O'Neal, 41, a "model policeman" throughout his 18 years of service on the force, pumped five bullets at the back of prisoner Carl E. Norman as the 31-year-old suspect was being led from his cell for questioning Friday.

Placed in the prison ward at County General Hospital in critical condition from chest, hip, arm and leg wounds, Norman last night was transferred to an intensive care unit after 6:50 a.m. was posted.

#### SUSPENDED

O'Neal was immediately suspended from the police force and booked on suspicion of assault with intent to commit murder. Should Norman die, the charge will be changed to murder. He was released under \$500 bond.

Yesterday, however, Detective Commander Charles Hughes, in charge of the investigation, said, "We simply do not know at this time"

(Continued on Page 3, Col. 4F)

### Wrong Suspect Shot?

(Continued from Page 1)

whether Carl Norman actually was involved in the rape case."

The rape victim, 18-year-old Shirley Diane O'Neal, identified two of 11 men believed to have been in the house at 8535 Amigo Ave., near San Fernando Valley State College, where the assault took place last Tuesday.

Shortly after making the identification, Shirley collapsed, apparently due to emotional stress. She is presently under psychiatric care.

But Norman was not one of the men identified. He is held only on a charge of narcotics possession, as is another of the youths in custody, Allen Bruce Smith, 18, of 12411 Mission St., Chatsworth.

Booked on suspicion of rape, are George Ulatowski, 18, and Melvin Skinner, 17, both of 18304 Baticoy St., Reseda; two brothers, Ford and Ronald Wood, of 6785 Ellwanda St., Northridge; Derick Ukstad, 18, of 5181 Royald Ave., Simi; Robert V. Adkins, 26, of 18618 Hart St., Reseda; and Eric R. Forrest, 19, of 5456 Bertrand St., Los Angeles.

Meanwhile, O'Neal's legal defense was in the hands of Atty. Max Herman, a former robbery detail detective, who said offers of financial aid and support were "pouring in" from all parts of the nation.

The attack on Shirley O'Neal took place last Tuesday when she began her work as a book salesman, hoping to earn money to help pay her way to college this fall.

With other members of her sales crew, she was taken to the Northridge area of San Fernando Valley, and set to work selling cookbooks on a door-to-door basis. One of the houses on the street to which she was assigned turned out to be a hangout for the infamous Hells Angels motorcycle club.

At the door of this house, she was met by a young man who said his "uncle" might be interested in buying a cookbook. Lured inside, she was stripped and subjected to repeated rape by members of the gang.

### O'Neal Case

### Jury Will Hear Victim

Shirley Diane O'Neal, 18, complaining witness against five youths accused of a mass rape attack upon her, will testify before the County Grand Jury at 10 a.m. Friday, Dist. Atty. Evelle J. Younger announced today.

The girl, the daughter of suspended police Lieut. Thomas E. O'Neal, will attempt to identify her assailants through photographs.

Miss O'Neal said she was attacked when she visited a Northridge home to sell a cookbook.

Dep. Dist. Atty. Thomas P. Funnery has been assigned to make the presentation to the grand jurors in an estimated two-hour hearing.

If the accused are indicted, the indictment will cancel a preliminary hearing scheduled in Van Nuys Municipal Court Monday.

Previously arraigned on three counts of forcible rape were:

Matthew Melville, 26, of 18311 Plummer St., Chatsworth.

Ford Wood, 26, and his brother, Ronald Wood, 21, of 6785 Ellwanda Ave., Northridge.

Eric Forrest, 19, of 6884 Bertrand Ave., Reseda.

George Ulatowski, 18, of 8535 Amigo Ave., Northridge, where the assault allegedly took place.

Shirley identified Ulatowski Friday, the day of the alleged attack, after which she became hysterical and went into seclusion with her mother.

At O'Neal, 41, the girl's father, was formally charged by the Police Department yesterday with wounding Carl E. Norman, 31, in a shooting incident at the West Valley police station.

Norman, who had been

taken into custody as a narcotics suspect, is recovering at County General Hospital.

Three police captains were chosen yesterday for a trial board to hear a review of O'Neal's suspension.

The three were Capt. Sid J. Lambert of the Van Nuys detective division, Barry Birch of the LAPD planning and research division and Robert W. Richards of the Foothill Division of San Fernando Valley.

O'Neal's attorney, Max Herman, indicated he would probably ask for an adjournment pending O'Neal's court trial on the shooting.

Appendix XIV

The Carl E. Norman Shooting (Cont'd)



Van Nuys courtroom prior to arraignment on charges stemming from his shooting a 91-year-old attack suspect.

O'NEAL WANTS TO STAY ON POLICE FORCE

'That's My Life...My Life's Work'

**Suspended Police Lt. Thomas E. O'Neal, who faces a charge of assault with intent to commit murder, said Thursday that he hopes to continue his 15-year career as a policeman.**

**"That's my life... my life's work," the grim-faced officer said after he was arraigned at Van Nuys Municipal Court, "I hope to stay on the force."**

**O'Neal, 41, allegedly went berserk last Friday in the West Valley Police Station while investigating the mass sexual assault on his daughter, Shirley Diane, 17, and fired three bullets into a man he mistook for a suspect in the case.**

**Doesn't Blame Officer**  
The man, Carl E. Norman, 31, is recovering in General Hospital and has said he doesn't blame O'Neal, although he blames the Police Department for permitting O'Neal to participate in investigation.

**"I've got an infant daughter of my own," said Norman in a bedside interview. "If something like that happened to her, I'd tend to do the same thing."**

**O'Neal was formally charged in a complaint signed by Det Sgt. L. R. Setty with one count of assault with intent to commit murder.**

**Appears in Court**  
Neatly dressed and saying little, the suspended officer appeared before Judge George B. Row.

**O'Neal sat alone as a lineup of criminal suspects appeared for various proceedings. The setting was familiar to the veteran officer, but this was the first time he was present as a defendant rather than a policeman.**

**From time to time other officers in the courtroom supplied by offer words of encouragement to O'Neal.**

**JULY 1965**  
Arraignment took only a few seconds, with Judge Ross setting a preliminary hearing for July 27 at 1:15 p.m. Bail of \$3,000 was continued.

**Attorney**  
Altezza ward, O'Neal told newsmen that he was "feeling all right" and "my daughter is improving." His attorney, Max Herman, a retired policeman, advised the lieutenant against discussing his case.

**But Herman said that O'Neal's plight has brought a "tremendous" response from law enforcement agencies and sympathetic individuals all over the country and all over the world.**

**Donations Received**  
Many of the messages, Herman said, contained donations to help O'Neal with his defense and his family expenses.

**"He has been a hard working policeman," said Herman. "He never did any outside work and he has been living from check to check."**

**O'Neal's salary of \$1,000 a month was cut off when he was suspended and he faces extensive medical, psychiatric and legal expenses for his family and himself, Herman said.**

**Faces Formal Hearing**  
In addition to the criminal proceedings, O'Neal also faces a formal hearing by the Police Department which could result in his dismissal.

**Meanwhile, he local chapter of the International Fraternal Order of Police, a law enforcement, business and professional organization, voted \$200 for O'Neal's family expenses and announced that the chapter's 1,000 members would be solicited individually for contributions to the defense fund.**

**The county grand jury today will consider the case of five young men who are being held as suspects in the slaying of Miss O'Neal.**

GEORGE W. GEXAS  
17TH DISTRICT, PENNSYLVANIA

COMMITTEE ON THE JUDICIARY

WASHINGTON OFFICE  
1608 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-4318



**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

October 18, 1983

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Hon. John Conyers, Jr.  
U.S. House of Representatives  
2313 Rayburn HOB  
Washington, D.C. 20515

Dear John:

I recently received the attached correspondence from a Mr. Jerry S. Goldman, Esquire, Philadelphia, Pennsylvania, who states that he would like his remarks entered into the record of the hearing held in New York City by you to review allegations of police brutality in New York City.

Mr. Goldman's remarks emanate from his obviously in-depth experience with the New York crime situation and are deserving of widespread consideration.

I echo his request that his remarks be entered into that hearing's transcript.

Thanks for your attention to this.

Very truly yours,

GEORGE W. GEXAS  
Member of Congress

10/18/83  
G.W.G.

GWG/wac

JERRY S. GOLDMAN, ESQ.  
 ATTORNEY AND COUNSELOR AT LAW  
 THE BOURSE BUILDING  
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September 28, 1983

Congressman John Conyers, Jr.  
 United States House of Representatives  
 Washington, D.C.

Sir:

It is with great consternation that I have read of your recent hearings on the subject of alleged police brutality by members of the New York City Police Department. Having spent six years in the criminal justice system as an Assistant District Attorney in the Kings County District Attorney's Office (1976-1982) prior to my entrance into private practice, I have several disinterested, apolitical, and objective comments about the problems of crime in the City of New York. I would request that they are distributed to the members of your subcommittee and entered into the record of your hearings.

New Yorkers of every age, every race, and of every economic background suffer the ravages of crime. They are raped. They are robbed. They are murdered. They are deprived of their property by both street thugs and so-called white collar criminals and mobsters. They are afraid to walk the streets. They must fence in their businesses and imprison themselves in their homes. They must pay higher prices for goods they purchase to make up for the losses caused by professional criminals. They are forced to live lives of fear. And this burden falls most harshly on the poor--on the old--on the weak--on blacks and hispanics. That is the problem of crime in New York. Not a few isolated crimes by a handful of police officers.

There currently exists adequate mechanisms to curb crimes by members of the police force. In fact, far more resources are devoted to investigating allegations in this area and to prosecute crimes resulting from such investigations. In my experience, I saw more manpower devoted by both the police department, via the Civilian Complaint Review Board and the various Internal Affairs Units, including the Field Internal Affairs Units, and the District Attorneys' Offices, than in other areas of criminal activity. Every discharge of a weapon by a police officer was immediately investigated by both superior officers of the Police Department as well as Assistant District Attorneys who responded 24 hours per day, 7 days per week. Grand Jury investigations

logs  
 10-19-83

Congressman Conyers  
September 28, 1983  
Page 2

in this area were routine. Every allegation of unwarranted exercise of force referred to the District Attorney's Office by the alleged victim was fully probed by that Office. No other assault case was given even a fraction of that attention. In the instances where the the allegations were found to have merit, prosecution was initiated.

The problem in New York is not that insufficient attention is devoted towards criminal violence or other acts of illegality by members of the Police Department; rather, it is that insufficient resources and attention are devoted to all other classes of crimes by all the components of the criminal justice system. There are far too few police officers and detectives. There are dire shortages in the specialized investigatory units, particularly in the areas of white collar crime, official corruption and organized crime. There are too few prosecutors and judges and both are grossly underpaid. The physical facilities and support systems of the courts and prosecutors' offices are antiquated. The Courts do not view many crimes with the requisite degree of seriousness which they deserve. Police officers and detectives are inadequately compensated. Those are the problems. The public is the victim.

Perhaps you should focus on those areas and examine methods by which the federal government could assist so that the right of the people to be safe and secure in their homes, on their streets, at their workplaces, at their parks and playgrounds and in their buses and trains, can be enforced.

Respectfully,

  
Jerry S. Goldman

JSG: ls

cc: Honorable George Gekas  
United States House of Representatives  
Washington, D.C.

Honorable Robert McGuire  
Police Commissioner  
City of New York  
One Police Plaza  
New York, N.Y.

1513



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July 15, 1983

Congressman Conyer  
c/o Gail E. Bowman  
Assistant Counsel Judiciary  
Committee, Sub-Committee  
on Criminal Justice  
United States House of Representatives  
House Annex No. 2, Room 362  
Washington, D.C. 20515

Dear Congressman Conyer

I wish to thank you and your committee for their  
conscientious investigation into the allegations of Police  
brutality.

However, I cannot personally support these allegations  
in their entire prospectus. As a New York City Councilman  
of the 11th Councilmanic District, I have developed an ex-  
cellent rapport with the Precinct Commander of my district.  
I have found them to be most responsive to every condition  
or request made upon them. I have yet to witness a white-  
wash situation or a coverup.

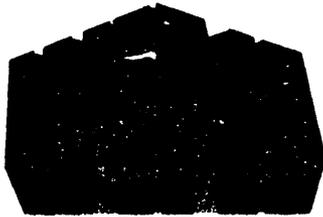
I am not naive to the fact that there have been valid  
cases involving brutality. In the past I would tend to  
agree that there were numerous brutality cases, but at  
present they are limited but not condoned.

I wholeheartedly agree with the committee recommendation  
regarding the appointment of civilian personnel to the  
Civilian Complaint Review Board:

It has indeed been a pleasure to have had the opportunity  
to assist you and your committee.

Sincerely Yours,

  
Rafael Castañeira Colón  
Council Member



WILLIAMSBURG INDUSTRIAL NEIGHBORHOOD DEVELOPMENT, INC.

July 14, 1983

Congressman Conyer  
c/o Call E. Bowman  
Assistant Counsel  
Judiciary Committee  
Sub-Committee in Criminal Justice  
U.S. House of Representatives  
House Annex #2 Room 362  
Washington, D.C. 20515

Dear Congressman Conyer:

As President and Chief Executive Officer of the Williamsburg Industrial Neighborhood Development, Inc. (WIND), I speak on behalf of our Board of Directors and of its subsidiary corporation, the Williamsburg Industrial Development Enterprises, Inc. (WIDE).

WIND is a not-for-profit local development corporation that has been in existence since 1972. WIND is dedicated to the economic, manpower and industrial development of the Williamsburg, Bushwick, Fort Greene and Bedford-Stuyvesant communities. Its first major accomplishment was the rehabilitation of the abandoned Detecto Scales building into the nation's first, community-sponsored industrial park. This former shell now houses seven (7) industrial tenants and the executive offices of the corporation and employees totaling over 1,500 people, ninety-percent of whom are resident minorities of our service area.

WIND recognized that these industries coming in would require a trained labor force. To meet this need, WIND has sponsored numerous training programs for the hard-core unemployed adults and youth. Since 1972, over 7,000 community residents have been serviced by our staff.

Over the span of our ten year tenure in the area, we have never seen any evidence of an organized effort by the New York City Police Department to abuse our community residents. Quite to the contrary, our experience has been that

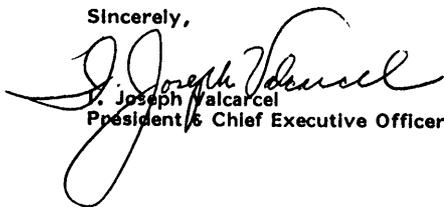
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New York's Finest are highly trained professionals who are fair, sensitive and compassionate to the constituency they protect. Each and every time we have called on the NYPD, 90th Precinct, under whose jurisdiction we fall, their response has been timely and above and beyond the call of duty.

Their performance has been so outstanding, that I have taken the initiative, on several occasions, to make official commendations on behalf of the officers that have done such an outstanding job. Enclosed is a copy of my most recent letter, dated March 2nd, to Commissioner Robert J. McGuire. Enclosed you will also find a map of the boundaries of the 90th Precinct. This will show the predominance of minorities within its catchment area.

I am outraged that such charges have been leveled at the police department. These charges and/or allegations are, frankly, ludicrous! This is certainly not the case with the 90th Precinct. Nor is it my impression of the police department as a whole. As a former director of Youth Services for the Bronx, my work focused on Youth Services especially the groups (gangs) of the area. I found that the officers of the 41st Precinct (Fort Apache) performed similar as those of the 90th, maintaining the highest tradition as New York City's Finest.

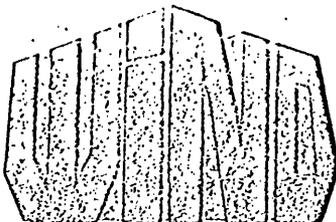
Sincerely,



J. Joseph Valcarcel  
President & Chief Executive Officer

IJV:rmf

enclosures



## WILLIAMSBURG INDUSTRIAL NEIGHBORHOOD DEVELOPMENT, INC.

March 2, 1983

Honorable Robert J. McGuire  
Commissioner  
New York City Police Department  
1 Police Plaza  
New York, New York 10038

Dear Commissioner McGuire:

On behalf of the Board of Directors, the officers and staff of Williamsburg Industrial Neighborhood Development, Inc., I would like to express sincere gratitude to you for the support we received from the 90th Precinct and Patrol Borough Brooklyn North on February 25th, 1983.

On that occasion, WIND sponsored a luncheon honoring the Honorable Philip Abrams, Assistant Secretary for Housing, U.S. Department of Housing and Urban Development, and the Honorable Blanca Cedeno, Commissioner, New York City Housing Authority. The ceremony was attended by many public elected and appointed officials from the city, state and federal government, as well as prominent members of the community and business sector. The response and cooperation from your department in arranging adequate coverage for this event was outstanding.

Since 1974, the 90th precinct has been of great assistance in providing this kind of support for all special events that have taken place at WIND. For this, they deserve special commendation for performing in the best tradition of New York's Finest.

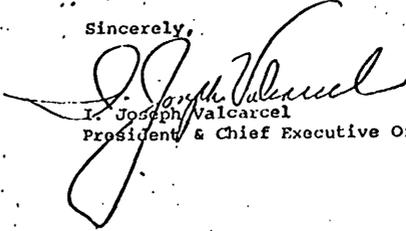
I would like to convey through you my sincere thanks for a job well done to the Commanding Officer, Captain Emery J. Papp, Sergeant Wilfred

1517

Caban (Shield No. 3010), Detective Joseph Ares (Shield No. 2802), Detective Pablo Irizarry (Shield No. 2848), and Police Officer Felix Pérez (Shield No. 7556).

Again, my deepest gratitude for your continued cooperation and support.

Sincerely,

A handwritten signature in dark ink, appearing to read 'I. Joseph Valcarcel', is written over the typed name and title.

I. Joseph Valcarcel  
President & Chief Executive Officer

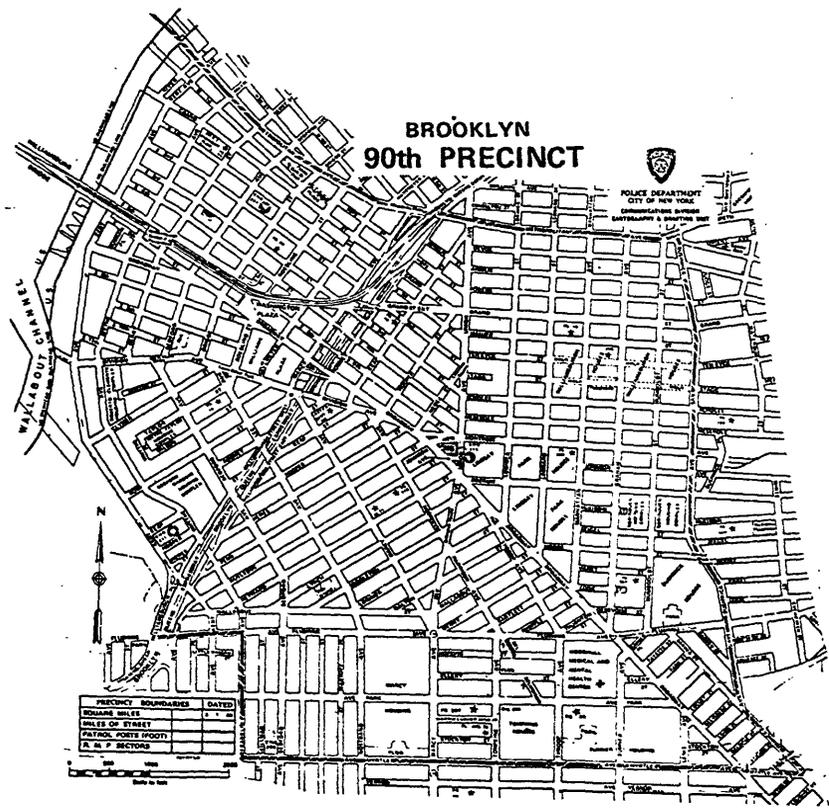
IJV:rmf

cc: Honorable Edward Koch  
Mayor of the City of New York

Honorable Jaime Rios  
Deputy Commissioner for Trials

WIND Board of Directors

WIDE Board of Directors





## *Desfile Puertorriqueño de Nueva York*

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July 21, 1983

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Dear Congressman Conyer:

As President of the Puerto Rican Day Parade in New York City, I have never experienced any unfair treatment by any of the members of the New York City Police Department.

On the contrary, I have found the Police Department to be most helpful. I have found that the police officers have demonstrated extra efforts in protecting and assisting all citizens of our City.

The police have especially been most cooperative in providing the necessary protection and assistance in our Puerto Rican Day Parade.

Sincerely,

DESFILE PUERTORRIQUEÑO DE NUEVA YORK

Federico Perez,  
President

Congressman Conyer  
c/o Gail E. Bowman  
Assistant Counsel, Judiciary  
Committee, Sub-Committee on  
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United States House of Represent-  
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" CELEBRATING OUR 25th. ANNIVERSARY "

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1983



## BANCO DE PONCE

10 Rockefeller Plaza, New York, New York 10020

July 14, 1983

Congressman Conyer  
c/o Gail E. Bowman  
Assistant Council, Judiciary Committee  
Sub-Committee of Criminal Justice  
United States House of Representatives  
House Annex No. 2, Room 362  
Washington, D. C. 20515

Dear Congressman Conyer:

It has been the experience of Banco de Ponce, on many occasions, that when we call the Police Department for any type of assistance, their personnel are at our doors quickly. Their attitude toward "duty calls" and fellow humans in need is surely commendable. Such calls would include harassment to our employees, disorderly conduct at our branches, and/or community meetings where Banco de Ponce is involved, not to mention lengthy stake-outs at our branches when the need arises.

Our branch managers maintain close relations and contacts with the local Precinct commanders and community affairs personnel. On one occasion the New York City Police Commissioner, at our request, visited our Southern Boulevard branch where an open meeting was held, attended by local merchants of the area and community leaders. This is a rarity in which our community members would have a chance to meet directly with the Commissioner and ask questions that would affect their neighborhoods and businesses.

In general, the services rendered to Banco de Ponce, the oldest and largest Puerto Rican Bank in New York City, has been from the rank of Police Officer to Police Commissioner.

We at Banco de Ponce gratefully appreciate the support and cooperation extended by the New York City Police Department to our employees and to the community we serve.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Wiscovitch".

Joseph Wiscovitch  
Assistant Vice President and  
Security Officer



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OF

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October 5, 1983

Honorable John Conyers  
Chairman, Subcommittee on Criminal Justice  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Conyers,

We are writing this letter to you for inclusion in the record of the hearing held on September 19, 1983 in New York City on the subject of police brutality.

A recurring problem that has come to our attention involves needless terrorizing of crime-victims who have called the police in an emergency and the police responded in street clothes. In these situations, the victim expected to see officers "in blue" responding to the 911 call and was unexpectedly confronted by several individuals who themselves looked like criminals, but who in reality were police officers dressed in "plain" clothes.

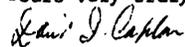
We understand that there are cases where police response in plainclothes is indicated in the furtherance of good police work. But there are many cases to our own knowledge where response in plainclothes was clearly inappropriate and terrorizing of the victim, and was excused only by lack of adequate uniformed manpower. For such situations of shortage of uniformed police, it is our suggestion that blue vests be kept on hand by the police, to be worn over plainclothes by responding officers where a uniformed response is indicated. These vests should be clearly identifiable to the public, after a TV informational campaign. Police precinct stations and police vehicles would

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10-24-83

keep an adequate supply of these vests at all times, so as to have them readily available for emergency responses.

We hope that our suggestion for blue vests will be found to be a practical and feasible step in reducing tensions between police and public.

Yours very truly,



David I. Caplan  
Chief Counsel



## National Conference of Black Lawyers

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**Deborah A. Jackson**  
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*Phroska L. McAlistar, Esq.*  
Testimony Submitted by the New York City  
Chapter of the National Conference of  
Black Lawyers to the Congressional  
Subcommittee on Criminal Justice

September 19, 1983

Mr. Chairman:

As you well know, since our beginning in 1968, the National Conference of Black Lawyers has distinguished itself as an organization of activist lawyers dedicated to the cause of racial justice in this country and abroad. We have been in the forefront of the fight against police brutality, the preservation of affirmative action in employment and education, and the representation of Black and poor defendants who are victims of a racist criminal justice system. In addition, NCBL is recognized internationally for its support of civil and human rights for oppressed peoples around the world.

In New York City, members of NCBL have represented victims of police brutality and their

families. Moreover, because of the rise in police violence in the late 1970's, in 1980, the New York City Chapter of NCBL sponsored a conference on police misconduct. We concluded that police violence against Blacks, Hispanics and other poor people was pervasive, motivated by racism generally, and that the Civilian Complaint Review Board (CCRB) was not an adequate mechanism for addressing this problem. Today, three years later, these conclusions have been confirmed by the testimony you have already heard.

A report issued in January 1982 by the National Minority Council on Criminal Justice stated:

The history of the police in the United States reflects the evolution of a socially approved armed institution whose role has frequently been at odds with the freedom and the very lives of minority peoples. While the roots of the American police may be traced to England, the role of the modern American policeman was heavily influenced by the "paddyrollers" who patrolled southern plantations, swamps, and towns to ensure that slaves stayed in their assigned roles and did not disrupt the "slavocracy" on which southern society and economy were based.

Unequal Justice in America, at 225.

While this is New York City and not the antebellum South, the police in this City often act like paddyrollers. According

to statistics published in the Village Voice September 20, 1983 edition, since 1977, an average of 16 Blacks a year have died at the hands of New York City police. During the past five years police killings have increased 25%, with an average loss of 36 lives per year. Civilian complaints against the police have doubled since Mayor Koch took office; many of these are for racial slurs.

The Mayor who sets direction for the police department exhibits the attitude of a plantation owner towards the Black, Hispanic and Asian communities in this City. Just a few examples of this attitude are: 1) the closing of Sydenham Hospital in the face of widespread community protest and the pleas of Black leaders to keep it open; 2) despite the outcry of several thousand residents who demonstrated in front of City Hall, Mayor Koch approved the building of a prison in Chinatown; 3) the surprise and disbelief the Mayor expressed upon learning that a Black minister was beaten by white police officers on a street and at a police stationhouse in Harlem (where the Mayor incorrectly believed a large number of Black police officers are assigned); and 4) characterizing this subcommittee's decision to hold this hearing here at the 369th Armory as a veritable "circus." Such actions add legitimacy to the argument that this administration turns a deaf ear to minority concerns and closes its eyes to complaints

of physical brutality and verbal harassment. Indeed, such actions encourage the wanton use of excessive force and the concomitant belief in the minority community that the police force is not friend and is an army of occupation.

As the testimony we have heard today overwhelmingly indicates, the problem of police violence against Blacks, Hispanics and other oppressed people must be immediately addressed. Increasing the staff of the CCRB by 25%, as Police Commissioner McGuire announced just three days ago, is not the answer. Whether the CCRB has 7 civilian employees or 27 is irrelevant. The point is the CCRB is totally ineffective.

In addition to the several complaints recounted today that were mishandled by the CCRB, my firm represents a number of victims of police brutality, two of whom had cases improperly handled by the CCRB.

On February 14, 1983 police officers assaulted and harassed Ms. P. Ellis near the Bayou Pub at 123rd Street and 8th Avenue. They pushed her to the ground and fractured her arm while cursing her and accusing her of selling drugs. The only charge formally made against Ms. Ellis was dismissed by the criminal court for failure to prosecute. Ms. Ellis did not have any past experience with drugs, nor was she a regular patron of the Bayou Pub. In fact, Ms. Ellis is a reputable person, who works as a cashier at Lord & Taylor to support herself and two children. The incident and

injuries caused her to miss five days work and an enormous amount of anguish. To date, Ms. Ellis has heard nothing from the CCRB.

On June 6, 1983 at 8:15 A.M. at a subway station at 191st Street and St. Nicholas Avenue, Ms. Aquino, a 45-year old woman, was assaulted, badly beaten, and publicly humiliated by two Transit police officers. Ms. Aquino, while on her way to work, was arrested, handcuffed, subjected to racial and ethnic slurs and generally humiliated in front of students and personnel of George Washington High School, where she is employed as a school aide. Although she suffered multiple contusions, swelling of the arms, wrists and fingers, whiplash and low back syndrome as a result of the beating, she was charged with disorderly conduct. She was subsequently acquitted of the charge. The most disturbing aspect of this case is that the TA Police Department Civilian Complaint Review Unit had only two months before received complaints from a teacher and two students from George Washington H.S. about the same police officers, the same type of physical and verbal abuse and at the same location. Nevertheless, the TA Police Department Civilian Complaint Review Unit determined that there was "insufficient evidence" to sustain a finding of impropriety by these police officers.

What then is the solution? Increasing the presence of Blacks and Hispanics on the police force is one way of reducing racially motivated police violence. Making the police more responsive to all the residents of this City will go even further toward an effective solution to the problem. A body made up of citizens not employed by the police department which sets policy, has subpoena power and enforcement authority is, we believe, what is necessary to convert the role of the police in Black, Hispanic and Asian communities from that of paddyrollers to what it should be -- civil servants. To that end NCBL endorses the model legislation for a Community Control Council drafted by the NAARPR. With them, we urge its consideration by this subcommittee.

Thank you for this opportunity to address this subcommittee.

Respectfully Submitted,

Phroska L. McAlister  
Co-Chair, Legal Advocacy &  
Legislative Committee  
NCBL-NYC Chapter

NATIONAL CONFERENCE OF BLACK LAWYERS  
FIFTEENTH ANNUAL CONVENTION

Los Angeles, California  
October 7-10, 1983

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ADMINISTRATIVE REVIEW OF  
RACIALLY-MOTIVATED POLICE VIOLENCE

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A Survey, by Kirsten Bey, Student,  
Northeastern University  
School of Law

Introduction, by Betty Lawrence Bailey  
Staff Attorney  
Center for Constitutional Rights

ADMINISTRATIVE REVIEW OF  
RACIALLY-MOTIVATED POLICE VIOLENCE

Introduction

By Betty Lawrence Bailey,  
Staff Attorney,  
Center for Constitutional Rights

Police harassment/brutality is a component of racially-motivated violence. As is the case with racially-motivated violence generally, any solution to police violence must involve the community the violence is directed against. Throughout this country communities are demanding that cities be held accountable for police violence. They are demanding citizen boards with the power to hold police officers accountable for their violent deeds. Some cities have responded to this demand by establishing some form of administrative review of police misconduct. What follows is a survey of what, if anything, is available administratively in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.

A recent example of the successful use of administrative review is the Lacy case in Milwaukee, Wisconsin. In the summer of 1981, Ernest Lacy, a 22-year-old Black man, left the apartment he was painting to get some food and was arrested by three police officers from the Milwaukee Tactical Squad. The police claimed that he fit the description of a rapist being sought by police, although Lacy's physical characteristics were different.

The police wrestled Lacy to the ground, forcing him to lie face down, an officer pressing his knee into Lacy's back and lifting Lacy's arms to a 90 degree angle. He was kept in this position even after he was handcuffed. Unconscious, Lacy was thrown into a

police van, his forehead hitting the metal floor. The van was then driven to another location to arrest a man for outstanding parking warrants. That man told the police that Lacy was not breathing, but was ignored. Finally, after arriving at the scene of the rape, when the officers could not awaken Lacy, they called for an ambulance. Paramedics arriving at the scene were unable to revive him and were critical of the police for not administering first aid. Lacy was then taken to a hospital, where he was pronounced dead on arrival.

The Center for Constitutional Rights (CCR), together with local Milwaukee lawyers, represented the Lacy family seeking disciplinary action against the police officers before the Milwaukee Fire and Police Commission--a citizen board which is vested with the authority to discipline police officers for misconduct in office. After a lengthy hearing, the Commission ruled that one officer was guilty of using excessive force in the arrest and that all five officers were guilty of failing to render first aid. One officer was fired, three others suspended without pay for 60 days, and one suspended for 45 days.

Administrative review can provide a way of involving the community. In the Lacy case, the Lacy family and a coalition of individuals from the community insisted that the legal team seek administrative review in addition to filing a civil rights damage action. Throughout the proceeding the community was actively involved. They demonstrated whenever any proceedings took place on the case, and they were present in the hearing room throughout the 29 days of the hearing. Towards the end of the proceedings

members of the community testified about the effect police violence had on the community. The Milwaukee Fire and Police Commission provided a forum for community residents to have their views heard.

Seeking administrative review is not without problems. In instances where a civil rights damage action is planned, deciding whether or not to seek administrative review before filing the damage action should be well thought out. There is always a chance that a party may be bound through the doctrines of res judicata or collateral estoppel by an adverse decision of the administrative body. See, Kremer v. Chemical Construction Corp., \_\_\_ U.S. \_\_\_, 102 S. Ct. 1883 (1982) (a federal court in a Title VII case must give preclusive effect to an administrative determination on the same matter, affirmed by a state court, if the plaintiff had a "full and fair opportunity" to litigate). See also, Unger v. Consolidated Foods Corp., 693 F. 2d 703 (7th Cir. 1982); Mitchell v. National Broadcasting Company, 553 F. 2d 265 (2d Cir. 1977) (applying res judicata to a subsequent §1981 action); Developments in the Law, Section 1983 and Federalism, HARV. L. REV. 1133, 1330-1360 (discussion of application of doctrine in §1983 actions). In determining whether to seek administrative review prior to filing a civil rights damage action, one should consider first what the client and the community wants, and second, the structure of the administrative body and the facts of the particular case. If the facts are particularly strong and the administrative body impartial, it may be worth the chance. If, on the other hand, the administrative body is made up of employees of the police

department, such as exists in New York, one would be well advised to first seek review in federal court. If you prevail in federal court you can then pursue administrative review.\*

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\* Consider whether there is a time limit on seeking administrative review. Where the state statute of limitations may prevent review, communities may want to pressure the city to take action against officers accused of gross misconduct. In Milwaukee, the FPC suspended the three officers who arrested Ernest Lacy within weeks of the incident. We are sure the many demonstrations by the Lacy Coalition had something to do with the suspension. Another alternative is to file a complaint before the administrative body and ask them to stay the proceedings pending the outcome of the damage action. Staying the proceedings should be a last resort, since the police officers would continue to patrol the communities in the interim.

ADMINISTRATIVE REVIEW OF  
RACIALLY-MOTIVATED POLICE VIOLENCE

A Survey

by Kirsten Bey, Student  
Northeastern University  
School of Law

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1.

To find State statutes referring to Administrative Review of Police Misconduct I looked under the following topics in statute indexes:  
Municipal Corporations, Cities and Towns, Police, Peace Officers, Law Enforcement Officers.

- I. The following list covers the general statutes I found dealing with review of police conduct. I am not vouching for the completeness of this list, but it should at least get you started in each state.
1. Alabama 11-43-180 et seq. Civil Service Merit System for Law Enforcement Officers
  2. Alaska 18-65-130 et seq. Alaska Police Standards Council  
29-23-550 et seq. Municipal Employees Merit Appointment
  3. Arizona 38-1001 et seq. Law Enforcement Officers Merit System
  4. Arkansas 19-1601.1 et seq. Civil Service Merit System for Police and Fire Department
  5. Colorado 31-30-101 to 31-30-105 Fire, Police & Street Department Civil Service Commission
  6. California Pen. 832.5 Citizen Complaint Against Personnel  
See also Berkeley Municipal Code, L.A. Municipal Code, San Francisco Municipal Code
  7. Connecticut 7-274 to 7-294(e) Establishment of Town Police Commission
  8. Delaware Nothing
  9. District of Columbia 4-901 to 4-905 Civilian Complaint Review Board
  10. Florida 112.531 et seq. Law Enforcement Officers Rights
  11. Georgia Nothing
  12. Hawaii 52-1 et seq. Police Departments  
52-31 to 52-51 Hawaii, Kua, Maui
  13. Idaho 15-1601 et seq. Civil Service Commission (not clear Police fall under this)
  14. Iowa 400.13 et seq. Civil Service, Police
  15. Indiana 36-8-9-1 et seq. Board of Metropolitan Public Safety
  16. Kansas 13-2201 et seq. Civil Service Commission
  17. Illinois 125 ¶ 51 et seq. County Police Department  
24 ¶ 10-2-1 et seq. Board of Fire & Police commission  
24 ¶ 3-7-3.1 Police Boards, Cities over 500,000 population
  18. Louisiana R.S. 33:2471 et seq. Fire & Police Civil Service Commission
  19. Massachusetts 41 § 96 et seq. Pol. Officers, towns where civil serv. title not applicable  
31 § 41 + 43 § 58 et seq. Public officers under civil service statute

20. Kentucky 95.450 Removal of Police Officers
21. Maine 30:2361 Law Enforcement Officers  
30:2152 Police & Fire Department Civil Service Commission
22. Maryland 27-727 to 734D Law Enforcement Officers Bill of Rights
23. Michigan 28.1 et seq. Michigan State Police  
38.501 Firemen & Policement Civil Service Commission  
See also, Detroit City Charter
24. Minnesota 419 et seq. Police Civil Service Commission  
439 et seq. Board of Fire & Police Commission
25. Mississippi 21-21-1 Police Chief in Charge  
21-31 1 et seq. Police Civil Service for Certain Municipalities
26. Missouri 85-010 et seq. Board of Police Commission  
84-010 et seq. Board of Police Commission -- St. Louis  
85.350 et seq. Board of Police Commission -- Kansas City
27. Montana 11-1802 et seq. Police Commission
28. Nebraska 19-1801 et seq. Police Department Civil Service Commission
29. New Hampshire 49-A: 24 Police Chief in Charge of Department (mayoral city)  
49-A: 56 Police Chief in Charge of Department (manager city)
30. Nevada Nothing
31. New Mexico 29-1-1 et seq. Police Officers Generally  
29-2 et seq. State Police Board
32. New Jersey 40 A: 14 et seq. Police & Fire Department  
40 A: 14-165 et seq. Board of Fire & Police Commission
33. New York Civ. Serv. § 83 Police Advisory Board  
§ 131 et seq. Police Commission 2d Class Cities
34. North Carolina 128.16 Removal of Police Officer
35. North Dakota Nothing
36. Ohio 143.01 et seq. Civil Service  
737.12 Public Safety Director - suspension of police personnel
37. Oklahoma 11-10-119 Police Department Creation  
see also collective bargaining Fire & Police
38. Oregon 236.350 et seq. Disciplinary Actions Against Police Officers
39. Pennsylvania 53-811 et seq. Removal of Police Officers  
53-12638 Police Commission  
See also, Philadelphia Charter 351 § 3.3-206 Police Commission
40. Rhode Island 42-28.6 et seq. Law Enforcement Officers Bill of Rights

41. South Carolina 5-19-10 et seq. Civil Service Commission  
5-19-110 et seq. Civil Service Commission certain cities  
23-21-10 et seq. Board of Police Commission certain cities
42. South Dakota 9-14-1 et seq. Police Department Civil Service
43. Tennessee Nothing
44. Texas 28-22-1269m et seq. Civil Service Police
45. Utah 10-10-14 et seq. Civil Service Commission  
10-3-1001 et seq. Board of Commissioners
46. Vermont 24-55-1931 et seq. Police Department, hearing before legislative body
47. Virginia Nothing
48. Washington 41-12-010 et seq. Civil service Commission for City Police  
*SANU City Charter Art 16 §12; Spokane City Charter*
49. West Virginia 8-14-7 et seq. Policemen's Civil Service Commission  
*§-14A-1 et seq. Municipal Pol. off & Firemen's Pol. for Investigation*
50. Wisconsin 62.13 Fire & Police Commission: Cities less than first Class  
62.50 Fire & Police Commission: First Class Cities
51. Wyoming 15-5-101 et seq. Fire & Police Commission

For States that divide their cities up into many different classes I did not keep track of all the various provisions. As I mentioned at the out-set this is only meant as a sketchy overview and a place to begin looking for provisions dealing with review of police conduct.

52. Puerto Rico 1 § 171 et seq. Investigation, Prosecution & Appeals Comm  
25 § 1001 et seq. Police of Puerto Rico
53. Virgin Islands 3 § 25B Department of Public Safety  
23 § 1 et seq. Police Force.  
(Commissioner of Public Safety has total control.)

## II. Who can file a complaint?

Citizen initiation of complaint allowed

California	Nebraska
District of Columbia	New Jersey
Florida	North Carolina
Idaho	Pennsylvania
Kentucky	Rhode Island
Maryland	South Carolina
Michigan (For State Police)	South Dakota (Governor has independent power to remove- citizen can file complaint with governor)
Mississippi	
Missouri	Vermont
Montana	Washington
	Wisconsin
	Puerto Rico

Language of statute seems to limit who can file complaint

Arizona (department head)  
 Hawaii (police chief)  
 Illinois (County police department - only sheriff can bring complaint)  
 Minnesota (superior officer or appointing authority)  
 Virgin Islands (only Commissioner of Public Safety can discipline an officer)

No indication from statute who raises complaint initially

Alabama	Michigan (for municipal police dept)
Alaska	New Mexico
Arkansas - (statute doesn't seem to give citizen right to file charge but case law indicates citizen can file charge)	New York
Colorado	Ohio
Connecticut	Oklahoma
Indiana	South Dakota (civil service procedure)
Kansas	Texas
Illinois (for municipal police department case law indicates that citizen complaint can be basis for removal, but not explicit that citizen can file complaint on own)	Utah
	West Virginia
	Wyoming
	Massachusetts
Louisiana	
Maine	
Iowa (civil service comm it self can initiate process against municipal employee)	

## III Who sits on review board, if one exists?

For states which provide some sort of reviewing body, the following compositions of those bodies exist:

Reviewing body has no police as members

Arizona  
 Arkansas  
 Connecticut (But each town has discretion whether or not to have review system)  
 Hawaii  
 Idaho  
 Indiana (Each city has discretion whether or not to create a board)  
 Kansas (Each city has discretion whether or not to adopt a civil service comm)  
 Kentucky (Town legislative body hears complaints against police)  
 Massachusetts (Final reviewing body, initial review by appointing authority)  
 Maine (Each town has the discretion to create a board)  
 Minnesota (Each town has discretion whether or not to have board)  
 Mississippi  
 Missouri  
 Montana  
 Nebraska  
 New Mexico  
 North Carolina (File petition for removal with county superior court judge)  
 South Carolina  
 Texas  
 Utah  
 Vermont  
 Wisconsin  
 Puerto Rico

Reviewing body has some civilian members and some police members

Alaska  
 Alabama  
 Louisiana  
 Michigan (for municipal police departments)  
 West Virginia (one member appointed by chamber of commerce)  
 District of Columbia

Reviewing body made up of all police officers

Maryland (at least one member must be of rank of aggrieved officer)  
 Michigan (for State police matters)  
 New Mexico  
 Rhode Island (aggrieved officer gets to choose one member)  
 West Virginia  
 Florida (aggrieved officer gets to choose one member)  
 Virgin Island (Commissioner of Public Safety is sole decider)

Statute provides for reviewing body, but composition is unclear from statute

Colorado	Pennsylvania
California	Illinois (County: sheriff appoints
New Jersey	City: mayor appoints members)
New York	Iowa
Oklahoma	South Dakota
Oregon	Washington

## IV Who has final authority regarding sanction for misconduct?

Reviewing board has final authority (except for judicial review)

Alaska	Missouri
Arizona (reviews an initial decision of police chief)	Montana (mayor has veto power over guilty decision)
Arkansas	Nebraska
California (in charter cities. Not clear where final authority lies with general law cities)	New Mexico
Connecticut	New Jersey
Florida	New York
Hawaii	North Carolina
Idaho	Ohio
Indiana	Oregon
Kansas	Pennsylvania
Illinois	Rhode Island
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Texas
Michigan	Utah (can only review a decision from department head. Cannot compel a dismissal)
Minnesota	Vermont
Mississippi	Washington
Iowa	West Virginia
	Wisconsin
	Wyoming
	Massachusetts
	Puerto Rico

Reviewing board only makes recommendation to the chief of police

District of Columbia  
Maryland

Reviewing board exists at least in part to review disciplinary actions of department head i.e., department head can impose heavy sanctions without first providing hearing

Arizona  
Arkansas  
Hawaii  
Nebraska  
Ohio  
Texas  
Utah  
Massachusetts (statutory provision is general civil service commission review, i.e., not specific to police officers)  
Iowa

V What provisions are allowed at a hearing?

Full panoply of rights, e.g., right to counsel, subpoena witnesses, cross examine etc. (for accused officer)

Arkansas  
 District of Columbia  
 Florida  
 Idaho  
 Indiana  
 Kansas  
 Illinois  
 Kentucky  
 Louisiana  
 Maryland  
 Michigan  
 Minnesota  
 Mississippi  
 Missouri  
 Montana

Nebraska  
 New Mexico  
 New Jersey  
 New York  
 North Carolina  
 Ohio  
 Oregon  
 Pennsylvania  
 Rhode Island  
 South Carolina  
 South Dakota  
 Utah  
 Vermont  
 Washington  
 West Virginia  
 Wisconsin  
 Wyoming

Massachusetts (first hearing before appointing authority. Review by  
 Puerto Rico  
 Civil Service Comm.

No absolute right to a hearing, board can refuse to review decision

Hawaii

States where statute does not specify details of hearing

Arizona  
 Colorado  
 California  
 Connecticut  
 Maine  
 Texas  
 Iowa

## VI Specific statutory provisions

A. Reviewing body has some control over rules and regulations of police department i.e., control beyond hiring and firing

Alabama (arguably from purpose of statute)  
 Berkeley  
 Detroit  
 Connecticut  
 Hawaii  
 Indiana  
 Louisiana  
 Minnesota  
 Missouri  
 Montana  
 Puerto Rico  
 South Carolina  
 Wisconsin

B. Complainant has role other than as witness

Wisconsin  
 District of Columbia  
 Puerto Rico (maybe can just appeal decision of Commission)

C. Records of reviewing body are clearly public

California (must maintain records for at least five years)  
 District of Columbia  
 Florida  
 Texas  
 Massachusetts (becomes part of employee's record)

D. Who can ask for appellate review (judicial review) I may not have noted down this aspect on some of the states.1. Only aggrieved officer

Idaho	New York
Indiana	Ohio
Kentucky	Pennsylvania
Maryland	Utah (only for abuse of discretion)
Mississippi (jury trial review)	Vermont
Montana	Washington
Nebraska	West Virginia
New Mexico	Wyoming
New Jersey	

2. Department/commission or aggrieved officer

Arizona  
 Arkansas  
 Illinois (pursuant to Administrative Review Act)  
 Louisiana  
 Minnesota  
 Rhode Island

3. Citizen/complainant can request review

Puerto Rico  
Wisconsin

4. Unclear who can request review

Alabama	Oregon
Alaska	Ohio
Colorado	North Carolina (original review is judicial)
California	South Carolina
Connecticut	South Dakota
District of Columbia (not clear there is review)	Texas
Florida	Virgin Islands
Iowa	
Maine	

5. No one can request review

Hawaii  
Kansas (?)  
Missouri .

## VII Discussion

There are three generic forms of review boards:

- 1) departmental internal review systems;
- 2) civilian review boards which have no departmental role except to review citizen complaints; and
- 3) civilian police commissions which have authority to
  - a) review and decide misconduct complaints, and
  - b) provide input into the general management of the police department.

All review systems I found in the statutes are some variation on these general themes. Most involve types 2 and 3. The make-up of the boards varies greatly from one state to another. It runs the gamut from total civilian control to total departmental control. All boards seem to be able to recommend or impose the whole range of sanctions, from suspension to discharge.

Because I reviewed only state statutes I have no idea what exists on the municipal level (although I did come across references to city provisions for Detroit, Seattle, Spokane, Berkeley, L.A., San Francisco, and Chicago.) When looking at § I, note that many of the states allow cities the discretion to have a review system or not. Therefore, what follows in the succeeding sections may or may not exist, depending on whether a given city opted for creating a review board.

The first place to begin in looking for administrative review of police misconduct should be at the city level, i.e., see if the city charter provides for anything. After that an inquiry should be made into what type of procedures a specific police department has. A department may provide a relatively fair system, e.g., reviewing agents' sole job may be to do internal investigations. I suspect, however, that any internal departmental system will be inadequate, but it is a place to begin.

If there are no local provisions and the internal review mechanism appears unsatisfactory, I would then go to state statutes. I was surprised at the number of states that do provide for some form of review of police misconduct. Many of

these are civil service systems which exist primarily to protect public employees from improper discharge, but several do incorporate specific regulations dealing with police misconduct. At least 20 states (including D.C., Puerto Rico, and the Virgin Islands) provide for citizen initiation of complaints in some form. Of these several are within the civil service regulations or Law Enforcement Officers Merit Systems. (see § I & II)

The history of type 2 systems in the U.S. has been less than successful. This is due mainly to police department opposition. A former member of the Detroit Civilian Police Board, Littlejohn, claims that police opposition is less strenuous to a civilian commission because the commission has actual authority over departmental matters and is not viewed as an outside entity being imposed upon the police department.<sup>1</sup>

Besides Detroit and Wisconsin, there are several other review-type bodies which have some input inot departmental matters. (see § VI A) In addition to not being an alien force, these bodies can use what they learn from their reviewing function to propose needed changes in the department. A review board which only recommends a sanction, or even if it can impose a sanction, cannot force any structural change upon a department.

Aspects which make a system "progressive", i.e., pro-citizen include:

1. Citizen allowed to file a complaint;
2. Citizen able to control prosecution of complaint;
3. Reviewing body has authority to impose sanction;
4. Citizen able to appeal unfavorable decision; and
5. Hearings and records are public.

Only the Wisconsin and Puerto Rico systems provide for all of these features.

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1. See Civilian Police Commission: A Deterrent to Police Misconduct. U. Detroit Urban Law Journal.

A review system which really involves complainant input is particularly important for misconduct of minor dimensions,<sup>2</sup> e.g., law level harrasment, verbal abuse, discrimination, because most victims of such police behavior would not be able to maintain a civil action to redress these wrongs. Additionally most review systems provide for relatively quick review of the accused officer's behavior. The most wide spread complaints against civil litigation are that actual results never filter down to the individual officer and civil litigation doesn't lead to structural change in the department.

My personal view (primarily from the Lacy case) is that civilian review of police misconduct is more of a community control issue than an individual rights remedy; although each successful complainant certainly has had his/her rights vindicated. I hold this view because those who are most often victims of police abuse are the poor and minority members of a community, and the more local a remedy, the more ability they have to control their environment. I wouldn't suggest doing away with filing civil law suits but a strong, well-utilized system of administrative review fulfills a role in the overall sheme of combatting police abuse.

Any city that already provides for citizen initiated review of police misconduct could be ripe for a concerted effort to test the system. Especially in cities where hostility exists between the police department and certain groups, those abused groups could organize to use the complaint system at least to draw attention to the abuse and expose an ineffective or sham system.

Where citizen initiation of review is not allowed, this would seem to be the area of most needed change. Where citizen initiation is possible, but citizens are at most witnesses in any proceeding, the necessary change is to allow a complainant, if they choose, to present their case. One problem with complainant

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2. Most states list misconduct in general terms, e.g., excessive force, abuse of authority, discourteous behavior toward public. Puerto Rico provides for a long list of improper behavior including discrimination on socio-economic basis, or any reason not applicable to general population, physical or psychological coercion.

control is that if a complainant cannot afford an attorney, the complainant will likely be at a disadvantage to the accused's attorney. Therefore, in some situations it might be preferable to allow a complainant to choose between self control of the case or control by the hearing board. The problem with board control is, of course, it's hard for a board to be both an impartial decision maker and a zealous advocate for the complainant.

A couple states' review systems prohibit administrative review to occur while there is on going criminal or civil action. I didn't research the issue of the res judicata effect of an administrative decision (no doubt Betty or some law student will in preparation for the civil suit) on subsequent civil action. As I know nothing about administrative law and remember even less about civil procedure I won't hazard a guess on this issue.



**NATIONAL PEOPLE'S HEARING  
AND INQUIRY INTO**



Atlanta Georgia/Danny Lyon/Magnum



Fresno, Calif., 1973/Bob Fitch

**POLICE CRIMES**



Birmingham Alabama, 1963/Wide World

**IN THE UNITED STATES**

**\$2.75**

**NATIONAL PEOPLE'S HEARING  
AND INQUIRY INTO  
POLICE CRIMES  
IN THE UNITED STATES**

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## INTRODUCTION

Since its foundation in 1973 the National Alliance Against Racist and Political Repression has consistently fought to protect poor and minority communities from widespread abuses of police powers. In recognition of the consistent failure of the administration of justice system to provide adequate civil and criminal remedies against such crimes, the NAARPR established a Police Crimes Task Force nationwide to place deliberate emphasis on the criminality of abuses of police powers.

Responding to the increasing volume of evidence of police crimes amassed by the Alliance's regional committees and recognising the extent to which the media ignores these crimes, the Alliance decided to hold a National People's Hearing and Inquiry into Police Crimes in Los Angeles on January 23-24, 1981.

A panel of distinguished church leaders, community representatives, legislators and legal experts was convened in Los Angeles' City Hall on January 23 and they received oral and written testimony from a large number of victims, attorneys, community leaders and legislators who came from across the country to testify. Witnesses came from northern and southern California, Colorado, Indiana, Kentucky, Louisiana, Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, Texas and Washington, D.C.

On the following day, members of the panel joined witnesses and experts in order to help formulate programs of action in workshops concentrating on legislative strategies, litigation and community organisation.

### PANELISTS

Helen Hide	University of Nebraska, Omaha: Co-ordinator Student personnel
Quincy Beaver	Southern Chair, Black Caucus, California Democratic Council, Carson Ca;
Curtis Earnest	Legislative Deputy to Bill Greene, California State Senator, Los Angeles, Ca;
Rev. Edgar Edwards	Pastor, Immanuel United Church of Christ, Co- Chair, Political Committee of "The Gathering" Los Angeles, Ca;
Robert Farrell	Councilman, City of Los Angeles, California;
Richard Harvey	Barrister, International Association of Democratic Lawyers, London, England;
Dr. Cecil (Chip) Murray	Pastor, First AME Church; Co-Chair Political Committee of "The Gathering" Los Angeles, Ca;
Rosalio Munoz	Los Angeles Committee on Immigration, Ca;
Mary Powers	National Interreligious Taskforce on Criminal Justice, Chicago IL.

### SPONSORS

National Alliance Against Racist and Political Repression  
National Conference of Black Lawyers  
National Black American Law Students Association

## I. THE HEARINGS

### 1. PURPOSES

**First**, to provide a national forum for the presentation of evidence of police crimes;

**Secondly**, to examine the extent to which individual police crimes may be categorized as part of a consistent pattern and practice of behavior;

**Thirdly**, to establish whether there be any significant correlation, by way of race, class, ethnicity or otherwise, between individual victims of police crime;

**Fourthly**, to investigate the failures of the administration of justice system to provide adequate civil and criminal remedies for the victims of police crimes;

**Fifthly**, to review how far, if at all, police officers\* and departments are subject to the control of the communities which employ them; and to make findings and recommendations based on the above.

### 2. CRITERIA FOR FINDINGS

The panel took as its basic premise that police officers and departments must be, and must be seen to be, subject to the same laws as those individuals and communities they are employed to serve. Accordingly, we applied the ordinary standards of criminal law in examining allegations of crimes committed by police officers.

However, police officers have particular responsibilities and duties to society in addition to those which apply to the ordinary citizen. They exist to uphold the law and the constitution and to defend internationally recognised standards of human rights and fundamental freedoms. For these purposes they are given extraordinary powers and licensed to carry deadly weapons.

The violation of any one individual's rights by any police officer we take to be a crime against the community as a whole. Where the machinery of the administration of justice fails to guarantee a remedy in practice for such a crime then those responsible, be they legislators, judges, medical examiners, District Attorneys or senior police chiefs, are equally guilty of violating human rights. Accordingly, in addition to the ordinary criminal law, we have applied internationally accepted standards of human rights.

### 3. COUNSEL TO THE PANEL

Adjoa Burrow Esq., Washington D.C.

Lennox S. Hinds Esq., New York, N.Y.

### 4. CATEGORIES OF CRIME ALLEGED

Attorneys Lennox S. Hinds and Adjoa Burrow called before us evidence of:

A. Murder: 25 specific cases were testified to, together with details relating to numerous others;

B. Assaults: a substantial number of witnesses gave evidence of the most brutal types of assault;

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\*In this term we include any law enforcement officers; local, State or Federal, who are legally authorised to carry weapons and other dangerous instruments and to enforce laws in any jurisdiction.

- C. **Breaking & Entering:** many of the above cases, together with further instances, involved violations of the privacy of individuals and organizations;
- D. **Politically and Racially selective prosecutions, harrassment and surveillance of poor and minority communities in criminal violation of people's constitutional rights:** trade unionists, political and community activists and leaders of minority communities attested to such practices.

## **5. STANDARD OF PROOF APPLIED**

The panel applied to all cases the standards which would ordinarily justify the institution of criminal proceedings against any person accused of a crime: the standard of **prima facie** proof.

## **6. LIST OF WITNESSES**

Raymond Blanks — National Minority Advisory Council on Criminal Justice to the Law Enforcement Assistance Administration, Washington, D.C.

Bernida Reagan — National Conference of Black Lawyers, Los Angeles, CA. (Chapter Chairperson)

Leon Gilbert — Attorney, Los Angeles

Merri Felder — Philadelphia, PA.

Barbara True — Mother of victim Anthony Hightower, Oklahoma City, OK.

Ted Quant — Police Abuse Committee, New Orleans LA.

Bob Robideau — Leonard Peltier Defence Committee, Pine Ridge, So. Dakota.

Jerry Mandel — La Raza Legal Alliance, Washington D.C.

Ida Jones — Omaha, NE.

Kabili Tayari — People's Investigation Commission, Jersey City, N.J.

Bill Worley — Charles Briscoe Committee for Justice, Oakland, CA.

Sherry Nelson — Sister of Victim, Richmond CA.

Mattie Jones — NAARPR, Louisville Kentucky

Fred Harris — Victim, Louisville KY.

Rev. Jessie Gray — Victim, Los Angeles, CA.

Alex Hurder — Trade Union Organiser, Memphis, TN.

Hon. Maxine Waters — State Assemblywoman, Sacramento, CA.

Rita Melgares — Francisco Martinez Defence Committee, Colorado.

Linda Valentino — American Friends Services Committee, American Civil Liberties Union, Los Angeles, CA.

Juan Guitierrez — Local 301, Los Angeles, CA.

Brian Hudson — National Lawyers Guild, Los Angeles Central Jail Project, CA.

## 7. FORMAT OF HEARINGS

The hearings were opened by addresses from Alliance Executive-Secretary, Charlene Mitchell and Police Crimes Task Force Co-ordinator, Bob Duren. Due to personal commitments, certain panelists were unable to be present for the entire period of testimony, however, a continuous and careful note was kept of all evidence, the contents of which were shared between all panelists in order that their findings might be unanimous.

All witnesses were given a full opportunity to present a detailed account of cases of which they had direct or expert knowledge.

In addition to oral testimony, the panel received written submissions and summaries of learned studies, such as that prepared by the U.S. Justice Department's **National Minority Advisory Council On Criminal Justice** to the Law Enforcement Assistance Administration. Further written testimony came in the form of the **Report on Police Crimes in the United States to the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders** (August 1980, Caracas, Venezuela) from the **International Association of Democratic Lawyers**; the **Report to the IVth Russell Tribunal on Leonard Peltier and the denial of his and other Native Americans' treaty rights and human rights**; and the findings of the **Mexican American Legal Defense and Education Fund (MALDEF)** concerning over 50 murders by police officers of Mexican Americans in the United States within the last decade.

Due to prior commitments, several potential witnesses and organizations were unable to attend the panel hearings. The **Asian American Legal Defense and Education Fund (AALDEF)** provided detailed written evidence of police crimes of murder and racially selective prosecution in the Chinatowns of San Francisco and New York. Jack Kilroy, Esq., an attorney of the **Farm Labor Organizing Committee, Toledo, OH**, sent photographic and written documentation of brutal police assaults on himself and other Committee activists in Ohio in September 1979, followed by politically motivated prosecutions.

## SUMMARY OF FINDINGS

1. Based on all of the evidence presented to us, we, the panelists of the national People's Hearing and Inquiry into Police Crimes in the United States, find that a *prima facie* case has been overwhelmingly established, showing a pattern and practice of politically and racially selective surveillance, harrassment, arrest and prosecution. We find that the victims of these practices are predominantly drawn from poor and minority communities throughout the United States.

These practices violate the ordinary standards of the criminal law, the Constitution of the United States and internationally accepted principles of human rights. Further, in the case of Native Americans, they violate treaty obligations.

2. The very existence of such practices on such a scale as we have found operates to chill the exercise of constitutionally guaranteed freedoms, particularly for members of poor and minority communities with insufficient funds to hire attorneys and inadequate public standing to attract media coverage.

3. That chill on their rights can only be removed by a responsive machinery of justice dedicated to eradicate police crime and protect its victims. We find, by contrast, innumerable instances of cursory investigation, dilatory prosecution and a greater concern to exonerate the perpetrator than to protect the victim of police crime. Indeed, we heard and were satisfied that in a significant number of cases the clear concern of senior police officers, political figures, coroners, D.A.'s and judges is to put the victim on trial, if still alive, or to subject a dead victim and his or her family to a campaign of vilification, with the aim of justifying the actions of the police officer or department.
4. These gross failures of the machinery of justice can only be remedied by public awareness and determination. The great concern of the founding fathers to encourage democratic accountability of all organs of government led to the passing of the First Amendment. However, we have found that this protection of the press from censorship does not protect the public from the evils of self-censorship. Many witnesses complained of media unconcern and some stated that while individual reporters had shown sympathy and understanding, editorial policy had "killed" the story.

Thus, while applauding the courage of individual investigative journalists who have jeopardised their careers to fight police crime, we find the dismissive attitude of the Los Angeles Times to the subject-matter of our Hearings to be typical of a nationwide abdication of journalistic responsibility.

5. We make a special finding that, in a significant number of cases, police departments have engaged in a consistent pattern of harrasment, surveillance, intimidation and prosecution of groups and individuals engaged in constitutionally protected forms of political activity. "Red Squads" formed in a number of States have persistently violated the human right to freedom of association.
6. We find further that certain police departments have not only sought to intimidate others in exercising their rights, but have used improper threats and inducements to manipulate popularly elected representatives. By threatening to finance campaigns aimed at removing representatives voting against legislation promoted by police departments, those very departments seek to subvert the democratic process. We find that such practises, where they have occurred, cross the line which distinguishes a democracy from a police state.
7. The use of such pressures to divert public funds away from increasing community needs at a time when public funds are decreasing and police expenditure rising further demonstrates the danger of a movement towards a police state. The social cost of such a move is evidenced by the Miami and Chatanooga rebellions and we find the calls for increased police powers which accompany such occurrences only exacerbate the problems they claim to address. Greater police powers do not mean greater social justice. The evidence we have seen and heard points to precisely the opposite conclusion.

8. Finally, based on our questioning of those expert witnesses called before us, we conclude that in no part of the United States does there exist any adequate, democratically accountable mechanism for control over police departments by the communities which employ them. We therefore accept the evidence of Jerry Mandel, of the La Raza Legal Alliance that:

“In the poor and minority communities the police are viewed from coast to coast as an army of occupation”.

## R E C O M M E N D A T I O N S

In the light of our findings we endorse the proposals which emerged from the **Legislation, Litigation and Community Organisation Workshops** held on January 24th, 1981. (Parts II & III of this Report). We further urge all organisations concerned to fight police crime to study the National Alliance's “**Model Legislation for A Police Control Council**” (Appendix I) with a view to organising within the community and lobbying legislators for implementation of that model.

The **Bill of Rights for the Undocumented Worker** (Appendix II) deserves similarly urgent consideration and implementation.

Since the conclusion of our hearings a large number of unarmed civilians have been shot by police officers, in many instances where officers have been off duty and failed adequately or at all to warn the victims of their identity. A recent New York Times editorial challenged the New York Police Department's rule that off duty officers must carry their weapons at all times. In our view, not only is such a rule illogical but it aggravates the danger to the community. We recommend that no off duty police officer should be allowed to carry a weapon without the direct authorization of the Chief of Police, who must in turn be accountable to democratic control.

## SUMMARY OF EVIDENCE

### A. CRIMES AGAINST MINORITY COMMUNITIES

As stated above, the violation of any one individual's rights is a crime against the community as a whole. However, certain witnesses provided detailed testimony relating to a substantial number of violations of the rights of whole communities. Space does not permit all these details, many of which were contained in written submissions to the panel, to be repeated. What follows is a summary of crimes committed as part of a consistent pattern and practice by police departments against minority communities.

#### 1. NATIVE AMERICAN RESERVATION, PINE RIDGE, SOUTH DAKOTA.

**Bob Robideau** gave oral and written testimony of the June 26, 1975 attacks on women and children launched by the FBI as the culmination of a wave of murders committed by Bureau of Indian Affairs trained "goon squads". Between 1973 and 1975 some 200 members and supporters of the American Indian Movement had been killed, and when members of AIM sought to defend their community on June 26, 1975 they found themselves framed on murder charges.

Having considered the evidence submitted to the IVth Russell Tribunal, we are satisfied that **Leonard Peltier** is a political prisoner in that he is the victim of the police crime of racially and politically selective prosecution brought with the clear purpose of harrasing the entire community of Pine Ridge and intimidating Native Americans across the United States from demanding their treaty rights and from opposing the "official" leaders designated by the Bureau of Indian Affairs. These are chosen for their willingness to give away their ancestral lands at bargain prices rather than for their democratic popularity or accountability to the community.

#### 2. ALGIERS, NEW ORLEANS, LOUISIANA

According to **Ted Quant**, of the New Orleans Police Abuse Committee:

"Since Labor Day 1980, the New Orleans Police Department has murdered five people in cold blood".

In this predominantly Black community the first to die was **Laurence Lewis**, beaten in the head and shot in front of witnesses after having been arrested on the street. A grand jury acquitted police officers of crime.

Then, on November 8th a white officer was killed, leading to a community-wide rampage by a squad of 20-30 officers who attacked and beat youths all over Algiers in an attempt to intimidate them into giving evidence about the killing. On November 11th, **Raymond Ferdinand** was stopped in this way, while carrying a bag containing a knife and illicit drugs. He was killed on the spot.

Finally, after two "witnesses" had been tortured by semi-strangulation and Russian roulette and forced to sign false statements implicating men they did not know, police surrounded the houses of **James Billy**, **Reginald Miles** and **Sherry Lin Singleton**. Without warning or order to come out, they stormed both houses, murdering the adults in a hail of bullets. Ms. Singleton's four-year old child was unhit and now bears the psychological scars of having seen his mother crouched in the bath with her eye shot out.

The local chief of police was forced to resign, claiming that, although officers should not have acted as they did, the raid was so conducted:

"To prevent police morale from being destroyed".

As we go to press we read, with deep concern, but no surprise, that New Orleans grand juries found "insufficient evidence" and thus refused to hand down indictments against any single officer implicated in this shameful attack.

This is precisely the sort of callous disregard for the right to live which sparked the rebellion in Miami in 1980 and it is only through full community accountability for police action that similar rebellions can be averted in the future.

### 3. JERSEY CITY, NEW JERSEY

In the words of **Kabili Tayari**, of the New Jersey People's Investigation Commission, in parts of the United States.

"Afro-Americans are in the same position as Jews in Second World War Germany"

Citing prison statistics which show Black Americans forming 70% of the population of prisons as opposed to 15% of the free community, Mr. Tayari went on to list a catalogue of police crimes against the Jersey City Black community which has led to the People's Investigation Commission calling for the resignation of the police chief and reporting 22 cases of police crime to the NAACP in 1980 alone.

The only response to the Commission was to call police re-inforcements to eject its members from the Council meeting at which the police chief's resignation was demanded.

In the light of all the testimony presented we were convinced that Mr. Kabili was right in saying that:

"The Senate Judiciary Committee needs to investigate what is happening in the victims—the hostages\*—in the United States".

### 4. LOS ANGELES, CALIFORNIA

**Bob Duren**, as the Alliance's Police Crimes Task Force Co-ordinator, introduced his remarks by calling for communities around the country to take steps to prevent the further encroachments of the "Police state" concept seen emerging today. In reference to Miami, he said:

"Spontaneous rebellions are not simply racial conflicts, they are rebellions against the whole operation of the criminal justice system".

#### **Eula May Love**

We heard an appalling amount of evidence of wanton disregard for the sanctity of life by the Los Angeles Police Department.

**Bernice Reagan**, of the National Conference of Black Lawyers, called Los Angeles the "Police killing capital of the world" and went on to outline the shocking

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\*Reference to the contrasting official response to the treatment of 52 Americans in Iran as opposed to the plight of millions of repressed minorities daily held hostage to fortune in the United States.

murder of Eula Love, shot eight times by two police officers in circumstances where their own lives could not conceivably have been endangered whatever the reality of the hotly disputed evidence.

### **John Moore, Roy Lemelle & Larry Morris**

Attorney Leon Gilbert, testifying about three separately murdered youths, John Moore, Roy Lemelle and Larry Morris, made the telling point that it is one thing to talk about police crime, but:

“Seeing the results of their brutality on the mortuary slab puts things in a different perspective.”

Handcuffed, with his hands behind his back, **John Moore** was lying on the ground after being arrested. When an officer saw him move he shot him in the buttocks with a shotgun, killing him.

**Roy Lemelle** had been arrested and placed in a police car for stealing a radio. Witnesses say police strangled him and subsequent examination revealed deep bleeding in his neck in contrast to the autopsy report that he choked to death on his own vomit.

**Larry Morris's** killing was described by Attorney Gilbert as “another example of the Gestapo tactics of the LAPD”. Such extreme language certainly seems justified by the extreme severity of the police response to some youths playing on the street. Having verified that reports of “gunshots” really referred only to a firecracker, one officer was heard to say to another: “Let’s go give them some harassment”. Totally unprovoked, they burst into Larry and his cousin David’s apartment and beat Larry to death, leaving 65 bruises on his body and a baton mark across his neck where, as the coroner’s jury later found—contradicting an attempt by the police and coroner’s office to cover up the crime as death by a heart condition—the cause of death ultimately was strangulation.

The cover up was consummated when the coroner refused to record the jury’s verdict and substituted his own—heart disease. In this, as in many other cases, Attorney Gilbert testified:

“A coroner’s inquest becomes an adversary proceeding against the victim’s family. Whereas, in police-related cases the D.A.’s office does not participate except to send observers to the inquest. This is totally different from the way in which they cross-examine witnesses to alleged killings by civilians”.

### **Rev. Jessie Gray**

**Rev. Gray** documented six allegedly false arrests between the end of 1975 and mid-1980, saying he had been held for a total of 18 months without charges or court appearances. While in Los Angeles County Jail he witnessed two murders of inmates by the Sheriff’s “goon squad” and was himself the victim of numerous beatings. He stated that the murders were written up as suicides by the prison authorities and he is currently pursuing claims for false imprisonment, wrongful arrest and assault and battery.

### **Los Angeles Central Jail**

**Brian Hudson**, of the National Lawyers Guild Project on the Jail pointed out that this is one of the largest in the country, housing 6,000 people of whom the vast majority are Black or Hispanic. By contrast the vast majority of the guards are inexperienced white police officers on their first tour of duty.

The Guild Project had found evidence of extensive beatings and an average of one totally unprovoked serious assault each day.

A Grand Jury hearing, held ostensibly to investigate police abuses in the jail, was turned by the D.A. into a forum for trying to obtain evidence against prisoners.

These prisoners are all drawn from a wide area and the continual pattern of harrassment and criminal brutality against them is a racially selective crime against them as individuals and against the whole community of prisoners. It is furthermore a crime against the communities they live in causing stress and fear to friends and relatives.

### **5. BAY AREA, CALIFORNIA**

**Bill Worley**, of the **Charles Briscoe** Committee for Justice detailed the murder of Mr. Briscoe, a respected community leader with two daughters, in Oakland Ca. On September 5th 1979 police officers opened fire in an unprovoked attack on Mr. Briscoe, whose body sustained 42 wounds. He was one of 10 Black people killed by Oakland police during 1979, as a result of which there has been a substantial response from the community, demanding a Citizens Complaints Board.

Bill Worley warned of the dangers of accepting a board which is not democratically elected and which does not exercise real control. In Oakland it is the Mayor who appoints the members, the board has insufficient power to investigate complaints and no authority to enforce reforms in police practises.

**Sherry Nelson**, of Richmond, Ca., gave evidence of her brother **Valery's** murder by police when he failed to stop when ordered to do so while driving. The family has filed a wrongful death suit against the police department and the city council since, although the officer claimed he thought Valery was reaching for a gun, medical examination revealed powder burns on his neck, indicating shooting at virtually point blank range. The county D.A. claimed it was justifiable homicide.

### **6. THE CHICANO COMMUNITIES OF COLORADO**

**Rita Melgares**, of the **Francisco Martinez** Defense Committee made an urgent appeal on behalf of human rights lawyer "Kiko" Martinez. Kiko was forced to go underground after a sustained campaign against activists on behalf of Chicano rights in 1973.

In a number of bombings blamed on Chicano activists and killings of Chicano leaders including Kiko's brother, the Defence Committee sees a pattern similar in all respects to the COINTELPRO operations mounted by the FBI to discredit and assassinate Black activists. Denver police attacked a Chicano legal center in May 1973, killing one and wounding many more and in August of the same year a remarkable "discovery" of unexploded bombs suggested media and police collaboration to justify convening a Grand Jury to investigate the entire Chicano community.

In November 1973 the Grand Jury handed down an indictment of Kiko Martinez and shortly afterwards 6 Chicano activists were killed in explosions over a 48 hour period. In a wave of media hysteria the US government offered \$3000 for information leading to Kiko's arrest, matched by \$2500 put up by the local newspaper. This served as a backdrop to the wholesale intimidation of the Chicano community under the color of searching for Martinez.

When he was arrested in 1980, Attorney Martinez faced three Federal Court and two State Court trials. We understand that since the Hearing on January 23, his first trial ended when the judge declared a mis-trial and there has since been a massive campaign of vilification by a television program aimed at prejudicing the minds of any further jurors.

## 7. OKLAHOMA CITY OK.

**Barbara True** has long been an activist in Oklahoma City against police crimes. When, on December 22 1976, two officers knocked on her door to announce her son had been killed while allegedly committing an armed robbery, threats which had been made on her own life suddenly became real.

No coroner's inquest was held, but the mortician who attended to her son **Anthony Hightower** was medically qualified. He stated that, with 20 years as a medic in the armed forces, all entry wounds except one were in Anthony's back—one, the size of a silver dollar, in the back of his head. The remaining wounds in the middle of his chest had left powder burns on his skin despite the thick clothing he was wearing. This confirmed a witness report that after being felled by bullets from behind Anthony was kicked over by an officer and shot with a 357 magnum held to his chest.

Mrs. True was refused her son's clothing and since the only other witness had a long criminal record it was not difficult for the police investigation to conclude that the officers had acted correctly in killing Anthony with a sawn-off shotgun and the 357 magnum.

Mrs. True's evidence was clear and frank and gave good grounds for believing that the killing was aimed at silencing those who raise questions about police crime. Further threats to Mrs. True's life have been reported since.

## 8. OMAHA, NE

**Ida Jones** testified to the murder of **James Powell**, a 19 year old college student forced off the highway by a police car. The officer claimed he had been speeding at 95 miles per hour and at the same time reached below the dashboard for a gun. The only gun at the scene was the officer's 357 magnum, which discharged "accidentally", leaving powder burns on the victim and the car window.

James Powell was shot in the back of the head but the officer was acquitted of any wrongdoing in an internal police investigation. The Powell family has hired an attorney to file a civil action.

## 9. LOUISVILLE, KY

### **Emmanuel Ballard**

This 66 year old man was shot and killed by an off-duty police officer in

November 1980. **Mattie Jones**, of the Kentucky branch of the Alliance, told the panel that Mr. Ballard had been to the drug store where the officer was moonlighting as a security guard. Claiming Mr. Ballard had stolen some aspirins the officer shot dead the unarmed Black senior citizen.

#### **Fred Harris**

Wearing dark glasses to conceal his artificial eye, **Fred Harris** testified about the June 1979 incident in which, while falsely arresting him on charges of which he was later completely cleared, Officer Whittaker attacked him with his flashlight.

When Mr. Harris brought up his knee to protect his genitals the flashlight broke. Whittaker then stabbed him in the eye with the broken end, cutting the eye in half.

Despite the fact that Mr. Harris's civil suit against the police department resulted in a substantial settlement in his favour, and although Whittaker is known to have been involved in other flashlight assaults, the officer still remains in the police force, paid out of funds to which Mr. Harris has to contribute.

#### **10. PHILADELPHIA PA.**

**Merri Felder**, of the Pennsylvania branch of the Alliance, outlined the murder of **Jose Reyes**. Although police officers claim Reyes attacked them with an iron bar, several eyewitnesses say this is untrue and that he was killed by two shots at close range as he lay unresisting on the floor of the house to which he had run. An officer was seen to take a long iron bar from the house after his body had been removed and to smear it with blood as "evidence". Reyes had been the victim of many previous police beatings and witnesses stated he had lived in constant fear, running if he saw police approach.

Merri Felder related her own experience of brutality at the hands of the notorious Philadelphia Police Department. She has brought charges against officers responsible for an unlawful arrest and beating she suffered simply for watching as two youths were being frisked by officers. When she refused their unconstitutional demand that she show them identification she was forced against a wall by a police car, handcuffed, kicked and thrown to the ground.

#### **B. EXPERT TESTIMONY**

In this part of the report we record our summary of the evidence given by attorneys, legislators, trade union representatives and officials of organizations dedicated to combatting social injustice. The detailed studies already made by these individuals and organizations were of invaluable assistance to us in determining the extent to which the crimes recorded in the preceding section from part of a consistent pattern.

#### **1. NATIONAL MINORITIES ADVISORY COUNCIL ON CRIMINAL JUSTICE TO THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON D.C.**

**Raymond Blanks Esq.**, on behalf of the Advisory Council, shared with the panel the findings published in the Council's recent report.

He emphasised the important position the police hold in the eyes of the community. As the point of entrance to the criminal justice system the police, in undermining public confidence in their own fairness, undermine confidence in the entire system.

As long ago as 1961 the Civil Rights commission reported that police brutality presented a serious problem. In 1981, Mr. Blanks stated, this situation had not changed, at least, not for the better:

"many police do reflect and express white power, white prejudice and white racism".

In the recent federal suit *US vs City of Philadelphia*, filed in 1979, the Federal Justice Department demonstrated that the Philadelphia police department had encouraged a consistent pattern and practice of police abuse of minorities and shielding police officers from investigation and prosecution.

Throughout the United States minorities form a disproportionate number of those arrested, charged and imprisoned and those in prison serve longer sentences than the majority. Until 1976, although minorities form 20% of the population, only 4% of Justice Department employees were minorities. Still today, there are 28 cities in the United States, employing a total of 80,000 police officers, but with only 9% of those employees from the minority communities.

The most serious threat to minority communities, according to the Council, is police use of deadly force. So concerned were they that they are publishing a special report under the title "Inequality of Justice". Quoting the Mayor of Birmingham, Alabama, Mr. Blanks said:

"I do not believe the public should expect to pay for police services by receiving police misconduct".

With almost one person a day killed by police in 1979, over 50% were from minority communities. Indeed, as Jerry Mandel of La Raza pointed out (see below) the statistics are nearer to two to one: minority to majority.

We have noted in our recommendations that off duty police officers should not be allowed to carry weapons without the authorization of the chief of police. We were particularly alarmed by Mr. Blanks' evidence that 27% of all police killings in New York State are the work of off duty officers.

## **2. LA RAZA LEGAL ALLIANCE, WASHINGTON D.C.**

In presenting evidence on behalf of La Raza Legal Alliance, Jerry Mandel, Esq., stressed the systematic nature of cover-ups which surround police crimes against Hispanic Americans across the country. He detailed specific cases in Brooklyn, Chicago, Denver and Albuquerque to show how such cover-ups give police departments "A blank cheque for violence".

Mr. Mandel drew the panel's attention to the findings of the Mexican American Legal Defence and Education Fund (MALDEF), whose federally funded report disclosed incontrovertible evidence of unjustifiable homicide committed by police officers against Hispanic Americans in over 50 cases between 1973 and 1978. Their findings resulted in a few Justice Department investigations but in several cities media figures are seen to act in complicity with D.A.'s, coroners and highly placed political figures in ensuring a successful cover-up.

The results have certainly been to unite members of minority communities in determination to obtain public control of the police in some areas. However, organisation is often made harder by successful police use of media contacts to malign their victims. Thus the danger grows that if a person can be shown to have been a drug user or thief, the press will give the impression that summary execution on a street corner is all the criminal can expect. This makes it all the harder to combat police crime, since those standing up for the rights of a drug pusher are easily tarred with the brush of criminality themselves.

Mr. Mandel further pointed out that, while Justice Department statistics show 343 civilians killed by the police in 1979, their claim that 50% were Black is a distortion of the impact on minorities as a whole, since Hispanics are classified as White for statistical purposes. In fact, he asserted, two members of minority communities are killed for every one from the majority. This, where minorities form 20% of the entire population, provides the clearest possible proof that they are the principal victims of police crime.

### **3. SURVEILLANCE OF THE TRADE UNION MOVEMENT**

**Alex Hurder**, trade union activist in Tennessee for many years, gave expert testimony as to the widespread practises of police intelligence units in violating constitutionally protected rights.

FBI trained agents started infiltrating and spying on unions in the 1960's and in Memphis the Sanitation Workers Local exposed one at the first meeting he attended although another remained undetected for years.

The founding of a Political Intelligence Unit of the State police in 1974 led to investigations of Steel Workers, the UEW, UAW and Hotel Workers. Documents released recently reveal they intended to establish an intelligence "liaison" with the NAACP.

Between 1976 and 1978, the Mayor of Memphis ordered the destruction of over 50 files to prevent details of such infiltration from ever coming to light. No evidence was ever produced to suggest the spying had anything to do with alleged criminal activity. Its sole aim was political.

In answering a question from the panel, Mr. Hurder said:

"I am not at all satisfied that such surveillance has been stopped, although it was outlawed by the State legislature",

### **4. AMERICAN FRIENDS SERVICE COMMITTEE & AMERICAN CIVIL LIBERTIES UNION LOS ANGELES CA.**

On behalf of the American Friends Service Committee and the American Civil Liberties Union, **Ms. Linda Valentino** testified about Red Squad activities in Los Angeles. These dated back to the 1920's but in the 1960's they took on a new form.

After 1965 a vast informant network was established in Watts under the guise of police/community relations. The Public Disorder Intelligence Department (PDID) was set up, targeting peace groups and Black activists. When Police Chief Davis retired in 1978 he boasted:

"In 1969 when I became police chief the Black Panther Party ruled this city with an iron fist. I succeeded in destroying the BPP; that was my major accomplishment".

In 1975 2 million intelligence files were destroyed and in 1976 4½ tons of material on police complaints were destroyed, thus preventing public access to these politically motivated attacks on constitutional rights.

The PDID targeted 201 organisations for surveillance, only 15 of which could be said to be right-wing. Groups infiltrated included the Alliance itself, the National Lawyers Guild, La Raza, SCLC and NAACP. In 1600 pages of intelligence documents obtained by the ACLU there is no evidence of illegal or violent acts being committed by those described by police as "violence-prone target individuals".

#### **4. POLICE CRIMES AGAINST UNDOCUMENTED WORKERS IN CALIFORNIA**

The selective harrassment and indiscriminate killing of undocumented workers was highlighted impressively by **Juan Guterrez**, of Local 301 ILGWU. In 1979 10 totally unjustified murders by police or INS officers were committed against people in the border area, some of whom were shot in the back from helicopters, others killed while arrested and in handcuffs and one shot on the Mexican side of the border.

Pointing out that half of the undocumented workers in the United States are **not** Mexican, he said that 1 million people are deported annually, of whom over 90% are Mexican, which emphasises the racial selectivity of law enforcement. With the Klu Klux Klan setting themselves up as vigilantes to hunt and kill Mexicans in the area as if they were wild game, Mr. Guterrez pointed out that:

"At least one undocumented person is killed in the San Ysidro area every seven days by police, INS or the Klan".

In drawing the attention of the panel to the absence of constitutional protection for undocumented people, Mr. Guterrez urged that legislative steps be taken locally and nationally to implement a Bill of Rights for Undocumented Workers in accordance with the model prepared for the International Conference on the Rights of Undocumented Workers in Mexico City in April 1979. (Appendix III).

#### **6. IMPEDIMENTS TO LEGISLATIVE INITIATIVES**

State Assemblywoman **Maxine Waters**, Sacramento California, provided the panel with clear and cogent evidence of the lengths to which police departments are prepared to go in perverting the truly democratic structures of this country.

Legislators in Sacramento refuse to even debate bills Assemblywoman Waters has introduced proposing Citizens' Review Boards and public investigations in cases of police killings of civilians. She suspects, as they do, the existence of a "little book" kept by California police departments on state legislators. Ms. Waters is not the only representative to be threatened that, if she fails to support police-sponsored budgetary proposals or pursues legislation against police wishes, she will face a police-funded political campaign to unseat her by publicly accusing her of being pro-crime and anti-police.

Ms. Waters warned of bills currently pending in the State Legislature proposing criminal sanctions against any person bringing a complaint against the police which is found to be "unjustified". Given the difficulty of substantiating even the clearest evidence of police criminality in the face of the kind of cover-ups of which the panel received evidence, such a provision would operate as a chill on the right of public access to the administration of justice and bring that system into yet further public disrepute.

In the wake of Proposition 13 and cutbacks in public funding for community projects, Ms. Waters testified that substantial budget increases were annually voted for the police departments of California with scarcely any debate as to their merits.

## **7. NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION**

In categorising police crime across the country as a fundamental denial of the human right to live, **Charlene Mitchell**, Executive Secretary of the NAARPR emphasized that this denial hits the more than 50 million people of color and the poor white communities harder than any other social group.

"In looking at the numerous individual instances of police assaults on our persons and on our rights as citizens to organize and protest we must not lose sight of the true meaning of all this; we must not fail to recognise that in large measure what we are dealing with politically is an officially inspired reign of terror in our respective communities. it is officially inspired because the reactionary forces of big business, whom Ronald Reagan now proudly proclaims to be the backbone of his imperial presidency, clearly understand that racist repression is the prescription so long as our people are the foremost victims of the current financial crisis and urban deterioration".

Pointing to the increased militarization of police departments around the country, Ms. Mitchell said:

"When the Law Enforcement Assistance Administration was created in 1968 the national expenditure on police was approximately \$1 billion. In 1980 it was \$24 billion. The money was spent for the creation of special weapons and tactics (SWAT) teams; armed helicopters with night vision; ground-to-air communications; telescopic cameras; trained and equipped surveillance collection to develop regional and national networks of computerized data-banks with instant telecommunications and so on. And all this was done not merely to stop crime in the streets but principally to block Miami type rebellions, civil disobedience of any kind and to disrupt movements for social change."

## **PANELISTS' CONCLUSION**

In concluding with Charlene Mitchell's words, delivered in her opening address to the Hearings, we wish to state clearly that we are satisfied, from the large number of crimes cited above, that these in fact form a very small part of the whole pattern of police criminality.

Police officers do not have any greater tendency towards crime than other citizens, but as long as they are more concerned to serve the political and economic interests of the few they will represent an undemocratic, and potentially anti-democratic force in society. One of the surest guarantees of a democratic society is a democratically accountable police force, along lines such as those proposed in the NAARPR., draft Model legislation (see Appendix I).

In addition to expressing our gratitude to those expert witnesses and attorneys who presented such clear and detailed evidence to us we would like to thank especially the victims and their relatives who came before us to relive the most dreadful experiences of their lives so that we and others might understand more fully the extent of the suffering caused by police crime. We recognise that to re-tell is to re-live and their courage and pain made an unforgettable impression on all who saw and heard them. To them and to all other victims we all have the duty to recognise the purpose of such Hearings and to assist the National Alliance Against Racist and Political Repression and all organisations dedicated to the fight for freedom and social and economic justice.

We heartily endorse Charlene Mitchell's statement that:

"We called this hearing not merely to raise the issue of police crimes and abuse, but to propel the mass struggle to put an end to such legalized lawlessness. We are here not simply to declare that we are victims, but to organize a fightback and say loud and clear we shall not continue to be victims. We are here to arouse a public outcry against racist inspired violence, to further organize and build a movement which says in word and deed that no imperial President, no imperial wizard, no knights in blue and no goose-steppin' fanatics are gonna turn us around".

## II. THE WORKSHOPS

On Saturday January 24th, two workshops were held at Pepperdine University, Los Angeles, CA. Each sat for the full day to explore in detail the problems arising out of the previous day's hearings. Proposals from each workshop were formulated into a **Program of Action Against Police Crime** which was adopted in a final Plenary Session.

It is impossible to reproduce the full depth of the workshop discussions in the space available here but an overview of the wealth of expertise and principal considerations will convey the extent of the concern which went into producing the Program of Action.

### 1. LEGISLATIVE STRATEGIES & COMMUNITY ORGANIZATION WORKSHOP

Chaired jointly by **Angely Y. Davis**, National Alliance co-chairperson, **Bob Duren** of the Los Angeles Alliance Task Force on Police Crimes and **Adjoa Burrow**, Esq., Alliance Board Member, Washington D.C.

Adjoa Burrow presented the National Alliance's own "Model Legislation for a Police Control Council" (See Appendix I) and led discussion on developing existing models of legislation and ways of adapting them to the needs of the community. **Michael Zinzun**, of the Los Angeles Coalition Against Police Abuse, and **Mark Ridley Thomas**, Executive Director of the Los Angeles branch of the Southern Christian Leadership Conference, both presented their views on draft legislation as a formula for making police departments accountable to the communities which employ them.

Problems encountered in enacting such legislation were described by **Wilfredo Santiago**, of the Puerto Rican Alliance, Philadelphia, and by **Larry Wiggs**, the Chief Administrative Aide to Los Angeles Councilman **Robert Farrell**.

Community organizing was considered from the view point of specific minority groups and on a regional basis.

**Lols Red Elk** detailed the targetting of Native Americans for consistent criminal activities by police departments and the FBI. Youth and students as a base for organization were covered by **Janell Byrd**, of the Berkeley CA. branch of Balsa (Black American Law Students Association). **Alex Hurder**, from District 1199 Hospital Workers in Tennessee, described both successes and problems in organizing trade unionists against police crime.

Community response to police crime was outlined in respect of Algiers, New Orleans by **Ten Quant** (Police Abuse Committee); Philadelphia Communities United Against Police Abuse were represented by **Merrie Felder**; Louisville, Kentucky was described by local Alliance chair, **Mattie Jones**; and Los Angeles was dealt with by **Bob Duren**.

One of the many methods considered in fighting police crime was the organization of People's Tribunals, again described by **Mattie Jones**. The all-important problem of raising funds for victims and campaigns was addressed by **Marilyn Clement** of the Center For Constitutional Rights, New York. **Anthony Thigpen**, of Los Angeles, was one of several who contributed suggestions on how to organize petition campaigns, community rallies and support to victims of police crime.

Organizing on the national level to combat the rise in police crime was focussed on by **Frank Chapman**, of the Alliance National Office. **Cathy Bell**, as chairperson of BALSAs, contributed further strategies, as did **Marilyn Clement**.

After a most productive group discussion and summation the workshop proposed many of the constructive points in the Program of Action.

## **2. LITIGATION FOR VICTIMS' REMEDIES AND POLICE CRIME CONTROL**

Co-chaired by **Linda Ferguson Esq.**, of the Los Angeles chapter of the National Conference of Black Lawyers and **Lennox Hinds Esq.**, Permanent United Nations Representative of the International Association of Democratic Lawyers.

This workshop drew on the experiences of people's attorneys and national legal organizations in civil and criminal courts at both state and federal levels.

Types of action considered on the civil side included:

- Civil Rights Actions on behalf of individual victims;
- Civil Rights Actions on behalf of groups;
- Injunctive relief restraining police departments from criminal conduct.

On the criminal side the principal focus was the agencies responsible for prosecution and the extent to which they fail to carry out their functions:

- State and Federal Authorities' duties;
- U.S. Justice Department and U.S. Attorneys' roles;
- Municipal and State Prosecutors;
- State Attorneys-General;
- Federal and State Grand Juries.

Surveillance and harassment of community groups was considered in particular detail by **Vernon Mason, Esq.**, General Counsel to NCBL, New York, who also presented a case study on the 92 Morningside Drive break-in in search of Assata Shakur (New York City). Surveillance of labor unions was analyzed by **Alex Hurder, Esq.** of Local 1199, Tennessee.

**Jerry Mandel Esq.**, of La Raza Legal Alliance, Washington D.C., and **Wilfredo Santiago**, of the Puerto Rican Alliance, Philadelphia, led discussions on how to involve the community in support for litigation strategies, especially in identifying vital cases and plaintiffs, selecting the best lawyer, fundraising, publicity strategies and the problems that arise.

Further expertise was provided to the workshop by **Jerry Persky, Esq.**, of the Los Angeles branch of the National Lawyers Guild, **Michael Cato**, BALSAs branch, Houston, Texas and **Ida Jones, Esq.**, of Legal Aid Nebraska.

### III. PROGRAM OF ACTION AGAINST POLICE CRIMES

The final fruit of the two days of hearings and workshops was the following Program proposing a number of constructive approaches to combatting police crimes in all communities. It is a Program which will require further elaboration at the national and local levels but it provides the basic strategy for attacking the evil consequences of police crime and enforcing accountability to the community for all police actions. The Program was adopted unanimously by the participants.

#### PROPOSALS

1. That we go to our respective communities and begin at once to organize campaigns to end police crimes and stop police abuse. This campaign consists first of building mass support for the concept that the police must be controlled and demilitarized. To educate the community successfully on the need for democratic control of the police we must combine education with agitation in each particular case so that the community is not only outraged but is ready to act politically.
2. That we start proposing municipal legislative action in cities around the country based on the model prepared by the National Alliance Against Racist and Political Repression. (See Appendix I)
3. That we generate a national pool of progressive legislators on the city, county, state and federal level who are favorable to the kind of legislation we are proposing; and that wherever the proposed model legislation is introduced we should fully utilize the technique of mass organizing and grass-roots lobbying in order to build the necessary support and/or initiatives to make it law.
4. That we propose that the names of all law enforcement officers who are known to have committed police crimes against the people be compiled and publicized so as to expose to the community individual officers guilty of criminality. Also Alliance Branches should consistently document instances of police crimes and send them to our National Office.
5. That we use federal, state and local laws to sue the police for damages and to bring criminal charges against them and to petition for public investigation.
6. That we identify an office and a person or persons prepared to co-ordinate a National Brief Bank, where Alliance attorneys can file pleadings relating to police crimes litigation.
7. That we start proposing state legislative action modelled on the Federal Freedom of Information Act to guarantee citizens free access to all police files on covert conduct.
8. That we oppose all attempts by police departments to conceal their grossest crimes by internal "investigations" as recently exemplified in Algiers, New Orleans, and demand the immediate appointment of a Special Prosecutor from outside the municipal, state or federal department to be investigated.

This brief summary of the proposals adopted in the final Plenary Session of the People's National Hearings and Inquiry into Police Crimes will be considered further by the Task Force on Police Crimes with a view to circulating all Alliance Branches with Action Guidelines so that we may carry forward the work of organizing for community control of the police.

#### **IV. THE RALLY**

On the evening of Saturday January 24th the National Alliance held a Rally Against Police Crimes in the First AME Church Los Angeles thanks to the hospitality of Dr. Cecil (Chip) Murray and his congregation. Some idea of the remarkable atmosphere can be guessed at simply by noting that the keynote speakers included Rev. Benjamin Chavis, Angela Davis, Lennox Hinds, and Charlene Mitchell! But, for those who were there, no words exist adequate to convey that experience to those who were not. The force of the speeches and the intense feeling of solidarity in a united struggle were a fitting end to the weekend's work.

**APPENDIX I  
PROPOSAL  
MODEL LEGISLATION FOR A POLICE CONTROL COUNCIL**

*BY*

*National Alliance Against Racist & Political Repression*

**I. GENERAL PURPOSES**

The general purposes of this legislation are to insure that:

- A. Popular democratic control over the functioning of the \_\_\_\_\_ Police Department rests with an independent, elected body of citizens who reflect the multi-racial, multi-national character of the community;
- B. Racism, racial discrimination, and brutality be abolished from the policies, practices, procedures, rules and regulations of the \_\_\_\_\_ Police Department.
- C. Preservation of human life and respect for human integrity and dignity become paramount considerations in the development of police policies, practices and procedures. And further that police policies, practices and procedures demonstrate a commitment to the preservation and extension of the constitutional, legal, civil and human rights of all people.
- D. No person be subjected to verbal or physical harassment or abuse by police authorities because of race, age, sex, or political beliefs.
- E. Only democratic police authorities function in our city where racial and sexual composition reflects the community entrance requirements, training, and practices that are in the best interest of the community and, where individual members are accountable to the community.
- F. Lines of responsibility and accountability for an effectively and equitably functioning police authority are clearly established.
- G. Unconstitutional control of local police authorities by corporate and military institutions is prevented.

**II. POWERS AND DUTIES OF THE POLICE CONTROL COUNCIL**

The Police Control Council shall have the following powers and duties:

- A. Investigate the extent to which present police employment, structure, budget, and rules and regulations promote systematic discrimination on the basis of:
  - (1) Race
  - (2) Economic Status
  - (3) Geographic Location
- B. Establish the office of General Counsel to the Police Control Council with the authority to receive, investigate and litigate, as provided in this charter, any complaint concerning the operation and functioning of the \_\_\_\_\_ Police Department.
- C. Act as final authority in reviewing and imposing discipline of police in the \_\_\_\_\_ Police Department.
- D. Review and approve the \_\_\_\_\_ Police Department budget annually and provide for its publication before its submission to the authorizing body.
- E. Formulate and implement policies, rules and regulations to democratize the practices, procedures, and operation of public and private police authorities in order to carry out the general purposes of this legislation as stated above.

- F. Formulate and implement policies, rules, and regulations concerning the recruitment, hiring, training and promotion of police employees in order to insure that the past history and effects of racial discrimination are remedied and that the composition of police personnel reflect, at all department levels, the racial and national minority composition of the City of \_\_\_\_\_.
- G. Formulate and implement strict administrative standards and regulations for the exercise of police discretion in order to curb discriminatory selective enforcement by individual police officers on the basis of race, age, sex, and economic status.
- H. Appoint the Chief of Police for the \_\_\_\_\_ Police Department who will then be responsible to the Council for the day-to-day functioning of the \_\_\_\_\_ Police Department.
- I. Oversee and regulate the appropriation of state and federal funds to the \_\_\_\_\_ Police Department.
- J. Investigate, make findings and publish the policies, practices and procedures of private security agencies, state and national police agencies and intelligence and military agencies operating with the City of \_\_\_\_\_ to insure that their operations conform to the standards established by the Council for the democratic functioning of the police.
- K. Compile and publish an annual report to the Mayor and City Council of the \_\_\_\_\_ Police Department's activities during the previous year and of future plans for the upcoming year.
- L. Adopt rules and regulations and develop such procedures for its own activities and investigations in order to carry out the general purposes of this legislation and to publish and file the same with the office of the City Clerk and to do such other things not forbidden by law which are consistent with a broad interpretation of the general purposes of this legislation.
- M. Subpoena witnesses, administer oaths, take testimony and require the production of evidence. To enforce a subpoena or order for the production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order, the Council shall apply to the appropriate Court.

### III. ESTABLISHING A POLICE CONTROL COUNCIL, PROVIDING FOR THE ELECTION AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES, AND ACTIVITIES OF SAID COUNCIL.

The general purpose of this legislation is to establish a multi-racial, multi-national democratically elected Police Control Council in the City of \_\_\_\_\_ charged with the responsibility of overseeing and supervising the overall functioning of the \_\_\_\_\_ Police Department.

There is hereby established a Police Control Council of the City of \_\_\_\_\_. Said Council shall consist of elected representatives from each of the Council districts within the City of \_\_\_\_\_.

For purposes of this legislation the City of \_\_\_\_\_ shall be divided into \_\_\_\_\_ Police Control districts. Said districts shall be drawn with the specific intent to guarantee at least proportional representation to racial and national minorities living within the district.

**Size of Council:** The Council shall consist of \_\_\_\_\_ members, \_\_\_\_\_ people elected to the Council from each district and \_\_\_\_\_ people elected at large. All persons between the ages of sixteen (16) and seventy (70) shall be eligible to vote for a Council member as well as be eligible for election to the Council.

**Composition:** Every effort shall be made to have the composition of the Police Control Council proportionately represent the racial and economic structure of the City of \_\_\_\_\_, at least to the degree described in the latest U.S. census report, in order to remedy the past effects of discrimination against racial and national minorities.

**Term of Office:** The term of each member shall be two (2) years commencing on October 4 of each odd-numbered year and ending on October 3 of each succeeding odd-numbered year. Any vacancy, from whatever cause occurring during the term of any member, shall be filled by election from that district no longer than sixty (60) days after said vacancy occurs.

**Officers:** The Council shall elect one of its members as Chairperson and one as Vice-Chairperson as well as an executive secretary, who shall each hold office for one (1) year and until their successors are elected. Officers shall be elected no later than the second meeting of the Council following its election.

**Budget:** The Police Control Council of the City of \_\_\_\_\_ shall be a working body and shall be funded by the City of \_\_\_\_\_ with a budget of \$ \_\_\_\_\_. In order to compensate councillors for their time and work in overseeing and supervising the functioning of the public and private police authorities, Councillors shall receive \$5.00 (five dollars) per hour. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Council and filed with the Controller's office of the City of \_\_\_\_\_.

Such clerical and secretarial assistance as well as office facilities as are needed by the Council shall be provided by the appropriate office of the City. The Council is further authorized to secure and define the duties of the staff named above, in the manner consistent with existing law, as it may deem necessary or appropriate.

The Council shall also appoint a Chief Investigator and an additional staff of at least two (2) investigators for each of the Police Control districts. They must possess skills and experience necessary for investigative work.

All members of the staff are under the direction of the Council and, neither the Chief of Police nor any other police department officials shall have any authority over any member of the staff.

**Meetings:** The Councillors shall establish a regular time and place of meeting and shall meet regularly at least once a week or more frequently as the workload requires. The regular place of meeting shall be in an appropriate central location in the city capable of accommodating at least 75 people at a time most convenient for public participation, provided that no meeting be held in a building where the \_\_\_\_\_ City Police Department is located. At least once every three months, or more frequently if the Council desires, the Council may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people of the various neighborhoods in the city at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Council, upon personal notice being given to all members or written notice mailed to each member and received at least thirty-six (36) hours prior to such meetings unless such notice is waived in writing.

All Council meetings and agenda for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the city at least three (3) weeks prior to said meetings, except special meetings where advance notice may be dispensed with. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the city as are designated by the Council.

All meetings shall be open to the public. The Council shall cause to be kept a proper record of its proceedings which shall be kept open for inspection by the public at reasonable times in the office of the Executive Secretary of the Council.

All meetings shall be open to the public. The Council shall cause to be kept a proper record of its proceedings which shall be kept open for inspection by the public at reasonable times in the office of the Executive Secretary of the Council.

A majority of the elected Councillors shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take action.

On the petition of fifty (50) or more citizens filed in the office of the Executive Secretary of the Council, the Council shall hold a special meeting at an appropriate and convenient location and time for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Council with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for regular meetings of the Council. In no case shall the Council meet later than five (5) working days following the date the petition is filed.

**Delegation of Authority:** The Council may delegate to subcommittees as it deems necessary or desirable to carry out its investigations and functions, provided that membership on such subcommittees

shall not be limited to Council members but may include members of the public who express an interest in the business of the subcommittees. (The members of such subcommittees shall serve without compensation). The Council may delegate in writing to a subcommittee the powers to administer oaths and take testimony.

#### **IV. RULES AND REGULATIONS CONCERNING INDIVIDUAL CONDUCT OF POLICE PERSONNEL**

The Council within one (1) year after the enactment of this legislation, shall adopt a manual of rules and regulations to govern the conduct of individual police officers. The manual shall define categories of major and minor offenses and shall set forth the maximum and minimum administrative penalties for each offense.

In order to properly define categories of offenses, the Council shall hold a series of hearings in every borough during the first six (6) months after enactment of this legislation at which time citizens will have an opportunity to testify and present other relevant evidence to aid the Council in the adoption of the manual.

This manual shall include provisions concerning the following:

- (1) use of deadly force
- (2) use of non-deadly force
- (3) use of abusive language
- (4) selective enforcement of laws
- (5) internal corruption
- (6) activities of off-duty police officers
- (7) standards for the exercise of police discretion
- (8) prohibitions against racial and sexual discrimination
- (9) restrictions on dragnet arrests
- (10) treatment of arrestees during detention
- (11) political surveillance, photographing, record keeping, use of informers, development of red squads
- (12) use of decoys to entrap the young and economically desperate citizens
- (13) interrogations of those accused of crime
- (14) prohibit all acts of racial discrimination within and among police officers.
- (15) strict guidelines for the collection of data to prevent its unauthorized use and dissemination/mandate public disclosure to an arrestee of any and all reports concerning said arrest
- (16) end corporate and military influence over the police
- (17) establish strict disciplinary regulations to require that police follow not only the spirit but also the letter of the constitution in the areas of arrest, interrogation, search and seizure, and stop-and-frisk.
- (18) develop an overall policy within the \_\_\_\_\_ Police Department that demonstrates the highest regard for human life, integrity and dignity

#### **V. COMPLAINT PROCEDURE**

Complaint forms written in a clear and legible manner shall be made available to the public at the City Clerk's office at City Hall, all public libraries, and the police department. A complainant shall set out the substance of the complaint on a complaint form and file the same at the City Clerk's office, the police department, or a public library. Once filed all complaints shall be forwarded immediately to the General Counsel of the Council. Copies of the complaint shall be made available to each member of the Council, the General Counsel (the chief investigator of the Council) and the chief of police.

The General Counsel, as chief investigator, shall supervise all investigations conducted by the investigation staff of the Council. The investigation staff shall conduct investigations of complaints by interviewing all persons involved in the alleged incident. The complainant shall have an opportunity to furnish evidence, including written statements and testimony, to the investigator.

The investigators shall be given complete access to all department personnel and records and may in the course of investigation subpoena witnesses, administer oaths, compel testimony and require the production of evidence. To enforce a subpoena or order for the production of evidence or to impose any penalty prescribed for failure to obey a subpoena or order the chief investigator shall apply to the appropriate court under the administrative procedure act.

A report shall be filed within 30 days from receipt of the complaint detailing findings of fact. Upon receipt of the findings of fact, the council shall review the record and impose whatever disciplinary action is warranted by the facts.

If a complaint is not resolved as a result of investigation to the satisfaction of the complainant, the respondent employee, or a member of the Council, may request the Council to hear or review the matter. The Council, at its option, may hear or review the matter itself or refer the matter to a fact finder.

When a matter is referred to fact finding, the complainant and employee shall request an arbitrator from the American Arbitration Association and shall select names, numbering them in order of preference. The selection will be made in accordance with the general provision of the AAA concerning selection of arbitrators. The fact finder, in the conduct of the hearing, has powers similar to the chief investigator listed above.

After a hearing, the fact finder shall, within 30 days from the last day of the hearing, submit findings of fact to the Council. The Council, upon receipt of the report of the fact finder, shall, within 30 days, determine any discipline to be imposed. It shall publish its decision and action. The decision of the Council is final.

Any employee against whom a complaint is filed is presumed innocent. An employee shall not forfeit any pay or seniority rights pending final action by the Council, except with the concurrence of the majority of the council present and voting.

All pleadings filed and all hearings before the fact finder and the Council shall be public. The parties to any hearing are the complainant and the respondent employee. Each has a right to counsel. The case may be presented by the complainant or counsel. Any probative evidence may be admitted.

A public docket of complaints and the disposition of each complaint after investigation shall be kept in the office of the Executive Secretary of the Council and made available to the public. A report compiling statistics as to the number of complaints received and their disposition shall be made to the Council by the chief investigator each year and said report shall be made available to the public.

## VI. HIRING POLICIES

The division of police personnel shall be headed by a director of police personnel appointed by the Council. The director of police personnel must be a civilian and serves at the pleasure of the council.

Applicants for employment as police officers (or civilian employees) must enter the department in accordance with the following procedure:

The director of police personnel shall recruit applicants for service as police officers with the department, prepare and administer examinations for hiring police officers, and prepare and conduct examinations for promotion with the department.

Lateral entry into employment with the department as a police officer is permitted in accordance with the rules, regulations and procedures established by the Council.

A program of affirmative action in the hiring of national minorities will be instituted in order to insure that past history and practices of racial discrimination be remedied so that recruitment reflect the minority population composition of \_\_\_\_\_. Promotions shall also be proportionate to population ratios wherever possible and lateral entry of police officers will be permitted to effectuate this goal.

In order to effectuate hiring based on a population ratio of minority members, hiring will be permitted where the applicant has a record of misdemeanor convictions or arrests which do not involve crimes of moral turpitude.

Psychological testing of all officers, applicants, and recruits will be conducted. The tests shall be designed to detect racial bias and tendencies toward violent action. Appropriate reassignments, dismissals or refusal to hire will be based on the test results.

The chief of police shall make all promotions within the department subject to the approval of the Council.

Promotions shall be made on the basis of examinations administered by the director of police personnel. All examinations will be prepared by the division of police personnel subject to the approval of the Council.

Employees of the \_\_\_\_\_ Police Department shall receive equal pay for the same or similar work.

**VII. CHIEF OF POLICE**

The Council shall appoint a chief of police, skilled and experienced in law enforcement. The chief of police serves at the pleasure of the Council.

The Chief, with the consent of the Council, may appoint necessary deputy chiefs, including a deputy chief for the women's division who shall be a woman.

**Duties of the Chief of Police:** The chief of police is the chief executive officer of the police department and shall administer the department according to the policies, rules and regulations established by the Council and shall;

- (1) Recommend rules, regulations, and procedures to the Council for its approval.
- (2) Prepare the annual budget for the police department.
- (3) Except as otherwise provided by the Council, maintain custody and control of all property and equipment belonging to the department or held by the department as evidence.
- (4) Except as otherwise provided by the Council, maintain custody and control of all property and equipment belonging to the department or held by the department as evidence.
- (5) Submit to the Council tri-monthly reports of the operations of the department for forwarding to the mayor, city council and public. Included in said reports shall be the number of arrests, the character of arrests, the use of any physical force in accomplishing the arrest, the number of complaints received and the names of employees complained against.
- (6) Exercise such other powers as conferred by the Council.

**WE WELCOME YOUR IDEAS AND COMMENTS ON THIS PROPOSAL, AND YOUR HELP IN BUILDING A CAMPAIGN DESIGNED TO ESTABLISH CITIZEN CONTROL OF THE POLICE IN \_\_\_\_\_ CITY.**

**PLEASE CONTACT US AT:**

National Alliance Against Racist & Political Repression  
27 Union Square West / Rm. 306  
New York, NY 10003

(212) 243/8555

## APPENDIX II

## BILL OF RIGHTS FOR THE UNDOCUMENTED WORKER

**Article I:** Every Immigrant worker shall have the right to establish legal residency by demonstrating a status as wage earner and taxpayer.

**Article II:** Every Immigrant worker shall have all of the Constitutional Rights guaranteed all persons in the U.S. This right shall include but not be limited to: the right to due process, and the right to be free in their persons and possessions from unreasonable searches and seizures; and such rights shall not be violated by raids in factories, residential areas and in public places and shall be free from deportations and other unconstitutional practices.

**Article III:** Every Immigrant worker shall have the right to be reunited with his or her family in country where he or she is a wage earner.

**Article IV:** Every immigrant worker shall have the right to legalize and adjust their status within the U.S. without having to return to their country of origin.

**Article V:** Every immigrant worker shall fully enjoy all the rights guaranteed to citizen workers including socio-economic and labor rights.

**Article VI:** Every immigrant worker, particularly seasonal workers, shall be provided adequate housing, health and safety provisions.

**Article VII:** Every immigrant worker shall be guaranteed the same rights enjoyed by U.S. citizens especially the right of access to free and adequate social and health services, child-care, and other similar social benefits.

**Article VIII:** Every immigrant person shall have the right to quality public education in his or her native language, utilizing English as a second language and shall not be restricted from fully practicing the culture of his or her country of origin.

**Article IX:** Every immigrant worker shall have the right to receive disability insurance partial or permanent), workers compensation, retirement and death benefits. In the event of a death, the cost of transporting the deceased to his or her country of origin shall be borne by the employer, and any corresponding benefits shall be delivered to the family of the deceased without regard to their place of residency.

**Article X:** Every immigrant worker shall have a right to organize and to collective bargaining, including the right to join existing unions or form new ones, for the defense of their labor rights and for the improvement of their wages and living and working conditions.

(A) The right to collective bargaining shall include agricultural and public service workers in order to protect their right to organize.

**Article XI:** Every immigrant worker shall have the right to utilize his native language in all legal proceedings, (i.e. to acquire citizenship, in judicial proceedings, etc.) and in all private or public contract agreements.

**Article XII:** Every immigrant worker shall have the right to exercise their right to vote in their native country's federal elections. This right should be facilitated through consulates and all other places (union-halls, schools, etc.) designated by competent authorities.

**Article XIII:** Every immigrant worker shall have the right to vote in local and state elections from the moment of legalizing their immigration status without having to become citizens. The right is based on their status as taxpayers, workers and residents.

International Coordinating Committee  
1st International Conference for the Full Rights of Undocumented Workers

### CARTA DE DERECHOS PARA LOS TRABAJADORES INDOCUMENTATOS

**Artículo I:** Derecho a la residencia legal, demostrando simplemente su calidad de trabajador y contribuyente, para lo que se les otorgará su visa de residente permanente.

**Artículo II:** Derecho a un procedimiento justo y legal que garantice la inviolabilidad de su domicilio, la privacidad de su persona y otros derechos civiles para el trabajador y su familia, suspendiéndose totalmente las redadas fabriles, domiciliarias y en lugares públicos, así como todo tipo de deportaciones y prácticas anti-constitucionales.

**Artículo III:** Derecho a la reunificación de las familias para todo trabajador con o sin documentos que así lo desee. Se podrá trasladar al conyuge, hijos y padres sin más trámites que demostrar su calidad de trabajador y contribuyente en la sociedad norteamericana.

**Artículo IV:** Derecho automático a legalizar su residencia sin tener que regresar a su lugar de origen, como lo exige actualmente la ley de inmigración de Estados Unidos.

**Artículo V:** Derecho de gozar plenamente de derechos sindicales, sociales y económicos que disfrutaran el resto de los trabajadores ciudadanos.

**Artículo VI:** Derecho a la vivienda en condiciones de higiene y seguridad adecuadas para todo trabajador cíclico o por obra determinada.

**Artículo VII:** Derecho a los servicios de salud y atención médica gratuita y adecuada, guarderías y demás beneficios en las mismas condiciones que los recibe cualquier ciudadano norteamericano.

**Artículo VIII:** Derecho a recibir educación pública adecuada en el idioma materno, utilizando el inglés segunda lengua y acceso sin restricciones a la cultura de su país de origen.

**Artículo IX:** Derecho a disfrutar de los seguros de incapacidad (parcial o permanente), por accidente de trabajo, enfermedades profesionales, vejez o muerte. En caso de fallecimiento, los gastos de traslado a su lugar de origen correrán a cargo del patrón, y los beneficios de los seguros correspondientes serán entregados a los familiares no importando su lugar de residencia.

**Artículo X:** Derecho a la organización sindical, ya sea ingresando a sindicatos ya existentes o formando nuevos, para la defensa de sus derechos laborales y el mejoramiento de sus salarios y sus condiciones de vida y de trabajo.

(A) Derecho de Negociaciones Colectivas para los trabajadores agrícolas y trabajadores públicos para garantizar su derecho a la organización sindical.

**Artículo XI:** Derecho al uso de la lengua materna en los tribunales cualquiera que sea el carácter de estos, para adquirir la ciudadanía, en procesos judiciales y en todo arreglo contractual público o privado.

**Artículo XII:** Derecho a que se le otorguen plenas facilidades para el ejercicio del voto en elecciones federales de su país de origen. Este derecho se ejercerá a través de consulados y todo lugar (sindicatos, escuelas, demás) designados por autoridades competentes.

**Artículo XIII:** Derecho desde el momento de legalizar su residencia y sin necesidad de adquirir la ciudadanía norteamericana de ejercer el voto en las elecciones locales y estatales en Estados Unidos. Este derecho nace de su condición de contribuyente, de trabajador y de residente.

Comisión Internacional Coordinadora  
Ira Conferencia Internacional Por Los Derechos Plenos de Los Trabajadores Indocumentados

1581



PACE UNIVERSITY  
NEW YORK • WESTCHESTER

SCHOOL OF LAW

December 19, 1983

78 NORTH BROADWAY  
WHITE PLAINS, N.Y. 10603  
(914) 681-4234

Honorable John Conyers  
Chairperson  
Committee on Criminal Justice  
United States Congress  
Room 362  
House Annex 2  
Washington, D.C. 20515

ATTENTION: Ms. Gail Bowman

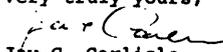
Dear Congressman Conyers:

I write to you on behalf of the Brooklyn chapter of the New York Civil Liberties Union.

Enclosed is a copy of our policy statement regarding police brutality in Brooklyn. It represents the position of the Brooklyn chapter of the NYCLU. We would appreciate it if you can include the policy statement in your official records and arrange to have it published in your hearing report.

With best personal regards.

Very truly yours,

  
Jay C. Carlisle

JCC: lf  
cc: Niel Cottler, Esq.  
Chief Legislative Assistant to  
Congressman Conyers



NEW YORK CIVIL LIBERTIES UNION  
BROOKLYN CHAPTER • P.O. BOX 2106, BROOKLYN, N.Y. 11202 • (212) 857-7861

THE BROOKLYN CHAPTER  
OF THE  
NEW YORK CIVIL LIBERTIES UNION

S T A T E M E N T

ALTERNATIVES TO THE USE OF  
DEADLY FORCE BY THE POLICE

Janessa C. Nisley  
Chairperson

STATEMENT OF THE BROOKLYN CHAPTER OF  
THE NEW YORK CIVIL LIBERTIES UNION  
TO THE HOUSE SUBCOMMITTEE ON CRIMINAL  
JUSTICE FOR THE NOVEMBER 28, 1983 HEARING

In Brooklyn in 1979, the mother of Luis Baez called the police to her home to subdue her son, a mentally disturbed youth. When they left, her son was dead; his body had been riddled by twenty bullets. The police pointed to the pair of scissors that he brandished as justification for their action. In each year since that incident, the number of persons killed by police has increased. In September of this year, Michael Stewart, another Brooklyn youth, fled when police sought to arrest him for drawing graffiti in the subway. He later died as the result of wounds that he received in the course of being apprehended. Stewart had carried no weapon.

These two incidents, as well as hundreds of others, serve as the bases for charges of police brutality. They are cases in which police officers resorted to the use of deadly force when other alternatives might have been feasible.

It is the position of the Brooklyn Chapter of the New York Civil Liberties Union that, in subduing persons who are mentally or emotionally disturbed or resisting arrest, the police should refrain from using deadly or injurious force. Persuasion and use of minimal physical restraint are preferable. In cases in which these alternatives are found to be inadequate, Mace or other disabling chemical or nonlethal weapons should be used. Only if such alternatives prove to be ineffective should methods that might result in death or serious injury be employed.

Four years ago following the Baez killing, the Brooklyn Chapter of the New York Civil Liberties Union encouraged the implementation of this policy by the Police Department. In 1980 Police Commissioner Robert McGuire stated to us that it was the policy of the Department to issue Mace to every officer and train them in its use. The yearly increase in the number of police killings since then demonstrates that the existing policy of the Police Department with regard to the use of Mace has not been effective. A one-time directive and training program is not enough.

The Police Department must promulgate regulations concerning when and how chemical weapons are to be carried and the circumstances under which they are to be used. Such regulations must be implemented and enforced; and the policy reinforced. Police officers who violate these, and other existing regulations concerning the use of firearms and deadly force, should be subjected to departmental discipline and other appropriate sanctions. In short, what is needed is an institutional commitment on the part of the Police Department to the use of chemical and nonlethal weapons as alternatives to the use of deadly force.

In addition to encouraging the implementation of a policy by the Police Department to employ chemical or other nonlethal weapons before the resort to deadly force, the Brooklyn Chapter of the New York Civil Liberties Union proposed revisions of the Policy Statements on the Use of Chemical Weapons of both the New York Civil Liberties Union and the American Civil Liberties Union in 1981. That proposal is now under consideration by the NYCLU. We urge that this subcommittee seriously consider this policy and joining us in urging its implementation. While the question of what constitutes the use of excessive force by the police is not an easy one, the use of less than deadly force should be mandated by police departments and those mandates implemented. Unless, and until, this happens the number of persons who are victims of police violence will continue to increase.

## APPENDIX B

POLICE DEPARTMENT  
CITY OF NEW YORK

T.O.P. 237

August 18, 1972

TO ALL COMMANDS:

Subject: USE OF FIREARMS BY MEMBERS OF THE FORCE AND ESTABLISHMENT OF A FIREARMS DISCHARGE REVIEW BOARD.

1. There have been tragic occurrences where police officers, acting within the scope of authority granted under the law, have discharged firearms and due to some circumstances beyond the officer's knowledge or a fortuitous event beyond his control, an innocent person, on occasion a brother officer, has been killed or injured. The discharging of a firearm to summon assistance is dangerous because the circumstances can be misunderstood; when the member is not in uniform, both the circumstances and his identity can be misunderstood. The firing of warning shots is also objectionable because a ricocheted bullet or a poorly aimed shot may also result in similar deaths or injuries. The risk of such occurrences is much greater in a densely populated urban area such as the City of New York than in some rural community.

2. A police officer's revolver is carried for personal protection against persons feloniously attacking an officer or another at close range. It is not intended nor is it ordinarily effective in stopping a moving vehicle. An officer, when being attacked by a person operating a moving vehicle, stands a much better chance of avoiding injury by jumping aside than by trying to halt the oncoming vehicle with shots. Means other than the discharging of a firearm will be used to stop such vehicles such as radio communication (both car radio or walkie-talkies), close pursuit, roadblocks, etc. A firearm shall not be fired from or at a moving vehicle unless the occupants of the other vehicle are firing at the officer or another.

3. Thus, to preserve and protect life wherever possible, the Department policy which reflects the recommendations and opinions of patrol field commanders on the use of a firearm is as follows:

a. In all cases, only the minimum amount of force will be used which is consistent with the accomplishment of a mission. Every other reasonable means will be utilized for arresting, preventing or terminating a felony or for the defense of oneself or

another before a police officer resorts to the use of his firearm.

b. A firearm shall not be discharged under circumstances where lives of innocent persons may be endangered.

c. The firing of a warning shot is prohibited.

d. The discharging of a firearm to summon assistance is prohibited, except where the Police officer's safety is endangered.

e. Discharging a firearm from or at a moving vehicle is prohibited unless the occupants of the other vehicle are using deadly physical force against the officer or another, by means other than the vehicle.

f. Members of the force will be held responsible for the use of firearms not consistent with the policy enunciated herein.

4. In order to review all incidents involving the discharging of a firearm by any member of the force, whether on or off duty, a Firearms Discharge Review Board is established and is composed of:

The Chief Inspector (chairman)  
 Deputy Commissioner Legal Matters  
 Deputy Commissioner Community Affairs  
 Division commander, designated by the Chief Inspector  
 Precinct commanding officer, designated by the Chief Inspector

Whenever a member of the force discharges his firearm a copy of the Firearms Discharge/Assault Report (PD 424-151) will be forwarded together with the Unusual Occurrence Report, directly to the Officer of the Chief Inspector. In addition, the commanding officer or the executive officer of the precinct involved shall be responsible for conducting an immediate investigation and forwarding a written report of his findings and recommendations, on official letterhead, within 24 hours, to the Chief Inspector; original forwarded directly, duplicate through channels. Until the facts of the incident are reviewed by the Board, the officer who fired the shot will be transferred from his assigned duty to administrative duty in the patrol borough office, or a similar administrative office, in other than patrol commands.

5. The Firearms Discharge Review Board will meet at times designated by the chairman. It may conduct hearings and question witnesses and members involved, as well as the commanding officer of the member concerned. The commanding officer should be prepared to answer questions as to the member's past performance,

instructions received as to the use of the firearm, and any recommendations he may have concerning the member.

6. After review of all facts in each case, the Board will submit a report of its findings and recommendations to the commanding officer of the member concerned. In appropriate cases a copy of such report will be forwarded to the Police Commissioner.

7. The following is a listing of recommendations that may be made. However, this listing is by no means all inclusive but is only intended as a guide:

a. The member concerned discharged the firearm in accordance with the policy of the Department.

b. The officer review and instructions issued on the discharge of firearms.

c. The officer receive additional firearms instruction.

d. The current assignment of the officer be reviewed.

e. Other appropriate recommendations including disciplinary charges when warranted.

8. The Commanding Officer, C.I.I.E.D., shall be responsible for performing the following services for the Board:

a. Make necessary notifications as directed by the Chief Inspector to members of the Board, of the time, date and location of scheduled meetings, and to provide necessary clerical assistance.

b. Compile and present to the Board all official reports of incidents involving the use of firearms by members of the force.

c. Summon such witnesses as the Board directs.

d. Prepare the recommendations of the Board, when so directed.

9. The intent of this order is not to unnecessarily restrict an officer in the performance of his duty, but rather to make it incumbent upon him to use prudent judgement in the use of his firearm.

10. The Commanding Officer, Police Academy, shall incorporate the Department's policy on the use of deadly physical force into the Department's training programs.

11. Commanding officers and supervisory heads shall instruct their subordinates in the contents of this order and make certain that the provisions thereof are strictly complied with.

12. Any provisions of the Rules and Procedures or other department orders in conflict with this order are SUSPENDED.

EFFECTIVE: 1600 hours, August 18, 1972.

BY DIRECTION OF THE POLICE COMMISSIONER.

DONALD F. CAWLEY  
Acting Chief Inspector

WF:m2

Distribution:

To all commands

1589

POLICE DEPARTMENT  
CITY OF NEW YORK

T.O.P. 237-1

August 18, 1972

TO ALL COMMANDS

SUBJECT: USE OF FIREARMS BY MEMBERS OF THE FORCE AND ESTABLISHMENT OF A FIREARMS DISCHARGE REVIEW BOARD.

1. Paragraph 4 of T.O.P. 237, c.s., is amended by adding thereto the Commanding Officer, Firearms Unit as a member of the Firearms Discharge Review Board.

2. Commanding Officers and supervisory heads shall be responsible that copies of the basic order are amended to reflect this addition.

BY DIRECTION OF THE POLICE COMMISSIONER.

DONALD F. CAWLEY  
Acting Chief Inspector

FR/pb

DISTRIBUTION:

ALL COMMANDS

INACTIVE DATE:

UPON ISSUANCE OF SUBSEQUENT ORDERS

## APPENDIX C

POLICE DEPARTMENT INTERIM ORDER NO. 118  
CITY OF NEW YORK

August 27, 1973

TO ALL COMMANDS

Subject: USE OF FIREARMS BY MEMBERS OF THE SERVICE AND ESTABLISHMENT OF AREA LEVEL FIREARMS DISCHARGE REVIEW BOARDS.

1. As law enforcement officers sworn to protect life and property, to prevent crime and apprehend offenders, we must be constantly aware of the sanctity of human life. There have been tragic occurrences in the past where police officers, acting within the scope of authority granted under the law, have discharge firearms, and because of circumstances beyond their knowledge or control, innocent persons, including other police officers, have been killed or injured.

2. Therefore, the guidelines listed below have been developed NOT TO RESTRICT an officer from properly performing his duty, but rather to make it incumbent upon him to use good judgement before using his firearm. The guidelines have been prepared to reduce shooting incidents and consequently protect life and property. Department policy concerning the use of a firearm follows:

- a. Every reasonable means will be utilized when arresting, preventing or terminating a felony or for the defense of oneself or another before a police officer uses his firearm. IN ALL CASES, ONLY THE MINIMUM AMOUNT OF FORCE WILL BE USED WHICH IS CONSISTENT WITH THE ACCOMPLISHMENT OF A MISSION.
- b. A firearm shall not be discharged if the lives of innocent persons may be endangered.
- c. The firing of warning shots is prohibited. A ricocheted bullet or poorly aimed shot may result in death or injury to innocent persons.
- d. Discharging a firearm to summon assistance is prohibited, except where the police officer's safety is endangered.
- e. Discharging a firearm from or at a moving vehicle is prohibited, unless the occupants of the other vehicle are using deadly physical force against the officer or another BY MEANS OTHER THAN THE VEHICLE.

- f. The discharge of a firearm at dogs or other animals should be an action employed ONLY when no other means to bring the animal under control exists.

Members of the service will be held responsible for the use of firearms not in accord with Department policy.

3. The Department Firearms Discharge Review Board consists of the following members:

Chief of Operations (Chairman)  
Deputy Commissioner - Community Affairs  
Deputy Commissioner - Legal Matters  
Supervisor, Training Division Firearms Unit

The Board will review all incidents involving the discharge of a firearm by a member of the service whether on or off duty.

4. In addition, a Field Service Area Firearms Discharge Review Board is created in each Area. All cases, involving the discharge of firearms by members of the service, after having been thoroughly investigated by the precinct commanders concerned, will be reviewed by the Area Board and forwarded to the Department Firearms Discharge Review Board with appropriate recommendations.

5. Each Field Service Area Commander shall convene, as often as necessary, an Area Firearms Discharge Review Board. The Area Firearms Discharge Review Board will consist of the following members of the Area command:

Field Service Area Commander (Chairman)  
A Zone Commander and an Area Training Officer  
A Precinct Commanding or Executive Officer (from other than the precinct of occurrence)  
A member of the service of equivalent rank in a similar assignment as the member involved.

NOTE: Alternates may be designated to represent members unable to attend due to vacation, sick leave, etc.

The Area Firearms Discharge Review Board will review all cases involving the discharge of firearms occurring within the Area Command.

6. Whenever a member of the service discharges his firearm, except at an authorized training session:

COMMANDING/EXECUTIVE  
OFFICER, PRECINCT OF  
OCCURRENCE - OR DUTY  
CAPTAIN

1. Respond to scene.
2. Take charge of investigation.
3. Have UNUSUAL OCCURRENCE REPORT prepared.
4. Have FIREARMS DISCHARGE/ASSAULT REPORT (PD 424-151) prepared.
5. Determine if:
  - a. Member should continue in present assignment or
  - b. Member should be assigned temporarily to clerical/administrative duties within Field Service Area or similar administrative office if not assigned to patrol.

## NOTE

If member of the service is not assigned to precinct of occurrence, commanding officer, precinct of occurrence will confer with member's commanding officer to determine if temporary assignment is necessary.

PRECINCT COMMANDING  
OFFICER

6. Have one copy of FIREARMS DISCHARGE/ASSAULT REPORT and UNUSUAL OCCURRENCE REPORT forwarded to Department Firearms Discharge Review Board (Office of Chief of Operations, Room 107, 240 Centre Street).
7. Prepare two (2) copies of report (within 72 hours) including:
  - a. Clear explanation of incident
  - b. Steps taken to determine if firearm discharged as per guidelines (e.g., interview witnesses, search crime scene, etc.)
  - c. Department background of member of the service involved (appointment date, age, awards, previous shooting incidents, disciplinary record, etc.)
  - d. Statement that investigation is completed or continuing and appropriate completion date.
  - e. Statement of findings, basis, action taken and recommendations.
8. Forward REPORT to Department Firearms Discharge Review Board (1st copy direct, 2nd copy through channels).

## AREA COMMANDER

9. Endorse and forward 2nd copy of REPORT to Department Review Board including findings to date, satisfaction or dissatisfaction with report, and if investigation is complete.
10. Bring case before Area Firearms Discharge Review Board when investigation is complete.

## NOTE

Area Board meets at times designated by Area Commander.

AREA FIREARMS DISCHARGE  
REVIEW BOARD

11. Review case.
12. Render decision (i.e., member concerned complied with guidelines)
13. Make recommendations as per following samples:
  - a. Member concerned discharged firearm according to Department policy
  - b. Member concerned review the laws and instructions issued re: discharge of firearms
  - c. Member concerned receive additional firearms instruction
  - d. Current assignment of officer be reviewed
  - e. Other - as appropriate including disciplinary charges when warranted
14. Reduce findings and recommendations to writing (Each member of Area Board must sign recommendation).
15. Forward REPORT and Area Board findings to Department Firearms Discharge Review Board.

7. The Chief of Operations, Investigation Review Section, will perform the following services for the Department Firearms Discharge Review Board.

- a. Make notifications to Board members of time, date, and location of meetings
- b. Provide necessary clerical assistance
- c. Compile and present to Board selected cases for review including findings and decision of Area Firearms Discharge Review Board
- d. Summon witnesses as directed by Board

- e. Investigate specific areas of reported firearms discharges as directed
- f. Prepare recommendations of the Board for dissemination
- g. Provide staff support and liaison with Area Boards
- h. Conduct analytical surveys and made recommendations.

8. The Commanding Officer, Training Division is responsible that Department policy, guidelines and recommendations of the Department Board, including training needs are disseminated. In addition, periodic reports concerning the nature and scope of the training, must be forwarded to the Chairman, Department Firearms Discharge Review Board by the Commanding Officer, Training Division.

9. Any provisions of the Patrol Guide or other Department Orders in conflict with this order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION  
All Commands

From: NAACP, CITIZENS GUIDE  
to Police-Citizen Violence (forthcoming)

Police in the United States encounter situations that threaten their lives or the lives of innocent citizens far more often than is true of police in other western countries. In such situations, it is sometimes necessary for the police to use deadly force if they are to protect themselves and citizens.

In a democracy, the power to take life should not be granted easily. Thus, the power of the police to use deadly force should be subject to controls that are reasonable, and that do not hamper the officer's ability to protect himself and innocent citizens. These controls should include meaningful guidelines to assist officers in making decisions to use deadly force, and a system that holds police accountable for exercising their power in a manner that is consistent with these guidelines. Because the police exercise their power to use deadly force in the name of the citizens, they are accountable to the citizens for their actions. Thus, any system of accountability should include provisions to make available to the public all information on cases involving police use of deadly force. This section of the guide presents NAACP proposals for such controls.

Controls on police use of deadly force may exist at many levels. State criminal laws, for example, usually contain sections defining the justifiable use of force by officers. In many cases, however, state laws regarding police use of deadly force are so broad as to be meaningless. In a state in which the law allows police to use deadly force to apprehend any fleeing felony suspect, for example, an officer who shot and killed a teenager fleeing on a stolen bicycle would not be chargeable with any offense, and would suffer no penalty under law, even though most people would find his actions excessive and unreasonable. Further, even in states in which such shootings violate the law,

the record suggests that enforcement is difficult. Criminal convictions of officers accused of using deadly force unjustifiably in the course of their duties are very rare. Regardless of the results of officers' actions, prosecutors are generally reluctant to bring charges against police officers who may have violated the law themselves while engaged in catching crooks. Even when they do bring such charges, prosecutors find it very difficult to convince juries that officers in such cases should be convicted and perhaps imprisoned.

Thus, if we try to measure the effectiveness of state laws in controlling police use of deadly force by counting the numbers of officers convicted for violating them, we would conclude that the law is not effective. Such a conclusion would not be totally accurate, however, because it does not take into account the fact that the law prevents much use of police deadly force by giving officers notice of the kinds of actions that may expose them to criminal penalties. Regardless of the rarity of convictions under such laws, police, like everybody else, are deterred from unreasonable actions by the threat of arrest and trial. Consequently, while the law does have shortcomings as a control, it is important that it be as specific as possible in delineating the circumstances under which officers may use deadly force.

There is an inherent limit to the specificity possible in state laws, however. State laws concerning police deadly force must be relatively vague because they apply to a wide variety of jurisdictions and circumstances. Statewide laws cannot take into account the fact that what may be appropriate police shooting in a deserted rural area might be inappropriate in crowded cities within the same state.

That is not to suggest that it may be appropriate for the police to kill people in some areas under circumstances that would not be appropriate in other

areas. It is the NAACP's position that officers should not use deadly force against other people except when it is not possible in any other way to protect the lives of officers or other people. It might be appropriate in isolated rural areas, however, for police to fire shots to summon the assistance of colleagues, but such shots would clearly be inappropriate in densely populated cities.

Thus, while it is generally inadvisable for police to shoot into the air to summon assistance, one can conceive of rare situations in which such an action might be appropriate and consistent with the police goal of protecting life. Such situations almost always would occur in isolated rural areas rather than in densely populated urban areas. The law, however, applies to the entire state with equal force and cannot take into consideration variations in local conditions within the state. For that reason, it is critically important that state laws be supplemented by more specific local controls on police use of firearms and other means of deadly force. The controls recommended at the end of the chapter, therefore, include both model state laws and local municipal ordinances, and police department policies.

POLICE DEPARTMENT DEADLY FORCE AND FIREARMS GUIDELINES

The most logical place to find such controls is in the operating manuals of police departments, where they should appear as departmental statements of policy on the use of firearms and on the use of other means of deadly force. By now, most of the larger police departments in the United States have established such policy statements, but many are extremely broad. Further, since there is no systematic source of information on police deadly force policies, there is no way to determine how many departments are utterly without any internal policies on use of deadly force. It is probable, however, that many smaller departments have no internal policies at all, so that officers are guided only by broad state laws. That is unfortunate because overly broad or nonexistent guidelines on use of deadly force are unfair not only to citizens, but to police officers as well.

Put yourself in the place of a new police officer. If you are like most new police officers, you are a young white man who has never been in any serious trouble, who has a high school degree or some college education, and who has taken the job because it offers both security and the opportunity to do exciting work and to help others. Like most new officers, you are not sure just what to expect from the job. You attend a 12 or 16 week training academy where you are bombarded with instructions on literally hundreds of responsibilities you will assume shortly. You are told that it is your important duty to prevent crime and to apprehend criminals. You are taught how to use your firearm, and are told that the state law permits you to use it against others to defend yourself or other innocent persons, or to apprehend fleeing felony suspects. You are also reminded of the tradition that the police "always get their man."

When you are assigned to "the street," you are told by your sergeant that he will evaluate you, and that he considers the number of arrests made by his officers a good indication of how well they do their job. A couple of weeks later, you see a car that has been reported stolen being driven along a major street late at night. You use your radio to call for help, and try to pull the car over, but the driver speeds off. After a short chase, he abandons the car, and flees on foot. You try to catch him but realize that you will not. You have a clear shot at him, know that you are allowed to shoot fleeing felons, that "the police always get their man," that it is your duty to apprehend criminals, and that your sergeant will be looking closely at the number of arrests you make. Your nerves are jangled, your adrenalin is pumping, you are running out of breath, help has not arrived yet, and you have only a second or two in which to decide to shoot him or not, because he will be long gone after that. What do you do?

Most officers would let the suspect escape, but many have responded to such situations by living up to the tradition that "the police always get their man." As a result, they have taken the lives of teenagers whose crimes would have been treated extremely mildly by the courts had they been apprehended alive. In many such cases, the consequences to officers have been severe. It is traumatic to take a life under any circumstance. It is especially devastating to make a hurried decision to live up to department expectations by shooting in a situation like the one described, and to reflect later upon the enormity of the consequence of that decision. Police psychologists suggest that there are two victims in cases of police deadly force--the person shot, and the person who shot him. Clearly, therefore, it is in the interests of officers, as well as the public, to attempt to define with as much specificity as possible the circumstances under which it is acceptable for officers to use deadly force.

The police department that fails to do that has failed to meet its responsibility to its officers as well as its responsibility to the people it serves. The decision to shoot is a really tough one, and officers should be given as much help in making it as possible.

The question of how specific local policies on deadly force should be is complex. Some departments have established deadly force policies so detailed that it is unrealistic to expect them to be useful to officers in the heat of the moment. For example, policies in some police departments permit officers to shoot at suspects fleeing from purse-snatchings in which victims have been struck or knocked to the ground, but do not permit shooting in cases of purse-snatchings not involving the use of such force. In some places, local police deadly force policies permit officers to shoot at fleeing individuals whose "conduct indicates that they will constitute a continuing danger to the community if not apprehended immediately." Except in rare instances (a "Son of Sam" style murderer, for example), it is extremely difficult for officers to apply such "crystal ball" policies in specific cases. It is very difficult for trained psychologists to predict human behavior; it is unfair to expect police officers on the street to do so.

Thus, it is the position of the NAACP that the main provision of local policies on police use of deadly force should permit officers to use deadly force only as a last resort and when no other means are available to protect officers or other innocent persons against imminent grievous physical injury or death. Simply stated, it is our position that officers should use deadly force only in defense of life.

The reasons behind that recommendation are many. First, it is the only policy that clearly is consistent with the primary responsibility of the police to protect life. Second, it in no way limits the authority of the police to use

deadly force in situations that are threatening to their lives or to the lives of others, and that cannot be overcome with less drastic measures. Third, it has the virtue of simplicity: it does not require officers to apply complex principles to heated and hurried decisions in the street. Fourth, it is consistent with constitutional due process guarantees and court interpretations that authorize the state to take life by capital punishment under only the most extreme circumstances. It reinforces this society's priority on the value of life over the value of property. Fifth, it is consistent with current practice in England, the source of our common law rule permitting use of deadly force to apprehend fleeing felons, and a country that long ago rejected that rule. Sixth, it is consistent with the findings of research that demonstrate that less restrictive deadly force policies do not contribute to police effectiveness. The evidence to date demonstrates there is no association between police policy on use of deadly force and rates of crime and arrest. Police departments that shoot a lot of people are not better crime fighters than police departments that shoot few people. Seventh, it is consistent with the long-time police of this country's most highly regarded law enforcement agency, the Federal Bureau of Investigation.

In making that proposal, we would take pains to point out that it is a recommendation for a policy, rather than for a hard and fast rule. Just as the law is most properly interpreted in its spirit, rather than by the letter, we suggest that our policy recommendations be interpreted in their spirit. There are no exceptions to a hard and fast rule, but there may be some exceptions to a policy. We recognize that there will may be some rare instances in which police use of deadly force violates the letter of our proposed defense of life policy, but will may be consistent with the primary responsibility of the police to protect life.

Suppose, for example, that an officer receives a report that an armed robbery is occurring in a store. As he pulls up to the location, a man with a gun in his hand runs out of the store pursued by another man. The man with the gun turns and shoots his pursuer. He then looks up, sees the officer, fires several shots in the officer's direction, and turns to flee, carrying the now empty gun in his hand. The officer pursues the man, but it is obvious that he cannot catch him. Is it reasonable for the officer to shoot in such a situation?

Under a literal interpretation of our policy recommendation, it is not. Neither the officer nor anybody else faces an imminent threat to life at that point because the man's gun is empty. On the other hand, is it reasonable for the officer to allow this individual to escape? He has shot one person, and he attempted to shoot the officer. If the officer continues his pursuit, will he find out the hard way that the man has a second loaded gun concealed on his person? Will the man be able to reload his gun and engage the officer in an exchange of shots?

The question here, then, is what possible police action is most consistent with the officer's responsibility to protect life? Reasonable people can differ on the answer but, given such extreme circumstances as these, and given such clear evidence of this suspect's disregard for the life of the officer and those he is sworn to protect, it is our position that use of deadly force in this case would be both reasonable and consistent with the officer's responsibility to protect life. Use of deadly force in this case would violate the letter of our proposed policy, but it would certainly not violate its spirit.

If we would find such a shooting reasonable, why have we not clearly said so in our proposed policy? The answer is that it is impossible to do so without also opening the door to many other shootings that are far less consistent with

the police responsibility to protect life. If our policy said, for example, that officers were justified in shooting people who had committed robberies or other forcible felonies, it might be read to mean that we approved of shootings of youths fleeing from such offenses as schoolyard lunch money shakedowns. If our policy said that officers were justified in shooting people who were armed with guns, it might be read as encouraging such shootings even when there exist less drastic means of disarming suspects who pose no immediate threat to life (e.g., by calling for assistance, or by negotiating with barricaded suspects). Thus, we think it more reasonable to treat cases as extreme as the one we have described as exceptions to our general policy that officers use deadly force only in defense of life, than it would be to risk encouraging other more questionable shootings by elaborating on the policy.

Even though cases as extreme as the one we have described are rare, the fact that our recommendation is for a policy rather than a hard and fast rule makes the job of ruling on the justifiability of use of deadly force more difficult. It is easy to decide when a hard and fast rule has been violated, but it is far harder to decide when a policy has been violated. We recognize that, but we see no alternative. The main provision of our policy is based on the principle that a police officer's power to use deadly force should be limited to cases where life is in imminent danger. Cases which appear to violate the letter of that policy should be judged on the basis of whether the actions of the officer were consistent with his responsibility to protect life. We think that is a judgment reasonable people can make. We think also that articulating the basis for such judgments in reports made available to the public following all cases of use of deadly force and use of firearms will insure the integrity of the process of adjudicating police actions, and will enhance the credibility of the police by reducing speculation that investigations and adjudications of police actions are not objective.

Just as we acknowledge these rare exceptions to the main provision of our policy, we also acknowledge rare exceptions to its other provisions. Our policy prohibits warning shots, for example; but we recognize that in some unusual circumstances it may be reasonable for officers to fire warning shots. An officer suddenly confronted on a crowded street by a deranged and threatening young man with a knife might be deemed to have acted reasonably if he fired a shot into the air to shock his assailant into reality when his only other choice was to shoot at the man and to risk hitting bystanders with a bullet. Here, as in every case, the relevant provision of our policy must be applied by considering whether the officer's actions were consistent with his responsibility to protect life. Was it consistent with that responsibility to attempt to spare the life of the young man and to minimize risk to bystanders by firing a shot into the air instead of shooting at him? In this case, assuming that no other options were available, and that the officer's life was really in danger, shooting the man would have been justifiable under our policy's "defense of life" provision. But the officer apparently sought to avoid taking a life by firing a warning shot. We would find it very difficult to penalize him for that.

#### STATE AND LOCAL GOVERNMENT CONTROLS ON POLICE DEADLY FORCE AND FIREARMS

Obviously, most of our discussion of controls of police use of deadly force centers on things that the police department itself can do, rather than upon the law's limits on this police power. We think the police chief is the most appropriate and logical candidate to control effectively what his officers do with their guns. Because the police chief is a local official, we think also that he is likely to be more responsive to the wishes of citizens regarding use of firearms and other means of deadly force than would a state legislature which serves many interests and many constituencies. Running the police department and responding to citizens' opinions about the police department is the police chief's job, while police matters are only one among many concerns of state

legislators. Police officers pay close attention to their chief, but they usually are far less affected by anything that happens in the state capital.

The most fruitful place to seek change in police deadly force practices, then, is probably the police chief's office. Unfortunately, however, the resulting reforms sometimes last only as long as the chief who implemented them. In some places, reforms put in place by progressive police chiefs appointed by progressive mayors have been rescinded by "tough on crime," "law and order" mayors and police chiefs put into office in subsequent elections. One midwestern chief, for example, recently responded to rising crime rates by "taking the handcuffs off his officers," and ordering them to "shoot only to kill." That kind of talk may sound good to people frightened by rising crime, but it has little real effect except perhaps to send officers a not-so-subtle message that the chief's idea of a good cop is one who would not hesitate to take a life.

If the threat of such regression is real, it may be advisable to work for the passage of municipal legislation that requires police chiefs to establish and administer reasonable and clear guidelines on the use of firearms and other deadly force. Unlike an internal policy, a municipal ordinance cannot easily be overturned by the stroke of one person's pen. Thus, our proposals include the language for such a municipal ordinance that makes it a legal requirement for police chiefs to develop a deadly force policy, to review shootings, and to report publicly on shootings and their investigations and findings.

This model municipal ordinance might also be useful in cases involving police chiefs who are not responsive to citizen requests for reform of deadly force policies simply because they are not accountable to the citizens. In some places, police chiefs hold civil service tenure, and are not removable from office except for "cause," which often means that they are "chiefs for life" unless they violate the law. Our model municipal ordinance increases the accountability of such chiefs by making failure to administer deadly force

As you read our proposals, you will find there are differences among them in terms of their specificity. We have left our proposed state law relatively broad, so local jurisdictions might work within its guidelines to tailor their own specific policy guidelines. We have also done so to preclude the prosecution of police officers for actions that people in some jurisdictions might consider reasonable. A local ordinance or policy can be more restrictive than state law, but it cannot be less restrictive.

## A MODEL STATE LAW ON USE OF DEADLY FORCE BY POLICE

Justification: Use of Deadly Physical Force by Police Officers

- A. A police officer may use deadly physical force upon another person when and to the extent he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use of imminent use of unlawful deadly physical force by such other person, and when no other reasonable means exist to do so, or
- B. When no other reasonable means exist to effect the arrest or prevent the escape from custody of a person whom the police officer reasonably believes has committed one of the following offenses in the immediate past:

murder, or attempted murder  
 non-negligent manslaughter  
 forcible rape  
 forcible sodomy  
 aggravated assault involving use of a deadly weapon  
 kidnaping  
 robbery while armed with a firearm or explosive device  
 arson of an occupied building or dwelling

II. DefinitionsA. Defenses: Burden of Proof

When a "defense" is raised at a trial, the people have the burden of disproving such defense beyond a reasonable doubt.

B. Justification: A Defense

In any prosecution for an offense, justification is a defense.

- C. "Deadly Physical Force" means any physical force which, under the circumstances in which it is used, is readily capable of causing death or other grievous physical injury.

- D. "Deadly Weapon" means any loaded weapon from which a shot, readily capable of causing death or other grievous physical injury, may be discharged, or a switchblade knife, dagger, billy, blackjack, or metal knuckles.
- E. "Explosive Device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel which has been knowingly tampered with or arranged so as to explode.

Comment

While it is NAACP's position that police officers should use deadly force only in defense of life, our model state law allows shooting to apprehend fleeing persons suspected of several especially terrible crimes. That might seem inconsistent, but it is not.

Our model state law allows--but does not encourage--officers to use deadly force to apprehend fleeing persons suspected of murder, the most serious types of manslaughter, forcible sex crimes, assault with deadly weapons, kidnaping, armed robbery, and arson. All these are lethal or life-threatening offenses and, in some cases, shooting to apprehend suspects of these crimes might be consistent with the police responsibility to protect life. Suppose, for example, during the recent terrible series of murders in Atlanta, an officer had fired at a fleeing person whom he had seen throw the body of a young man into the Chatahoochie River. If there existed no other way to make that apprehension, most people would agree that the officer had acted properly to protect life. Even those who did not agree would be hard put to argue that the officer should be arrested and criminally prosecuted for such an action. We don't think so either, and to avoid such an outcome, we have allowed for such situations in our model state deadly force law. Neither our model municipal ordinance nor our model departmental policy, however, authorizes such shootings. Thus, some violations of the letter of the defense of life provision of our policy (such as the shooting of the fleeing murder suspect described above) may be evaluated by police departments and citizens on a case-by-case basis without subjecting officers to criminal prosecution.

Our proposed law, it should be noted, is comparable to the most restrictive state deadly force laws in the United States. As long as our model policy is interpreted and administered responsibly, however, that policy, and not the law, will be the operative guideline for officers in the field.

## A MODEL LOCAL ORDINANCE ON USE OF POLICE DEADLY FORCE

I. The chief of police shall be held accountable for the use of firearms and other means of deadly force by officers of the police department.

II. The chief of police shall promulgate administrative directives that clearly delineate the circumstances under which officers of the police department may display or discharge firearms or employ other means of deadly force.

III. The administrative directives required by Section II shall prohibit officers of the police department from discharging firearms except when, in the absence of any other means to do so, it is necessary to defend officers or other innocent persons against the use or imminent use of unlawful deadly force by another person, or when, in the absence of any other means to do so, it is necessary to destroy a dangerous or hopelessly injured animal.

IV. The administrative directives required by Section II shall prohibit officers of the police department from discharging firearms at or from moving vehicles, except when, in the absence of any other means to do so, it is necessary to defend officers or other innocent persons against the use of unlawful deadly force by means other than a vehicle.

V. The administrative directives required by Section II shall prohibit officers of the police department from discharging firearms as warnings.

VI. The administrative directives required by Section II shall prohibit officers of the police department from discharging firearms in order to summon assistance.

VII. The administrative guidelines required by Section II shall include specification of internal police investigative and review procedures for all instances in which officers of the police department discharge firearms or employ other means of deadly force.



VIII. It shall be the responsibility of the chief of police to discipline officers of the police department determined to have violated the provisions of the administrative directives required by Section II..

IX. It shall be the responsibility of the chief of police to submit promptly to the mayor and the city council written reports detailing the circumstances under which officers of the police department have discharged firearms or employed other means of deadly force and specifying the criteria upon which such incidents were determined to have been in accord with or violated the provisions of the administrative directives required by Section II. Such reports shall include a statement of corrective action taken, where applicable.

X. It shall be the responsibility of the chief of police to provide to any citizen upon written demand full copies of the reports required by Section IX.

XI. It shall be the responsibility of the chief of police to respond to requests of the city council to clarify or explain reports required by Section IX by responding in writing, or when so requested by the council, by appearing before the council.

XII. Failure of the chief of police to obey the requirements of Section I through XI shall be unlawful.

Comment

Our model local ordinance is designed to hold chiefs of county, town, and city police agencies accountable to elected officials for the use of deadly force by members of their departments. It most directly limits the discretion of police chiefs, rather than street police officers, by mandating that chiefs establish and administer restrictive deadly force guidelines.

In many cases, chiefs have been reluctant to establish department guidelines for shooting, on the spurious grounds that they have no authority to restrict police shooting more than the law does. This ordinance negates such arguments by making it a legal requirement for police chiefs to establish internal policies.

FIELD OFFICER'S SUMMARY

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YOUR FIREARM IS A LAST RESORT

- o DO NOT REMOVE IT FROM YOUR HOLSTER UNLESS YOU REASONABLY SUSPECT THAT IT MAY BECOME NECESSARY TO USE YOUR FIREARM TO DEFEND YOUR OWN LIFE OR THE LIFE OF ANOTHER.
  
  - o DO NOT DISCHARGE YOUR FIREARM UNLESS THERE IS NO OTHER WAY TO DEFEND YOUR LIFE OR THE LIFE OF ANOTHER...OR,
  
  - o UNLESS THERE IS NO OTHER WAY TO DISPOSE OF A DANGEROUS OR INJURED ANIMAL.
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Comment: This model deadly force policy field officer's summary is designed simply as a decision-making guide for officers in the field, and can be issued to them individually on wallet-sized cards, and posted in police buildings and on the sun visors of police vehicles on larger cards.

A MODEL POLICE DEPARTMENT POLICY ON  
USE OF DEADLY FORCE AND USE OF FIREARMS

I. A. The purpose of this order is to provide officers with a single document explaining this department's policies and procedures related to the authorization, discharge, and carrying of firearms.

B. The primary responsibility of this department and of each of its members is to protect the lives of the citizens we serve. It is critical, therefore, that every action of this department and of each of its members be consistent with that responsibility. It is also the responsibility of each member of this department to honor the established principles of democracy. These include a reverence for human life, the principle that the value of any human life exceeds that of any property, and the principle that it is the function of the judiciary and of correctional authorities to punish wrongdoers.

C. This department and each of its officers has been granted extensive powers to meet these responsibilities. These powers have been granted by citizens, and this department and each of its officers are accountable to the citizens for the manner in which those powers are exercised. This is especially true where the power to use deadly force is concerned.

D. The laws of this state define deadly force as "force capable of killing, or likely to kill." Most often, deadly force involves the use of firearms. It is the policy of this department that display and discharge of firearms shall be held to the absolute minimum required to fulfill the responsibilities of this department and to protect the safety of officers.

E. Therefore, this department has this date enacted the following police guidelines regarding the use of firearms and other means of deadly force. The following guidelines must be viewed as administrative guides for decision-making

before the fact and not as a standard for civil or criminal litigation judging the propriety of actions already taken. That is a matter of established law as well as a process for prosecutors, courts, and juries reviewing specific facts of a given incident.

## II. Policy Statement

### A. Discharge of Firearms

1. It is the policy of this department that firearms may be discharged only under the following two circumstances:

- a) when necessary to protect an officer or other innocent person against grievous bodily injury or death caused by assaultive conduct by other persons, and when all other reasonable means of doing so have been exhausted.
- b) when necessary to destroy a dangerous or hopelessly injured animal, and when all other reasonable means of doing so have been exhausted.

2. It is the policy of this department that:

- a) a firearm SHALL NOT be discharged when there exist or are other less lethal means of neutralizing a threat to the live of officers or other innocent persons, or of disposing of dangerous or hopelessly injured animals.  
IN ALL CASES, ONLY THE MINIMUM AMOUNT OF FORCE WILL BE USED TO ACCOMPLISH A MISSION.
- b) A firearm SHALL NOT be discharged if the lives of innocent persons may be endangered.

- c) A firearm SHALL NOT be discharged as a warning shot. A ricocheted bullet or poorly aimed shot may result in death or injury to innocent persons.
- d) A firearm SHALL NOT be discharged to summon assistance.
- e) A firearm SHALL NOT be discharged at or from a moving vehicle, unless an officer or another innocent person is the subject of deadly force by means other than a vehicle.

8. Display of Firearms. It is the policy of this department that firearms may be unholstered, handled, or otherwise displayed only under the following two circumstances:

- 1) when an officer reasonably suspects that he or another innocent person may be subjected to imminent danger of grievous bodily injury or death by assaultive conduct from other persons, and when there exist no less lethal means of subduing that threat.
- 2) when necessary to destroy a dangerous or hopelessly injured animal, and when all other reasonable means of doing so have been exhausted.

Nothing in the guidelines above should be construed as a restriction upon the ability of members of this department to perform their duties or to protect their own safety. This department and the citizens to whom it is accountable acknowledge that effective police work depends upon the wise exercise of discretion and good judgment. This department and the citizens to whom it is accountable acknowledge also that some extraordinary circumstances may warrant technical violation of the letter of these guidelines. In such cases, the reasonableness of officers' actions will be adjudged according to their

consistency with the primary police responsibility to protect life; but officers will be held accountable for their adherence to the spirit of these guidelines, and for their adherence to their responsibility to protect life.

### III. Firearms Discharge Report (FDR)

A. Whenever any officer discharges a firearm, whether accidentally or intentionally, and whether on-duty or off-duty, and whether within the geographic confines of this jurisdiction or otherwise, excepting authorized training or competition purposes, a written report shall be submitted to the chief of police. That written report shall be prepared by the officer involved, unless he is seriously injured or otherwise unable to do so. If the officer involved is unable to do so, the report shall be prepared by the supervisor of patrol of the district in which the firearms discharge occurred. This report shall set forth all circumstances surrounding the incident, including but not limited to the following:

- 1) A narrative describing the events leading up to the incident and the reason for use of the firearm.
- 2) A description of the location in which the incident occurred.
- 3) The names, addresses, and descriptions of any injured person or persons at whom fire was directed.
- 4) The names, addresses, and descriptions of any witnesses.

### IV. Investigation of Firearms Discharges

A. Whenever any officer discharges a firearm, whether accidentally or intentionally, and whether on-duty or off-duty, and whether within the geographic confines of this jurisdiction or otherwise, he shall notify the department Command and Control Center as soon as possible by either telephone or by notifying the department radio dispatcher.

B. The Command and Control Center shall immediately dispatch the supervisor of patrol of the district within which the incident occurred to the scene, and shall also immediately dispatch an officer at the rank of captain or above to the scene. The Command and Control Center shall also immediately notify by telephone the Internal Affairs Division and the office of the District Attorney, advising them of the location and of any related injuries. Pending the arrival of the captain, the patrol supervisor shall commence an investigation immediately upon arrival at the scene. He shall:

- 1) Ascertain the extent of any injuries involved, and make certain that injured parties are promptly and properly treated or removed for medical care.
- 2) Make a determination as to whether the investigation should continue at the scene or should be moved to the nearest police facility.
- 3) Interview the officer involved to determine the circumstances of the incident.
- 4) Inspect the firearm discharged, and commence a search for discharged bullets and for any undiscovered injuries or property damage.
- 5) Attempt to locate witnesses, and request that they remain available for interviews by the responding captain, or that they provide names, addresses, and phone numbers so that they may be interviewed in the future.

- 6) Notify the responding captain upon his arrival of the facts that he has ascertained, including a statement of his tentative judgment of whether or not the incident will result in the filing of criminal charges against the officer or officers involved.
- C. The responding captain shall assume command of the investigation. Upon arrival at the scene, he shall obtain the information above from the patrol supervisor, and shall immediately notify the Command and Control Center by telephone of the facts as he has ascertained them from the patrol supervisor. If, at any time, the captain determines that the filing of criminal charges against officers is likely, he shall immediately notify the Command and Control Center by telephone. The Command and Control Center shall then immediately notify by telephone the chief of police, the Internal Affairs Division, and the office of the District Attorney, if representatives of the district attorney are not already on the scene. The notification to the office of the district attorney shall include no statement of the reasons for the tentative determination that criminal charges are likely.
- D. The responding captain shall determine that all injured parties are properly cared for, and that any department services required to assist in the investigation (e.g., ballistics, photo, homicide, etc.) have been notified of the need for their services, and are en route to the scene.
- E. The responding captain shall then continue his investigation at the scene, or at the nearest police facility, whichever is more feasible. He shall attempt to put all involved parties at ease, and shall conduct

be tape recorded, conducted in private rooms, and in the presence of one other officer of a supervisory rank. All department members to be interviewed should be advised of their right to be interviewed in the presence of an attorney or a representative of the designated police labor association.

Officers who discharged firearms shall be interviewed prior to any interviews of witnesses. Interviews of officers shall begin with a reading of time, date, location, and parties present at the interview.

The captain shall then inform the interviewee that:

I am Captain \_\_\_\_\_. I am about to interview you regarding an incident which occurred at (location) at (time, date), in which your firearm was discharged. All the information obtained in this interview will be used for internal purposes by this department, and no statement made by you or your representative during the course of this interview will be used against you in any criminal prosecution which may result from this incident.

The interview I am conducting is not a part of a criminal investigation, and therefore, your Constitutional rights to remain silent do not apply. You may refuse to answer questions, but I must advise you that doing so will constitute grounds for immediate suspension from this department, and the filing of departmental charges of insubordination and hindering an official department investigation. The prescribed penalty for such offenses in an investigation such as this one is dismissal from the department.

Interviews of officers involved shall be conducted in a manner designed to obtain officers' descriptions of all events relevant to the firearms discharge, as should interviews of all other witnesses. Members of the department shall be instructed to remain available for further questions and for clarification of points raised in subsequent interviews. Interviews of citizens arrested or suspected of crimes as a result of their involvement in firearms discharge incidents should be preceded by reading of the Miranda advisements of their rights to silence and counsel.

- G. Upon completion of his interviews and other efforts to determine the facts of the incident, the captain shall make all involved officers available for interviews by the Internal Affairs Division and by the district attorney's representatives. He shall then have hand delivered all interview tapes and prepare a complete written report of his investigation in a sealed envelope to the deputy chief for field operations, and shall forward copies of the report to the chief of police, to the commanding officer of the officer involved, and to the commanding officer of the training academy. This report shall be forwarded within 24 hours of the firearms discharge, and shall be preceded by a brief preliminary report outlining the circumstances of the shooting, which shall be hand delivered to the office of the chief of police and to the office of the deputy chief of operations as soon as possible. Both the preliminary report and the complete written report will include a statement of the captain's determination of whether the firearms discharge was in conformance with department policy, and a statement of the reasons therefore.

H. In the event that the captain's investigation and the interviews of the Internal Affairs Division and the district attorney indicate that there exists probable cause to arrest an officer for criminal violations related to firearms discharges, the investigating captain shall immediately suspend the officer, and confiscate his weapon and badge. All arrests in such cases shall be effected by supervisory officers of the Internal Affairs Division.

v. Post-Shooting Services for Officers

In every case in which the discharge of an officer's firearm has resulted in injury or death to a human being, the investigating captain shall excuse the officer involved from his next three scheduled tours of duty, with pay. He shall also contact the departmental psychologist in all such cases, and shall arrange the scheduling of a post-shooting counseling session for the officer with the psychologist during the next two calendar days. At his discretion, he may schedule such appointments for officers involved in shootings not resulting in injury or death, and may reassign such officers to temporary duty in staff units. In any event, officers in post-shooting counseling will be excused from duty for counseling sessions at the department's expense until both they and the psychologist agree that there no longer exists a need for such treatment. It is critical that officers understand that such services are mandated not to discourage them from properly performing their duties, and not as a means of condemning their actions. Such services are offered by the department out of a concern for the psychological and spiritual well-being of officers, and out of the concern for the threat to such well-being caused by reactions to having shot another human being. The services of departmental chaplains also shall be made available to officers for these purposes.

D. The following is a listing of recommendations that may be made.

Recommendations are not limited to the following, and may include more than one of the following, or other dispositions, at the board's discretion.

- 1) The officer involved discharged the firearm in accordance with departmental policy.
- 2) The officer involved discharged the firearm in accordance with department policy, but his actions indicate a need for instruction in tactics and/or law.
- 3) The officer involved discharged the firearm in violation of departmental policy.
- 4) The actions of the officer involved indicated a need for psychiatric or psychological treatment or alcoholic counseling.
- 5) The officer involved should be given the opportunity to transfer to a less sensitive or demanding assignment.
- 6) The actions of the officer involved indicate a mandatory transfer to a less desirable or less sensitive or demanding assignment.
- 7) Criminal charges should be filed against the officer involved, if this has not already occurred.

**VII. Release of Information Regarding Firearms Discharges**

- A. In every incident involving the discharge of a firearm that has resulted in injury or death to a human being, upon request, the chief of police shall make available to the public all reports of the firearms discharge review board (omitting the identification of civilian witnesses, where necessary to protect their security and privacy), as well as a written statement explaining his acceptance or rejection of board findings, and the reasons therefore. Such reports shall also describe corrective action taken, if any, and if permissible within local privacy laws.
- B. At the end of each calendar year, the activities of the firearms discharge review board will be published in the department's annual report. This will include a statistical report on the number and types of firearms discharges reviewed, the numbers of resulting injuries and deaths, and the results of investigations and reviews of firearms discharges.
- C. At every stage of the investigation and review of shootings, it is this department's policy that the press and public are entitled to complete information, within the bounds of legality. Therefore, those charged with investigating and reviewing shootings shall make available to the press and the public all relevant information so long as disclosure would not endanger the progress of departmental or criminal proceedings, or the lives and privacy of witnesses and other innocent persons.

**VIII. Carrying Firearms**

- A. It is the policy of this department that only those officers who meet the minimum requirement for proficiency in the use of firearms as established by the training academy shall be permitted to carry firearms in the course of this department.
- B. It is the policy of this department that on-duty officers must carry with them a service revolver of a type and manufacture specified by the department, and with which they have met the minimum standards for proficiency as established by the training academy.
- C. All weapons owned or used by officers must be inspected and approved by the training academy on the date of purchase. At that time, all such weapons must be registered by serial number with the department, and two rounds of live ammunition must be provided the range officer for firing and retention by the department as samples for ballistics identification.
- D. No officer may carry upon his person at any time any firearm with which he has not demonstrated minimum proficiency as established by the training academy, except while transporting it to the training academy for that purpose on the date of purchase.
- E. With the prior knowledge and written approval of their commanding officers, on-duty officers may carry a second firearm, provided that all requirements in Sections VIII, A through D are met, and provided that the second firearm is not carried in a manner that is visible.
- F. Off-Duty Weapons
  - 1) When operating a department vehicle while off-duty, officers must carry a properly registered firearm of a type specified by the department, and with which they have met minimum department proficiency standards.

- 2) At other times, officers are permitted to carry firearms while off-duty, with the following exceptions:
  - a) It is the policy of this department that off-duty officers should not carry firearms at social events and other circumstances in which they anticipate consuming alcoholic beverages.
  - b) It is the policy of this department that off-duty officers should not carry firearms to places where they will engage in athletic activities (e.g., swimming, tennis, softball, bowling, etc.) where it is impractical to carry a weapon, and where its security may be compromised by leaving it in automobiles, lockers, or other temporary storage facilities.
  - c) It is the policy of this department that off-duty officers should not carry firearms beyond the geographic boundaries of this jurisdiction, except while on official business, or while traveling to or from this jurisdiction.
- 3) In no case will an officer who chooses not to carry a firearm while off-duty be subjected to disciplinary action if an occasion should arise in which he might have taken forcible police action had he been armed.
- 4) It is the policy of this department that officers should refrain from taking forcible police action except in circumstances which seriously threaten life, property, or public order. It is the policy of this department that the most appropriate police action to be taken by off-duty officers in less serious situations or in situations in which forcible police action itself may increase risk to the lives and safety of officers or other innocent persons is to request the assistance of on-duty officers at the first opportunity. Before taking any action while off-duty, officers should carefully consider the risks to themselves and to others that may be caused by sudden confrontation with armed criminals or suspects.

Comment: This model police department policy on use of deadly force and use of firearms is designed as a single comprehensive document governing this area of police operations. In laymen's terms it:

- o Explains the importance of restraint in unholstering and discharging firearms.
- o Authorizes shooting only when necessary to defend life, or to destroy injured or dangerous animals.
- o Prohibits shooting when innocent people may be endangered.
- o Prohibits warning shots.
- o Prohibits "shots in the air" to call for help.
- o Prohibits shooting at or from moving cars, unless opponents are also shooting at police.
- o Permits unholstering of firearms only when officers are entering potentially life-threatening situations, or are about to destroy animals.
- o Explains that extraordinary circumstances may justify exceptions to the policies above.
- o Requires officers to report in writing all firearms discharges.
- o Establishes procedures for investigation of all firearm discharges.
- o Requires all officers who discharge firearms to attend post-shooting psychological counselling.
- o Establishes a board to review and adjudicate all firearm discharges.
- o Suggests means by which the firearms discharge review board may conclude their reviews of shootings.
- o Requires the police chief to act upon the recommendations of the firearms discharge review board.

- o Requires the police chief to make public the results of investigation and review of firearms discharges, and any resulting departmental action.
- o Requires that officers be qualified by training before being permitted to carry firearms.
- o Establishes procedures to record all firearms owned by officers.
- o Establishes procedures that allow identification of bullets fired from all officers' firearms.
- o Establishes procedures for on-duty officers to carry second firearms.
- o Establishes guidelines for the carrying of firearms while officers are off-duty.
- o Establishes guidelines for off-duty police action by officers.

Some provisions of this model policy may require clarification. It is true that many citizens see no need for officers to own or to carry more than one firearm. It is also true that there have been incidents in which officers have "planted" their second firearm on persons they have shot, in order to cover up improper shootings of unarmed persons. But it is also true that there are legitimate reasons for officers to own or carry more than one firearm.

First, the typical police service revolver is large, bulky, heavy, and inconvenient for officers to carry while working out of uniform or while off-duty. Thus, many officers own a second, smaller "off-duty" gun. Second, there have been incidents in which on-duty officers have been disarmed by criminals, and have avoided death by resorting to the use of concealed second firearms.

The "problem of the second gun" is not the second gun, per se. The problem is the second gun whose ownership is not recorded, or the second gun that is carried visibly in a way that intimidates citizens. Requiring officers to register and qualify with all their firearms, to provide ballistic samples of all their firearms, and to obtain their commander's permission to carry a concealed--but registered--second gun minimizes those problems. No officer can "plant" a gun that is registered in his name on a shooting victim. No officer can intimidate citizens by carrying a second gun they cannot see.

Our policy's provisions regarding off-duty police action and off-duty firearms also require clarification. Police officers are the only civil servants who are "on duty 24 hours a day." In many places, they are required to be armed 24 hours a day. That requirement is often inconvenient for officers who like to swim or engage in other sports. It also places great demands on officers, who must remain alert and ready for action at all times. Unfortunately, experience has shown that police officers--like the rest of us--are human beings, and that tragic incidents involving armed off-duty police have occurred. Thus, our model policy eliminates the requirement that off-duty officers be "armed and ready for action at all time." Instead, it leaves the decision to carry a gun while off-duty up to the individual officer, and states that they should not carry off-duty guns while drinking, while engaging in sports, or while out of town. It also clearly defines the department's expectations of off-duty officers' responsibility to take police action.

Finally, our model deadly force policy is long and complex. That is not because our shooting guidelines themselves are complicated, but because of the detail of our recommended investigative and review procedures. Our shooting guidelines are simple and easy to remember:

The "problem of the second gun" is not the second gun, per se. The problem is the second gun whose ownership is not recorded, or the second gun that is carried visibly in a way that intimidates citizens. Requiring officers to register and qualify with all their firearms, to provide ballistic samples of all their firearms, and to obtain their commander's permission to carry a concealed--but registered--second gun minimizes those problems. No officer can "plant" a gun that is registered in his name on a shooting victim. No officer can intimidate citizens by carrying a second gun they cannot see.

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Our model deadly force policy is long and complex not because our shooting guidelines themselves are complicated, but because of the detail of our

recommended investigative and review procedures. Our shooting guidelines are simple and easy to remember:

Shoot only as a last resort

Shoot only to defend life, or to destroy an animal

Do not shoot where others may be endangered

Do not shoot at or from cars unless you are being shot at

Do not fire warning shots

Do not fire shots to summon assistance

Our investigative and review procedures, however, are long and complex because it is vitally important that every question arising from a shooting be answered. The complexity of those procedures places a burden on police departments to make certain that they are thoroughly explained to all officers, and that all officers understand that nothing in them makes the police job more dangerous or places any unreasonable limits on officers. They must also know that, in a democracy, the taking of a life is a grave matter, and that our recommended procedures will be followed.

**REPORT ON CASES  
SUBMITTED DURING  
CONGRESSIONAL HEARINGS ON  
ALLEGED POLICE BRUTALITY  
HELD NOVEMBER 28, 1983**



**New York City Police Department**

**March 1984**

**Benjamin Ward  
Police Commissioner**

POLICE DEPARTMENT  
CITY OF NEW YORK

REPORT ON

CONGRESSIONAL HEARINGS ON ALLEGED POLICE BRUTALITY HELD ON

NOVEMBER 28, 1983

Twenty-one (21) persons testified (excluding City officials) at the second Congressional Hearing held on November 28, 1983. Testimony encompassed fifteen (15) cases or matters relating to police brutality. There were nine (9) new specific allegations of misconduct; three (3) previously investigated complaints, but testimony at the second Hearing raised a new allegation requiring further investigation; and three (3) cases which were previously investigated as a result of the first Hearing.

Attached is a synopsis of each complaint and the results of the subsequent investigation.

Appendix A contains the seven (7) cases involving Officers of the New York City Police Department.

Appendix B contains the two (2) cases involving Transit Police Officers.

Appendix C involves three (3) matters previously investigated but requiring further investigation with respect to new issues raised at the second Hearing.

Appendix D contains three (3) cases raised at the first Hearing which were fully reported on and required no further investigation.

Appendixes E-J contain statistical information in areas raised by Congressman Conyers at the Hearings, as follows:

- E. RACE AND AGE DISTRIBUTION OF NYC POLICE OFFICERS
- F. FATAL POLICE/CIVILIAN CONFRONTATIONS 1974-1983
- G. DISCIPLINARY PROCESSES
- H. DOCUMENTS RELATING TO:
  - Police Stress
  - Early Intervention Program
  - Psychological Candidate Screening
- I. COMMUNITY RELATIONS: STAFF & BUDGET
- J. CIVILIAN COMPLAINT REVIEW BOARD STATISTICS

## APPENDIX A

Case of Marshall Thomas raised by Alton Maddox

Incident involving a black complainant being assaulted by a black officer.

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At approximately 3:30 A.M. on June 29, 1975, Marshall Thomas, a civilian black complainant, was robbed at knifepoint and struck on the head with a club. Police Officer Willins, a black officer, 79th Precinct, responded to the incident and a verbal altercation with the complainant ensued. The complainant, who had been drinking, became abusive to the officer because he did not like the manner in which he was being questioned. The complainant was taken to the station house.

Mr. Thomas filed a civilian complaint alleging that Officer Willins struck him in the left eye while he was in front of the desk officer. Mr. Thomas was admitted to the hospital for an eye injury on June 29, 1975. He was discharged on July 7, 1975. The complaint was assigned to Commanding Officer, 79th Precinct for investigation. His investigation included interviews of Mr. Thomas, Police Officer Willins, the patrol Sergeant, other officers, and the two civilian employees manning the telephone switchboard and 124 room at the time of the incident. The complaint was unsubstantiated in that there was nothing to support Mr. Thomas' allegation of assault by the officer.

Three years later, in 1978, the two civilian employees who were present on the night of the incident and who had been previously interviewed, came forward and changed their story. Their revised statements indicated that Officer Willins assaulted Mr. Thomas in the sitting room of the station house. One of the employees, Mr. James Anderson, also complained that Lt. DeVivo, the Administrative Lt. of the 79th Precinct, attempted to discourage him from coming forward with this new information.

As a result of the two civilian employees changing their story, a new investigation was undertaken by BNFIAU in 1978. The two civilian employees stated that Mr. Thomas was assaulted in the sitting room. Mr. Thomas, however, has consistently stated he was assaulted in front of the desk. Additionally, the civilian employee (Anderson) who accused Lt. DeVivo of discouraging his coming forward with new information, had previously been the subject of disciplinary charges by Lt. DeVivo which had resulted in his dismissal from the Department. For these reasons the second investigation was closed as being unsubstantiated.

pg. 2 Case of Marshall Thomas

Lt. DeVivo was interviewed by Lt. Harrigan, I.A.D. and did not recall ever discouraging anyone from coming forward with information relative to police wrongdoing.

Mr. Thomas in his interview with Lt. Harrigan, states he was not aware of Mr. Maddox' testimony nor had he been contacted relative to the Congressional Hearings. He indicated he received a \$17,000 settlement of a lawsuit he had initiated against the City as a result of this incident. The Corporation Counsel has indicated that the settlement of the case was not an indication of a finding of misconduct on the part of Officer Willins.

A review of this matter and conferral with the Department Advocate, indicates that no disciplinary action can be taken in this case. The inconsistencies in the testimony of witnesses and the fact that no new information or evidence is available would not legally sustain the filing of disciplinary charges.

It should be noted that all attempts to interview Mr. Maddox proved to be futile.

Case of Cynthia Austin

Complains of being assaulted and verbally abused by White Police Officer in the driveway adjacent to her house and that when she prepared a hand written copy of CCRB complaint it was torn up and discarded.

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At approximately 10:20 A.M. on November 8, 1983, Police Officer Hartnett and Police Officer Simendinger, 70th Precinct, RIP Unit, were on patrol when they observed what appeared to be a burglary in progress at a private house located at 1111 Albemarle Road, Brooklyn, New York. The officers reported seeing two black men running into a driveway adjacent to the house. After parking their Department vehicle the officers noticed two men in a vehicle in the driveway moving it back and forth.

Officer Hartnett with his shield hanging from his neck carrying a portable radio in his left hand and his gun in his right hand, but placed behind his right leg, proceeded into the driveway and encountered a black woman leaving the house with a black plastic bag in her hands. At the same time Officer Simendinger approached the vehicle and placed the driver against the car. After identifying himself as a police officer, the woman was requested to identify herself by Officer Hartnett. She refused and tried to brush past him. Officer Hartnett attempted to restrain her by placing his left hand, which contained the portable radio, against her chest and demanded that she show some identification. The woman began to scream to her mother saying "Mommy, Mommy, the cops are out here". Her mother then came out of the house in her nightgown and identified the female as being her daughter. When the incident continued to escalate into a verbal altercation, the officers called for a supervisor to respond. The complainant also called 911 and stated that officers were in her back yard. She added that one officer had a gun drawn and did not identify himself as an officer, when they told the complainant she was under arrest.

At the Congressional Hearings Miss Austin stated that the officer slammed her into the wall, cocked a pistol at her and called her an "African Rat."

The complaint has been investigated by the Civilian Complaint Review Board with the following determinations:

## pg. 2 Case of Cynthia Austin

- a) the officer's actions in conducting an investigation of a possible burglary in progress were proper.
- b) the complaint alleging the officer's failure to identify himself is unfounded.
- c) the restraining force used by the officer against Ms. Austin was not unreasonable.
- d) the complaint of discourtesy and the use of abusive language has been substantiated by the investigator and will be presented to the Board for their consideration and recommendation.
- e) the allegation that the handwritten copy of the CCRB complaint was torn up and discarded at the 70th Precinct station house is unfounded. Since the complaint was made directly to CCRB by the complainant at the station house there is no requirement that an additional handwritten copy be prepared.

Case of Deborah Cobb

Complains of being raped by a White Police Officer who was wearing civilian clothes.

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The complainant testified that on December 24, 1978, during the late evening hours, while plying her trade as a prostitute on the corner of Sutphin Blvd. and 106th Avenue, she entered the auto of a potential customer and was driven to a construction site. Enroute to the location, the unidentified man told her that he was a police officer and that if she elected to run, he would shoot her in the back and plant a gun near her. At no time did Miss Cobb see any shield, gun, police radio or other police equipment. She described him as a white man in his late 40's or early 50's, clean shaven with round cheeks, small eyes, 5'8" - 5'10", and with a stocky build. The car involved was a late model. When they arrived at the location, she was forced to commit sexual acts. The man then drove Miss Cobb back to Sutphin Blvd. & 106th Avenue. Enroute he attempted to enlist her help regarding some unsolved murders or assaults of "johns" by "queens" (male prostitutes posing as women) in the Jamaica area. He asked her to alert him through prearranged signals when these "queens" were out on the street alongside her. The alleged MOS also spoke of his sexual activity with another prostitute named Crystal Benjamin, with an address on Shore Avenue in Queens. Miss Cobb stated that she knew Crystal to be a working prostitute in the area. Miss Cobb stated she did not receive any money from this male, and that he really frightened her.

Approximately seven months later, Miss Cobb entered a drug rehabilitation program, where she spent thirty-one months, most of it confined to the premises. In April, 1982 while employed as a part time clerical person, she encountered the alleged officer while boarding a bus at Sutphin Blvd. & 91st Avenue. According to Miss Cobb, this male was parked in an auto on 91st Avenue when he saw Miss Cobb board the bus. He left the auto and boarded the bus with her. She believes he recognized her, but no conversation ensued. When she got off the bus at Rockaway Blvd. & 134th Avenue, he remained aboard.

Lt. Harrigan, I.A.D. interviewed Miss Cobb and made attempts to contact Crystal Benjamin. Ms. Benjamin who had previously lived on Shore Avenue, Queens, moved and left no forwarding address.

pg. 2 Case of Deborah Cobb

At the interview Miss Cobb was shown a number of pictures of police officers who were assigned to the Queens Detective Area during 1977 and 1978. She was also shown a number of pictures of known police impersonators. Miss Cobb failed to identify anyone as her assailant.

Since there has been no identification of the assailant and it is possible that the assailant may have been a police imposter, the case was referred by I.A.D. to the 103 PDU for followup investigation. The investigation is still pending.

Case of Assault upon a School Bus Driver

In his testimony before the Congressional Committee, Doug Colbert, Assistant Professor, Hofstra Law School, testified about an incident where a White/Italian School Bus Driver was beaten by a Police Officer in full view of the students on the bus.

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At approximately 3:20 P.M. on November 9, 1983, Detective Robert Trotta, Midtown South PDU, was returning from Court and transporting a witness in his own vehicle. On Franklin Street his car was positioned immediately behind a school bus which was returning children from school. The bus stopped because of a traffic condition and the driver was reluctant to squeeze between two double parked vehicles.

Detective Trotta exited his vehicle and offered to guide the driver since he saw there was enough room to pass. The driver refused his assistance and Detective Trotta, after identifying himself as a Police Officer, directed him to move the bus. The driver refused and was advised that if he did not comply he would be arrested. Detective Trotta stated that when he entered the bus to attempt to get the driver to move the vehicle, he was punched in the face and fell backwards off the bus. Police Officer John Pignataro, Application Investigation Unit, came upon the scene and assisted Detective Trotta in effecting an arrest. Police Officer Pignataro did not witness the officer being struck but he did indicate he saw the bus driver lunge at Detective Trotto's neck when the officer attempted to place him under arrest. The officer sustained a muscle strain of the right leg, abrasions of the neck and injury to the nose. He was treated and released at Beekman Downtown Hospital. He then reported sick.

The bus driver was charged with Felonious Assault and Resisting Arrest. He sustained an injury to the eye area. He was treated at Bellevue Hospital and released.

pg. 2 Case of Assault upon a School Bus Driver

The criminal action against the bus driver is pending. A trial date of March 15, 1984 has been set by the court.

The allegations against the Police Officer were investigated by I.A.D. and found to be unsubstantiated.

Case of Police Officer Horace Leamon

Off-duty Black Officer Shot by Uniformed White Police Officer being threatened by deadly physical force.

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On November 16, 1983, at 11:08 P.M., off-duty Police Officer Horace Leamon was shot by on-duty Police Officer Carl Planagan who was in uniform. Off-duty Officer Leamon entered a social club at approximately 6:30 P.M. on that date. After consuming a heavy amount of alcoholic beverages for 4½ hours, Leamon, for undetermined reasons, seized a 60 year old patron and placed his off-duty .38 calibre revolver in his rear side and stated, "they're after me, your going to be my ticket out of here." Police Officer Planagan on foot patrol, interceded in this incident after being informed by a pedestrian a man was holding a gun on another. Officer Planagan confronted Leamon and the older man, but from his position could not observe the gun being held in the rear side of the older man. Planagan questioned the two as to whether one of them had a weapon, Leamon replied, "what's it to you", and then pushed the older man out of his way pointing his revolver in the direction of Officer Planagan. Planagan fired four times striking Leamon once in the left jaw of his face and once in the upper left shoulder.

Mrs. Leamon testified at the Congressional Hearings that one shot hit her husband in the mouth which proves he was trying to identify himself as a Police Officer. She also indicated that her husband was shot while he was on the ground.

The initial investigation by the Duty Captain states that Officer Planagan acted in self defense and within Department guidelines. Witnesses at the scene stated that Officer Leamon did not identify himself and supported Officer Planagan's statements. The Firearms Discharge Review Board has not completed the investigation of this case.

Subsequent to the testimony at the Congressional Hearings, Mrs. Leamon was interviewed by Lt. Harrigan of I.A.D. In that interview she admitted knowing nothing concerning the incident involving her husband. She stated she was frustrated and angry as a result of her husband's suspension and loss of income and felt that the Hearings presented her with an opportunity to give vent to those feelings.

The District Attorney's Office has not completed its investigation of this matter with respect to either Officer Planagan's actions or those of Officer Leamon. Officer Leamon has been suspended and given charges which include wrongfully holding a civilian at gunpoint and wrongfully pointing his off-duty revolver at Officer Planagan.

Case of Police Officer Willis Crosland (appeared in person)

Police Officer Crosland, who is black, testified at the Congressional Hearings that, as a result of his reporting to FIAU, that a police officer was using marijuana and had offered marijuana to him on numerous occasions, he was subjected to harassment by the Department. He complained that:

- (a) his identity and involvement in the investigation of the officers' use of marijuana was revealed;
- (b) he was refused overtime for off-duty hours he spent in the investigation;
- (c) his transfer out of the Tactical Patrol Unit was delayed;
- (d) request for off-duty employment was rejected;
- (e) he was subjected to disciplinary measures on various occasions;
- (f) he was denied representation by the PBA.

Police Officer Crosland also sent a letter to the Police Commissioner prior to his testimony which essentially enumerated the same complaints. As a result of this letter a thorough investigation of the allegations was undertaken by the Internal Affairs Division. This investigation was concluded and the findings submitted to the Police Commissioner on November 16, 1983, twelve days before Police Officer Crosland testified.

The investigation revealed that Officer Crosland's identity was revealed to the PBA attorney by the Department Advocate's Office. This was necessary in order to permit the PBA attorney to prepare a defense for Police Officer Cruz who was charged with misconduct as a result of Officer Crosland's cooperation.

Officer Crosland was informed early in the investigation that he should wait until its completion before submitting his overtime requests. When he subsequently submitted these requests, the overtime was paid.

pg. 2 Case of Officer Crosland

The officer's transfer, out of TPU was delayed due to the fact that he requested an assignment to OCCB, which was denied due to his lack of field experience. He was subsequently transferred to Street Crime Unit on October 17, 1983.

Concerning his complaint that he was denied permission to engage in off-duty employment, it was found that the denial occurred prior to Officer Crosland notifying FIAU of the marijuana use by Officer Cruz. The reason for the denial was unrelated to his informing on Police Officer Cruz and the department records indicated it was for marginal performance. P.O. Crosland admits that the denial was unrelated to the marijuana incident but takes exception to the reason for such denial.

When questioned about disciplinary harassment he indicated he was dissatisfied with his evaluation and has filed a formal appeal. This evaluation was prepared after he informed on Police Officer Cruz. The other instances which Officer Crosland alluded to were for various Patrol Guide violations which the officer acknowledged bore no reference to his allegations against Police Officer Cruz.

The officer's allegations of being denied representation by the PBA was due to the fact that when he requested legal advice as to whether he was required to testify against Police Officer Cruz he was told that he would have to seek the counsel of the Department Advocate's Office since the PBA represented Police Officer Cruz.

Subsequent to his appearance before the Congressional Committee, Police Officer Crosland was interviewed by Lt. Bernard Harrigan, I.A.D. At this meeting Officer Crosland was shown the I.A.D. investigation report and indicated he was generally satisfied with its conclusions. Officer Crosland stated that he testified before the Committee because of his perception that as a result of his reporting misconduct to FIAU, he is now estranged and isolated from other members of his new command. Lt. Harrigan of I.A.D. who interviewed Officer Crosland sensed his feeling of isolation and that it might affect his ability to develop his career in the Department.

It is recommended that the Employee Relations assist Officer Crosland in any way possible to ensure his performance levels reflect his abilities and that this incident does not negatively affect the officer.



pg. 2

A review of the case file resulted in five (5) civilian witnesses who indicate they could identify officers who engaged in acts of misconduct. One (1) of these witnesses was willing to view eight (8) Administrative lineups with negative results. Accordingly, the investigation was closed as to individual officer misconduct. However, two police supervisors have been given Departmental charges for failing to properly supervise officers in connection with this incident. Those cases are pending.

## II Badlands Bar:

Mr. Berrill also complained of an incident involving an altercation between 2 individuals in a doorway of the Badlands Bar. At approximately 9:00 P.M. on November 21, 1983, Police Officers Perez, Lane, and Bowman were on anti-crime patrol in an unmarked Department vehicle when they observed a fight in the doorway of the Badlands Bar, 388 West Street, Manhattan. Officer Perez approached the fighting men, identified himself as a police officer and ordered them to break up the fight. Mr. Medina, one of the combatants, started to swing his fist at Officer Perez. A struggle ensued out onto West Street and Officer Lane went to the assistance of Officer Perez. Police Officer Bowman diverted traffic in order to prevent oncoming vehicles from hitting any of the participants. During the scuffle with Mr. Medina, the other combatant, Mr. Guzman, attempted to interfere with the arrest of Mr. Medina. A Mr. John Payne was present and observed what had transpired. He stated that when he was observed by the officers, he was told "take a walk you liberal fag." Mr. Medina was charged with attempted assault on the bouncer who had attempted to remove the two from inside the bar, assault 3rd degree on Officer Lane and resisting arrest. Mr. Guzman was charged with obstructing government administration. He later plead guilty to disorderly conduct. The charge of attempted assault on the "bouncer" was dropped because of his failure to come forward as a complainant. The felonious assault on the police officer was reduced to a misdemeanor and is still pending in court. The next scheduled court appearance is on January 18, 1984.

A civilian complaint was lodged against the officer by Mr. Payne, the witness at the scene, who alleged excessive force by the officers and discourtesy towards himself. The initial CCRB investigation was closed as being unsubstantiated because Mr. Medina and Mr. Guzman indicated they had no complaints against the officers and the identity of Mr. Payne was not known at that time.

pg. 3

A second investigation was commenced by CCRB after the identity of Mr. Payne became known. Detective French, CCRB, has made numerous attempts to contact Mr. Payne. He has telephoned his place of business on two occasions, leaving messages to contact him. He has also called his home leaving the same message on an answering machine. Mr. Payne has ignored each request. If Mr. Payne does not contact the CCRB investigator, the case will be closed as unsubstantiated.

CASE OF "BLUES BAR" (Alan Roskoff)

Complaint that officers damaged a bar and assaulted black patrons.

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A number of complaints received by the Police Department alleged that on September 29, 1982 at about 11:00 P.M., several uniformed police officers entered the "Blues" Bar at 264 West 43rd Street, New York, N.Y. These officers are alleged to have assaulted patrons and employees of the bar and to have taken money and other property. These same officers threw bar stools, turned over a pool table, broke liquor bottles, glasses, mirrors, and caused extensive damage to the bar.

A review of the F.A.T.N. communications printout indicates that at 10:55 P.M. "911" received a call from a male complaining that two blacks assaulted him and threw him out of the "Blues" Bar. Three Midtown Precinct South Sector cars and a foot patrolman responded. Two minutes later, 10:57 P.M., a signal "10-13" (assist patrolman) was called over the air and five Midtown Precinct North cars, including one sergeant, responded. At 11:00 P.M. "no further assistance" was called over the air; and by 11:03 P.M. eight minutes after the first call to 911, police units were resuming patrol.

The first two police officers to arrive on the scene, Police Officer Manuel Gomez and Police Officer Thomas Monroe, both of MTS Precinct, were injured while trying to break up a fight between two unidentified black men but were unable to identify those who injured them.

Sixteen complainants who were interviewed were unable to identify conclusively, officers who were at the scene. One complainant, Arnold Doreen Williams did identify Police Officer Auer and his partner who denied ever responding to "Blues" Bar. No other officers interviewed could place Auer or his partner at the scene.

A total of 50 police officers were interviewed. Nineteen officers stated they responded to the "Blues" Bar but never entered the bar. Eleven officers admitted entering the bar but denied using any force or damaging any property.

This case is still under active investigation by Internal Affairs Division.

## APPENDIX B

TP-8 #14/84

COPIES SENT TO CC#467/83


 NEW YORK CITY TRANSIT  
 POLICE DEPARTMENT

DATE January 5, 1984

FROM: Sgt. Thomas M. Dunn #711, C.C.U.

TO: Chief, Transit Police Department

 SUBJECT: CIVILIAN COMPLAINT AGAINST PROBATIONARY POLICE OFFICER FRANCIS  
 DILLON #1944, TACTICAL PATROL FORCE, AND OTHER UNIDENTIFIED  
 OFFICERS
ALLEGATION:

That the complainant was physically and verbally abused.

COMPLAINANT:

Mr. Mark Clark, 137-9 142nd Street, Apt. #2E, New York, New York 10038 (mother's residence #345-2375). Student, John Jay College. Male, black, age 22.

DETAILS OF COMPLAINT:

On November 27, 1983, at 0010 hours, Mr. Clark was present at District #1 where he reported to Sergeant Maurizzi #877 that on Saturday, November 26, 1983, at 2332 hours, he was on a northbound "D" train. At West 4th Street, P.P.O. Dillon removed him from the train. Mr. Clark was then struck in the face, back, and groin. P.P.O. Dillon verbally abused him and threatened to shoot Mr. Clark. Mr. Clark was then issued a summons. (See my interview of Mr. Clark for a more detailed account.)

INVESTIGATION REVEALS:

That this complaint is unsubstantiated. There is insufficient evidence to corroborate the complainant's allegations. However, I have instituted disciplinary action against P.P.O. Dillon for making false and misleading statements.

DETAILS OF INVESTIGATION:

Department records (CN#78222) indicate that at 2312 hours P.P.O. Dillon requested a "10-85." At 2340 hours, the officer called the Communications Unit and indicated that he issued a male a summons for Disorderly Conduct.

I requested that a transcript of the radio transmissions pertinent to this incident be prepared. It indicates that at 2311 hours 34 IP11 (P.P.O. Dillon's assignment) requested a "10-85" for a N/B "D" train at West 4th Street, in the last car. The console operator put out this message over the air. At 2316 hours, P.O. Harrison #2792 radioed the Communications Unit and advised them that the condition was normal. At 2322 hours, there was a transmission from an unidentified unit indicating that the officer who had requested the "10-85" was in the "Police Room" at that time.

Mr. Clark was interviewed by me on December 3, 1983, in person at the Civilian Complaint Unit. Mr. Clark signed a statement indicating that he was travelling alone on the train when P.P.O. Dillon entered the last car of the train where Mr. Clark was sitting. Another passenger had placed his foot against the pole. P.P.O. Dillon told the male to put his foot down, which the male did do. P.P.O. Dillon then walked to the rear of the car and placed his foot on the seat. Mr. Clark and P.P.O. Dillon momentarily established eye contact. The officer moved to another position. Mr. Clark then noticed that the officer was looking at him so he (Mr. Clark) momentarily looked at the officer. Mr. Clark opined that the officer appeared to be agitated. Mr. Clark looked away but then noticed that the officer was still looking at him. The officer appeared to be shifting his glance back and forth from the complainant to other males in the car. P.P.O. Dillon then walked into the next car. ~~P.P.O. Dillon then walked into the next car.~~ Mr. Clark claimed that at no time during the above incident did he say anything or get up from his seat. At the West 4th Street station the doors to the platform opened at which time P.P.O. Dillon entered the car. There were approximately fifteen (15) other officers on the platform. P.P.O. Dillon told Mr. Clark to get off the train. Mr. Clark, while asking what was wrong, got off the train. On the platform P.P.O. Dillon called Mr. Clark a "psycho" and accused Mr. Clark of staring at him (the officer). A male white uniformed officer then grabbed hold of Mr. Clark's shoulder bag. P.P.O. Dillon then grabbed Mr. Clark by one arm and a second male, white officer grabbed Mr. Clark by the other arm. A third male, white officer then pushed Mr. Clark from behind, thereby slamming him against the wall that is part of the stairway. Mr. Clark was told to place his hands against this wall at which time he was frisked by an officer. Mr. Clark was then handcuffed by P.P.O. Dillon who repeatedly called Mr. Clark a "smart ass." Mr. Clark asked what he had done wrong and P.P.O. Dillon repeatedly said that he (Clark) was staring at him (Dillon). Mr. Clark was then brought upstairs, held by one arm by P.P.O. Dillon and by the other arm by a male white officer. It was then that P.P.O. Dillon over-tightened the handcuffs. Mr. Clark was brought to a door on which there was a padlock. An officer other than P.P.O. Dillon opened the lock. Into the room went Mr. Clark, P.P.O. Dillon, and five (5) other male, white uniformed officers. Mr. Clark was again frisked, this time by an officer other than P.P.O. Dillon. "This officer, in frisking one of my legs, flagrantly and blatantly caused his hand to strike my groin, two or three times." P.P.O. Dillon then told Mr. Clark to sit down. In the space of approximately ten minutes, P.P.O. Dillon smacked Mr. Clark in the face approximately six times, punched Mr. Clark in the chest approximately four times, and punched him once in the right back-kidney area. Mr. Clark did not claim injury as a result of this punching/smacking. P.P.O. Dillon examined Mr. Clark's wallet which was in his aforementioned shoulder bag and then told Mr. Clark that he was going to be arrested. Mr. Clark explained that he was going to become a lawyer. P.P.O. Dillon laughed and said he was going to release Mr. Clark. P.P.O. Dillon showed Mr. Clark a "007 knife" and said that he carried it so he could place it on a person's hand he had shot so as to justify the shooting. P.P.O. Dillon also said that if there had not been other officers present, he would have shot Mr. Clark. P.P.O. Dillon then told Mr. Clark that if he (Clark) reported what had occurred, he (Dillon) would find Mr. Clark. P.P.O. Dillon then said that he had shot two people in the past. Mr. Clark then complained that the handcuffs were tight resulting in P.P.O. Dillon loosening them. P.O. Dillon then gave Mr. Clark a summons, removed the handcuffs, and told Mr. Clark to leave. The time of release was approximately 2340 hours. Mr. Clark then proceeded to District #1 where he filed his complaint. (Note: Mr. Clark advised me that he had

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made this complaint on November 28, 1983, at the Congressional Hearings on Police Brutality chaired by United States Representative Conyers.)

Trainmasters Office records indicate that the crew of the train involved in this incident consisted of Conductor J. Cruise #189555 and Motorman H. Hart #369531. Both were interviewed and both claimed to have no knowledge of the alleged incident. Additionally, Trainmasters Office records indicate that there was not any platform conductor assigned to the subject station at the time concerned.

Station Department records indicate that the following employees were assigned to the West 4th Street station at the time concerned:

- |                             |                    |
|-----------------------------|--------------------|
| 1. R/R/C R. Martiné #563181 | - Booth N-80       |
| 2. R/R/C E. L. Noor #653855 | - Booth N-83       |
| 3. R/R/P A. Winbush #973585 | - Station's Porter |

Each of the above person was interviewed and each claimed to have no knowledge of the alleged incident. Additionally, Station Department records indicate that the supervisor assigned to cover the West 4th Street Station was Deputy Station Supervisor Seaborn #804548 who, according to her daily report, did not visit that station during her tour of duty.

P.P.O. Dillon was interviewed by me in person on December 12, 1983. P.P.O. Dillon said that when he entered the last car he was observed by Mr. Clark who became loud and boisterous. Mr. Clark was with three (3) other people. Mr. Clark refused to be quiet so P.P.O. Dillon walked into the adjoining car and radioed for a "10-85." He explained that he left the car to call for the "10-85" so that Mr. Clark would not know whether or not the radio was working. When the train arrived at the West 4th Street Station, P.P.O. Dillon entered the last car through the storm doors. When the doors to the platform opened, P.P.O. Dillon noted that there were four or five officers on the platform. P.P.O. Dillon took Mr. Clark off the train and asked Mr. Clark for identification but he refused to provide it. P.P.O. Dillon maintained that he did not accuse Mr. Clark of staring at him. P.P.O. Dillon denied verbally abusing Mr. Clark. The officer recalled that Mr. Clark was carrying a shoulder bag but maintained that no one took the bag from Mr. Clark. P.P.O. Dillon, in response to my questions, stated that he did not recall grabbing Mr. Clark and doubted that he would have grabbed Mr. Clark. P.P.O. Dillon maintained that Mr. Clark was not pushed by any officer. P.P.O. Dillon stated "I don't recall handcuffing him and I certainly didn't frisk him." P.P.O. Dillon then brought Mr. Clark upstairs and into the "Police Room." "Nobody entered that room except myself and him. The only other person in that room was another officer who was writing a summons before that." He went on to explain that this officer was already in the room and not one of the officers who had responded to the platform. P.P.O. Dillon denied that Mr. Clark was frisked while in the room and denied that he slapped, punched, or threatened to shoot Mr. Clark. Mr. Clark started to cry and asked for a break because he wanted to become an attorney. P.P.O. Dillon issued Mr. Clark a summons and told him to leave.

I contacted Mr. Clark's mother's residence on December 13, December 14th, and December 15th, 1983, and left messages requesting that Mr. Clark Contact me. (It was my intention to show photographs of officers I had established as having responded to the "10-85.") On December 16,

1983, I again telephoned the above residence. I spoke to Mr. Clark's mother who advised me that her son had gotten my messages. However, to date, Mr. Clark has not called me.

In reviewing roll calls and memorandum books and with the assistance of Tactical Patrol Force Headquarters Bureau staff, I established that the following officers responded to the "10-85" at West 4th Street:

1. P.P.O. Corapi #2598, T.P.F.
2. P.P.O. Keller #4019, T.P.F.
3. P.O. Nemeč #4052, District #4
4. P.O. Harrison #2793, District #4
5. P.P.O. Arana #1497, T.P.F.
6. P.P.O. Frederick #3589, T.P.F.
7. P.P.O. Hughes #3858, T.P.F.
8. P.P.O. Mitchell #4322, T.P.F.

P.P.O. Corapi #2598 was interviewed by me in person on December 20, 1983. He stated that when he arrived at the N/B platform there were at least five other officers already there. When the train arrived, P.P.O. Dillon told the male to detain. The male was yelling and disorderly, and was pointing his finger at P.P.O. Dillon. P.P.O. Corapi said "I believe P.O. Dillon grabbed Mr. Clark and said 'Come on!'" P.P.O. Corapi described how he believes P.P.O. held Mr. Clark's upper arm. He did not recall anyone mentioning anything about staring. Asked if any officer pushed or slammed Mr. Clark against the wall, P.P.O. Corapi said "No. I think he hit the structure when he was struggling, when they had him, one on each arm was holding him." P.P.O. Corapi could not recall who the two officers were who were holding Mr. Clark by the arm. P.P.O. Corapi further stated "In the process of struggling he hit against the stairs. He was struggling and they just held him to it." He further stated, "While on the platform I believe P.O. Dillon held Mr. Clark by the arm but I think he struggled away. That's when the other two officers grabbed him." Mr. Clark was handcuffed while on the platform, but P.P.O. Corapi does not know who cuffed him. It was then that an officer took from Mr. Clark his shoulder bag. P.P.O. Corapi did not see any officer frisk Mr. Clark while on the platform. Officers then took Mr. Clark into the room. P.P.O. Corapi followed a short time later and then entered the room. Inside were himself, Mr. Clark, P.P.O. Dillon, P.P.O. Keller and one or two other officers who left the room a short time later. P.P.O. Corapi did not see Mr. Clark being frisked while in the room. Mr. Clark said that the handcuffs were too tight at which time an officer loosened them. P.P.O. Corapi stated that he did not witness Mr. Clark being verbally abused or punched or smacked by any officer. He had no knowledge of the allegations that P.P.O. Dillon threatened to shoot Mr. Clark, that P.P.O. Dillon showed Mr. Clark a knife, and that P.P.O. Dillon claimed to have shot two persons in the past. Mr. Clark was then summonsed and released.

P.P.O. Keller #4019 was interviewed by me in person on December 20, 1983. He stated that P.P.O. Dillon told Mr. Clark to detain and Mr.

Clark did so. On the platform, P.P.O. Keller did not see any officer frisk, grab or push Mr. Clark. An officer did handcuff Mr. Clark but P.P.O. Keller does not know which officer did this. Mr. Clark was taken upstairs to a room on the mezzanine. Into this room went P.P.O. Dillon, Mr. Clark, P.P.O. Keller, P.P.O. Corapi and possibly another officer. P.P.O. Keller stated that there was no one already present in the room when he and the aforementioned other persons entered. P.P.O. Keller maintained that he did not observe Mr. Clark being frisked, manhandled, or verbally abused by any officer while inside the room. He further stated that he did not see P.P.O. Dillon show Mr. Clark a knife or hear P.P.O. Dillon threaten to shoot or injure Mr. Clark.

P.O. Nemeck #4052 was interviewed by me in person on December 20, 1983. He and P.O. Harrison #2793 were assigned to the West 4th Street Station at the time concerned. He recalled responding to the "10-85." There were other officers present. P.O. Nemeck had no recollection of any officer grabbing, pushing, frisking, handcuffing, or verbally abusing the male (Mr. Clark). The last place that P.O. Nemeck saw the male was while the male was still on the platform. P.O. Nemeck then left the West 4th Street Station enroute to District #4 to go off duty.

P.O. Harrison #2793 was interviewed by me in person on December 20, 1983. He stated that he and his partner were in the process of going to District #4 when he heard a radio report of a "10-85." They responded to the platform. Also on the platform were approximately five (5) other officers. The train arrived; the situation was under control; P.O. Harrison and P.O. Nemeck then left the scene. P.O. Harrison stated that while he was on the scene he did not observe any officers physically or verbally abuse, handcuff or frisk anyone.

P.P.O. Dillon was re-interviewed by me in person on December 23, 1983. He was represented by P.B.A. attorneys Gogel and Agulnick. P.P.O. Dillon denied that while on platform he or any other held Mr. Clark by the arm. In response to my question as to whether Mr. Clark struggled out of Dillon's grasp at which time two other officers held Mr. Clark by the arms, P.P.O. Dillon stated that this did not occur. P.P.O. Dillon stated that Mr. Clark was not pushed by an officer against a stairway. P.P.O. Dillon further stated that there was no struggle in which Mr. Clark fell against the stairway wall. P.P.O. Dillon stated that he did not recall if Mr. Clark was handcuffed. P.P.O. Dillon maintained that he brought Mr. Clark into the room and he does not think that any other officer assisted in bringing Mr. Clark into the room. In response to my question as to whether there was any other officer also present in the room, P.P.O. Dillon maintained that it was his belief that there was an officer present in the room when he (P.P.O. Dillon) brought Mr. Clark there. He did not recall any other officer being present in the room during the incident. He denied making a statement to Mr. Clark that he (P.P.O. Dillon) had fired his gun on two occasions, but stated that it was possible he might have made this statement to the aforementioned officer who had already been in the room. (Note: On August 27, 1982 and April 1, 1983, P.P.O. Dillon did, in fact, fire his gun.) Asked if Mr. Clark was in handcuffs while in the room, P.P.O. Dillon replied "Not that I know of." He maintained that there was "no way" that he would permit another officer to handcuff his (Dillon's) prisoner. He did not recall handcuffing Mr. Clark at any time during this incident.

P.O. Arana #1497 was interviewed by me in person on December 28, 198

He recalled responding to the "10-85" On the platform there were four or five officers. The train pulled into the station and the male detained on his own. The male was handcuffed but P.P.O. Arana did not know which officer handcuffed the male. After the male was handcuffed, an officer took Mr. Clark's shoulder bag from him, but P.P.O. Arana does not know which officer this was. P.P.O. Arana at first maintained that while on the platform no officer touched Mr. Clark. Then, in answer to my question as to whether Mr. Clark ever came to be against any wall or structure on the platform, P.P.O. Arana replied, "Yes. I guess so. When they cuffed him." He could not recall who handcuffed Mr. Clark. He then said, "They pushed him against the wall to put the cuffs on him." He then went on to say that this was done in a non-violent manner. P.P.O. Arana believes that these officers were the post officers (and not I.R.F. officers) because they were older. However, he indicated he was not sure who it was that did this. P.P.O. Arana could not recall if Mr. Clark was frisked while on the platform. Mr. Clark was then taken to the room by P.P.O. Dillon, P.P.O. Arana, and other officers, including the post cops who did not enter the room but who went on their way upon arrival in the mezzanine. Entering the room were Mr. Clark, P.P.O. Dillon, P.P.O. Arana, P.P.O. Corapi, P.P.O. Keller and maybe another officer. There was no one already in the room. He could not recall if Mr. Clark was frisked while in the room. I asked P.P.O. Arana if P.P.O. Dillon ever verbally abused Mr. Clark. P.P.O. Arana replied, "Yes sir. He may have. I don't recall what he said but he was saying some stuff." P.P.O. Arana went on to say that P.P.O. Dillon said to Mr. Clark "Who do you think you are, staring?" P.P.O. Dillon accused Mr. Clark of staring at him (Dillon). He did not observe P.P.O. Dillon punch or smack Mr. Clark. P.P.O. Arana also noted that an officer who "must have been officer Dillon" loosened and then removed the handcuffs from Mr. Clark. He did not recall P.P.O. Dillon showing a knife or threatening to injure Mr. Clark.

P.P.O. Frederick #3589 was interviewed by me in person on December 29, 1983. He recalled being on the platform when the train arrived. The male (Mr. Clark) left the train on his own. On the platform the male was uncooperative, in that he was struggling/moving his shoulders apparently to prevent any officer from touching him. P.O. Frederick stated that he did not observe any officer push or shove the male. The male was frisked on the platform but P.P.O. Frederick did not know who did the frisking. The male was carrying a shoulder bag which was placed on the ground but P.P.O. Frederick does not know by whom. P.P.O. Frederick did not witness the officer who was assigned to the train physically or verbally abuse the male. P.P.O. Frederick further stated that he did not see the male fall or stumble against any structure. Additionally, P.P.O. Frederick did not recall if the male had been handcuffed. He did note that officers (he does not know their identities) brought the male to the north end of the northbound platform, but he did not see them ascend any stairway. P.P.O. Frederick remained on the south end of the platform to catch his assigned train patrol assignment.

P.P.O. Hughes #3858 was interviewed by me in person on December 29, 1983. He recalled being present on the platform when the "10-85" was called. He was present with other officers when the train arrived. The officer assigned to the train pointed to a M/B and told him to detain which the male did. He was not sure whether the male was frisked but he stated that the officer who was on the train (referring to P.P.O. Dillon) handcuffed the male while on the platform. P.P.O. Hughes stated that the male was not physically or verbally abused. The last time P.P.O. Hughes saw this male was when he (the male) was brought upstairs

by officers whose identities he does not know.

P.P.O. Mitchell #4322 was interviewed by me in person on December 29, 1983. He recalled that he and approximately five other officers were on the platform when the train entered the station. The officer who was assigned to the train asked the male to detain and the male complied. The male was carrying a bag which P.P.O. Mitchell believes the male dropped to the ground. P.P.O. Mitchell did not see any officer touch or manhandle the male, nor did he see the male fall or stumble against any structure. He was not sure if the male had been frisked, nor was he sure if the male had been handcuffed, but he (Mitchell) noted that the male's hands were behind his body. The male was then escorted up a stairway by officers whose identities P.P.O. Mitchell does not know.

#### SUMMARY:

Mr. Clark alleged that he was physically and verbally abused by P.P.O. Dillon and by other officers. There is insufficient evidence to corroborate these allegations. However, based upon statements made by other officers, it is my opinion that P.P.O. Dillon, upon being interviewed by me, did not give an accurate account concerning this incident. There are a number of instances in which a statement made by Mr. Clark is essentially corroborated by one or more of the responding officers, and either denied or not recalled by P.P.O. Dillon.

Two of these instances are noted here.

#### INSTANCE #1

Mr. Clark claimed he was handcuffed by P.P.O. Dillon while on the platform. P.P.O. Dillon stated that he did not recall if Mr. Clark was handcuffed. P.P.O. Corapi, P.P.O. Keller, and P.P.O. Arana recalled that Mr. Clark was handcuffed though they did not know who did this. P.P.O. Hughes stated that Mr. Clark was handcuffed by P.P.O. Dillon. Furthermore, P.P.O. Arana stated that, later, in the room, an officer "who must have been officer Dillon" loosened and then removed the handcuffs from Mr. Clark. I find that P.P.O. Dillon's statement that he could not recall if Mr. Clark was handcuffed was intentionally misleading.

#### INSTANCE #2

Mr. Clark claimed that he was taken into a room by P.P.O. Dillon who was accompanied by five other officers. P.P.O. Dillon maintained that just he and Mr. Clark entered the room but noted that already present in the room was an officer who was finishing writing a summons. Upon being reinterviewed by me, P.P.O. Dillon stated that he did not recall any other officer being present in the room. P.P.O. Corapi, P.P.O. Keller, and P.P.O. Arana acknowledged entering the room contemporaneous to the time P.P.O. Dillon and Mr. Clark did so. They further maintained that they did not leave the room until after Mr. Clark was summonsed and released. I find that P.P.O. Dillon made a false statement by claiming that no one entered the room besides himself and Mr. Clark and that he made an intentionally misleading statement when he indicated that he could not recall if there were any other officers present in the room.

I find that P.P.O. Dillon violated the following provision of the Department Manual.

Rules and Regulations, Chapter 2, Paragraph 30.0 -(False Misleading Statements)

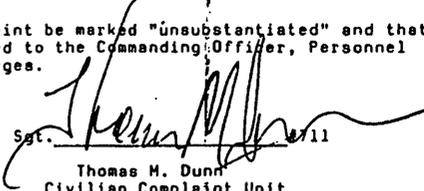
Accordingly, I recommend that formal disciplinary charges be instituted against P.P.O. Dillon.

ACTION TAKEN:

I have instituted IP-8 #14/84 against P.P.O. Dillon, charging him with violating the above provisions of the Department Manual.

My attempts to contact the complainant have not been successful. Therefore notification of the investigative results via U.S. mail is required.

I recommend that this complaint be marked "unsubstantiated" and that a copy of this report be forwarded to the Commanding Officer, Personnel Division, for preparation of charges.

Sgt.  6/11

Thomas M. Dunn  
Civilian Complaint Unit

TMD/mb

1ST ENDORSEMENT

From: Commanding Officer, Civilian Complaint Unit

To: Chief, NYCTPD  
January 9, 1984

Investigation reviewed. Allegations made by Mr. Clark are unsubstantiated. There is insufficient evidence to corroborate the allegations. However, as indicated in Sergeant Dunn's report, the statements made by P.P.O. Dillon are false and misleading. TP-8 #14/84 has been instituted.

Copy of this report to be forwarded to the Commanding Officer, Tactical Patrol Force, for preparation of Dereliction Recommendation Form. Copy of Tactical Patrol Force report of disciplinary action to be forwarded to the Civilian Complaint Unit for information no later than January 19, 1984.

Copy of this Report to be forwarded to the Commanding Officer, Headquarters Bureau, for preparation of charges.



Jerome P. Donnelly  
Captain, P.O.  
Civilian Complaint Unit

130:JPD/vh

ATTACHED:

Sgt. Dunn's Report  
Letter to Complainant  
Copy forwarded to C.O., Tactical Patrol Force  
Copy forwarded to C.O., Headquarters Bureau

The allegations made by retired P.O. Richard Woodbury are as follows:

Sometime in 1968, while on patrol in the Bronx, he observed a male black in handcuffs who had been arrested by an unidentified white Transit Police Officer and had been assaulted by the officer. The male's only crime was that he was travelling with a white woman. Subsequent to that incident P.O. Woodbury alleges that his Sergeant told him that he was a "troublemaker" and that on March 16th and March 18th he received complaints. His Sergeant harassed him until he finally requested a transfer to a District in Brooklyn, which was 75% black. A review of the officer's personnel folder and Civilian Complaint Unit records reveals nothing for either 1968 or 1969 which would shed any light on the allegation of brutality.

Concerning the allegation that he was harassed by a Sergeant with whom he had been on good terms prior to his allegation of brutality, Department records reveal that on March 15, 1969 P.O. Woodbury was issued a dereliction by Sergeant P. Farrell. Sergeant Farrell, while on supervisory patrol at Soundview Avenue, overheard an unauthorized transmission made by P.O. Woodbury. Sergeant Farrell investigated and found that P.O. Woodbury had detoured eight (8) stops prior to the completion of his assigned area. When questioned about this P.O. Woodbury told the Sergeant that he detoured to go to meal. Later, in a written report, the officer stated that he left his area for reasons of personal necessity. In any event, the officer failed to cause the conductor to signal for the station patrolman, as required, so that his train run could be covered. The officer was charged and found to be "Guilty" and was given two (2) days suspension.

Further, review of this officer's folder reveals that on March 27, 1969, he was issued a dereliction by Lieutenant F. Harte of the Communications Office for refusal to obey a lawful order. P.O. Armstrong #1159, who was assigned to a train run, received an emergency excusal due to his wife's illness. Lieutenant Harte, after granting the excusal, directed P.O. Armstrong to notify P.O. Woodbury to take the train run assigned to P.O. Armstrong. Notification was made in this manner because time constraints would have prevented Lieutenant Harte from making direct notification. P.O. Armstrong notified P.O. Woodbury in sufficient time of Lieutenant Harte's order. P.O. Woodbury chose to question the authenticity of the order, stating to P.O. Armstrong, "You're not a Sergeant, you can't give me any orders." By the time P.O. Woodbury attempted to verify the order the train had left unmanned. P.O. Woodbury was found "Guilty" of the dereliction and was given a "Reprimand".

There appears to be no pattern of harassment that can be documented by disciplinary action taken against this officer as he alleges.

Concerning his second allegation against an unknown Sergeant who threatened him with a complaint should he file any complaint against City police officers. Sergeant Kmitek might be the supervisor involved. A complaint was issued to P.O. Woodbury by Sergeant Kmitek on October 19, 1970 for leaving post without authority. Woodbury arrived at District #32 office at 0355 hours. He indicated that he left post early so as not to incur overtime due to single tracking operation. However, other officers along the same line arrived at the proper time without incurring overtime and without leaving post early.

It was noted in Sergeant Kmitek's report that P.O. Woodbury had a good attitude toward the job and got along well with other officers. These statements do not appear to be indicative of a supervisor who is trying to "get" an officer.

P.O. Woodbury did make a civilian complaint concerning the Erasmus High School incident. This matter was referred to the Civilian Complaint Review Board (N.Y.C.P.D.) and was investigated by them. A Lieutenant Fitzgerald and Sergeant Renzuello were involved in this investigation. No other information is available concerning this allegation.

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## Profile of retired P.O. Richard Woodbury

Richard Woodbury was appointed a member of the New York City Transit Police Department on November 28, 1967 and was retired effective August 26, 1983 on Accidental Disability. (Personnel Order dated April 13, 1983).

Prior to his appointment, Applicant Investigation revealed that Richard Woodbury had received ten (10) traffic summonses for such infractions as speeding, disobeying signs, failure to signal, unlicensed operator. His license was also suspended for approximately ninety (90) days. He was also involved in four (4) accidents.

TRANSIT POLICE ACADEMY:

The class ranking of the officer was seventy eight (78) out of a total of ninety seven (97). His I.Q. was tested as a low normal 97.

While assigned to recruit training Woodbury received one (1) dereliction for being absent without leave and late.

TP 8 (DERELICTION) EXPERIENCE:

#636/67 12-26-67 - A.W.O.L. 3 hours 40 minutes - four (4) hours extended duty.

#108/69 02-04-69 - Garnishee - W/A by District C.O.

#207/69 03-16-69 - Absent from post - 2 days suspension

#240/69 03-27-69 - Refused to obey a lawful order - reprimand

#287/70 04-09-70 - Failed to safeguard revolver - 3 days suspension

#762/70 10-19-70 - Left post without authority - 1 day suspension

#160/71 03-07-71 - Late sick notification - W/A by District C.O.

#896/71 10-02-71 - Failed to be in uniform 5 minutes prior to tour - reprimand

#833/72 08-30-72 - Adverse Criticism

#907/73 09-18-72 - Not available for sick investigation

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#913/72 09-19-72 - Unfit for duty - Drugs - substantiated in part - 4 days suspension

#319/73 04-07-73 - Late 30 minutes - 3 days suspension

#975/74 08-20-74 - In booth - 3 days suspension

#1374/74 12-05-74 - In booth - 2 days suspension

#034/76 01-27-76 - Adverse criticism - failure to obey - 276 days suspension

#816/79 05-08-79 - Failure to fall in at proper time and have assignment in memo book - W/B by District C.O.

SICK EXPERIENCE:

From 1968 through 1976 P.O. Woodbury was involved in 49 incidents of sick for 220 days lost. Sixteen (16) incidents involved compensation and two (2) times were D.I.F. Fifteen (15) of the incidents were for diarrhea, upset stomach and cramps.

CIVILIAN COMPLAINT EXPERIENCE:

P.O. Woodbury had two (2) civilian complaints of which he was the subject and two (2) which were processed through this Unit to N.Y.C.P.D. Civilian Complaint Review Board against New York City Police Officers. (See enclosure (1)).

ADDITIONAL INFORMATION:

P.O. Woodbury was involved in two (2) incidents involving City Police Officers where he was taken to a precinct:

(1) On August 30, 1972, P.O. Woodbury was observed running three (3) red lights and was stopped by an anti-crime team. After words were exchanged, the officer was taken to the 79th Precinct where he was identified as a Transit Police Officer. He was issued three (3) summonses for running the red lights.

(2) The second incident took place on January 27, 1976 when Woodbury was observed by City Police Officers breaking the windows in his wife's car. He was removed to the 63rd Precinct where he assaulted a Transit Police officer who had responded to the incident with a supervisor. Woodbury was not arrested but was taken to Kings County Hospital where he was admitted for observation.

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-3-

This incident resulted in suspension from duty for a period of 276 days. In addition, Dr. Cerulli, Transit Authority Psychiatrist, has diagnosed P.O. Woodbury as suffering from a mental disorder.

## APPENDIX C

Case of Roy Innis, Director of C.O.R.E.

In his testimony at the Congressional Hearings, Mr. Innis made a series of allegations. He stated that he sent a letter to former Police Commissioner Robert J. McGuire requesting a personal meeting but received no response. He indicated that the responsibility to meet with him was relegated to a line officer which he considered an insult.

He also testified that he, his family and friends have been a victim of so many crimes that it is improbable that they are random criminal acts. Three of his sons have been victims of a street crime and two have been murdered. Three cars had been stolen in a four week period, another had been vandalized. His family has been threatened and the CORE payroll has been robbed. He also complained that after apprehending a thief he caught attempting to steal his car, he himself was arrested. He also complained that the order to arrest him must have been given by District Attorney Morgenthau or Mayor Koch himself.

He questioned the number of black persons that have licenses to carry guns and how many pistol licenses are given to whites as compared to black applicants.

Investigation:

At the direction of the Police Commissioner, the Commanding Officer of the Intelligence Division met with Mr. Innis at the office of CORE to discuss his complaints of criminal activity against autos rented by him. Mr. Innis appeared to be satisfied with the assistance provided, although he continued to request a personal meeting with the Police Commissioner.

On Monday, December 19, 1983, Lt. Harrigan, I.A.D., interviewed Mr. Innis at CORE Headquarters regarding his complaints. In essence, he stated there had been myriad number of crimes against himself, his family, his staff and his property, both personal and business.

A review of the crime complaints filed by Mr. Innis, his family and CORE officials indicate a thorough investigation was undertaken in all cases, especially the more serious ones where additional information was available for follow-up investigation. These cases include the homicide of Mr. Innis' two sons, the felonious assault on his younger son and the burglary of the CORE office where a security guard was present.

pg.2 • Case of Roy Innis

In the assault and burglary cases, the investigative processes were hampered by the lack of cooperation either on the part of Mr. Innis, his family or his assistants. Efforts undertaken by the Police Investigators were fully documented in both of these crimes.

The CORE office at 1916 Park Avenue is in a high crime area in the 25th Precinct. Mr. Innis failed to implement the security proposals previously recommended by the Crime Prevention Officer of the 25th Precinct.

Mr. Innis stated in his testimony to the Congressional Committee that the burglaries at his Harlem Core Office involved only papers, but no business equipment. The complaint reports on file clearly show otherwise. In four of the reports, a Computer, Typewriters, Calculators, and Office Supplies were reported stolen.

Mr. Innis repeatedly raised the incident in which a suspect was caught breaking into a vehicle belonging to CORE, which resulted in his (Mr. Innis) being arrested and prosecuted. This individual, before being turned over to the police by CORE personnel, was assaulted. The Assistant District Attorney who interviewed all parties, directed the arrest of Mr. Innis for 1st degree assault. Mr. Innis was ultimately found not guilty after trial. Mr. Innis feels that because of the publicity associated with that case, other criminals may attempt to take advantage and commit crimes against the CORE building and its properties.

With respect to Mr. Innis' complaint that black people are discriminated in against their application for pistol licenses, the License Division does not maintain statistical records by race. However, in October, 1983 a sampling was made of the last 110 pistol license applications, 40 which were minority applicants, and 70 non-minority applicants. The approval rate for minority applicants was 32.5% (13 out of 40), while the approval rate for non-minority applicants was slightly less 31.4% (22 out of 70).

#### Conclusion and Recommendations:

It is clear that Mr. Innis, his family and the CORE Organization have been the victims of many criminal acts. There does not appear to be any racially motivated reason for such criminality. Mr. Innis and his Organization have repeatedly failed to cooperate with police investigations and his Organization's staff have failed to take proper security methods to prevent such criminal acts. Mr. Innis has reviewed his request to meet personally with the Police Commissioner.

Case of Detective Philip Francis (personal appearance)

Black Detective complains of unnecessary force used by officers mistaking him for a criminal suspect; use of racial slurs; and being transferred from Manhattan Robbery Squad to the 32nd PDU as a result of making a formal complaint of the incident.

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The underlying incident of unnecessary force and racial slurs was investigated and reported on page 80 of the October, 1983 "Report on Cases Submitted During Congressional Hearings on Alleged Police Brutality."

Detective Francis appeared personally at the second Congressional Hearing and complained that he was transferred from the Manhattan Robbery Squad to the 32nd PDU as a result of his making a formal complaint relative to the prior incident.

The officer was interviewed by Lt. Harrigan, I.A.D. He indicated he was not satisfied with the Department's conclusion reached in the original investigation of his complaint. The Department investigation into the incident concluded it was a case of mistaken identity and not racially motivated. He still considers the incident to have been a racially motivated incident.

A review of the evaluation reports submitted relative to the officer's performance indicate that he had been generally rated above standards until his transfer to Manhattan Robbery.

The evaluation report prepared by his Manhattan Robbery Supervisors just prior to the incident in question, (August 1982) indicates that his performance had declined, although it was recommended that he continue in his present assignment.

Detective Francis attributes the decline in his performance during 1982 to an off-duty injury to his hand as well as the on-duty injury sustained in August 1982. He also stated that Military Leave Excusal during that year contributed to his marginal evaluation.

The evaluation report of Detective Francis submitted after the August 1982 incident recommended that he be transferred to a PDU Unit because of poor performance.

pg. 2 Case of Detective Philip Francis

The officer's believes that it wasn't poor performance which precipitated his transfer, but that it was directly related to his formal complaint of being assaulted by white officers.

Detective Francis states that when he attempted to clarify the issue of his transfer, he was given ambiguous and vague answers by his superiors.

The Detective is presently assigned to the 32nd PDU and appears satisfied with that assignment. He is getting along well with his fellow officers and his most recent evaluation is good.

Detective Francis, when interviewed recently, indicated he has not complained to OEEO or Employee Relations because he felt it may not serve any purpose. However, in view of his continuing dissatisfaction with the results of the investigation and the reasons for his transfer, it is recommended that OEEO or Employee Relations contact Detective Francis and review this matter with him.

Case of John Cousar, former President New York City  
Guardians Association.

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Mr. Cousar alleged that police officers carry various weapons not authorized by Department Regulations, namely, ax handles, 007 knives, 9mm revolvers, slappers and black jacks. This complaint was previously forwarded to the Chief of Operation for investigation.

## APPENDIX D

CASE OF P.O. WARENA BROWN (C. Vernon Mason)

Female Black Police Officer alleges she was improperly treated by a white female and oriental male officer.

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Police Officer Brown, while off duty and on Extended Military Leave called 911 to report a Burglary on 6/9/83. Investigation reveals that Officer Brown was uncooperative with responding officers, after they had apprehended a suspect she had pointed out. At the scene she recanted her original identification of the suspect and refused to properly identify herself, and attempted to leave the area. When the officers persisted in trying to secure her cooperation she became belligerent and used obscene language, drawing the attention of bystanders. The officers took her into custody and removed her to the station house to avoid an incident with the crowd.

The Commanding Officer, 67th Precinct, and representatives from the P.B.A. and the Guardians Association were present at the station house where P.O. Brown was properly identified and permitted to leave.

Officer Brown complained to the Guardian's Association at a later date that her five year old daughter was abandoned on the street and that she was not allowed to converse with a supervisor or make any telephone calls until one hour after she was detained.

An investigation by Internal Affairs Division found these allegations to be UNSUBSTANTIATED.

CASE OF POLICE OFFICER CLARK (John Cousar)

Complains of being subjected to racial slurs and assaulted by white officers.

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Police Officer Roberts, male, white, assigned to the 101 Precinct and Police Officer Clark, female, black on a summer detail at the 101 Precinct became involved in an argument in the lounge of the Station House.

On July 25, 1983 at 8:15 P.M. Police Officer Clark, while on her meal period, was watching television when Police Officer Roberts came into the lounge and changed the channel. Officer Roberts told Officer Clark that if she joined the Precinct's TV Club and paid dues she could watch whatever she wanted on the club TV. Police Officer Clark then got up and changed the channel back to what she had been watching. Officer Roberts then changed it back to the baseball game and was allegedly struck in the neck by Officer Clark. Officer Roberts then turned and allegedly struck Officer Clark in the mouth.

Officers in the next room heard an argument going on, and went to the door of the lounge and observed Officer Clark throw a metal chair at Officer Roberts from a distance of 5-8 feet and call him a "bastard". Officer Clark picked up another chair and threw it at Officer Roberts striking him in the forearm. Officer Clark went to the desk officer hollering, "I am not going to let that white mother get away with this. Roberts hit me and I want to make a complaint against him."

The Lieutenant interviewed both officers and observed a cut on Officer Clark's lip. Officer Clark was treated and released at St. John's Hospital. Officer Roberts was treated and released at Penninsula Hospital.

Charges and Specifications have been preferred against both officers for conduct unbecoming officers.

These Department charges are still pending.

CASE OF MICHAEL STEWART (Rev. Daughtry)

Died in hospital 13 days after being arrested by Transit Authority Officer for writing graffitti in the subway.

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On September 15, 1983, Michael Stewart was arrested on the 1st Avenue, 14th Street BMT LL Station by a Transit Police Officer for writing graffitti on the subway walls. He bolted and ran up the stairs and was apprehended. Mr. Stewart became violent and was subdued by a member of the Transit Authority Police.

Mr. Stuart was brought to Bellevue Hospital for psychiatric evaluation. Upon admission to the emergency room, Mr. Stewart became comatose. He died on September 28, 1983.

The Manhattan District Attorney's Office is conducting an investigation into the matter.

## APPENDIX E

## RACE AND AGE DISTRIBUTION OF NYC POLICE OFFICERS

AGE DISTRIBUTION OF POLICE OFFICERS

		<u>20-30</u>	<u>31-45</u>	<u>46-55</u>	<u>56+</u>	
3/78	MALE	3569	11,372	2043	331	
	FEMALE	<u>98</u>	<u>243</u>	<u>32</u>	<u>3</u>	
		3667	11,615	2075	334	NET: 17,691
	%	21	66	12	2	
1/83	MALE	4348	9,119	1127	266	
	FEMALE	<u>772</u>	<u>389</u>	<u>18</u>	<u>7</u>	
		5120	9,508	1145	273	NET: 16,046
	%	32	59	7	2	
	CHANGE	+11%	-7%	-5%	No Change	

# 1672

## BREAKDOWN OF UNIFORM PERSONNEL ASSIGNED TO PRECINCTS, APRIL 1, 1983

<u>PRECINCT</u>	<u>ETHNICITY</u>						<u>SEX</u>						
	<u>TOTAL</u>	<u>WHITE</u>	<u>%</u>	<u>BLACK</u>	<u>%</u>	<u>HISP.</u>	<u>%</u>	<u>OTHER</u>	<u>%</u>	<u>MALE</u>	<u>%</u>	<u>FEMALE</u>	<u>%</u>
<u>Manhattan South</u>													
1	148	126	85	10	7	11	7	1	1	140	95	8	5
5	175	153	87	12	7	10	6	0	0	167	95	8	5
6	162	140	86	11	7	10	6	1	0	151	93	11	7
7	116	93	80	8	7	13	11	2	2	111	96	5	4
9	173	150	87	11	6	12	7	0	0	169	98	4	2
10	122	100	82	7	6	15	12	0	0	105	86	17	14
13	148	127	86	14	9	7	5	0	0	137	93	11	7
<b>M.S. TOTAL</b>	<b>1044</b>	<b>889</b>	<b>85</b>	<b>73</b>	<b>7</b>	<b>78</b>	<b>7</b>	<b>4</b>	<b>*</b>	<b>980</b>	<b>94</b>	<b>64</b>	<b>6</b>
<u>Manhattan North</u>													
MTS	354	324	92	17	5	12	3	1	*	341	96	13	4
17	160	142	89	15	9	3	2	0	0	143	89	17	11
MTN	311	275	88	25	8	10	3	1	*	292	94	19	6
19	234	199	85	18	8	16	7	1	*	216	92	18	8
20	144	128	89	5	3	10	7	1	*	138	96	6	4
23	130	93	72	13	10	24	18	0	0	122	94	8	6
24	155	119	77	14	9	20	13	2	*	144	93	11	7
25	121	84	69	14	12	23	19	0	0	115	95	6	5
26	120	83	69	20	17	16	13	1	*	114	95	6	5
28	171	105	61	54	32	11	6	1	*	168	98	3	2
30	110	71	65	19	17	19	17	1	*	101	92	9	8
32	151	93	62	46	30	12	8	0	0	144	95	7	5
34	205	143	70	29	14	32	16	1	*	193	94	12	6
<b>M.N. TOTAL</b>	<b>2366</b>	<b>1859</b>	<b>79</b>	<b>289</b>	<b>12</b>	<b>208</b>	<b>9</b>	<b>10</b>	<b>*</b>	<b>2231</b>	<b>99</b>	<b>135</b>	<b>1</b>
<u>Bronx</u>													
40	171	110	64	26	15	33	19	2	*	159	93	12	7
41	131	87	66	20	15	23	18	1	*	122	93	9	7
42	128	61	48	33	26	34	27			111	87	17	13
43	197	153	78	16	8	28	14			180	91	17	9
44	199	134	67	32	16	32	16	1	*	184	92	15	8
45	122	89	73	10	8	23	19			111	91	11	9
46	203	145	71	19	9	39	19			190	94	13	6
47	180	146	81	21	12	12	7	1	*	168	93	12	7
48	134	90	67	25	19	18	13	1	*	123	92	11	8
50	134	123	92	5	4	6	4			121	90	13	10
52	189	158	84	19	10	11	6	1	*	181	96	8	4
<b>BRONX TOTAL</b>	<b>1788</b>	<b>1296</b>	<b>72</b>	<b>226</b>	<b>13</b>	<b>259</b>	<b>14</b>	<b>7</b>	<b>*</b>	<b>1650</b>	<b>92</b>	<b>138</b>	<b>8</b>

\*Less than one percent.

PRECINCT	ETHNICITY						SEX					
	TOTAL	WHITE	%	BLACK	%	HISP.	%	OTHER	%	MALE	%	FEMALE
<u>Brooklyn South</u>												
60	136	123	90	9	7	3	2	1	*	134	99	2
61	151	148	98	1	*	1	*	1	*	146	97	5
62	118	111	94	6	5	1	*			113	96	5
63	135	127	94	5	4	3	2			126	93	9
66	114	103	90	4	4	7	6			106	93	8
67	171	138	81	16	9	15	9	2	1	160	94	11
68	136	127	93	6	4	3	2			130	96	6
69	125	101	81	14	11	10	8			120	96	5
70	164	146	89	8	5	9	5	1	*	148	90	16
71	240	194	81	32	13	14	6			223	93	17
72	130	112	86	8	6	10	8			119	92	11
76	111	85	77	13	12	13	12			103	93	8
78	119	92	77	22	18	5	4			111	93	8
<b>B.S. TOTAL</b>	<b>1850</b>	<b>1607</b>	<b>87</b>	<b>144</b>	<b>8</b>	<b>94</b>	<b>5</b>	<b>5</b>	<b>*</b>	<b>1739</b>	<b>94</b>	<b>111</b>
<u>Brooklyn North</u>												
73	143	99	69	33	23	11	8			135	94	8
75	215	171	80	31	18	11	5	2	*	202	94	13
77	219	131	60	70	32	18	8			207	95	12
79	150	86	57	41	27	23	15			137	91	13
81	113	75	66	34	30	4	4			109	96	4
83	174	117	67	33	19	24	14			160	92	14
84	147	104	71	23	16	19	13	1	*	131	89	16
88	119	80	67	38	32	1	*			105	88	14
90	150	100	67	27	18	22	15	1	*	141	94	9
94	120	96	80	13	11	10	8	1	*	109	91	11
<b>B.N. TOTAL</b>	<b>1550</b>	<b>1059</b>	<b>68</b>	<b>343</b>	<b>22</b>	<b>143</b>	<b>9</b>	<b>5</b>	<b>*</b>	<b>1436</b>	<b>93</b>	<b>114</b>
<u>Queens</u>												
100	108	91	84	14	13	3	3			99	92	9
101	118	112	95	4	3	2	2			112	95	6
102	133	121	91	8	6	4	3			126	95	7
103	197	164	83	29	15	4	2			187	95	10
104	155	142	92	9	6	4	2			144	93	11
105	181	107	94	8	4	2	1	1	*	176	97	5
106	143	130	91	7	5	6	4			139	97	4
107	174	167	96	3	2	4	2			170	98	4
108	160	138	86	13	8	9	6			148	93	12
109	216	208	96	3	2	5	2			208	96	8
110	227	196	86	13	6	18	8			215	95	12
111	142	137	96	3	2	2	2			137	96	5
112	150	140	93	4	3	6	4			142	95	8
113	185	144	78	31	17	10	5			173	94	12
114	229	210	92	6	3	12	5	1	*	211	92	18
<b>QNS. TOTAL</b>	<b>2518</b>	<b>2270</b>	<b>90</b>	<b>155</b>	<b>6</b>	<b>91</b>	<b>4</b>	<b>2</b>	<b>*</b>	<b>2387</b>	<b>95</b>	<b>131</b>

\*Less than one percent.

<u>PRECINCT</u>	<u>ETHNICITY</u>								<u>SEX</u>			
	<u>TOTAL</u>	<u>WHITE</u>	<u>%</u>	<u>BLACK</u>	<u>%</u>	<u>HISP.</u>	<u>%</u>	<u>OTHER</u>	<u>%</u>	<u>MALE</u>	<u>%</u>	<u>FEMALE</u>
Staten Island												
120	195	191	98	2	1	2	1			190	97	5
122	156	153	98	2	1	1	1			155	99	1
123	106	105	99	0	0	1	1			103	97	3
S.I. TOTAL	457	449	98	4	1	4	1			448	98	9
GRAND												
TOTALS	11,573	9429	81	1234	11	877	8	33	*	10,871	94	702

\*Less than one percent.

BREAKDOWN OF N.S.U. ASSIGNMENTS

	<u>ETHNICITY</u>								<u>SEX</u>				
	<u>PCT.</u>	<u>TOTAL</u>	<u>WHITE</u>	<u>%</u>	<u>BLACK</u>	<u>%</u>	<u>HISP.</u>	<u>%</u>	<u>OTHER</u>	<u>%</u>	<u>MALE</u>	<u>%</u>	<u>FEMALE</u>
MS NSU	1	37	32	87	3	8	2	5			29	78	8
	2	72	46	64	19	26	5	7	2	3	53	74	19
	3	115	96	84	13	11	5	4	1	1	97	84	18
TOTAL		224	174	78	35	16	12	5	3	1	179	80	45
MN NSU	4	62	48	77	3	5	10	16	1	2	51	82	11
	5	62	30	48	14	23	15	24	3	5	50	81	12
	6	53	36	68	8	15	8	15	1	2	45	85	8
TOTAL		177	114	64	25	14	33	19	5	3	146	82	31
BX NSU	7	75	54	72	6	8	15	20			66	88	9
	8	51	29	57	7	14	15	29			43	84	8
	9	88	66	75	7	8	15	17			79	90	9
TOTAL		214	149	70	20	9	45	21			188	88	26
BS NSU	10	71	65	92	3	4	3	4			65	92	6
	11	60	37	61	12	20	11	19			50	83	10
	12	85	63	74	17	20	4	5	1	1	73	86	12
TOTAL		216	165	76	32	15	18	8	1	1	188	87	28
BN NSU	13	57	41	72	13	23	3	5			46	81	11
	14	84	51	61	23	27	10	12			69	82	15
	15	57	39	68	10	18	7	12	1	2	46	81	11
TOTAL		198	131	66	46	23	20	10	1	1	161	81	37
QN NSU	16	85	71	83	9	11	5	6			70	82	15
	17	84	74	88	6	7	4	5			76	90	8
	18	103	90	87	8	8	5	5			97	94	6
TOTAL		272	235	86	23	9	14	5			243	89	29
SI NSU		54	50	92	2	4	2	4			51	95	3
GRAND TOTAL		1301	968	74	181	14	142	11	10	1	1105	85	196

## APPENDIX F

## FATAL POLICE/CIVILIAN CONFRONTATIONS 1974-1983

POLICE DEPARTMENT  
CITY OF NEW YORK

July 12, 1983

FATAL SHOOTING OF CIVILIANS BY MEMBERS OF THE NEW  
YORK CITY POLICE DEPARTMENT

1. The following is a compilation of the years 1974 through June 30, 1983 regarding the above subject, and consists of a breakdown by race, age and sex of those fatalities.

2. For the period indicated, a grand total of three hundred forty-five (345) civilians were fatally shot as shown in the following chart:

<u>YEAR</u>	<u>TOTAL FATALITIES</u>	<u>WHITE</u>	<u>BLACK</u>	<u>HISPANIC</u>	<u>ORIENTAL</u>
1983 (1/1-6/30)	18	3	10	5	
1982	39	9	10	20	
1981	36	8	13	14	1
1980	28	3	19	5	1
1979	40	8	18	14	
1978	39	9	18	12	
1977	30	7	14	9	
1976	27	5	14	8	
1975	43	5	25	12	1
1974	45	5	26	14	
<b>TOTALS</b>	<b>345</b>	<b>62</b>	<b>167</b>	<b>113</b>	<b>3</b>

3. The age groupings of the above are detailed by year, in five (5) year parameters, with notations concerning the 15-20 age group and those concerning their sex.

A. During the period January 1, 1983 through June 30, 1983, 18 civilians were fatally wounded by members of the service. The breakdown includes: 3 Whites, 10 Blacks and 5 Hispanics as follows:

F-2-

<u>RACE</u>	<u>AGE GROUPS</u>						<u>Age Unk.</u>
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>	
White	1	1			1		
Black		3	2	3	1	1	
Hispanic	1	1	1			1	1

NOTE: (1) White - 15 years of age  
 (1) Hispanic - 16 years of age  
 No Females

B. In 1982, thirty nine (39) civilians were fatally wounded by members of the service. The breakdown includes: 9 Whites, 10 Blacks and 20 Hispanics as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White	1	6		1		1
Black	1	2	1	3	1	2
Hispanic	6	3	2	4	2	3

NOTE: (3) Hispanics - 18 years of age

C. In 1981, thirty six (36) civilians were fatally wounded by members of the service. The breakdown includes: 8 Whites, 13 Blacks, 14 Hispanics and 1 Oriental as follows:

<u>RACE</u>	<u>AGE GROUPS</u>						<u>Age. Unk.</u>
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>	
White	2	3	2		1		
Black	2	2	2	3	2	2	
Hispanic	3	3	1	3	2	1	1
Oriental		1					

NOTE: (1) White - 18 years of age (1) Hispanic - 18 years of age  
 (1) White - 19 years of age (1) Female, Black - 39 yrs.  
 (1) Black - 15 years of age  
 (1) Black - 19 years of age  
 (1) Hispanic - 17 years of age

F -3-

D. In 1980, twenty eight (28) civilians were fatally wounded by members of the service. The breakdown includes: 3 Whites, 19 Blacks, 5 Hispanics and 1 Oriental as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White		1	1			1
Black	6	8	2	2	1	
Hispanic	1	2	1	1		
Oriental						1

NOTE: (1) Black - 16 years of age  
 (1) Black - 18 years of age  
 (1) Black - 19 years of age  
 No Females

E. In 1979, forty (40) civilians were fatally wounded by members of the service. The breakdown includes: 8 Whites, 18 Blacks and 14 Hispanics as follows:

<u>RACE</u>	<u>AGE GROUPS</u>						<u>Age.Unk.</u>
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>	
White		2	4	1	1		
Black	3	2	3	2	2	5	1
Hispanic	3	3	4		2	2	

NOTE: (1) Black - 19 years of age  
 (1) Hispanic - 16 years of age  
 (1) Hispanic - 17 years of age  
 (1) Female Hispanic, 34 yrs. of age

F. In 1978, thirty nine (39) civilians were fatally wounded by members of the service. The breakdown includes: 9 Whites, 18 Blacks and 12 Hispanics as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White		2	3	2		2
Black	1	3	2	7	1	4
Hispanic	5	2	2		3	

f-4-

NOTE: (1) Black - 19 years of age  
 (1) Hispanic - 15 years of age  
 (1) Hispanic - 18 years of age  
 (3) Hispanics - 19 years of age  
 (1) Female Black - 34 years of age

G. In 1977, thirty (30) civilians were fatally wounded by members of the service. The breakdown includes: 7 Whites, 14 Blacks and 9 Hispanics as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White	1	2	2		1	1
Black	1	6	3		2	2
Hispanic	1	4	2			2

NOTE: (1) White - 20 years of age  
 (1) Black - 18 years of age  
 (1) Hispanic - 19 years of age

H. In 1976, twenty seven (27) civilians were fatally wounded by members of the service. The breakdown includes: 5 Whites, 14 Blacks and 8 Hispanics as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White	1	2				2
Black	1	3	4	4	1	1
Hispanic	1	1	2	2		2

NOTE: (1) Black - 15 years of age  
 (1) White - 18 years of age  
 (1) Hispanic - 18 years of age  
 (1) Female Hispanic - 58 years of age  
 (1) Female Hispanic - 26 years of age

F -5-

I. In 1975, forty three (43) civilians were fatally wounded by members of the service. The breakdown includes: 5 Whites, 25 Blacks, 12 Hispanics and 1 Oriental as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White	1	1		1	2	
Black	3	5	6	6	4	1
Hispanic		4	2	3	1	2
Oriental		1				

NOTE: (1) White - 16 years of age  
 (1) Black - 15 years of age  
 (1) Black - 17 years of age  
 (1) Black - 19 years of age  
 No Females

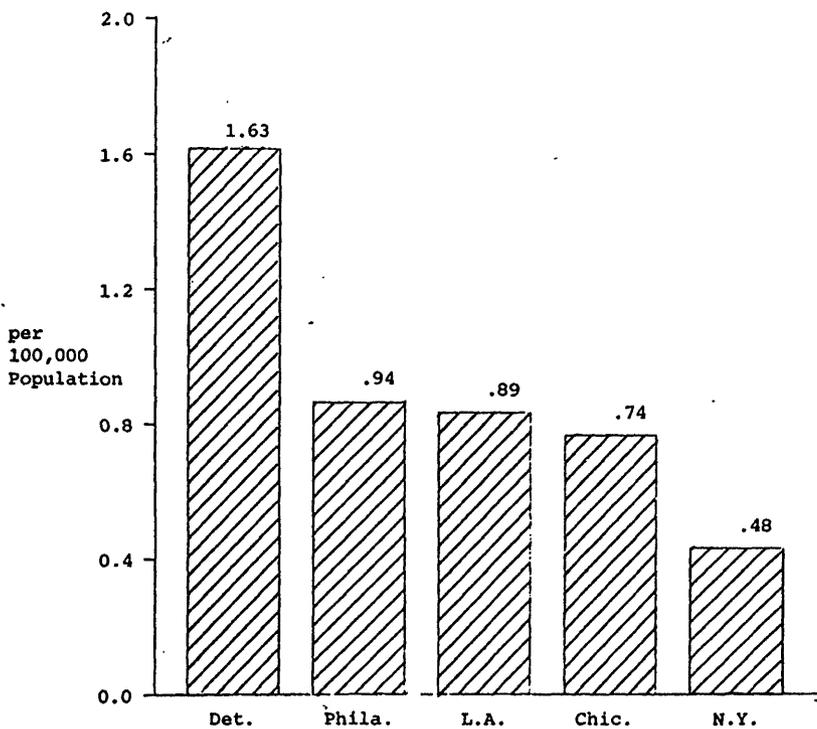
J. In 1974, forty five (45) civilians were fatally wounded by members of the service. The breakdown includes: 5 Whites, 26 Blacks and 14 Hispanics as follows:

<u>RACE</u>	<u>AGE GROUPS</u>					
	<u>15-20</u>	<u>21-25</u>	<u>26-30</u>	<u>31-35</u>	<u>36-40</u>	<u>Over 40</u>
White		2		1	1	1
Black	3	11	3	3	1	5
Hispanic	2	4	2	1	1	4

NOTE: (1) Black - 14 years of age  
 (1) Black - 18 years of age  
 (2) Hispanics - 17 years of age  
 No Females

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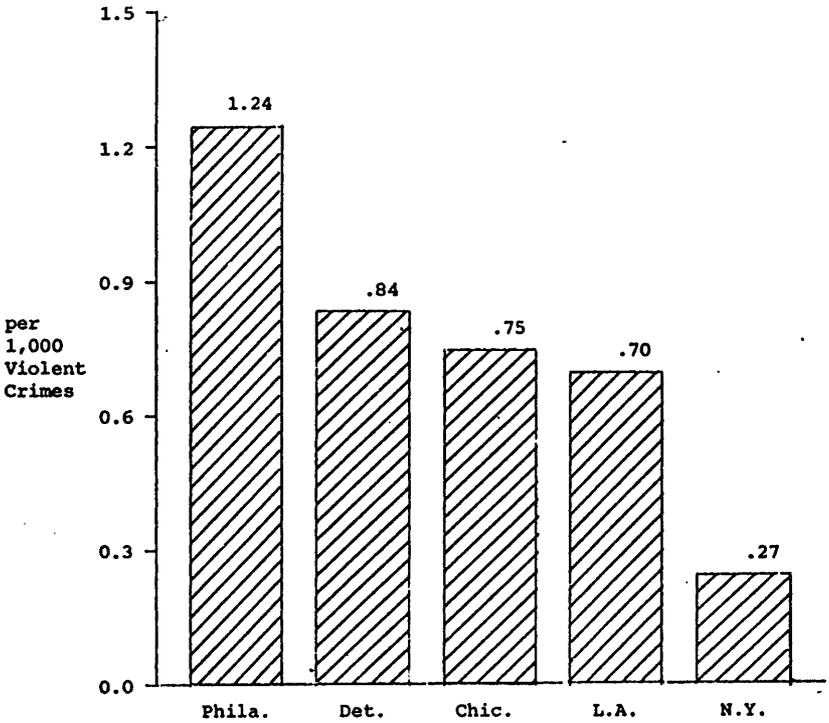
RATE OF HOMICIDE BY POLICE



Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

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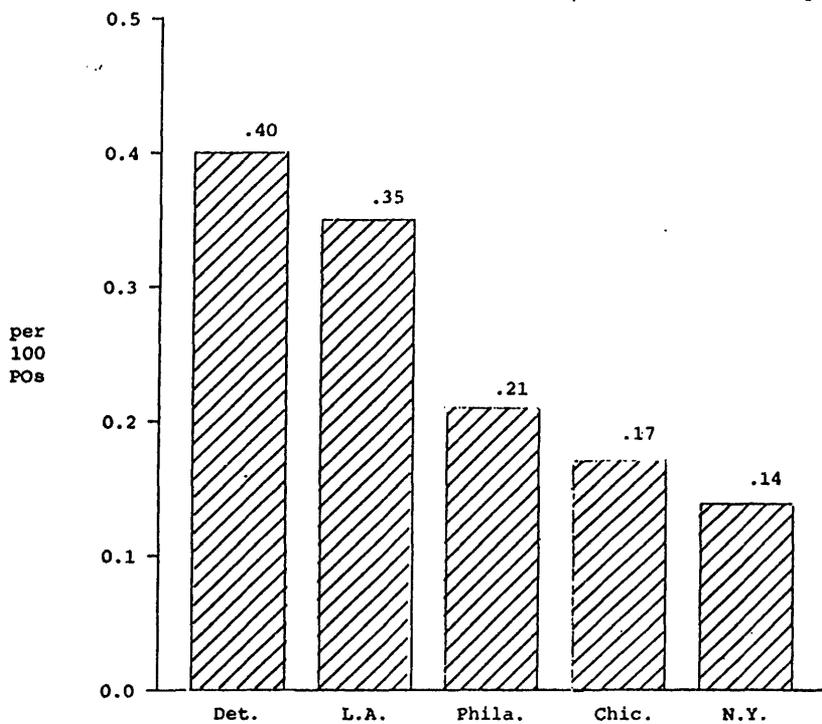
RATE OF HOMICIDE BY POLICE



Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

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## RATE OF HOMICIDE BY POLICE

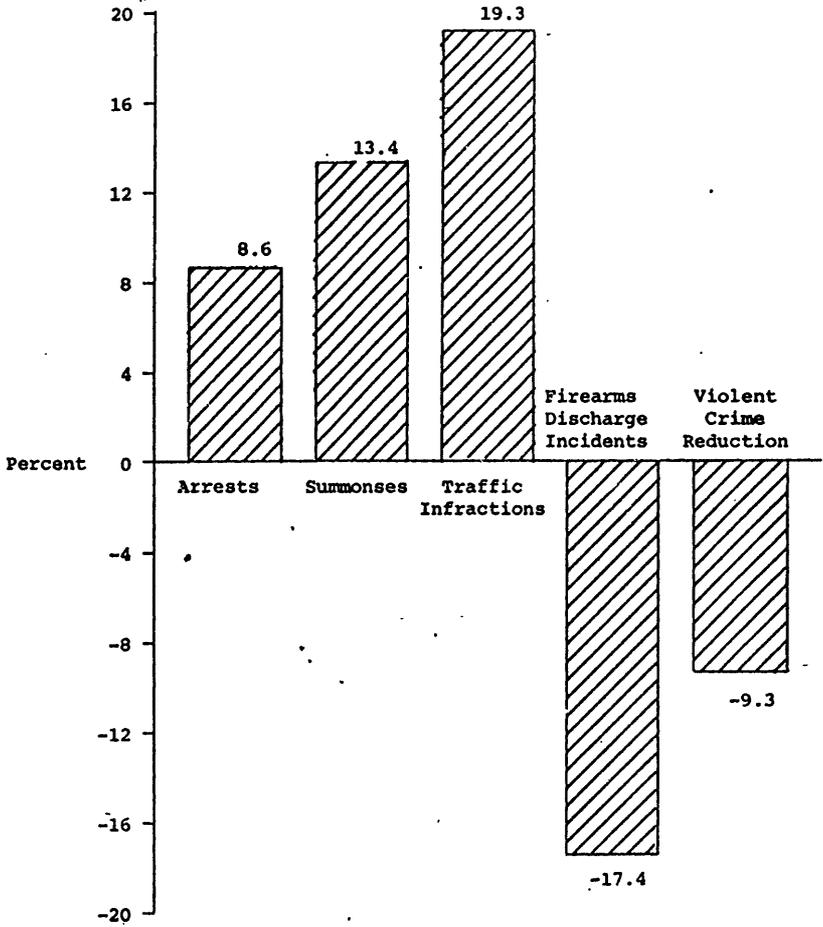


Matulia, Kenneth J. "A Balance of Forces"; IACP, 1982

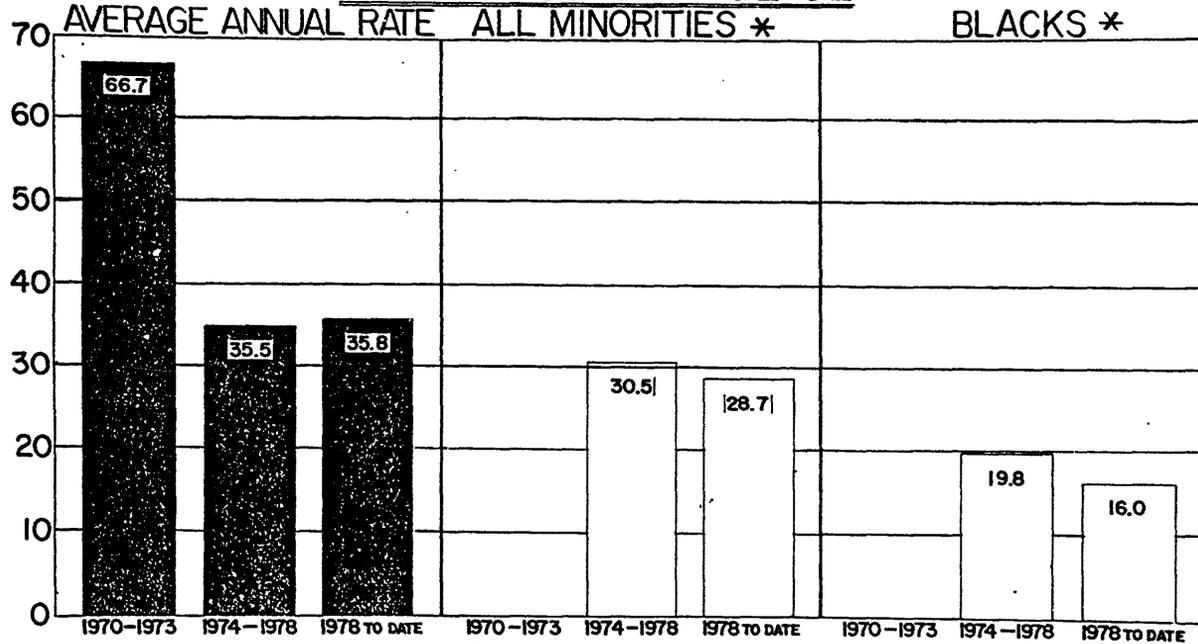
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N.Y.P.D. ENFORCEMENT ACTIVITY

Change from 1981 to 1982



# HOMICIDES BY POLICE



\* PRIOR TO 1974, DATA ON RACE OF PERSONS KILLED BY POLICE NOT AVAILABLE.

SOURCE: NEW YORK POLICE DEPARTMENT



SHOOTING HOMICIDES BY POLICE:PERIOD 1970 - 1973

1970	-	50
1971	-	93
1972	-	66
1973	-	<u>58</u>

267

66.7 annual average

PERIOD 1974 - 1978

1974	-	43
1975	-	42
1976	-	27
1977	-	<u>30</u>

142

35.5 annual average

PERIOD 1978 - Present

1978	-	40
1979	-	36
1980	-	28
1981	-	36
1982	-	39
(to date) 1983	-	<u>18</u>

197

35.8 annual average

46.3% decrease from 1970 - 73 average

0.8% increase from 1974 - 78 average

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SHOOTING HOMICIDE OF BLACKS BY POLICE (Hispanics excluded) \*PERIOD 1974 - 1978

1974	-	26
1975	-	25
1976	-	14
1977	-	<u>14</u>
		79

Annual average 19.75

PERIOD 1978 - Present

1978	-	18
1979	-	18
1980	-	19
1981	-	13
1982	-	10
(to date) 1983	-	<u>10</u>

88 Annual average 16.0

18.9% decrease from 1974-78

\* Statistics on race of shooting opponents unavailable prior to 1974.

SHOOTING HOMICIDES OF MINORITIES (Blacks & Hispanics) \*PERIOD 1974 - 1978

1974	-	40
1975	-	37
1976	-	22
1977	-	<u>23</u>

122

Annual average 30.5

PERIOD 1978 - Present

1978	-	30
1979	-	32
1980	-	24
1981	-	27
1982	-	30
(to date) 1983	-	<u>15</u>

158

Annual average 28.72

5.8% decrease from 1974-78

\* Statistics on race of shooting opponents unavailable prior to 1974.



# PATROL GUIDE

PROCEDURE No

104-1

## GENERAL REGULATIONS

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
11-5-76	11-15-76	76-7	6 of 6

### COURTESIES (continued)

6. Remove hat and stand at attention in office of Police Commissioner, deputy commissioner or member above rank of lieutenant.
7. Order "Attention" when member above rank of captain enters room unless otherwise directed.
8. Place U.S. flag at half-mast as indicated below, when a member of the service dies:
  - a. Lieutenant, sergeant, police officer -- on department building where assigned on day of funeral.
  - b. Captain -- on department building where assigned from time of death to sunset, day of funeral.
  - c. Deputy inspectors or inspectors -- on department buildings within his command from time of death to sunset, day of funeral; flag at Police Headquarters will fly at half-staff on day of funeral.
  - d. Member killed in line of duty -- on department building where member assigned from time of death to ten days after death; flag will fly at half-mast on all department buildings on day of the funeral.
  - e. Other members, Police Commissioner or a deputy commissioner -- as directed by the Police Commissioner or Chief of Operations.

### USE OF FIREARMS

In addition to Penal Law restrictions on the use of deadly physical force (See Article 35.00, P.L.), members of the service will adhere to the following guidelines concerning the use of firearms:

1. Use all reasonable means before utilizing firearm when effecting arrest for or preventing or terminating, a felony or defending self or another.
2. Do not fire warning shots.
3. Do not discharge firearm to summon assistance, except when safety is endangered.
4. Do not discharge firearm from or at moving vehicle unless occupants are using deadly physical force against officer or another, by means other than vehicle.
5. Do not discharge firearm at dogs or other animals unless there is no other way to bring animal under control.
6. Do not discharge firearm if innocent persons may be endangered.

### NOTE

The above guidelines are not meant to restrict a member in the performance of his lawful duty, but are intended to reduce shooting incidents and consequently protect life and property. In every case, department policy requires only the minimum amount of force be used consistent with the accomplishment of the mission.

NEW YORK CITY POLICE DEPARTMENT

FD-204 48781  
FILE

FEB 16 1981

POLICE DEPARTMENT  
CITY OF NEW YORKOffice of the Police Commissioner  
February 17, 1981

Memorandum to: Police Commissioner

Subject: MISCONDUCT RELATED TO USE OF FIREARMS BY MEMBERS OF  
THE SERVICE.

A review of all disciplinary cases which have been adjudicated in calendar years 1978, 1979 and 1980, indicates that members of the service have been charged with either wrongful discharge or wrongful display of their weapon, both on and off duty.

In 1980 there were 37 incidents involving 39 members of the service where they either discharged their weapon or menaced another individual and disciplinary charges were preferred.

I.	<u>On duty Discharge of Weapon</u>	
	a. Property damage:	1
	b. Personal injury:	3
	c. Death:	1
	d. No damage or injury:	0
	<u>Total</u>	5

	<u>Disciplinary Disposition</u>	
	a. Trial and found guilty:	3
	b. Trial and found not guilty:	1
	c. Negotiated settlements:	1
	d. Criminal convictions:	0
	*e. Other dispositions:	0

Penalties for the above proven misconduct and negotiated cases ranged from five days vacation to twenty days vacation.

II.	<u>On duty wrongful display or menacing of an individual by a member of the service with a firearm.</u>	
-----	---	--

	<u>Total:</u>	5
--	---------------	---

\* Wherever "Other Dispositions" appears in this report it refers to Charges and Specifications that have been dismissed or filed.

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<u>Disciplinary Disposition:</u>	
a. Trial and found guilty:	0
b. Trial and found not guilty:	2
c. Negotiated settlement:	1
d. Criminal convictions:	0
e. Other dispositions:	2
<u>Total:</u>	5

Penalty for the above negotiated case was ten days vacation.

III.	<u>Off duty Discharge of weapon:</u>	
	a. Property damage:	6
	b. Personal injury:	4
	c. Death:	2
	d. No damage or injury:	5
	<u>Total:</u>	17

<u>Disciplinary Disposition</u>	
a. Trial and found guilty:	3
b. Trial and found not guilty	2
c. Negotiated settlements:	8
d. Criminal convictions:	1
e. Other dispositions:	3
<u>Total:</u>	17

Penalties for the above proven misconduct and negotiated cases ranged from Command Discipline to Dismissal from the Department.

IV.	<u>Off duty wrongful display or menacing of an individual by a M.O.S. with a firearm:</u>	
	<u>Total:</u>	10

<u>Disciplinary Dispositions:</u>	
a. Trial and found guilty:	2
b. Trial and found not guilty:	1
c. Negotiated settlements:	2
d. Criminal convictions:	1
e. Other dispositions:	4
<u>Total:</u>	10

Penalties for the above proven misconduct and negotiated cases ranged from fifteen days vacation to dismissal from the Department.

In 1979 there were 29 incidents involving 33 members of the service where they either discharged their weapon or menaced another individual and disciplinary charges were preferred and adjudicated.

I. On Duty Discharge of Weapon:

a. Property Damage:	0
b. Personal Injury:	0
c. Death:	2
d. No Damage or Injury:	6
<u>Total:</u>	<u>8</u>

Disciplinary Disposition:

a. Trial and found guilty:	3
b. Trial and found not guilty:	0
c. Negotiated settlements:	3
d. Criminal convictions:	0
e. Other Dispositions:	<u>2</u>
	<u>8</u>

Penalties for the above proven misconduct and negotiated cases ranged from 15 days to dismissal from the Department.

II. On Duty Wrongful Display or Menacing of an Individual by a Member of the Service with a Firearm:

<u>Total:</u>	<u>1</u>
---------------	----------

Disciplinary Disposition:

a. Trial and found guilty:	0
b. Trial and found not guilty:	1
c. Negotiated settlement:	0
d. Criminal convictions:	0
e. Other dispositions:	<u>0</u>
	<u>1</u>

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III. Off Duty Discharge of Weapon:

a. Property Damage:	2
b. Personal Injury:	3
c. Death:	0
d. No Damage or Injury:	4

Total: 9

Disciplinary Disposition:

a. Trial and found guilty:	3
b. Trial and found not guilty:	0
c. Negotiated settlements:	4
d. Criminal convictions:	1
e. Other dispositions:	1
	<u>9</u>

Penalties for the above proven misconduct and negotiated cases range from 8 days to dismissal from the Department.

IV. Off Duty Wrongful Display or Menacing of an Individual by a Member of the Service with a Firearm:

Total: 10

Disciplinary Disposition:

a. Trial and found guilty:	0
b. Trial and found not guilty:	1
c. Negotiated settlements:	8
d. Criminal convictions:	1
e. Other dispositions:	0
	<u>10</u>

Penalties for the above proven misconduct and negotiated cases range from 5 days to dismissal from the Department.

In 1978 there were 21 incidents of misconduct involving 21 members of the service where they either discharged their weapon or menaced another individual and disciplinary charges were preferred and adjudicated.

I. On duty discharge of weapon

a. Property Damage	0
b. Personal Injury	1
c. Death	0
d. No Damage or Injury	0
<u>Total:</u>	<u>1</u>

Disciplinary Disposition

a. Trial and found guilty	0
b. Trial and found not guilty	1
c. Negotiated settlements	0
d. Criminal convictions	0
e. Other dispositions	0
	<u>1</u>

II. On duty wrongful display or menacing of an individual by a member of the service with a firearm.

Total: 1

Disciplinary Disposition

a. Charges Dismissed	1
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III. Off duty discharge of weapon

a. Property Damage	4
b. Personal Injury	3
c. Death	1
d. No Damage or Injury	2
<u>Total:</u>	<u>10</u>

Disciplinary Disposition

a. Trial and found guilty	4
b. Trial and found not guilty	1
c. Negotiated settlements	3
d. Criminal convictions	1
e. Other dispositions	1
	<u>10</u>

Penalties for above proven misconduct and negotiated cases range from 10 days to dismissal from the Department.

IV. Off duty wrongful display or menacing  
of an individual by a member of the  
service with a firearm.

Total: 9

Disciplinary Disposition:

a. Trial and found guilty	3
b. Trial and found not guilty	2
c. Negotiated settlements	1
d. Criminal convictions	0
e. Other dispositions	3
	<u>9</u>

Penalties for the above proven misconduct and negotiated cases range from 7 days to dismissal from the Department.

	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>
NUMBER OF POLICE SHOOTINGS RESULTING IN DEATH OF PERPETRATOR	18	39	36	28	36	40
•						
NUMBER OF INDICTMENTS OF M.O.S. BY GRAND JURY	1	1	3	0	0	1
NUMBER OF M.O.S. GUILTY OR NOT GUILTY AFTER CRIMINAL TRIAL	* 1 PENDING	** 1 PENDING	*** 3 (NOT GUILTY)	0	0	**** 1 (GUILTY)

\* P.O. Victor Pezzolla, Shield 29559, 69 Precinct - Indicted for Criminally Negligent Homicide - Indictment #1565/83. Next Queens Supreme Court Hearing - July 13, 1983 - A.D.A. Sullivan.

\*\* P.O. Charles Tschupp, Shield 27705, 75 Precinct - Indicted for Murder 2nd - Manslaughter 1 and 2 - Indictment #2333/82. Next Queens Supreme Court Hearing - August 18, 1983.

***	P.O. William Baker, Shield 1913, 40 Precinct -	NOT GUILTY -	Criminal Negligent Homicide	3/31/82	Ex. Supreme Ct.	Pt.86
	P.O. Carol Esserman, Shield 2754, 42 Precinct	DO	DO	2/1/83	DO	DO 78
	P.O. John Mayer, Shield 31891 42 Precinct	DO	Assault 2nd	DO	DO	DO DO

****	P.O. James E. Lewis, Shield 29432	GUILTY	Criminal Negligent Homicide	10/18/79	DO	DO 18
	DISMISSED - 2400 Hrs. 10/18/79					

POLICE DEPARTMENT  
CITY OF NEW YORK

From: The Chief of Operations  
To: The Police Commissioner  
SUBJECT: DEPARTMENT FIREARMS DISCHARGE REVIEW BOARD SEMI-ANNUAL REPORT (1983)

1. This report summarizes two interrelated, but distinct, statistical compilations: all incidents during the first six (6) months of 1983 (Jan.-June) in which New York City Police Department officers discharged firearms and all cases reviewed during this same period.

2. During the first six (6) months of 1983, there were 143 firearm discharge incidents, which involved 183 members of the service. In 104 of these occurrences, the officers fired at an offender in self-defense or in defense of others (the remaining cases involved animals, self-inflicted gunshot wounds and accidental discharges). In 89 of the offender cases, a total of 157 arrests were made. These figures compare to 158 incidents involving 197 members of the service during the first six (6) months of 1982, of which 116 incidents involved an offender; in 98 of those cases, 179 were arrested. The total number of occurrences this year represents a decrease of 15 cases (9.5%). There were 12 less cases involving an offender (10.3%). Injuries to officers totalled 73 compared to 58 during the previous year, an increase of 15 (20.5%). In 79 instances (76% of the offender cases), guns or other weapons were recovered, compared to 78 cases (67.2%) in 1982.

3. While the statistics compiled for this report refer only to incidents in which a member of the service discharged his firearm, we have provided statistics for two (2) categories (members of the service shot and/or killed) in which members of the service did not discharge their firearm.

4. The data relating to the 1983 cases are as follows:

A. MEMBERS OF THE SERVICE DISCHARGING WEAPONS

(1) RANK	1 - Assistant Chief Inspector....	.55%
	1 - Captain.....	.55%
	1 - Lieutenant.....	.55%
	14 - Sergeants.....	7.65%
	15 - Detectives.....	8.20%
	151 - Police Officers.....	82.50%

(2) MEMBERS INVOLVED

<u>1983</u>	<u>1982</u>	
183	197	(decrease of 14 or 7.11%)

(3) DEATHS/INJURIES

<u>1983</u>	<u>1982</u>	
0	2*	- Killed by perpetrators
5**	6	- Shot by perpetrators
1	0	- Shot accidentally by other member of the service
61	37	- Other weapons/assaults
0	2	- Dog bites
1	2	- Human bites
1	3	- Struck/dragged by autos
73	58	- Miscellaneous (chasing perps., climbing fences, flying glass, et
2	1	- Suicides
<u>144</u>	<u>111</u>	

\* In both incidents, MOS did not return fire.

\*\* In 1983 there was 1 incident where MOS was shot and did not return fire.

(4) ACCIDENTAL DISCHARGES

<u>1983</u>	<u>1982</u>	
28	24	(+14.29%)

(5) ANIMALS

<u>1983</u>	<u>1982</u>	
8	15	(-46.67%)

(6) OFF-DUTY INCIDENTS

<u>1983</u>	<u>1982</u>	
46	37	(+19.57%)

(7) VEHICLES

<u>1983</u>	<u>1982</u>	
8	22	(-63.64%)

B. PERPETRATORS

- (1) 167 were arrested in 89 (62.93%) of the 143 cases involving offenders.
- (2) 35 cases: 37 were wounded by members of the service. Of the 37, 37 had previous criminal records.
- (3) 18 cases: 18 were shot and killed by members of the service. Of the 18, 12 had previous criminal records.
- (4) In 1982, 179 were arrested in 98 (84.5%) of the 116 offender cases.

C. MISCELLANEOUS CASES INVOLVING MEMBERS OF THE SERVICE

- (1) 165 weapons were recovered in 75 cases (45.5% of cases involving offenders).
- (2) 104 guns were recovered in 50 cases (34.97% of offender cases).

Not all firearms are recovered after the shooting incident. This is due to the fact that all perpetrators are not apprehended and weapons dropped by offenders in a crowd very often disappear.

- (3) 29 cases (20.28% of offender cases) other weapons were recovered (knives, pipes, chukka sticks, etc.).
- (4) 17 (11.89% of the offender cases) incidents in which members of the service were fired upon.
- (5) There were 20 incidents in which members of the service were shot at, but did not return fire.

(6) RANK ORDER BY DAY OF INCIDENT

a) Tuesday	25	17.48%
b) Friday	23	16.08%
c) Sunday	22	15.38%
d) Monday	22	15.38%
e) Thursday	21	14.69%
f) Wednesday	17	11.89%
g) Saturday	13	9.10%

---

143 cases

(7) RANK ORDER BY TOUR OF INCIDENT

a) 0001x0800	57....	39.86%
b) 1600x2400	54....	37.76%
c) 0800x1600	32....	22.38%

D. (1) TOTAL CASES REVIEWED DURING 1983 (198)

<u>NO</u> <u>VIOLATION</u>	<u>VIOLATION</u>	<u>ACCIDENTAL</u>
155	30	27

(2) TOTAL CASES REVIEWED IN PAST YEARS

	<u>No violation</u>	<u>Violation</u>	<u>Accidental</u>	<u>Total</u>
1973	265 (75.9%)	(84)*		349
1974	361 (70.4%)	(152)*		513
1975	351 (74.2%)	122)*		473
1976	302 (79.7%)	54	23	379
1977	280 (74.9%)	47	47	374
1978	323 (76.4%)	50	50	423
1979	312 (73.1%)	55	60	427
1980	261 (78.9%)	42	28	331
1981	323 (75.6%)	61	43	427
1982	276 (77.7%)	42	37	355

\* During these years, violations and accidental discharges were classified in a manner not compatible with the present categories.

## APPENDIX A

F-27

NUMBER OF FIREARMS DISCHARGE INCIDENTS BY PRECINCTS  
1983 - (143) JANUARY - JUNE

<u>P.B.M.S.</u>		<u>P.B.M.N.</u>		<u>P.B. BRONX</u>	
<u>PCT.</u>	<u>INCIDENTS</u>	<u>PCT.</u>	<u>INCIDENTS</u>	<u>PCT.</u>	<u>INCIDENTS</u>
1	2	19	3	40	3
5	1	20	2	41	2
6	0	23	2	42	3
7	2	CPP	0	43	7
9	2	24	1	44	6
10	0	25	3	45	3
13	1	26	0	46	2
MTS	0	28	5	47	2
MTN	0	30	6	48	3
17	2	32	4	*50	3
		34	9	52	3
TOTAL	10	TOTAL	35	TOTAL	37

<u>P.B.B.S.</u>		<u>P.B.B.N.</u>		<u>P.B. QUEENS</u>	
<u>PCT.</u>	<u>INCIDENTS</u>	<u>PCT.</u>	<u>INCIDENTS</u>	<u>PCT.</u>	<u>INCIDENTS</u>
60	0	73	0	100	0
61	0	75	1	101	0
62	1	77	2	102	2
63	1	79	1	103	2
66	3	81	0	104	0
67	1	83	2	**105	7
68	2	84	1	106	1
69	1	88	1	107	1
70	2	90	0	108	2
71	4	94	0	109	4
72	2			110	2
76	0			111	0
78	1			112	3
				113	3
				114	5
TOTAL	18	TOTAL	8	TOTAL	32

P.B.S.I.

<u>PCT.</u>	<u>INCIDENTS</u>
120	0
122	3
123	0
TOTAL	3

The following precincts reported no firearms discharge incidents: 6, 10, MTS, MTN, CPP, 26, 60, 6, 73, 76, 81, 90, 94, 100, 101, 104, 111, 120, 123

\*50 Pct. - includes 1 incident in Bronxville and 1 incident in Otsego Co.

\*\*105 Pct. - includes 1 incident in Suffolk Co.

APPENDIX BCOMPARISON FIGURES FOR SPECIFIC CATEGORIES 1983 - 1982 (Jan - June)RE: DISCHARGE OF FIREARMS BY MEMBERS OF THE SERVICE

<u>CATEGORY</u>	<u>1983</u>	<u>PERCENT</u>	<u>1982</u>	<u>PERCENT</u>
ASSISTANT CHIEF INSPECTOR	1	.55%	0	.00%
CAPTAIN	1	.55%	0	.00%
LIEUTENANT	1	.55%	1	.51%
SERGEANT	14	7.65%	18	9.14%
DETECTIVE	15	8.20%	24	12.18%
POLICE OFFICER	161	82.50%	154	76.17%
MOS DOA BY PERP.	0	0%	0*	.00%
MOS SHOT BY PERP.	8**	9.88%	6	1.10%
MOS SHOT AT	18	22.22%	0	.00%
PERP. DJA	18	22.22%	17	38.80%
PERP. WOUNDED	37	45.68%	36	61.10%
ACCIDENTAL	22	25.88%	24	24.24%
ANIMALS	7	8.32%	16	15.15%
OFF DUTY MOS	46	54.12%	37	37.38%
VEHICLES	9	10.59%	22	22.22%
WARNING SHOTS	0	.00%	0	.00%
SUMMONS ASSISTANCE	1	1.18%	1	1.01%

\*2 MOS killed by perpetrators, but did not discharge weapon.

\*\* 1 MOS shot by perpetrator, but did not discharge weapon.

RANK ORDER BY PATROL BOROUGH COMMAND

	<u>1983</u>	<u>1982</u>
1. BRONX	37	34
2. MANHATTAN NORTH	36	22
3. QUEENS	32	31
4. BROOKLYN SOUTH	18	17
5. MANHATTAN SOUTH	10	19
6. BROOKLYN NORTH	8	25
7. STATEN ISLAND	3	10
TOTALS	143	158

INCIDENTS BY DAY/TOUR

	<u>1983 - 1982</u>	<u>1983 - 1982</u>	<u>1983 - 1982</u>	<u>TOTALS</u>
TUESDAY	12 x 8	8 x 4	4 x 12	25 21
FRIDAY	4 8	9 9	8 8	23 25
SUNDAY	13 11	4 7	5 7	22 25
MONDAY	7 3	5 6	10 9	22 18
THURSDAY	7 12	7 7	7 13	21 32
WEDNESDAY	5 3	4 8	7 8	16 19
SATURDAY	9 8	2 4	2 6	13 18

## APPENDIX G

## DISCIPLINARY PROCESSES

D.A.O. #258/82

G-1

POLICE DEPARTMENT  
CITY OF NEW YORK

October 18, 1982

From: Director, Department Advocate's Office

To: Deputy Commissioner, Legal Matters

Subject: DISCIPLINARY PROCESSES

1. The Police Department has a myriad of processes that are used in its disciplinary system. This is due in part to the make-up of its personnel (uniform, civilians, probationary, provisional, part-time, volunteer) and also to various contractual arrangements covering the discipline of affected members and grievance procedures.

2. Although the Administrative Guide sections 318-2 through 318-5, 319-9 and the Patrol Guide sections 118-1 through 118-6 address many of the disciplinary processes, it does not cover all options included in contractual agreements and it is difficult to follow.

3. The following report is an attempt to codify the disciplinary procedures in a single document and is meant to be used as a reference tool not an administrative guide.

## A. COMMAND DISCIPLINE

1. Command Discipline can be initiated in any one of three ways:

1. by a supervisor in ones' own command
2. by a supervisor from outside your command
3. by the Civilian Complaint Reveiw Board

2. If the Command Discipline is initiated by supervisor from either your command or an outside command the procedures to be followed are the same:

1. supervisor that observes a violation prepares a Supervisors Complaint Report, gets a serial number from the command discipline log of the member's command and forwards the report to the member's commanding officer.

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2. the commanding officer investigates to determine if the allegation is substantiated or not.
3. if the allegation is not substantiated file the report and send a duplicate copy to the Department Advocate's Office only if the violation falls into Schedule B categories of the Command Discipline Procedures (PG 118.3).
4. if the allegation is substantiated the commanding officer then decides whether it should be resolved through the Command Discipline Procedures or through Charges and Specifications.
5. if Charges and Specification are to be prepared, refer to the discussion of Charges and Specification later in this report.
6. if the Command Discipline Procedures are to be used the Commanding Officer meets with the member accused informs him of his findings and the proposed disciplinary action.
7. the member receives a copy of the Command Discipline Report Election Form and has three working days to make one of these three choices:
  1. accept the disciplinary action in which case the penalty is imposed.
  2. decline the proposed penalty in which case Charges and Specifications will be prepared. (Charges and Specifications are discussed later in this report.
  3. accept the proposed disciplinary action but request a review of the penalty.
8. if the member accepts the proposed disciplinary action but requests a review of the penalty, the commanding officer notifies the Department Advocate's Office.
9. Department Advocate notifies the Borough Personnel Office of the member concerned to convene a review panel of three (3) members of the Department of the rank of captain or above.
10. Borough Personnel Officer presents the case (the member, complainant, witnesses do not appear unless requested by the Review Panel) the panel reviews and can make one of three determinations:
  1. approve the penalty proposed by the commanding officer.
  2. reduce the penalty proposed by the commanding officer.
  3. increase (up to double) the penalty proposed by the commanding officer.

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11. The decision of the Review Panel is forwarded to the member's commanding officer, who then imposes the penalty.

3. If the Command Discipline is initiated by the Civilian Complaint Review Board it is sent to the member's commanding officer (as having been investigated and substantiated) for penalty only. Therefore, only steps 6 through 11 would be followed.

#### B. CHARGES AND SPECIFICATIONS (UNIFORM)

1. Charges and Specifications can be initiated any one of five (5) ways:

1. by a member's commanding officer or a supervisor in a member's command.
2. by an investigatory unit (F.I.A.U., I.A.D., etc.)
3. by a supervisor from an outside command
4. by a member's option under the Command Discipline Procedure.
5. by the Civilian Complaint Review Board.

2. When it has been decided that Charges and Specifications will be prepared the following processes shall be followed:

1. confer with the Disciplinary Advisory Section of the Department Advocate's Office to determine the appropriateness of Charges and Specifications, whether further investigation is necessary and whether the case may present an unusual legal problem.
2. if there is a legal issue that must be addressed an attorney from the attorney's section, Department Advocate's Office will be conferred with.
3. the wording for the Charges and Specifications will then be given by the Disciplinary Advisory Section.
4. the person initiating the Charges and Specifications prepares seven copies of the Charges and Specifications and sends them along with a 49 detailing the circumstances surrounding the charges to the next higher command for endorsement.

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5. the Charges and Specifications are forwarded to the Department Advocate's Office who presents them to the First Deputy Police Commissioner for his review and endorsement.
6. the Charges and Specifications are sent back to the Department Advocate's Office where they are reviewed for completeness, logged, categorized, given a disciplinary record number and assigned to an advocate.
7. the advocate reviews the case and prepares a prosecutors memorandum including any recommendations for plea purposes and forwards the case folder to the Administrative Lieutenant for his review and recommendation.
8. the Administrative Lieutenant reviews the case and offers his comments and recommendation. He then forwards the case to the managing attorney.
9. the managing attorney reviews the case, confers with the advocate assigned if necessary, makes his recommendation and forwards the case to the Director, Department Advocate's Office for his perusal.
10. the Director, Department Advocate's Office reviews the case and all the recommendations made. He then makes the final decision regarding trial, plea negotiations and the parameters to be used. Once the Director has made a decision regarding the case, the case folder is returned to the assigned advocate and the Trial Calander Section, Department Advocate's Office, is notified to call the respondent in to serve him with a copy of the Charges and Specifications.
11. at the time of the service of the Charges and Specifications the respondent through his attorney will enter a plea of guilty or not guilty before the trial commissioner, negotiations for the purpose of plea bargaining will take place and a future date for trial will be chosen.
12. The Department follows a policy of full discovery of relevant matters

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- and all discoverable material would be exchanged prior to the trial date.
13. once the trial has begun there can be no plea bargaining, all witnesses will be subpoenaed by the Calander Section, Department Advocate's Office.
  14. the trial is conducted in an adversary manner with attorneys representing both the Department and the respondent, a trial commissioner, bridgeman and a stenographer.
  15. when the trial is concluded, the Trial Commissioner writes a decision which may be approved, modified or changed by the Police Commissioner.
  16. once the decision is signed by the Police Commissioner it becomes official. The respondent and the advocate receive a copy and the decision is published in the Personal Orders.

#### C. CHARGES AND SPECIFICATIONS (CIVILIAN)

1. When it has been decided that Charges and Specifications will be prepared against a civilian member of the Department, steps #1 through #6, described in Section B, Charges and Specifications (Uniform) will be followed. It is at this point that the procedures begin to differ.

1. after steps 1 through 6 have been adhered to the Calandar Section, Department Advocate's Office calls the respondent in and serves him with the Charges and Specification.
2. once the member has been served, the Calandar Section, Department Advocate's Office, notifies the Borough Personnel Officer to set up an informal conference at the member's next higher command concerning the instant Charges and Specifications.
3. the informal conference is held at the member's next higher command within five days of the date of service. If the member fails to appear at the conference the personnal officer shall impose the proposed penalty.

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4. if the member appears, the hearing is held and a written decision is rendered within three days.
5. when the decision of the informal conference is rendered the member has four options:
  1. accept the decision; which would conclude the case.
  2. request a statutory hearing in the trial room, in which case all the pertinent papers would be forwarded to the Department Advocate's Office and we would follow the same procedures as utilized for uniform personnel from step 7 through 16 as explained previously.
  3. refuse the penalty but fail to request a hearing within five days of notice in which case the penalty would be imposed.
  4. refuse the penalty and request union grievance procedures; in which case all pertinent papers would be forwarded to the Calendar Section, Department Advocate's Office.
6. if the member chooses option number four, Calendar Section, Department Advocate's Office upon receipt of the case folder, notifies the Office of Labor Policy of the member's request and forwards the case folder to them where a Step II hearing will be held within thirty days.
7. a decision will be rendered by the Office of Labor Policy within ten days of the hearing.
8. when the member receives a copy of the decision he has two options:
  1. accept the decision; which would conclude the case.
  2. within ten days request a hearing with the New York City Office of Municipal Labor Relations.
9. if the member chooses option number two, a hearing is held at the Office of Municipal Labor Relations and a decision is rendered within fifteen days of the hearing date.

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10. when the decision is rendered the member has two options:
  1. accept the decision; which concludes the case.
  2. within fifteen days appeal the decision, which would send the case to binding arbitration under the auspices of the Office of Collective Bargaining.
4. Submitted for your information.

WBF/MOF/mw



William B. Flack  
Director  
Department Advocate's Office

Disciplinary Case Report for 1983

During calendar year 1983 there were 876 formal sets of charges issued. This figure does not include Command Disciplines issued and adjudicated at the command level.

	<u>1983</u>	<u>1982</u>	<u>1981</u>
Total Cases	876	829	732
Adjudicated	790	667	784
Trials	134*	135	187
Trials Not Guilty	18)*	55	55)
Trials Guilty	114)	80	132)
Negotiated	263	254	237
Returned for C.D.	140	87	154
Cases Dismissed	37	46	63
Cases Filed	175*after plus 2 trial	118	134
Deferred Pending Dismissal	21	7	1
Criminal Convictions	20	20	8
Informal Conference (Civilian)	83		

Note: During 1983 some of the dispositions were for cases originating during 1982 or before.

## PATROL GUIDE

118-1



## REPORTING VIOLATIONS OBSERVED BY SUPERIOR OFFICER

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
10-1-72	10-1-72		1 of 1

**PURPOSE**

To report violations by a member of the service to his commanding officer for corrective action.

**PROCEDURE**

Upon observing or becoming aware of a violation of the rules or procedures by a member of the service:

**SUPERIOR OFFICER**

1. Prepare SUPERVISOR'S COMPLAINT REPORT (PD468-123) as follows:
  - a. One copy if superior and member are assigned to same command, for violations listed in Violations Subject to Command Discipline procedure (Schedule A)
  - b. Two copies if superior and member are assigned to same command, for violations listed in Violation Subject to Command Discipline procedure (Schedule B)
  - c. Two copies if superior is assigned to an outside command for violations listed in Violation Subject to Command Discipline procedure (Schedule A)
  - d. Three copies if superior is assigned to an outside command for violations listed in Violation Subject to Command Discipline procedure (Schedule B).
2. Notify station house supervisor of member's command and obtain next serial number from the COMMAND DISCIPLINE LOG (PD 468-102)
  - a. Serial numbers commence with number one each year.

**S.H. SUPERVISOR**

3. Make required entries in COMMAND DISCIPLINE LOG.

**SUPERIOR OFFICER**

4. Submit following number of copies of SUPERVISOR'S COMPLAINT REPORT to the command of the member committing the violation:
  - a. One (1) copy for violations listed in Violations Subject to Command Discipline procedure (Schedule A).
  - b. Two (2) copies for violations listed in Violations Subject to Command Discipline procedure (Schedule B).
5. Submit copy of SUPERVISOR'S COMPLAINT REPORT submitted to an outside command, to commanding officer for file.

NEW YORK CITY POLICE DEPARTMENT

**PATROL GUIDE**

PROCEDURE No.

118-2

PURPOSE

To inform members of the service (uniformed and civilian) of the violations of department regulations which may be adjudicated by Command Discipline.

PROCEDURE

When any of the following violations are brought to the attention of a commanding officer, the commanding officer concerned may initiate Command Discipline:

**SCHEDULE A.**

1. Absence from meal location
2. Failure to sign return roll call
3. Failure to signal or signal improperly
4. Improper uniform or equipment
5. Failure to maintain neat and clean personal appearance
6. Improper or omitted Activity Log entries
7. Improper or omitted entries in department records, forms or reports
8. Smoking as prohibited
9. Unnecessary conversation
10. Failure to lock an unguarded department vehicle
11. Loss of identification card
12. Absence from post or assignment
13. Reporting late for duty
14. Failure to respond, report disposition promptly or acknowledge radio calls directed to member's unit
15. Carrying packages, newspapers or other articles as prohibited while in uniform or department vehicle.
16. Failure to make routine inspections and surveys as required
17. Failure to notify supervising officer when leaving post for department or personal necessity
18. Unauthorized person riding in department vehicle
19. Failure to give name and shield number to person requesting
20. Failure to notify commanding officer when address, phone number, or social condition changes
21. Loss of summons book
22. Failure to have locker secured or properly tagged
23. Failure to sign in and out at court
24. Failure to perform duties in connection with court appearances
25. Failure to perform or improperly perform patrol
26. Failure to present required firearms to the range officer at firearms training cycle
27. Obvious neglect of care for off-duty or service revolver.

## PATROL GUIDE

PROCEDURE No.

118-2



## VIOLATIONS SUBJECT TO COMMAND DISCIPLINE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
11-11-83	11-18-83	83-9	2 of 2

## SCHEDULE B.

1. Loss of shield
2. Loss of revolver
3. Failure to safeguard prisoner (subject to approval of zone commander)
4. Loss of department property
5. Any other violation which, in the opinion of the commanding officer and subject to approval of the zone commander, is appropriate for Command Discipline procedures.

## SCHEDULE C.

All charges and specifications which have been designated Schedule C by the Department Advocate and returned to the command with the approval of the Deputy Commissioner-Trials.

ADDITIONAL  
DATA

The above violations may not be processed as Command Discipline if the violation is aggravated by conditions which make it inappropriate for disposition by Command Discipline or if member concerned requests a department trial.

A commanding officer must confer with the zone commander, prior to adjudicating a third Command Discipline for the same member within a six-month period, to determine if charges and specifications should be instituted.

Zone commanders will inspect Command Discipline records monthly to ascertain that the above procedures are complied with.

## PATROL GUIDE

PROCEDURE No.

118-3



## COMMAND DISCIPLINE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
11-11-83	11-18-83	83-9	1 of 2

PURPOSE

To permit a commanding officer to correct minor violations without resorting to formal charges and a departmental trial.

DEFINITION

Command Discipline - Non-judicial punishment available to a commanding officer to correct minor deficiencies and maintain discipline within his command.

PROCEDURE

Upon receiving a SUPERVISOR'S COMPLAINT REPORT (PD468-123) concerning a member of the service (uniformed or civilian) assigned to his command:

COMMANDING OFFICER

1. Investigate to determine if allegation is substantiated.
2. Indicate findings on report if allegation is not substantiated and:
  - a. For actions described in violations subject to Command Discipline procedure (Schedule B):
    - (1) File original
    - (2) Forward duplicate through channels to Department Advocate.
  - b. For actions described in violations subject to Command Discipline procedure (Schedule A):
    - (1) File the report.
3. Determine if the violations, when substantiated, may be disposed of under Command Discipline.
4. Confer with supervisor who prepared REPORT if required.
5. Schedule interview, if possible, with member concerned on a date when supervisor who prepared REPORT is available.
6. Advise member that one local representative of a line organization may be present at the interview.
7. Inform member of alleged violations and conduct interview
  - a. Do not record minutes.
  - b. Interview will be informal and non-adversary.
8. Give member an opportunity to make a statement in rebuttal and request commanding officer to seek additional information from other persons.
9. Conduct further investigation if necessary.
10. Inform supervisor who prepared REPORT of the results of the investigation and any proposed penalty.
11. Inform member of results of investigation and any penalty.
12. Advise member that he is entitled to:
  - a. Accept finding and proposed penalty, or
  - b. Accept finding but appeal proposed penalty to Command Discipline Review Panel, or
  - c. Decline to accept the finding and proposed penalty and have the matter resolved through formal charges and specifications.

## PATROL GUIDE

PROCEDURE No.

118-3



## COMMAND DISCIPLINE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
11-11-83	11-18-83	83-9	2 of 2

COMMANDING OFFICER (continued) 13. Inform the member that the decision of the Command Discipline Review Panel is final and not subject to review, and that the Panel has the authority to:

- a. Approve proposed penalty, or
- b. Reduce proposed penalty to any corrective measure the commanding officer was authorized to impose, or
- c. Increase proposed penalty to not more than double that proposed by the commanding officer.

14. Give member copy of COMMAND DISCIPLINE REPORT/ELECTION (PD468-124) at close of interview.

UNIFORMED MEMBER OF THE SERVICE 15. Notify commanding officer, in writing, on COMMAND DISCIPLINE REPORT/ELECTION of the option elected within three (3) working days of decision.

## IF MEMBER ACCEPTS FINDING AND PROPOSED PENALTY:

COMMANDING OFFICER 16. Enter disposition on SUPERVISOR'S COMPLAINT REPORT and make any necessary notifications to roll call clerk or Payroll Section.

17. File SUPERVISOR'S COMPLAINT REPORT and COMMAND DISCIPLINE REPORT/ELECTION in command.

18. Forward to Department Advocate, through channels, a copy of SUPERVISOR'S COMPLAINT REPORT if violation is listed in Schedule B of "Violations Subject to Command Discipline."

## IF MEMBER ACCEPTS FINDING AND DECLINES PROPOSED PENALTY:

19. Enter disposition on SUPERVISOR'S COMPLAINT REPORT.

20. Forward to the Department Advocate SUPERVISOR'S COMPLAINT REPORT, COMMAND DISCIPLINE REPORT/ELECTION and a report on Typed Letterhead of the facts of incident and the member's disciplinary history.

## IF MEMBER ELECTS FORMAL CHARGES:

21. Enter disposition on SUPERVISOR'S COMPLAINT REPORT, attach COMMAND DISCIPLINE REPORT/ELECTION and file.

22. Prepare and forward CHARGES AND SPECIFICATION (PD468-121)

23. Enter disposition on DISCIPLINARY ACTION REPORT (PD468-150) and forward one copy to zone commander for his review.

24. Review by the 15th of each month the Command Discipline records of members permanently assigned to the command.

25. Remove and destroy records and dispositions of convictions listed under Schedule "A" on the anniversary date of each entry, provided the member has had no subsequent disciplinary violations.

ADDITIONAL DATA

If the subject of Command Discipline is transferred, the commanding officer of his former command is responsible for the completion of the case. All relevant records shall be forwarded to the member's new commanding officer. If the commanding officer is transferred, the new commanding officer will complete the case.

## PATROL GUIDE

PROCEDURE No.

118-4



**AUTHORIZED PENALTIES  
UNDER COMMAND DISCIPLINE**

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
12-16-83	12-23-83	83-10	1 of 1

PURPOSE

To inform members of the service (uniformed and civilian) of the penalties a commanding officer may impose under Command Discipline.

PROCEDURE

When a Command Discipline allegation is substantiated:

COMMANDING OFFICER

1. Impose one of the following penalties:
  - a. Forfeiture of up to five (5) days vacation or accrued time.
  - b. Forfeiture of up to four (4) regular days off. (Assessment of only one (1) day per each excusal period).
  - c. Revocation of permission to engage in outside employment for a fixed period of time, not to exceed thirty (30) days, if the violation is related to the outside employment.
  - d. Restrict out-of-command assignments which pay "portal-to-portal" and overtime for a fixed period, not to exceed five (5) such assignments.
  - e. Revocation of accrued time due to lateness.

NOTE

The above penalties DO NOT prohibit a commanding officer from:

- a. Warning and admonishing orally
- b. Warning and admonishing in writing, copy to be filed with the papers
- c. Changing assignment within the command either for a fixed period or indefinitely.

ADDITIONAL DATA

In Schedule C cases, the member's commanding officer must impose a penalty consisting of forfeiture of a minimum of six (6) days to a maximum of ten (10) days vacation or other accrued leave.

A disciplined member may choose to satisfy a penalty by performing extra tours of duty at straight time in lieu of forfeiting vacation or other accrued leave. Such tours and the time period during which they must be performed will be determined by the commanding officer. A penalty not satisfied within the specified period will be immediately deducted from the member's accrued leave.

## PATROL GUIDE

PROCEDURE No.

118-6



## SERVICE OF CHARGES AND SPECIFICATIONS

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
12-16-83	12-23-83	83-10	1 of 1

PURPOSE

To formally notify a member of the service that he is charged with violating department regulations.

PROCEDURE

Upon receipt of CHARGES AND SPECIFICATIONS (PD468-121) from originating command:

DEPARTMENT  
ADVOCATE

1. Serve original and duplicate CHARGES AND SPECIFICATIONS and notice of hearing upon member concerned. (If personal service cannot be made, see ADDITIONAL DATA below).

NOTE

CHARGES AND SPECIFICATIONS will be served upon a suspended member of the service within ten (10) business days of the suspension. (Exceptions may be made, with the approval of the Deputy Commissioner-Trials, when extenuating circumstances exist).

## RESPONDENT

2. Keep copy of CHARGES AND SPECIFICATIONS and the notice of hearing.
3. Sign and return the original copy to the person serving the charges.

MEMBER OF  
THE SERVICE

4. Sign original copy as a witness.
5. Forward original, immediately, to Department Advocate, Trial Calendar Unit.

ADDITIONAL  
DATA

If personal service of the CHARGES cannot be made, service may be effected:

- a. By mailing the CHARGES AND SPECIFICATIONS to the person to be served at his last known residence by registered or certified mail, return receipt requested, OR delivering the CHARGES AND SPECIFICATIONS to a person of suitable age and discretion at his place of business, dwelling or usual place of abode of the person to be served. Proof of service will be filed with the Deputy Commissioner-Trials or the Commanding Officer, Operations Unit. Service is complete three (3) days after filing.
- b. By delivering a copy of the CHARGES AND SPECIFICATIONS to the agent of the person to be served.
- c. Where service under subdivisions "a" and "b" cannot be made, affix CHARGES AND SPECIFICATIONS either to the door of the actual place of business, dwelling or usual place of abode, of the person to be served and by mailing (registered or certified, return receipt requested) the CHARGES AND SPECIFICATIONS to the person at his last known residence. Proof of such service will be filed with the Deputy Commissioner-Trials or the Commanding Officer, Operations Unit. Service is complete three (3) days after filing.
- d. In such manner as the Deputy Commissioner-Trials directs, upon motion without notice, if service is impractical under subdivisions "a," "b" or "c."

## PATROL GUIDE

PROCEDURE No.

118-7



## PROCESSING CIVILIAN COMPLAINTS

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
4-29-83	5-6-83	83-4	1 of 3

**PURPOSE**

To record and initiate investigation of complaints from civilians alleging misconduct by members of the service (uniformed or civilian).

**SCOPE**

Complaints against members of the service may be made at any patrol precinct, traffic unit, office of the Civilian Complaint Review Board, or any other office of the Department including the office of the Police Commissioner or a Deputy Commissioner.

**PROCEDURE**

Upon receipt of a complaint from a civilian alleging misconduct by a member of the service (uniformed or civilian):

**MEMBER OF  
THE SERVICE  
RECEIVING  
COMPLAINT**

1. Accept complaint as follows:
  - a. Made in person:
    - (1) Interview complainant
    - (2) Give complainant one copy of CIVILIAN COMPLAINT REPORT (PD313-154) to prepare in his own handwriting
    - (3) Furnish assistance in preparing the form, if requested (complainant or person assisting enter under "Details of Complaint" the reason assistance was given)
    - (4) Have representative of a complainant, person assisting and the complainant sign the form
  - b. Received by mail:
    - (1) Treat letter as original copy of CIVILIAN COMPLAINT REPORT ordinarily prepared by complainant
    - (2) Enter CCRB serial number in a conspicuous location in large numerals at the top of the original writing
  - c. Received by telephone:
    - (1) Prepare CIVILIAN COMPLAINT REPORT in own handwriting and treat as original copy of complaint
    - (2) Advise complainant that he will receive a written acknowledgement.

**NOTE**

To prevent an interruption or delay in vital services, the telephone switchboard operator will refer an allegation of misconduct to the desk officer who will record pertinent details of the allegation.

2. Inform Civilian Complaint Desk member immediately by phone of:
  - a. Summary of alleged misconduct
  - b. Time complainant arrived, or letter or call was received
  - c. Name and address of complainant. Indicate if anonymous or transient
  - d. Rank, name, shield number and command of member complained of, if known
  - e. Reporting command
  - f. Name, rank and command of member transmitting information.
3. Notify the supervising officer or duty captain in the next higher command immediately, if there is any doubt as to the identity of the member against whom the complaint is lodged.

## PATROL GUIDE

PROCEDURE No.

118-7



MEMBER OF  
THE SERVICE  
RECEIVING  
COMPLAINT  
(continued)

PROCESSING CIVILIAN COMPLAINTS			
DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
4-29-83	6-8-83	83-4	2 of 3

COMMANDING  
OFFICER

MEMBER OF  
THE SERVICE  
RECEIVING  
COMPLAINT

4. Obtain Civilian Complaint Review Board or Chief of Operations number assigned and time entered in records of Civilian Complaint Desk.
5. Ask complainant and witnesses to remain if:
  - a. Requested by Civilian Complaint Desk pending the arrival of an investigator
  - b. Complaint has been assigned a Chief of Operations number and the complainant is a transient.
6. Request duty captain, or captain or above from the next higher command, to respond and initiate investigation of complaints alleged in subdivision b, step 5, above.
7. Have typewritten copies of the CIVILIAN COMPLAINT REPORT prepared:
  - a. Complaints assigned a Civilian Complaint Review Board number — five (5) copies
  - b. Complaints assigned a Chief of Operations number — six (6) copies.
8. Review and sign typewritten copies of the CIVILIAN COMPLAINT REPORT.
9. Give one typewritten copy, other than the original, to the complainant as receipt.
10. Note on the reverse side of Department copies of the complaint:
  - a. If complainant is apparently under the influence of an intoxicant or drug
  - b. If complainant is apparently suffering from a mental disorder or evidences any condition bearing on his credibility
  - c. The physical condition of the complainant, noting any visible marks or injuries relative to the complaint.
11. Enter in Command Log:
  - a. Name and address of complainant
  - b. Time of complainant's arrival and departure or time of receipt of letter or telephone call
  - c. Identity of member of the service complained of, if known
  - d. Whether complaint is a matter for the Civilian Complaint Review Board or the Chief of Operations and serial number assigned.
12. Have two (2) copies of Typed Letterhead prepared in a command not maintaining a Command Log, addressed to the commanding officer, containing the information described in step No. 11.
13. Endorse and forward original Typed Letterhead to next higher command maintaining a Command Log.
14. Have duplicate filed.
15. Process copies of CIVILIAN COMPLAINT REPORT as follows:
  - a. Complaints within Civilian Complaint Review Board jurisdiction:
    - (1) Forward original typewritten copy, two (2) additional typewritten copies and handwritten copy of complaint to Civilian Complaint Review Board, direct
    - (2) File one (1) typewritten copy.

## PATROL GUIDE

PROCEDURE No.

118-7



## PROCESSING CIVILIAN COMPLAINTS

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
4-29-83	5-6-83	83-4	3 of 3

MEMBER OF  
THE SERVICE  
RECEIVING  
COMPLAINT  
(continued)

- b. Complaints within Chief of Operations jurisdiction:
- (1) Type distribution of copies and identity of investigating command on reverse side of all copies except complainant's copy
  - (2) Forward original typewritten copy and complainant's handwritten copy to Chief of Operations direct
  - (3) Forward one (1) typewritten copy in sealed envelope to investigating command
  - (4) Forward one (1) typewritten copy in sealed envelope to next higher command above investigating command
  - (5) Forward one (1) typewritten copy in sealed envelope to parent command of originating command
  - (6) File one (1) typewritten copy.

ADDITIONAL  
DATA

A complainant seeking to register a complaint which does not affect this Department will be referred to the agency concerned. The desk officer will explain the reason for a referral to the complainant and assist the complainant in lodging the complaint in any way possible with the proper agency. However, a complaint against a member of another New York City law enforcement agency, i.e., Transit Police, Housing Authority Police, Department of Correction, Traffic Enforcement Agents or a court officer will be accepted and processed in accordance with this procedure. In every case, a Command Log entry MUST be made and, if appropriate, an OFFICIAL LETTERHEAD prepared.

A member of the service (uniformed or civilian) may prefer a civilian complaint against another member of the service. Investigation of such complaint will be conducted by the commanding officer(s) assigned by the Commanding Officer, Investigation Review Section, Office of the Chief of Operations.

RELATED  
PROCEDURE

Allegations of Corruption Against Members of the Service (P.G. 108-21)

## PATROL GUIDE

118-8



## CIVILIAN COMPLAINT-WITNESS' STATEMENT

DATE	DATE RECEIVED	REVISION NUMBER	PAGE
10-1-72	10-1-72		1 of 1

**PURPOSE**

To record and process statements of witnesses to incidents from which a civilian complaint arises.

**PROCEDURE**

When a person seeks to give a statement as a witness to an incident which is the matter of a civilian complaint:

*Witness present in Department facility when related civilian complaint made:*

**MEMBER OF THE SERVICE RECEIVING STATEMENT**

1. Interview witness.
2. Give witness one copy of CIVILIAN COMPLAINT REPORT (PD 313-154) to prepare in his own handwriting.
3. Have witness sign the CIVILIAN COMPLAINT REPORT containing his statement.
4. Cause same number of typewritten copies of statement to be prepared as are prepared for the related complaint. (See Processing Civilian Complaints procedure).
5. Enter same serial number on the witness' statement as is assigned to the related civilian complaint.
6. Review and sign typewritten copies of statement.
7. Give one typewritten copy, other than the original, to the witness as his receipt.
8. Note observations on reverse side of the copies that are to be retained in the Department.
9. Attach one copy of statement to each copy of the related civilian complaint.
10. Process in accordance with Processing Civilian Complaints procedure.

**NOTE**

If witness appears at station house after CIVILIAN COMPLAINT REPORT has been forwarded or at a command other than where the original complaint was lodged, the station house supervisor will comply with all procedures listed above. In addition, the station house supervisor will attempt to obtain and enter the related Civilian Complaint serial number on the form.

**RELATED PROCEDURE**

Processing Civilian Complaints.

## PATROL GUIDE

PROCEDURE No

118-9



<b>INTERROGATION OF MEMBERS OF THE SERVICE</b>			
DATE ISSUED 6-25-82	DATE EFFECTIVE 7-2-82	REVISION NUMBER 82-5	PAGE 1 of 3

PURPOSE

To protect the rights of the member of the service (uniformed or civilian) in an official department investigation.

PROCEDURE

Prior to questioning a member of the service uniformed or civilian) who is the subject or a witness in an official investigation:

INTERROGATING  
OFFICER

1. Permit member to obtain counsel if:
  - a. A serious violation is alleged or
  - b. Sufficient justification is presented although the alleged violation is minor.
2. Notify member concerned two (2) business days prior to date of hearing to permit member to obtain and confer with counsel.
3. Inform member concerned of:
  - a. Rank, name and command of person in charge of investigation.
  - b. Rank, name and command of interrogating officer.
  - c. Identify of all persons present.
  - d. Whether he is subject or witness in the investigation, if known.
  - e. Nature of accusation.
  - f. Identities of witnesses or complainants (address need not be revealed) except those of confidential source or field associate unless they are witnesses to the incident.
  - g. Information concerning all allegations.
4. Permit representative of department line organization to be present at all times during interrogation.
5. Conduct interrogation at reasonable hour, preferably when member is on duty during daytime hours.
6. Insure that interrogation is recorded either mechanically or by a department stenographer.
  - a. The Department Advocate will determine if a transcript is required in non-criminal or minor violation cases.
7. Do not use:
  - a. "Off the record" questions.
  - b. Offensive language or threats (transfer, dismissal or other disciplinary punishment).
  - c. Promises of reward for answering questions.
8. Regulate duration of question periods with breaks for meal, personal necessity, telephone call, etc.
9. Record all recesses.

## PATROL GUIDE

PROCEDURE No.

118-9



INTERROGATION OF MEMBERS OF THE SERVICE			
DATE ISSUED 6-26-82	DATE EFFECTIVE 7-2-82	REVISION NUMBER 82-5	PAGE 2 of 3

NOTE

Interrogations may be conducted before or after CHARGES AND SPECIFICATIONS (PD468-121) have been served. An interrogation conducted after service of charges must be completed at least 10 days prior to the date of department trial except as directed by the Deputy Commissioner-Trials.

10. Conduct interrogation within a reasonable time after disposition of criminal matter, when member was arrested, indicated or under criminal investigation.

DEPARTMENT  
ADVOCATE

11. Furnish member with copy of tape of interrogation no later than twenty (20) days after service of charges.
- If interrogation was conducted after service of charges, tape must be furnished to member no later than (5) days after interrogation.
  - Furnish transcript, if one was prepared, by 1000 hours on trial date, in all cases.

NOTE

When the department trial date is scheduled immediately after CHARGES AND SPECIFICATIONS are served, the Deputy Commissioner-Trials will grant the department reasonable time to conduct an interrogation. In any event, a copy of the tape and a copy of the transcript must be furnished as indicated above, if appropriate.

COMMANDING  
OFFICER OF MEMBER

12. Assign member to 2nd Platoon, if possible.

MEMBER OF THE

13. Answer questions specifically directed and narrowly related to official duties. (Refusal shall result in member's suspension from duty).
14. Submit OVERTIME REPORT (PDI38-064) if lost time accrues as result of investigation.

SUPERVISOR IN  
CHARGE OF  
INVESTIGATION

15. Notify the station house officer immediately when member of the service is directed to leave his post or assignment to report for an official investigation.
16. Insure that notifications concerning official investigations are properly recorded in appropriate department records when made to or recorded from:
- Complainants
  - Witnesses
  - Lawyers
  - Respondents
  - Other interested parties.

## PATROL GUIDE

PROCEDURE No.

118-9

INTERROGATION OF  
MEMBERS OF THE SERVICE

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
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S.H. OFFICER

17. Record in appropriate department records and notify the investigating command immediately of notifications or messages received from:
- Lawyers
  - Witnesses
  - Complainants
  - Other interested parties involved in the subject investigation.

ADDITIONAL DATA

If a member of the service (uniformed or civilian) is under arrest or is the subject of a criminal investigation or there is a likelihood that criminal charges may result from the investigation, the following warnings shall be given to the member concerned prior to commencement of the interrogation:

"I wish to advise you that you are being questioned as part of an official investigation by the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to departmental charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statement may be used against you in relation to subsequent departmental charges".

The questions and answers resulting from the interrogation conducted pursuant to this procedure are confidential. They are not to be revealed nor released to any person or agency outside the department without prior written approval of the Deputy Commissioner-Legal Matters. If a subpoena duces tecum is received for any such questions and answers, the Legal Bureau should be contacted immediately.

**PATROL GUIDE**

PROCEDURE No.

118-10

**CAUSE FOR SUSPENSION OR MODIFIED ASSIGNMENT**

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
12-16-83	12-23-83	83-10	1 of 2

**PURPOSE**

To describe those actions for which any member of the service may be suspended or a uniformed member of the service, placed on modified assignment.

**DEFINITION**

Ranking Officer - For the purposes of this procedure, a ranking officer is a member of the service in the rank of sergeant or above.

1. The Police Commissioner, a Deputy Commissioner, a hearing officer assigned to the Office of Deputy Commissioner-Trials, the Chief Surgeon, Deputy Chief Surgeon, Executive Director, Civilian Complaint Review Board, Director-Department Advocate's Office or the Director of Operations, Motor Transport Division may suspend a member of the service or place a uniformed member of the service on modified assignment when, in his opinion, such action is necessary.
2. A ranking officer in-charge or in-command **MUST** suspend a member of the service when the member:
  - a. Refuses to perform assigned duties at roll call or during tour of duty
  - b. Refuses an order of a supervisory officer to answer questions specifically directed and narrowly related to the performance of his official duties, after being informed of his rights as specified in procedure entitled "Interrogation of Members of the Service"
  - c. Is absent without leave for five (5) consecutive days.
  - d. Refuses to obey a lawful order by a ranking officer.

Suspension by a ranking officer is by authority of the First Deputy Commissioner. Prior conferral or approval is not required.
3. A ranking officer in-charge **MAY** place a uniformed member of the service on modified assignment or recommend to the First Deputy Commissioner, through the Department Advocate, that a member of the service be suspended when the member:
  - a. Is indicted by a Grand Jury
  - b. Is arrested
  - c. Is served with **CHARGES AND SPECIFICATIONS** (PD 468-121) alleging the wrongful solicitation and/or receipt of monies or other gratuities
  - d. Is unfit for duty due to effects of an intoxicant or drug or after effects thereof.



# PATROL GUIDE

PROCEDURE No.

118-10

## CAUSE FOR SUSPENSION OR MODIFIED ASSIGNMENT

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
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### ADDITIONAL DATA

A supervisory officer who reasonably believes that a uniformed member of the service is unfit for duty due to effects of an alcoholic intoxicant will notify the precinct commander/duty captain who will respond, conduct an investigation, and, based upon common sense standards, determine if the member is fit for duty. If found unfit, whether on or off duty, the supervisory officer making such determination will **SUSPEND** the member or place him/her on **MODIFIED ASSIGNMENT**; apprise the member concerned of the availability of the Counselling Service program, and, if the member desires to participate, contact the Counselling Service **DIRECT**, during normal business hours, or, during other than business hours, request conferral with a counselor by contacting the Sick Desk supervisor. The precinct commander/duty captain will also prepare four (4) copies of a report on Typed Letterhead detailing observations and circumstances leading to the determination of unfitness and the action taken, and forward copies of the report to the First Deputy Commissioner, the Chief of Operations, and the Chief of Personnel. The remaining copy will be filed in the command.

An officer in charge or in command may recommend that a uniformed member be placed on modified assignment when there is no apparent misconduct and no disciplinary action is contemplated. When facts or circumstances indicate that such an assignment would be in the best interests of the Department, the supervisor may recommend such action to the First Deputy Commissioner through the Department Advocate's Office.

Personnel assigned to the First Deputy Commissioner's Office or the Department Advocate's Office are available for consultation concerning the authority to suspend or place a uniformed member on modified assignment.

A civilian member of the service **MAY NOT** be placed on modified assignment.

### RELATED PROCEDURES

Interrogation of Members of the Service (P.G. 118-9)  
 Modified Assignment (P.G. 118-12)  
 Suspension from Duty (P.G. 118-11)  
 Removal And Restoration Of Firearms (P.G. 120-9)  
 Suspension of Civilian Employee (A.G. 319-18)

## PATROL GUIDE

PROCEDURE No.

118-11



## SUSPENSION FROM DUTY

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12-16-83	12-23-83	83-10	1 of 2

**PURPOSE** To temporarily prohibit a uniformed member of the service from performing assigned duties.

**PROCEDURE** When a uniformed member of the service is suspended.

**RANKING OFFICER IN CHARGE**

1. Inform member concerned that he is suspended from duty and the reason.
2. Direct member to surrender all department property and all revolvers or pistols owned or possessed.
3. Direct member to report in person, if not on sick report, each Monday, Wednesday and Friday to residence precinct. (Captain and above will report to residence borough command).
4. Inform suspended member that he may request waiver of reporting requirement by submitting form "Agreement To Accept Service of Notice" (Misc. 138) at residence precinct or Department Advocate's Office.

**NOTE** If suspended member prepares form in residence precinct, the precinct commander will forward a copy of the form to the Department Advocate's Office. If the form is prepared in the Department Advocate's Office, Department Advocate personnel will notify the desk officer, precinct of residence that the suspended member no longer has to report.

**UNIFORMED MEMBER OF THE SERVICE**

5. Surrender, promptly, all department property and all pistols or revolvers owned or possessed.
6. Do not wear uniform while suspended.

**RANKING OFFICER IN CHARGE**

7. Enter facts concerning suspension in Command Log.
8. Notify supervisor on duty at Operations Unit and member's residence precinct if below rank of captain, or residence borough command if captain or above.
9. Follow procedure for removal of property as outlined in Patrol Guide procedure 120-9.
  - a. Property other than firearms, shield, and I.D. Card will be retained at member's command.
10. Submit report, on Typed Letterhead, within twenty-four (24) hours, to First Deputy Commissioner, Chief of Operations, Deputy Commissioner-Trials and member's commanding officer.

**SUPERVISOR ON DUTY, OPERATIONS UNIT**

11. Inform ranking officer in charge that CHARGES AND SPECIFICATIONS (PD468-121) must be forwarded within 72 hours of the suspension.

**MEMBER'S COMMANDING OFFICER**

12. Have CHARGES AND SPECIFICATIONS prepared.

**PATROL GUIDE**

PROCEDURE No.

118-11

**SUSPENSION FROM DUTY**

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IF SUSPENDED MEMBER ELECTS NOT TO SUBMIT WAIVER (AGREEMENT TO ACCEPT SERVICE OF NOTICE)

**UNIFORMED  
MEMBER  
CONCERNED**

13. Report to residence precinct each Monday, Wednesday and Friday.

**DESK OFFICER,  
RESIDENCE  
PRECINCT**

14. Direct member to prepare REPORT OF SUSPENDED MEMBER'S VISIT (PD408-061) in his presence.

15. Complete appropriate captions under section entitled "Witnessed By".

16. Make entry in Command Log and deliver REPORT to Integrity Officer.

**INTEGRITY  
OFFICER**

17. Maintain a list of uniformed members of the service who are suspended and are required to report to the residence precinct.

18. Check Telephone Record and FATN messages each day to insure that uniformed members who are required to report are added to the list as required.

**NOTE**

If doubt exists regarding reporting by uniformed members of the service, contact Department Advocate's Office, Trial Calendar Unit.

19. Monitor appearances of suspended uniformed members of the service.

20. Inform commanding officer when suspended member fails to report as required.

**COMMANDING  
OFFICER  
RESIDENCE  
PRECINCT**

21. Prepare SUPERVISOR'S COMPLAINT REPORT (PD468-123) if member fails to report as required.

22. Forward SUPERVISOR'S COMPLAINT REPORT to members commanding officer for further disciplinary action, if required.

**ADDITIONAL  
DATA**

A uniformed or civilian member of the service under suspension who desires to be restored to duty or a uniformed member under suspension who desires to be placed on Modified Assignment will notify the Department Advocate and request a hearing to present a motion to restore.

**RELATED  
PROCEDURES**

Cause for Suspension or Modified Assignment (P.G. 118-10)  
Modified Assignment (P.G. 118-12)  
Preparation of Charges and Specifications (P.G. 118-5)  
Suspension of Civilian Employee (A.G. 319-18)  
Removal and Restoration of Firearms (P.G. 120-9)  
Residence Reports (A.G. 320-2)

## PATROL GUIDE

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## MODIFIED ASSIGNMENT

2-14-80

2-21-80

80-2

1 of 1

**PURPOSE**

To assign a uniformed member of the service to non-enforcement duties pending determination of fitness to perform police duties.

**PROCEDURE**

When placing a uniformed member of the service on Modified Assignment:

**COMMANDING OFFICER**

1. Inform member that assignment is contingent upon being available for prompt departmental disciplinary trial.
2. Remove firearms, shield, Identification Card and other department property and process as Patrol Guide procedure 120-9. (Member may retain Department Manual).
3. Direct member to report in civilian clothes at 0900, the next business day to Personnel Orders Section.
4. Enter facts in Command Log.
5. Notify supervisor on duty at Operations Unit immediately.
6. Submit report, within 24 hours, to the First Deputy Commissioner and the Chief of Operations.

**UNIFORMED MEMBER OF THE SERVICE CONCERNED**

7. Report to Employment Section for new identification card.

**ADDITIONAL DATA**

The First Deputy Commissioner must approve the return of firearms, shield and identification card to a uniformed member of the service on modified assignment unless the Police Commissioner or Deputy Commissioner-Trials directs return of such property.

A uniformed member of the service on modified assignment who desires to be restored to duty will notify the Department Advocate and request a hearing to present a motion to restore.

A member continues to accrue vacation and is permitted to take vacation or authorized leave if there is no conflict with appearance at criminal or disciplinary trial.

Members who are defendants in a criminal action shall not appear in court on these cases while on duty. Such appearances shall be made on regular days off or with authorized excusals.

If uniformed member on a modified assignment does not carry out his duties in a satisfactory manner, the commanding officer of the unit may recommend to the First Deputy Commissioner, through channels, that the member be suspended.

**RELATED PROCEDURES**

Cause for Suspension or Modified Assignment (P.G. 118-10)  
Removal and Restoration of Firearms (P.G. 120-9)

## PATROL GUIDE

PROCEDURE No.

118-13



## LOSS OF PISTOL OR REVOLVER

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
7-1-83	7-8-83	83-6	1 of 2

PURPOSE

To investigate circumstances when a uniformed member of the service reports the loss of his pistol or revolver.

PROCEDURE

When a uniformed member of the service loses his pistol or revolver:

UNIFORMED  
MEMBER  
CONCERNED

1. Notify desk officer, precinct of occurrence immediately.

NOTE

In Nassau or Suffolk Counties, notify desk officer, 105 Precinct. In Westchester, Orange, Putnam, Rockland Counties, notify desk officer, 50th Precinct. If loss occurs in other than New York City or the residence counties notify Operations Unit direct.

DESK  
OFFICER

2. Notify local police agency immediately if loss occurs outside New York City and request teletype notification to this Department.
3. Report loss to commanding officer at first opportunity and include all information available.
4. Notify commanding officer/duty captain and Operations Unit immediately.
5. Have COMPLAINT REPORT (PD313-152) prepared and record facts in Command Log.
  - a. Transmit alarm via-PATN.
  - b. Refer COMPLAINT REPORT to precinct detective unit.

NOTE

A COMPLAINT REPORT will NOT be prepared nor will an alarm be transmitted if the loss occurred outside New York City. However, a Command Log and/or Telephone Record entry will be made.

DUTY  
CAPTAIN

6. Notify Internal Affairs Division Action Desk and enter Internal Affairs Division log number under details on COMPLAINT REPORT, if prepared, or in TELEPHONE RECORD if COMPLAINT REPORT is not required.
7. Conduct immediate investigation if loss occurred within City.
  - a. Communicate by telephone with agency receiving report if loss occurred outside City.
8. Prepare and forward report on Typed Letterhead to commanding officer of member reporting loss.
  - a. Include transcript of Command Log entry concerning loss.

## PATROL GUIDE

PROCEDURE No.

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## LOSS OF PISTOL OR REVOLVER

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
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COMMANDING  
OFFICER OF  
MEMBER

9. Have notation made on member's FORCE RECORD (PD406-143) of time and date of the Command Log entry.
10. Prepare five (5) copies of report on Typed Letterhead giving particulars, results of investigation and any action taken or anticipated and forward:
  - a. ORIGINAL - Commanding Officer, Employee Management Division (DIRECT)
  - b. Copies to:
    - (1) Chief of Operations (THROUGH CHANNELS)
    - (2) Police Academy, Firearms and Tactics Section
    - (3) Internal Affairs Division (DIRECT)
    - (4) Stolen Property Inquiry Section for notation on PISTOL INDEX CARD (PD524-101).
11. Prepare two (2) copies of SUPERVISOR'S COMPLAINT REPORT (PD468-123).
12. Determine if disciplinary action should be taken.
13. Initiate Command Discipline or formal charges, if circumstances warrant.
14. Note disposition on SUPERVISOR'S COMPLAINT REPORT and
  - a. Forward duplicate, through channels, to the Department Advocate (Schedule "B" ONLY)
  - b. File the original.

RELATED  
PROCEDURES

Violations Subject To Command Discipline (P.G. 118-2)  
Unusual Occurrence Report (P.G. 116-7)

## PATROL GUIDE

118-14


 REMOVAL OF FIREARMS FROM  
 INTOXICATED MEMBER OF THE SERVICE

10-1-72

10-1-72

1 of 1

<b>PURPOSE</b>	To remove firearms from an intoxicated member of the service.
<b>DEFINITION</b>	Intoxicated — unfit for duty due to the influence of alcohol, narcotics or other drug.
<b>PROCEDURE</b>	Upon observing a member of the service who is intoxicated:
<b>SUPERIOR OFFICER</b>	<ol style="list-style-type: none"> <li>1. Remove firearms from member.</li> <li>2. Order member to remain at station house or other suitable location.</li> <li>3. Request the Medical Section — Sick Desk to have the reserve surgeon respond.</li> <li>4. Prevent member from leaving if he is placed on reserve by the reserve surgeon.</li> <li>5. Arrest member if he attempts to leave. (Charge — Public Intox.)</li> <li>6. Return firearms to member if found fit for duty by surgeon.</li> </ol>
<b>RELATED PROCEDURES</b>	Suspension Removal of Firearms at the Direction of a Police Surgeon

**PROBATIONARY POLICE OFFICER, POLICE ELIGIBLE OR  
CIVILIAN EMPLOYEE INVOLVED IN A POLICE INCIDENT**

11-8-74

11-18-74

74-6

1 of 1

- PURPOSE** To notify units concerned when a probationary police officer, civilian employee or person eligible for appointment to the Department is involved in a police incident.
- PROCEDURE** On obtaining information:
- MEMBER OF THE SERVICE**
1. Notify commanding officer of all facts.
- COMMANDING OFFICER**
2. Determine if the involvement of the person would affect probationary evaluation or eligibility.
  3. Prepare three (3) copies of a report containing pertinent information and forward:
    - a. To Commanding Officer, Applicant Investigation Section, for police eligibles
    - b. To Commanding Officer, Performance Evaluation Section, for probationary police officers or civilian employees.
      - (1) If probationary police officer is assigned to the Police Academy, prepare and forward an additional copy for the Commanding Officer, Police Academy.
- NOTE** Commanding officers will be mindful of the fact that the conduct of probationary police officers is evaluated while both on and off duty.

**PATROL GUIDE**

PROCEDURE NO

118-~~32~~



MEMBER OF THE DEPARTMENT ARRESTED			
DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
2-11-77	2-18-77	77-3	1 of 2

**PURPOSE**

To record and investigate cases when members of the Department are arrested.

**PROCEDURE**

When a member of the Department is arrested:

**MEMBER OF THE DEPARTMENT**

1. Notify promptly or have a responsible person promptly notify, the operations officer on duty at Operations Unit, Office of the Chief of Operations (374-5580), including:
  - a. Time and date of arrest
  - b. Place of occurrence
  - c. Present location of member or place where he will be available for interview
  - d. Identity of all persons involved in the incident, including local police authorities
  - e. Manner in which member became involved
  - f. Sickness or injury of member or other persons involved
  - g. Identity and statements of witnesses
  - h. Title and description of the law violated
  - i. Specific charges against the member
  - j. Date and location of court appearance
  - k. Temporary or final disposition.
2. Notify commanding officer without delay.
3. Inform commanding officer, at least once every thirty (30) days, of the status of the case including:
  - a. Adjournment dates
  - b. Final disposition
  - c. If an appeal has been taken
  - d. Disposition of the appeal.

**NOTE**

Commanding officer of member is required to contact arrested member within 24 hours of court appearance to ascertain status of case.

**OPERATIONS OFFICER AT OPERATIONS UNIT**

4. Notify commanding officer of member immediately:
  - a. If command to which the member is assigned is closed, make notification at 0900 the next regular business day.
5. Notify as follows:

ARREST MADE IN

NOTIFY

New York City

Commanding Officer, Field Services Area where arrest effected

11.1

6-33



**PATROL GUIDE**

PROCEDURE No

118-12

**MEMBER OF THE DEPARTMENT ARRESTED**

DATE ISSUED	DATE EFFECTIVE	REVISION NUMBER	PAGE
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**ARREST MADE IN**

**NOTIFY**

Westchester,  
Rockland, Orange  
or Putnam

Commanding Officer,  
Bronx Field Services Area

Nassau or  
Suffolk

Commanding Officer,  
Queens Field Service Area

Any other location

Internal Affairs Division

**COMMANDING  
OFFICER, FIELD  
SERVICES AREA**

**RANKING  
OFFICER  
ASSIGNED**

**NOTE**

**MEMBER OF THE  
DEPARTMENT  
ARRESTED**

**COMMANDING  
OFFICER,  
ARRESTED MEMBER**

6. Assign a captain or above, to investigate.
  7. Communicate by phone with arresting authorities to determine if there are witnesses to the incident.
- Investigating officer is authorized to use a department vehicle within city and the six residence counties without prior permission.
8. Advise the Operations Officer on duty at Operations Unit, of facts.
  9. Submit report on Typed Letterhead to the Chief of Operations within 24 hours.
  10. Ascertain status of the case no later than 24 hours after each court appearance of the member.
  11. Prepare and forward a report, indicating status and adjournment date, to First Deputy Commissioner, Chief of Operations, Chief of Personnel and Field Services Area commander responsible for the investigation.
  12. Notify commanding officer as soon as possible if charges are dismissed.
  13. Telephone the Department Advocate and the Area commander responsible for the investigation of the disposition of all criminal charges if department charges have been preferred.

## APPENDIX H

## DOCUMENTS RELATING TO:

- POLICE STRESS
- EARLY INTERVENTION PROGRAM
- PSYCHOLOGICAL CANDIDATE SCREENING

EMD #962  
 Pers. Bur.# A625  
 CU # 263

POLICE DEPARTMENT  
 CITY OF NEW YORK

July 7, 1983

Memorandum For: Chief of Operations

Subject: THE NEW YORK CITY POLICE DEPARTMENT'S  
 EARLY INTERVENTION PROGRAM/EARLY WARNING SYSTEM  
 A HISTORY  
 AND  
 OUTLINE OF FUNCTIONS

1. The Early Intervention Program (previously known as the Early Warning system) of the New York City Police Department is responsible for the identification of personnel concerns at the inception of observable deviation. The objectives of the Early Intervention Program are:

- (a). To assure the citizenry that the Police Officer they come in contact with is capable of functioning within the norms expected of a New York City Police Officer.
- (b). To prevent Department personnel from being a source of embarrassment to themselves and/or to the Police Department.
- (c). To assure that each individual member of the service is provided with professional care when such care is deemed appropriate.
- (d). To provide crisis intervention services for members of the Department in an attempt to alleviate the development of psychopathological disorders.

2. The Early Intervention Program (E.I.P) had its inception in April of 1973, when, then Police Commissioner, Donald Cawley established the Violence Prone Task Force. The Task Force was established as a direct result of a shooting incident that resulted in the death of a youth, community unrest and dismissal of the officers involved. The Violence Prone Task Force had as a main objective the detection of Violence Prone Personnel. The original goal was to detect the violence prone officer and remove him from contact with the citizenry. The Task Force was placed under the direction of the First Deputy Police Commissioner. As the investigations proceeded, the identification process uncovered a broad range of personal problems which members of the Department were attempting to and/or failing to deal with.

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The Violence Prone List, as it was called, didn't highlight the violent individual per se. It highlighted personnel with personal problems that manifested in a scale that ran from poor police performance to violent and criminal acts. Some of the personal problems observed were:

- Marriage and Family Difficulties
- Financial Problems
- Addictive Problems in the officer or immediate family
- Psychopathology
- Socialization Problems
- Training Problems
- Supervisor Conflicts
- Poor Supervision
- Real and Preconceived Concerns

3. The Early Intervention Program has been continually evolving to its present state of operations. Its success has been its ability to change, to seek out additional sources of information, and to function outside normal procedural boundaries in appropriate cases. The program functions on two main informational systems.

- (a). The Central Personnel Index
- (b). Field Resources
  - 1. Personal Contact
  - 2. Educational Enlightenment
  - 3. Confidential Sources

4. The Central Personnel Index: Central Personnel Index (C.P.I.) has been operating since 1972; it was established as a central repository of negative personnel records. Each member of the Department has a folder in this system. When a member of the Department is deemed to have become involved in one of these situations, the Central Personnel Index is provided with information about the incident.

5. The following incidents necessitate a notice to Central Personnel Index of an individual officer's involvement in a situation, for inclusion in the individual's Central Personnel Index folder.

- (a). Department Charges & Specifications
- (b). Loss of Shield
- (c). Loss I.D. Card
- (d). Loss of Gun
- (e). below Standards Rating on Annual Evaluation
- (f). Chronic Sick Reports
- (g). Substantiated C.C.R.B. reports
- (h). Investigations by I.A.D., F.I.A.U. or any other Investigative Unit

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- (i). Debt Subpoena
- (j). Preappointment Records
- (k). Reports of Administrative Transfers
- (l). Firearms Discharges
- (m). Off-duty Employment Records
- (n). Administrative Firearms Removal and Restoration
- (o). Reports of an Unusual Occurrence On or Off Duty

6. The various agencies, bureaus and units involved are required to submit these reports and update the status to the Central Personnel Index. These reports are serialized to prevent omission of reports to C.P.I. The staff of C.P.I. currently consists of one police officer and three civilian members under the supervision of a sergeant. The personnel of C.P.I. have received extensive training and supervision relative to the highlighting of potential personnel concerns. On each occasion that information is received on a particular member of the service, that individual's C.F.I. folder is evaluated along with the new information. If an individual is deemed to be a potential personnel concern by the C.P.I. staff based upon structured guidelines and/or professional opinion, the case is marked for review. The supervisor of C.P.I. reviews the potential case and approves or disapproves referral of the case to the Early Intervention Program. (The final determination is always made in favor of submittal to the E.I.P. if there is any question as to the necessity for referral).

7. The Early Intervention Program accepts all referrals from Central Personnel Index and each referral is placed with one of the investigative supervisors for analysis and possible profile. The investigator reviews the available information and determines whether or not further analysis is necessary. If there is any question as to the potentiality of the case being a personnel concern, an initial investigation is conducted in order to determine the need for a complete profile investigation.

- (a). The Initial Investigation consists of the following:  
A check of the individual's personnel file, review of all evaluations and contact with his Commanding Officer and/or immediate supervisor. If the initial investigation highlights any concern, a full profile investigation is conducted.
- (b). The Profile Investigation consists of the following:  
A complete history is developed and the individual's present and pre-appointment records are analyzed.

8. The investigator conducts field investigations with supervisors, peers, and confidential sources of information in the command and other environments. At the conclusion of this profile investigation, the investigator can determine the following:

- (a). To close the case
- (b). To monitor performance via an evaluation process
- (c). To refer to Psychological Services
- (d). To refer to Counseling Services
- (e). To refer to the Chaplain's Unit
- (f). To refer to the Commanding Officer
- (g). To transfer the individual, for his good or the good of the Department
- (h). Refer to Health Services Division
- (i). Refer to Employee Relations
- (j). Refer to Union Counseling Programs
- (k). Refer to appropriate outside agencies
- (l). To continue the investigation via a personal interview process. This interview can result in crisis intervention counseling, and/or any of the above listed.

9. The Central Personnel Index is one source of information for the Early Intervention Program. The other major sources of information are the direct referrals from supervisors, peers, and persons outside of the Department. The direct referrals have proven to be the more accurate source of highlighting the personnel concern. (C.P.I. referrals are approximately 58% unfounded; peer and supervisory referrals are approximately 24% unfounded). It is therefore understandable that the major portion of energy is expended in the encouragement of supervisory and peer referrals, as well as self referrals.

10. In an effort to encourage the direct referrals the (E.I.P.) personnel concentrated on an educational and personal approach. The investigative counselors of E.I.P. have divided the entire Police Department into regional areas of responsibility. This allows for a development of familiarity with personnel in each assigned area. The investigator is charged with the responsibility of visiting all commands in his designated area frequently. These visits establish trust, and have been valuable in highlighting the personnel concern at very early stages of pathology, etc.

11. The educational thrust has been expanded since 1977, when then Police Commissioner Codd ordered that the educational program be broadened. He requested that greater emphasis be placed on the helping aspect of various Department programs, and greater clarification of the official position of the Department relative to personnel seeking or requiring help. Police Commissioner, Robert McGuire continued this policy and in a department bulletin

which was distributed on October 13, 1978, made the following statements:

"One of my major concerns in running the Department continues to be the physical and emotional well-being of members of the Department. All the mechanical and technical resources available to us mean little if our prime resource, manpower, is not healthy and up to par. Tough decisions on the street are difficult enough to make even when you're at your best. Given the nature of the job, serious consequences can result when you are not at a top level of efficiency, and stress can affect efficiency. I think it's important for you to know that stress and its symptoms are treatable.....

I want to emphasize also the responsibility each one of you have in the well-being of your fellow officers - especially those you are close to on the job. If drastic changes in an officer's conduct become known to you, then for his sake, make it your business to get help for him. Simply saying it's the Department's job to surface somebody who needs help is foolish and self-defeating. It can only prolong and further compound the problem and might result in his doing something which gets him jammed up.

(Remember counseling services by the professionals is confidential). It won't affect an officer's career. We have to stop thinking that receiving professional counseling is either a form of punishment or a course of action which stigmatizes the individual with the Department. It is neither; I am personally committed to ensuring that no member of the Department is going to find a career blunted because he or she sought help. You have my word on it and if anyone wants to hear directly from me, call my office and I will see you to make that guarantee personally. That's how important this program is to me."

12. The educational program was developed and implemented with the full intention of breaking down the code of secrecy that prevails in large organizations. The first aim was directed at getting support at the upper level through education and bringing the program to the subordinates with the approval of known supervisors.

The first-training program began at the staff meeting of the Chief of Operations and ended at the level of precinct conferences. The results of this program have been the numerous referrals during and since that period. A marked increase in self referrals have also been noted. The first educational program took a year to complete. Refresher programs are conducted at the precinct and command levels on a continual basis. The Police Academy is another means of continual training, through the instructional services officers. The E.I.P. staff also lectures at the Executive Development Seminars conducted for the Executive level members of the Department.

The E.I.P. is a success because of the three-fold approach of personal contact, education, and C.P.I. as sources of input. It is also a success because of the professional support systems and referral sources that are available, such as the Counseling Unit, Psychological Services and the Chaplain's Unit. The Unions have also been supportive in understanding the needs and benefits of such a program.

Supervisory Staff Credentials:

The supervisory/counseling staff consists of two Sergeants and one Captain.

Captain Francis Dowd, Executive Officer of Employee Management Division, supervises the Early Intervention Program. He has over 28 years of police service in patrol and administrative positions. He has held supervisory positions in field and administrative commands for 15 years, the last nine years having commanded sensitive personnel units. He is in the position to understand the needs and difficulties which arise in the stressful situations that police personnel encounter.

Sgt. Gerard Kelly performs the duties of the staff Psychotherapist. He has been assigned to the E.I.P. since its inception. His background is both field and administrative, having been a patrol officer and supervisor. He performed duties with the Youth Aid Division for five years as an investigative counselor and research officer. He holds an Associate and Bachelors degree in Sociology, a Masters of Education degree in Rehabilitative Counseling, a Master of Science Degree in Psychological Counseling, with a Professional Diploma (66 graduate credit degree) in Counseling Supervision.

Sgt. David W. Nadel, the other investigator is a 17 year veteran of police service, having experienced the first-hand knowledge of patrol as an officer and supervisor. He has extensive experience in Anti-Crime operations. He also supervised the

administrative functions of a major precinct. He holds a bachelors degree in Police Science and a Mster of Arts degree in Criminal Justice. He has also attended seminars given by the New York State Division of Alcohol & Substance Abuse on "Alcoholic Family Systems" and "Drug Abuse and The Work Place". Sgt. Nadel also supervises Central Personnel Index.

Joseph A. Preiss  
Chief of Personnel

1st Endorsement

Office of the Chief of Operations to Deputy Commissioner, Legal Matters. July 13, 1983. Forwarded, as per your request.

*Charles H. Kelly*  
Charles H. Kelly  
Assistant Chief

JM/pkp



POLICE DEPARTMENT  
NEW YORK, N.Y. 10036

P.O. 150-151

June 30, 1983

EARLY INTERVENTION PROGRAM STATISTICS

Records reveal that the Early Intervention Program has processed a total of 3257 cases between the period of May 1973 to April 1979.

The Central Personnel Index surfaced 1799 of those cases, 580 of the cases resulted in action being taken, 1219 of the cases were not deemed appropriate for inclusion in the Early Intervention Program active system.

The additional 1458 cases were placed in the (Early Intervention Program) System as a result of Field Visits, Informational Profiles, Confidential referrals, and personal contacts with supervisors, peers and the individuals themselves.

Of the 3257 - total.  
 1246 - Were marked no personnel action  
 2011 - Resulted in active recommendations  
     230 - Referred to Psychological Services  
     180 - Referred to Counseling Services  
     159 - Transferred and monitored.  
     1442 - Recommended for periodic monitoring  
           interviews, counseling, field visits

2011 Total Active Cases

Final dispositions have been recorded in 546 of the cases in that;

254 Retired  
 95 Resigned  
 181 Dismissed  
 16 Deceased  
546 Total

The following information reflects Early Intervention Program records from January 1979 to May of 1983.

	<u>Y E A R</u>				
	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983* (thru May)*</u>
New Cases received and processed	647	594	653	678	299
No Personnel Action Necessary	217	185	200	163	96
Cases resulting in Active Recommendations	430	405	453	515	203
Referred to Psychological Services	27	17	37	47	14
Referred to counseling services	43	29	47	67	17
Transferred and monitored	32	43	58	60	28
Recommended for periodic monitoring/counseling/interviews field visits	328	316	311	341	144
<u>Final Dispositions (thru 5/83)</u>					
Dismissed/Resigned/Retired/Died	127	144	90	165	43

  
 Gerard W. Kelly  
 Professional Diploma  
 Early Intervention Program  
 Psychotherapist

1746

INTERIM ORDER NO. 40

POLICE DEPARTMENT  
CITY OF NEW YORK



October 23, 1982

TO ALL COMMANDS

Subject: FIREARMS DISCHARGE INTERVIEW

1. Effective with publication of this order, the commanding officer of a member who has discharged his firearm in the performance of duty will conduct an informal interview with the member concerned, as soon as possible after the formal investigation is concluded, to inquire about the officer's well being. The commanding officer will also offer the officer any assistance that the commander deems appropriate including the services of the Employee Assistance program of the Health Services Bureau or any assistance the officer requests. In addition, a follow up interview shall be conducted within the next 24-48 hours to observe the officers post trauma reaction and to again offer the services of the Employee Assistance program.

2. These interviews will also be conducted in all instances when a firearm is discharged at an officer or when a uniformed member is otherwise assaulted, harassed, menaced or subjected to an act of reckless endangerment or threats while performing lawful duty.

3. The commanding officer/executive officer will also include as part of the Firearms Discharge Investigation report that must be submitted within 72 hours (see Administrative Guide 316-17) an indication ONLY that the interviews have been conducted.

4. Any provision of the Department Manual or other department directive in conflict with this order is suspended.

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## PSYCHOLOGICAL TEST PROCEDURES

Applicant Processing Division schedules candidates who have passed the medical examination for psychological testing. Testing takes a full day and consists of the following: Minnesota Multi-Phasic Personality Inventory (MMPI): California Psychological Inventory (CPI): Cornell Index; Police Candidate Questionnaire; house/tree/person projective drawings and a written background narrative statement by the candidate. MMPI and CPI are machine scored; the Cornell Index and questionnaire are hand scored by Psychological Services and the projective drawings and narrative are evaluated by Psychological Services. The whole packet of test results, along with any pertinent information from Applicant Processing Division resulting from their interviews or investigation, is then evaluated by a department psychologist. If a candidate is found qualified at this stage, he goes to the next step in the screening process (completion of background/character investigation). If the candidate is considered not qualified on the basis of the initial evaluation, he is called in by Psychological Services for a personal interview with a department psychologist. If he passes at this stage, he is considered qualified and processed as indicated above. If he fails at this stage, he is disqualified. An exception to this, however, is a rejection based on alcoholism. Such candidates are called in for another interview with our N.Y.S. credentialed alcoholism counselor. If they pass at this stage, they are accepted; if they fail, they are disqualified.

PERSONNEL BUREAU MEMO NO. 16

POLICE DEPARTMENT  
CITY OF NEW YORK

TO ALL COMMANDS

October 26, 1978

Subject: EMPLOYEE ASSISTANCE PROGRAM

1. An Employee Assistance Program is currently in operation within the Health Services Division of the Personnel Bureau to aid members of the Department with physical and/or mental health problems.

2. The policy of this Department is to provide assistance when the employee so requests or when medical/personal problems appear to interfere with efficient and safe job performance. Primary emphasis is placed on alcoholism and psychological problems. Participation in the program, however, may not be utilized in place of regular forms of disciplinary, corrective or administrative action, where these are appropriate.

3. The Psychological Services Unit, the Counseling Unit and the Chaplain's Unit are the sub-units of the Health Services Division which are responsible for carrying out the functions of the Employee Assistance Program.

4. A member may enter this program in either of the following ways:

**SELF-REFERRAL** — When employees seek assistance of their own accord (walk-in, self-referral) no record of the request shall be kept. All communications between the requesting member and the counselor are confidential within the limits imposed by consideration for the welfare of the employee, the community and the Department.

**OFFICIAL REFERRAL** — When an employee is referred to the Employee Assistance Program through official department channels, a record of this referral shall be maintained. This record shall consist of any and all administrative, professional or other action taken regarding the employee's referral. These records are confidential, and shall be used solely for the purposes of the Employee Assistance Program, or to assist the Department in matters of personnel management. Such confidential records shall continue to be regarded as medical records, and shall not be released to persons or agencies outside the Department without written consent of the employee concerned (i.e. signed medical release properly subpoenaed by the court).

5. The supervisor, as the primary management representative, is responsible for the efficiency and performance of employees under his supervision. When performance deficiencies appear to be caused by personal problems, the supervisor shall interview such employees and inform them of services available under the Employee Assistance Program. If employees do not avail themselves of such services (self-referral) and the supervisor is aware of deteriorating or sub-standard performance which is attributable to medical or other causes where counseling would be appropriate, the supervisor has a fundamental responsibility, both to members and to the Department, to refer said members to the Health Services Division for professional help. Where such conditions are apparently present, the supervisor shall first confer with his commanding officer and when the commanding officer concurs, the member in question shall be officially referred to the Health Services Division for appropriate evaluation and/or treatment.

6. The Employee Assistance Program consists of in-house counseling and referral services under the direction of unit supervisors (see paragraph 3) who report to the Chief Surgeon. Upon referral, the counselor will interview the employee to determine the nature of the problem and offer appropriate assistance. If the assistance required is not available within the Department, unit supervisors will make treatment decisions as follows:

**CIVILIANS** — May be referred to District Council 37, Social Services Unit or the New York City Department of Health, Employee Counseling Unit. The counselor shall continue to monitor the employee's progress until the problem is resolved.

**MEMBERS OF THE SERVICE** — May be referred to an outside professional clinician. The counselor shall continue to carefully monitor the member's progress.

7. Services available under the Employee Assistance Program and appropriate phone numbers to call for specific information and assistance are outlined below:

a. **PSYCHOLOGICAL SERVICES (374-3860)**

- (1) Psychological evaluations and therapy
- (2) Marriage counseling (husband-wife conflict)
- (3) Family counseling (parent-child conflict)

b. **ALCOHOLIC COUNSELING (374-3894)**

- (1) Evaluation and therapy
- (2) Marriage counseling (conflict between husband and wife emanating from excessive drinking problems)
- (3) Family counseling (conflict between parents and children emanating from excessive drinking problems)
- (4) Financial counseling (conflict emanating from the inability to budget monetary resources)

c. **EMPLOYEE MEDICAL ASSISTANCE (Provided by appointment and availability) (374-6500)**

- (1) Blood pressure screening
- (2) EKG testing for heart disease
- (3) Preventive medicine counseling, e.g., weight control program
- (4) Honorary Surgeons referrals
- (5) Blood bank

BY DIRECTION OF THE POLICE COMMISSIONER

Henry R. Morse  
CHIEF OF PERSONNEL

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PERSONNEL BUREAU MEMO NO. 16

POLICE DEPARTMENT  
CITY OF NEW YORK

January 12, 1984

TO ALL COMMANDS

Subject: EARLY IDENTIFICATION AND REFERRAL OF EMPLOYEES WITH ALCOHOL PROBLEMS

1. The Department's Counselling Service was established in 1966 to help employees recognize and overcome drinking problems and related emotional and family difficulties.

2. Since its inception, the Counselling Service, currently located on the 4th floor, John Jay College (South Hall), 444 West 56th Street, telephone 489-0585, has continued to assist in the recovery and return to full duty of valued personnel. As a result, many careers have been reclaimed and hundreds of thousands of dollars have been saved through reduced absenteeism and increased performance.

3. To ensure continuance of these positive results, department policy re: members of the service with drinking problems is as follows:

- a. Alcoholism and problem drinking are recognized as a disease for which there is effective treatment and rehabilitation, particularly when addressed in the EARLY STAGES.
- b. The department's objective AT ALL LEVELS will be early detection and referral for evaluation and treatment.
- c. A drinking problem might exist when one or more of the following are evident:
  - (1) Efficiency and dependability become noticeably unsatisfactory and intoxicants may be related, whether ON OR OFF DUTY
  - (2) The condition appears progressive or repetitive in nature
  - (3) Several attempts at confronting the unacceptable behavior or performance deficiencies by peers, union delegates or supervisory personnel have not remedied the condition.
- d. Employees with problems involving alcohol abuse will be encouraged to arrange for a confidential interview with the Counselling Service. All such self-referrals are kept in strictest confidence and no information will be disseminated. If the problem is not within the scope of Counselling Service the employee will be referred to the appropriate service and the fact of such referral shall be accorded confidentiality.
- e. Records maintained by the Counselling Service are absolutely confidential and not duplicated anywhere else in the department. Other than in response to a valid court order, disclosure of diagnostic or treatment information is prohibited without a signed release by the individual concerned.
- f. Supervisory personnel should make referrals to the Counselling Service if the employee is unwilling or unable to do so. Ranking members of the service who refer employees will be given information only as to the level of cooperation of the employee with the treatment plan and then only on a need to know basis.

- g. Employees voluntarily seeking the help of the Counselling Service to overcome a drinking or related personal problem will not jeopardize their assignment or promotional opportunities. However, where all available rehabilitation efforts have failed, action consistent with the best interests of the department will be taken.

4. Self-referral before the condition begins to negatively impact on a member's ability to perform in an acceptable manner is the ideal. However, it should be understood that DENIAL and COVER-UP are inherent components of this illness. Thus, supervisory personnel may be the key to early identification, referral, treatment and recovery. Conferral with the Counselling Service will serve to clarify questionable issues and help to place members with problems into treatment programs, when necessary.

5. Commanding officers and all supervisory personnel will exact proper performance from their subordinates. When an employee will not or cannot meet acceptable standards and the use or effects of intoxicants are suspected, in addition to normal supervisory actions, an offer or assistance of the Counselling Service will be made.

6. Provisions of this directive are not to be considered as a substitute for taking proper disciplinary action. However, disposition of that disciplinary action may be modified if a member submits to treatment and rehabilitation is likely.

7. The services of the Counselling Service ARE NOT available to department personnel for illegal drug use and/or abuse problems. If such behavior comes to the attention of any member of the service, that member has a duty to inform supervisory personnel for whatever disciplinary action is deemed appropriate. All command level personnel will be held strictly accountable for cooperating with the intent of this directive and carrying out its provisions.

8. Any provision of the Department Manual or other department directive in conflict with this order is suspended.

9. Interim Order 11, series 1982 is REVOKED.

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APPENDIX I

COMMUNITY RELATIONS

STAFF & BUDGET

I

PERSONNEL AND BUDGET RESOURCE COMMITMENT TO THE COMMUNITY AFFAIRS  
FUNCTION WITHIN THE NEW YORK CITY POLICE DEPARTMENT

DEPUTY COMMISSIONER COMMUNITY AFFAIRS

COMMUNITY AFFAIRS DIVISION

- CIVILIAN PARTICIPATION UNIT
- PRECINCT RECEPTIONIST UNIT
- P.A.L. LIAISON UNIT
- POLICE YOUTH DIALOGUE UNIT

AUXILIARY SERVICES AND CRIME PREVENTION DIVISION

- AUXILIARY FORCES SECTION
- CRIME PREVENTION SECTION

THE ABOVE LISTED SEGMENT OF THE DEPARTMENT IS COMPRISED OF PERSONNEL  
AS FOLLOWS:

DEPUTY COMMISSIONER COMMUNITY AFFAIRS

- 1 DEPUTY INSPECTOR
- 1 CAPTAIN
- 6 LIEUTENANTS
- 10 SERGEANTS
- 11 DETECTIVES
- 30 POLICE OFFICERS
- 30 CIVILIANS

TOTAL =90 PERSONNEL ASSIGNED TO THE DEPUTY COMMISSIONER COMMUNITY AFFAIRS.  
SALARIES COMPUTED WITH FRINGE BENEFITS TOTAL.....\$ 2,988,412.00

SEVEN BOROUGH COMMANDS - PATROL SERVICES BUREAU

<u>COMMUNITY AFFAIRS</u>	<u>CRIME PREVENTION</u>	<u>AUXILIARY COORDINATORS</u>
1 CAPTAIN		
2 LIEUTENANTS		
13 SERGEANTS		
35 DETECTIVES	22 DETECTIVES	
103 POLICE OFFICERS	51 POLICE OFFICERS	80 POLICE OFFICERS
2 CIVILIANS		
<u>156</u>	<u>73</u>	<u>80</u>

TOTAL = 309 PERSONNEL ASSIGNED TO SEVEN BOROUGH COMMANDS. SALARIES COMPUTED WITH  
FRINGE BENEFITS TOTAL.....\$13,989,837.00

TOTAL PERSONNEL & BUDGET RESOURCE COMMITMENT  
FOR NEW YORK CITY POLICE DEPARTMENT

<u>PERSONNEL:</u>	<u>BUDGET</u>
90 DEPUTY COMMISSIONER COMMUNITY AFFAIRS.....	\$ 2,988,412.00
309 SEVEN BOROUGH COMMANDS, PATROL SERVICES BUREAU.....	13,989,837.00
TOTALS: 399 PERSONNEL COMMITED TO COMMUNITY AFFAIRS FUNCTION (includes Auxiliary Services/Crime Prevention)	\$16,978,249.00

NOTE: FIGURES REFLECT ONLY PERSONNEL COSTS.

NEW YORK CITY POLICE DEPARTMENT PERSONNEL AND BUDGET  
RESOURCE COMMITMENT TO THE COMMUNITY AFFAIRS FUNCTION  
AS COMPARED TO OTHER MAJOR CITIES BY POPULATION

<u>CITY</u>	<u># PERSONNEL</u>	<u>BUDGET</u>	<u>% OF DEPARTMENT PERFORMING FUNCTION</u>
NEW YORK	399	\$16,978,249.00	1.28%
Los Angeles	66	\$ 3,938,350.00	.69%
Chicago	123	\$ 3,003,490.00	.75%
Houston	52	\$ 752,000.00	1.11%
Detroit	97	\$ 1,676,128.00	2.08%
Dallas	30	\$ 756,000.00	1.16%
San Diego	28	\$ 693,945.00	1.52%
San Antonio	35	\$ 1,491,112.00	2.44%
Baltimore	103	\$ 2,765,239.00	2.96%
Phoenix	46	\$ 2,000,000.00	1.12%
San Francisco	74	\$ 2,403,819.00	3.05%

NOTE: FIGURES REFLECT ONLY PERSONNEL COSTS.

CIVILIAN PARTICIPATION PROGRAM  
COMMUNITY AFFAIRS DIVISION

November 14, 1983

<u>PROGRAM NAME</u>	<u>6/30/83</u>	<u>10/31/83</u>	<u>CHANGE</u>
Community Council	* 15,110	15,815	+04.7%
Blockwatchers	81,268	83,092	+02.2%
Car Patrollers	7,602	7,626	+00.3%
Foot Patrollers	3,691	1,920	-47.9%
Tenant Patrollers	10,975	11,021	+00.4%
Youth Councils	4,043	4,268	+05.5%
Senior Citizen's Escorters	905	552	-39.0%
Court Monitors	7,000	7,000	-06.7%
Safe Haven Merchants	6,800	6,800	0
Civilian Amateur Radio Patrol	650	650	0
Guardian Angels	610	610	0
Bus, Taxi & Truck Patrol	12,000	12,000	0
<b>TOTAL</b>	<b>* 150,654</b>	<b>151,354</b>	<b>+00.4%</b>

\*Represent corrected figures.  
The September Mayor's  
Management Report contained  
an error in this program's  
membership.

1755

<u>PROGRAM</u>	<u>12-31-77</u>	<u>12-31-81</u>	<u>12-31-82</u>	<u>10-30-83</u>	<u>CHANGE</u>
Community Councils	7,000	15,000	17,790	15,110	
Blockwatchers	30,000	65,000	77,809	81,268	+170.9%
Neighborhood Car Patrols	1,500	4,500	6,463	7,602	+406.8%
Block Foot Patrols	1,000	3,000	3,198	3,691	+269.1%
Tenant Patrols	2,500	7,500	9,978	10,975	+339.01%
Youth Councils	-0-	1,000	1,653	4,043	- -
Senior Escorts	600	1,500	1,666	905	+ 50.8%
Court Monitors	-0-	3,000	6,000	7,000	- -
Civ. Amt. Radio	-0-	550	650	650	- -
Safe Haven	-0-	4,000	6,000	6,800	- -
Guardian Angels	-0-	700	910	610	- -
Bus, Taxi & Truck Patrol	10,350	11,000	11,500	12,000	+ 15.9%
<hr/>					
TOTAL VOLUNTEERS	52,950	116,750	143,607	151,354	approx. +200.00%
- - - - -					
Employment Programs:					
Summer Youth	550	600	625	885	+ 60.9%
Public Works	-0-	40	47	108	- -

OFFICE OF THE DEPUTY COMMISSIONER COMMUNITY AFFAIRSCIVILIAN OBSERVER PROGRAM

Members of organizations or institutions that interact with the Police Department, or that have some relevant interest in police/public administration, may be eligible to ride in a precinct Radio Motor Patrol car. Requests from the news media, writers, or visiting police officials, will be referred to the Deputy Commissioner, Public Information.

INTERNSHIP PROGRAM

A program for students requiring work experience in conjunction with earning college credits. Students are placed in various units within the Police Department and serve as unpaid volunteers.

COMMUNITY AFFAIRS DIVISIONPRECINCT COMMUNITY COUNCILS

A program to promote and maintain public interest and participation in the police service. Composed of citizens who work or reside in the precinct, each council strives to develop an understanding of police objectives and a recognition of the citizen's responsibility in maintaining the peace. Through their monthly meetings, an awareness of the community's point of view is established, and a more responsive police attitude to the needs of the community is encouraged.

BLOCKWATCHERS PROGRAM

A program that maintains the anonymity of citizens volunteering to be the extended "eyes and ears" of the Police Department. The Blockwatcher is trained to observe and report crimes and dangerous conditions on the block. A confidential file is maintained by the police; the citizen is identified by a code number.

CIVILIAN OBSERVATION PATROL

Anti-crime program involving concerned citizens who voluntarily patrol their neighborhoods and report incidents, both criminal or otherwise hazardous, that require police action. These civilians are trained in observation and reporting techniques. They patrol both on foot and in cars; tenant patrols are also established in apartment buildings or projects.

CIVILIAN AMATEUR RADIO PATROL

This program enlists the aid of volunteer amateur radio operators to observe and report crimes. They also serve as an auxiliary communications network in case of a major disaster.

SENIOR CITIZEN ESCORT SERVICE

The purpose of this program is to escort senior citizens to and from their destinations with a sense of security. It brings together high school-age youths (and other interested persons) and the elderly in an escort-dialogue structured program.

SAFE HAVEN/HELPING HANDS PROGRAM

Formulated to encourage a citizen (young or old) who needs help, because of some emergency in the street, to enter the premises of a business establishment for the purpose of calling 911 and also for immediate protection and assistance. This requires the cooperation of the business community; identifying decals are placed in store windows of participating members.

COURT MONITORING

The aim is to reduce victim/witness intimidation and seek positive impact on the court system. Local citizen groups, in addition to victims and witnesses, are transported to court. Community Affairs Division provides technical assistance, and works with the Victim Services Agency.

GUARDIAN ANGELS

A unique citizen patrol group comprised of youths, as young as sixteen years of age, who patrol any area of the city where they believed they are needed. Its members wear distinctive identifying articles of clothing: red berets and white teeshirts bearing the organization's emblem. As with the other patrol groups operating in conjunction with the Police Department, Community Affairs Division provides training and identification cards for its members.

PRECINCT RECEPTIONIST PROGRAM

This program is operable in seventeen precincts. The Receptionist is a community resident who assists those persons entering a police precinct who need help with non-police problems. The twenty-seven Receptionists currently employed work part-time and are paid by the Department of Social Services.

PUBLIC WORKS PROGRAM

In cooperation with the Department of General Services, able-bodied welfare recipients perform public service work within the Police Department. This provides job training for the individual and simultaneously fills a Department need for "no cost" personnel.

SUMMER YOUTH EMPLOYMENT PROGRAM

Community Affairs Division supervises the placement of approximately 600 disadvantaged youths each summer. They work in Police Department commands and are paid by the Department of Employment.

SUMMER YOUTH RECREATION PROGRAM

The New York City Youth Board makes a grant to the Police Department, which is distributed to participating precincts for youth programs.

POLICE YOUTH DIALOGUE PROGRAM

A Community Affairs Division bus transports groups of neighborhood youths, accompanied by a couple of officers from the same precinct, to Fort Totten in Queens for a day's outing. There, dialogues take place between the youths and the officers to promote mutual understanding and respect.

POLICE ATHLETIC LEAGUE LIAISON PROGRAM

The P.A.L. Liaison Unit, in cooperation with the P.A.L., plans, coordinates, and supervises various citywide sports programs and activities.

PRECINCT YOUTH COUNCILS

In some precincts, these councils exist as adjuncts to the Community Councils. These groups operate special programs for youths in the area.

MODEL BLOCK PROGRAM

A Police Department sponsored, community-based program in the Patrol Borough Brooklyn North area that motivates community residents to actively work together to improve the quality of life in their neighborhoods. Viable block and/or tenant associations are formed, and residents engage in self-help projects in: sanitation, neighborhood beautification, fire safety, and, above all, crime prevention. Expansion to other areas of the city is being considered.

OTHER PROGRAMS

Community Affairs Division is continually involved in working with other units in the Department, and other agencies in various activities not mentioned above, e.g., crisis intervention and conflict resolution.

FUNDING ASSISTANCE

Community Affairs Division also gives technical assistance to non-profit, neighborhood groups seeking funds to support crime fighting programs.

AUXILIARY SERVICES & CRIME PREVENTION DIVISIONAUXILIARY FORCES SECTION - AUXILIARY POLICE PROGRAM

Auxiliary Police are volunteers, aged seventeen through sixty (may be older if assigned to non-patrol duties), trained and organized by the Police Department, who help local police by patrolling their neighborhoods during peak crime hours. They are trained in law, observation and reporting techniques, response to emergency situations, and self-defense. They wear uniforms (different shield and shoulder patch), but they are unarmed. While on patrol they keep in radio contact with the precinct. They may also help with traffic control during parades and festivals, and may be called to aid police in emergencies. Every precinct in the city has an auxiliary contingent. There are approximately 8,000 active members today.

CRIME PREVENTION SECTIONSECURITY SURVEYS

Any citizen may request a Crime Prevention Officer/Specialist to conduct a free, confidential survey of either the home or the business premises. The officer will inspect the premises, note deficiencies, make security recommendations, and prepare a written report for the requesting party.

SECURITY LECTURES

These officers speak to various business and community groups concerning crime prevention. A wide scope of related topics is covered, and they are geared to specific problems of the particular group being addressed.

OPERATION IDENTIFICATION

This program affords each citizen an opportunity to engrave valuables with his/her social security number. That number is then filed with the Police Department. A decal will then be issued to the owner of the property to be displayed on the door and window of the home/business. The decal warns potential burglars that the property inside the premises has been marked and registered for ready identification by the police.

INDUSTRIAL/COMMERCIAL SECURITY PROGRAMS

Community Development Grant funds provide a range of services designed to reduce burglary, robbery, and other threats to property and personal safety.

SECURITY ASSISTANCE FOR THE ELDERLY

Assistance is provided to elderly victims of crime, and victimization risks are reduced. The Crime Prevention Section, Victim Services Agency, and the Department for the Aging established a citywide program consisting of emergency burglary repairs provided by volunteer locksmiths.

AUTO THEFT/DECAL PROGRAMS

Crime Prevention Section works with the National Auto Theft Bureau in conjunction with various insurance companies and law enforcement representatives from New York and New Jersey in this endeavor. Primary purpose of the collaboration is to explore and recommend ways and means to reduce auto theft and instruct the public on preventive methods. The decal program allows car owners to register their auto in the resident precinct. The decal, placed on the rear window of the auto, identifies the precinct, and the sex and age group of all possible legitimate drivers of the auto.

MEDIA PROGRAMS

Radio, television, and various publications, are used for the delivery of crime prevention instruction in a multi-pronged effort to educate the public.

CRIME PREVENTION EXPO VAN

This van, containing a display of security hardware and instructional handout material, is used on a citywide basis, usually at public assemblages. The Crime Prevention Officer assigned explains the various uses of the items displayed, and answers questions pertaining to security.

BANK AUTOMATIC TELLER MACHINE PROGRAM

Provides technical assistance to various banks in developing security measures for consumer safety while using, or immediately after using, automatic teller machines. Crime Prevention Section also works in cooperation with the N.Y.S. Attorney General's Office on this project.

CRIME PREVENTION FOR DEAF, BLIND AND HANDICAPPED

In conjunction with various government and private agencies, efforts are made to reduce the victimization of these persons through their enlightenment on crime prevention techniques they are able to utilize. Instruction is provided in Braille, large print, and pre-recorded tapes, as needed.

N.Y.C. COMPUTER SECURITY PROGRAM

Computer security guidelines are formulated to assist agency heads and data processing directors in assessing the physical security status of their installations. They broadly describe physical security, risk management principles and procedures.

FUNDING ASSISTANCE

Technical assistance is provided in obtaining funds for new and existing community organizations and neighborhood groups.

## APPENDIX J

## CIVILIAN COMPLAINT REVIEW BOARD STATISTICS

CIVILIAN COMPLAINT REVIEW BOARD  
POLICE DEPARTMENT  
CITY OF NEW YORK

1982 ANNUAL REPORT

Despite the negative impacts of fiscal constraints, the Civilian Complaint Review Board (CCRB) of the New York City Police Department continues to perform its mandate conscientiously and efficiently. The Civilian Complaint Review Board accepts all complaints submitted by citizens alleging professionally unacceptable or inappropriate behavior of any employee of the New York City Police Department. CCRB is specifically charged with the investigation and recommendation of appropriate action with respect to allegations of unnecessary force, abuse of authority, discourtesy and ethnic slur. The Board investigates and monitors the inappropriate behavior within the New York City Police Department by advising superior officers of problem officers, by instructions as to the appropriate procedure and acceptable conduct, by discipline (positive or negative), when such action is deemed necessary, and also by recommending re-assignment of certain officers whose conduct does not conform to the prescribed policies of this department.

During the year 1982, the Civilian Complaint Review Board received and processed 8,419 complaints:

ANALYSIS OF COMPLAINTS RECEIVED AT CCRB IN 1982

ASSIGNMENT	number	percent
Civilian Complaint Review Board	4,106	48.77
Chief of Operations	4,031	47.87
Internal Affairs Division	163	1.94
OCCB	3	.04
Other Law Enforcement Agencies	110	1.31
Miscellaneous	6	.07
<b>GRAND TOTAL</b>	<b>8,419</b>	<b>100.00</b>

The Civilian Complaint Review Board received 4,106 complaints falling within its jurisdiction during 1982. This amount represents an increase of 955 cases or 30% over that of 1981. The investigative staff completed and the Board reached a determination in 3,917 cases during the year of 1982, which represents an increase of 869 cases completed or 28 1/2% over 1981.

Although the number of complaints have increased by 30% this year over last year, it is difficult to attribute the increase to any one specific cause. As of this writing, the final statistics for 1982 are not complete and are subject to further identification of the subject officers involved. Prior to 1975, CCRB statistics indicated that more than 55% of the complaints received were against police officers with a longevity of five years or less in the department. The largest amount in this specific group had less than 3 years service in the Police Department. To ascertain whether this pattern still persists is subject to the further collection and correlation of available data.

Several observations are worthy of mentioning as possibly contributing to the increase in the number of complaints. The fact that 2,589 officers were added to the department and went on patrol during 1982, may have been partially responsible for an increase in complaints due to an increase of contacts between the police and citizens of our city. It should also be noted that during 1982, the amount of summonses and arrests increased significantly over the previous year, due to the addition of more police officers. The increase of female officers account, in part, for a number of complaints arising out of a summons situation, where the male complainant subjectively felt his masculinity had been threatened or diminished by a female officer requesting or demanding his credentials. His pride having been hurt, he admitted his guilt but complained about the officers attitude or over-bearing behavior in the issuance of the summons.

It has been intimated in some quarters that a reduction in the number of police officers would result in the filing of less complaints by citizens. This is not entirely true. In 1975, at the height of the fiscal crisis, when 2,469 police officers were laid off, complaints under the jurisdiction of the Civilian Complaint Review Board decreased while those under the Chief of Operations increased. During 1982, as we added more police officers to patrol, civilian complaints increased while those complaints under the jurisdiction of the Chief of Operations decreased.

Although the number of CCRB complaints rose during 1982, an analysis of each complainant disclosed a decrease in the severity of the allegations made against police officers. Allegations of serious abuse of authority or police brutality has declined significantly over the last four years.

Many of our citizens, who deplore and fear an increase of crime within their neighborhoods, do not realize that society, as a whole, has failed in its role to educate many people in their duties and responsibilities as citizens. There is an over-all breakdown today of many social values to such an extent where individuals feel that they can say and do anything that they please and the police, along with the other citizens, are expected to subjugate their own values to those of the more permissive. Many of our complainants admit their wrongdoing in the very first instance, but challenged the right of the police to enforce the rule of law, duly enacted by legally elected representatives of the people. It is admitted that this group represents a small minority of our population but they constitute many of our complainants.

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During the past year, we have noted that a large but forgotten minority in our city, namely the deaf who somehow adequately cope with their disability and survive in a non-hearing environment, have often filed complaints against police officers. Many times the officer, in the initial confrontation, failed to recognize that the citizen was deaf and that his or her failure to comply with the officer's directive may have been due to this disability.

In the hopes of remedying this situation, this unit along with the office of the Deputy Commissioner of Community Affairs, has set up a liaison with the New York Center for Law and the Deaf. This center has offered to train police officers in sign language and has often interpreted on behalf of the deaf at our request in order to expedite our investigation.

#### 1982 CCRB ACCOMPLISHMENTS

During the course of the past year, several significant and new developments deserve mention:

1. CCRB updated and revised its list of members who are frequent subjects of CCRB complaints, thus providing the Department's Early Intervention Program (EIP) with current information. This current information, which for ease of access, was arranged in the following manner.
  - alphabetically by member's last name,
  - in order of assigned command,
  - numerically by tax registry number, and
  - numerically by number of complaints received.
2. CCRB has developed a computerized data bank of statistics and detailed information for complaints received since April 1, 1979. In the past year this entry of final investigatory information had progressed sufficiently so that quarterly summary results could be extracted, thus permitting trend analysis and development of accurate information from complaint characteristics of historical data. As one example, on the basis of such data, CCRB can estimate the profile characteristics of its typical first named accused member. The figures show that in 99% of the cases this member is an on-duty male, and that in about 90% of the cases he is a white police officer who is in uniform.
3. CCRB's quarterly report, published 30 days after the end of each quarter, classified complaints received by borough, zone, and precinct commands. This design facilitated use and study by field units.
4. Through his membership on the Violence Prone Committee, Assistant Commissioner William T. Johnson, C.C.R.B.'s Executive Director, provided valuable input into this Committee's decisions to remove from patrol several violence-prone members of the Service.
5. Procedural changes required that investigators work with the Department Advocate through the prosecution stage, in substantiated cases which led to Department charges.

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6. In order to sensitize and insure that the members of the New York City Police Department were aware of the Police Commissioner's policy regarding civilian complaints, the Assistant Commissioner/Executive Director attended roll call training sessions in various precincts in every borough of the City of New York. In addition, all persons promoted to the rank of Sergeant or Lieutenant received a three hour training session as to their responsibilities in the area of receiving and processing civilian complaints. To ensure that the civilian members of this department were aware of the policy and procedure for the receipt and processing of civilian complaints, the staff of this office conducted in-service programs for all Senior Police Administrative Aides and Police Administrative Aides assigned to patrol precincts.

In addition to the above, CCRB continued to work closely with the City's District Attorney's offices and with the United States Attorney's offices in both the Eastern and Southern Districts of New York. As still another part of its assignment, CCRB continued to make recommendations for changes which surface as important and desirable as CCRB investigated its complaints and their causes. Changes in processing and supervision of arrests were implemented in the arrest processing procedures at all central booking facilities as a result of problems identified as a result of the investigation of a number of civilian complaints.

#### CIVILIAN SUPPORT RESOURCES

Although the overall workload at CCRB from 1980 to 1982 has increased 43%, the civilian support staff, due to the hiring freeze imposed upon the New York City Police Department, has decreased 25 1/2%. The civilian support staff of the Board has been strained almost to the breaking point. Each increase in the number of cases means more notifications to complainants, witnesses, interested parties and the subject officers. In the face of the employment freeze and the absorption of attrition, the productivity of this unit continued to rise. More than 12,300 notifications, letter to interested parties constitutes a rise of 3,175 or 35% over last year.

The Wang Word Processor is responsible to a great extent, for the increased productivity, especially in the area of notifications and letters of disposition to complainants, interested parties and subject officers. This computerized typewriter has aided the staff of this unit to efficiently comply with judicial subpoenas and various other official requests for records in a timely fashion.

CCRB's Record Room workload has grown significantly through the years as authorized units and governmental agencies have increased their requests for records, as indicated by the four-year history presented in the following tables:

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REQUESTING AUTHORITY	1979	1980	1981	1982
	number of requests			
Subpoenas*	444	478	457	182
Corporation Counsel	76	83	71	123
Comptroller	190	202	349	416
Miscellaneous Requests**	62	67	10	236
<b>TOTAL</b>	<b>772</b>	<b>830</b>	<b>887</b>	<b>957</b>

\* Subpoenas include requests received from the court system, State and Federal District Attorneys and legal units within this Department.

\*\* Miscellaneous includes but is not limited to Applicant Investigation, New York City Retirement System, Psychological Services, Precincts and Borough Commanders, Chief of Operations, Federal Bureau of Investigation, Employee Management Division, Department of Juvenile Justice and Crime Victims Compensation Board of the State of New York.

#### DISCIPLINARY ACTIONS

During the year 1982, the Board and its panels reviewed 3,917 cases and submitted their recommendations for final determination by the Police Commissioner. While the Board did find 1,137 of these cases unsubstantiated for any of a number of reasons, 153 cases were determined to be substantiated and some type of disciplinary action was recommended with respect to the officers involved.

For comparison purposes, it is interesting to look over the history of such discipline recommendations over the last seven years, as shown in the following table:

#### Type of Disciplinary Action

YEAR WHEN RECOMMENDATION WAS MADE	CHARGES	COMMAND		TOTAL
		DISCIPLINE	INSTRUCTIONS	
	number of members receiving recommendation of disciplinary action			
1976	100	119	324	543
1977	62	92	241	395
1978	87	87	262	436
1979	108	92	180	380
1980	31	56	90	227
1981	56	48	185	289
1982	75	52	88	215

In all three categories of disciplinary actions, the annual number of members receiving recommendations for discipline appears to be declining. Such trends, however, must be interpreted only with an understanding of the changed CCRB policies previously discussed. These changes have concentrated investigative efforts on the more serious cases, thereby assuring thorough and more conclusive results, which are represented in those cases resulting in recommendations of either Charges or Command Discipline in 1982.

1. CHARGES

During the year 1982, the Civilian Complaint Review Board recommended Charges and Specification Procedures against 73 members of the service, involving 49 CCRB cases. In addition, there were (2) Command Discipline Procedures refused in (2) CCRB cases, resulting in an additional 2 charges and specifications. The total number of CCRB cases in which charges and specifications were preferred was 51 and involved 75 members of the service. The following is a breakdown of these members of the service by rank:

Police Officers	68	90.67
Detective	1	1.33
Sergeants	5	6.66
Lieutenant	1	1.33
	<u>75</u>	<u>100.00</u>

2. COMMAND DISCIPLINE

Command Discipline Procedures were recommended by the Civilian Complaint Review Board against 52 members of the service in 42 CCRB cases. Of these 52 Command Discipline Procedures, 2 members of the service refused Command Disciplines in 2 CCRB cases and Charges and Specifications were prepared. In addition, in one case, the police officer retired before imposition of discipline and in 3 other cases, Command Discipline procedures are still pending against 3 members of the service. 46 Command Discipline Procedures were accepted in 36 CCRB cases. The following penalties were imposed:

	<u>No. of Members</u>	<u>Percentage</u>
A) Warned and Admonished	31	67.39
B) Less than One Day	5	10.87
C) One Day	7	15.22
D) Two Days	2	4.35
E) Five Days	1	2.17
	<u>46</u>	<u>100.00</u>

The breakdown by rank of the members of the service directed to receive Command Disciplines is as follows:

Lieutenants	3	5.77
Sergeants	15	28.85
Detective	1	1.92
Police Officer	32	61.54
Probationary Police Officer	1	1.92
TOTAL	<u>52</u>	<u>100.00</u>

3. INSTRUCTIONS

During 1982, the Civilian Complaint Review Board recommended formal instructions to be given by the Commanding Officer to 88 members of the service and an entire command.

The breakdown by rank of members of the service directed to receive instructions is as follows:

Lieutenants	3	3.41
Sergeants	15	17.05
Detective	1	1.14
Police Officer	68	77.26
Probationary Police Officer	<u>1</u>	<u>1.14</u>
<b>TOTAL</b>	<b>88</b>	<b>100.00</b>

STATISTICAL SUMMARY

Of the 3,917 cases on which the Board ruled in 1982, 1,384 or about 35% were not fully investigated because the complainant agreed to have his or her case informally settled through conciliation. In another 1,243 complaints or 32% of the cases, the complainant withdrew his or her complaint or failed to respond to our request to cooperate in the investigation.

Nevertheless, by receiving and processing all incoming complaints CCRB continued to perform a major function for the Department, serving as the receiver of the public's real or imagined grievances.

The following pages summarizes some general characteristics of CCRB complainants and members who are the subjects of CCRB complaints, for both 1982 and, for comparison, the previous year. With only minor variations, the general profiles or patterns appear to persist.

CHARACTERISTICS OF \*FIRST UNIFORMED MEMBER OF DEPARTMENT

MEMBER'S RANK	1981		1982	
	number	percent	number	percent
Police Officer	2,782	88.0	3,643	88.72
Detective	105	3.3	126	3.07
Sergeant	97	3.1	127	3.09
Lieutenant	21	.7	22	.54
Captain or Above	5	.2	0	0.00
Civilian	6	.2	17	.42
Unknown	143	4.5	171	4.16
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

MEMBER'S SEX	1981		1982	
	number	percent	number	percent
Male	2,988	94.5	3,870	94.25
Female	5	.2	82	2.00
Unknown	166	5.3	154	3.75
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

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MEMBER'S ETHNICITY	1 9 8 1		1 9 8 2	
	number	percent	number	percent
White	2,080	65.8	2,516	61.28
Black	208	6.6	514	12.52
Hispanic	92	2.9	307	7.48
Other	9	.3	24	.58
Unknown	770	24.4	745	18.14
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

MEMBER'S DUTY STATUS	1 9 8 1		1 9 8 2	
	number	percent	number	percent
On Duty	2,950	93.3	3,965	96.57
Off Duty	43	1.4	45	1.10
Unknown	166	5.3	96	2.33
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

MEMBER'S DRESS	1 9 8 1		1 9 8 2	
	number	percent	number	percent
In Uniform	2,924	92.5	3,653	88.97
Out of Uniform	69	2.2	236	5.75
Unknown	166	5.3	217	5.28
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

Refers to the first member of several members involved in the same incident about whom a complaint is being made.

COMPARISON OF CCRB COMPLAINT CHARACTERISTICS IN 1981 AND IN 1982

CCRB COMPLAINT DISTRIBUTION	1 9 8 1		1 9 8 2	
	number	percent	number	percent
Civilian Complaint Review Board	3,159	40.92	4,106	48.73
Referrals to Other Commands	4,560	59.08	4,320	51.27
<b>TOTALS</b>	<b>7,719</b>	<b>100.00</b>	<b>8,426</b>	<b>100.00</b>

WHERE COMPLAINT WAS RECEIVED	1 9 8 1		1 9 8 2	
	number	percent	number	percent
Civilian Complaint Review Board	1,436	45.46	1,677	40.84
Field Units	1,500	47.48	2,397	58.38
Police Commissioner's Office	46	1.46	32	.78
Other Agencies or Unknown	177	5.60	0	0.00
<b>TOTAL</b>	<b>3,159</b>	<b>100.00</b>	<b>4,106</b>	<b>100.00</b>

CHARACTERISTICS OF \*FIRST COMPLAINANT

COMPLAINANT'S ETHNICITY	1 9 8 1		1 9 8 2	
	number	percent	number	percent
White	969	30.7	1,580	38.60
Black	1,022	32.3	1,273	31.00
Hispanic	555	17.6	526	12.82
Other	26	.8	16	.39
Unknown	587	18.6	706	17.19
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

COMPLAINANT'S SEX	1 9 8 1		1 9 8 2	
	number	percent	number	percent
Male	2,206	69.8	2,737	66.66
Female	896	28.4	1,191	29.01
Unknown	57	1.8	178	4.33
<b>TOTAL</b>	<b>3,159</b>	<b>100.0</b>	<b>4,106</b>	<b>100.00</b>

First Complainant - Refers to the first complainant of several complainants who make a complaint about an incident.

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POLICE DEPARTMENT  
CITY OF NEW YORK

September 14, 1983

From: Assistant Commissioner Charles J. Adams, Civilian Complaint Review Board

To: Police Commissioner

Subject: DISCOURTESY STUDY.

1. The Civilian Complaint Review Board conducted a study on a sampling of discourtesy complaints lodged with this office during the calendar year of 1982. A total of 228 Discourtesy complaints were reviewed by staff members. The sampling was obtained by taking the first ten cases and the last nine cases of discourtesy that were filed by civilians each month of 1982. The cases were identified by the nature of the complaint, which are recorded under the acronym FADE (F=Force, A=Abuse of Authority, D=Discourtesy and E=Ethnic Slur). The case folders of these 228 Discourtesy complaints were reviewed by staff members. The review revealed that 60 of the chosen cases were designated Discourtesy "C" cases. The designation of "C" is assigned to cases that are readily identifiable as only minor discourtesy complaints. Discourtesy "C" complaints are forwarded by the Civilian Complaint Review Board to the Command where the discourtesy was alleged to have occurred and are investigated by Field Supervisors. The Civilian Complaint Review Board has limited control over these investigations and, therefore, it was determined that by eliminating these cases, the study would provide a more accurate profile of discourtesy cases that are investigated and reviewed by the Civilian Complaint Review Board.

2. Of the remaining 168 cases, 10 were discarded because the recorded information did not contain the type of information pertinent to the study.

3. Seventy-six of the remaining 158 cases alleged discourtesy and no other offensive act. The eighty-two remaining cases were a combination of Discourtesy and the other acts of misconduct which are investigated by the Civilian Complaint Review Board, e.g. Force/Discourtesy or Force/Abuse/Discourtesy.

4. In the following tables, the information revealed by the study is presented in two categories: D only cases, which represents 76 of the cases, and FAE & D cases, which represents 82 cases. Both categories are then combined and listed as total cases.

  
Charles J. Adams  
Assistant Commissioner  
Civilian Complaint  
Review Board

CJA:gt  
cc: Commissioner Conboy

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TABLE I reveals the ethnicity of the victims of discourtesy complaints. Both whites and blacks are over-represented in this category by approximately 6% and 15%, respectively. Hispanics are under-represented.

TABLE I  
ETHNICITY OF COMPLAINANT/VICTIM

	WHITE	BLACK	HISPANIC	OTHER/UNKNOWN
# D CASES	42	21	5	8
% D CASES	55	28	7	10
# FAE & D	32	34	9	7
% FAE & D	39	41	11	9
# TOTAL CASES	74	55	14	15
% TOTAL CASES	47	35	9	9

TABLE II reveals the ethnicity of the alleged offending officer. The officers ethnicity is reflective of the uniformed ethnic makeup of the department.

TABLE II  
ETHNICITY OF POLICE OFFICER

	WHITE	BLACK	HISPANIC	OTHER/UNKNOWN
# D CASES	83	10	7	
% D CASES	83	10	7	
# FAE & D	76	13	2	16
% FAE & D	71	12	2	15
# TOTAL CASES	159	23	9	16
% TOTAL CASES	77	11	4	8

TABLE III reveals that a very small percentage of complainants were known to be under the influence of drugs or alcohol at the time of the alleged discourtesy incident. 5% of the victims were so influenced.

TABLE III  
USE OF ALCOHOL/DRUGS BY COMPLAINANT

	YES
# D CASES	7
% D CASES	4
# FAE & D CASES	1
% FAE & D CASES	1
# TOTAL CASES	8
% TOTAL CASES	5

TABLE IV reveals the officers' record of prior Civilian Complaint Review Board complaints. 122 (60%) of the officers received prior complaints for their alleged behavior. Any complaint registered to the Civilian Complaint Review Board was considered for recording. No consideration was given to the validity of these complaints.

TABLE IV  
NUMBER OF OFFICERS WHO HAD PRIOR C.C.R.B. COMPLAINTS  
 LODGED AGAINST THEM

# D CASES	60
% D CASES	60
# FAE & D CASES	62
% FAE & D CASES	58

TABLE V reveals that of the 122 officers with complaints lodged against them, 134 of the complaints were recorded as discourtesy or ethnic slurs. This represents 1.1 allegation of discourtesy by each officer.

TABLE V  
NUMBER OF DISCOURTESY COMPLAINTS LODGED AGAINST THESE OFFICERS

D CASES	61 or 1 per officer
FAE & D CASES	73 or 1.2 per officer
TOTAL CASES	134 or 1.1. per officer

- 4 -

TABLE VI reveals that the average service time for the subjects of the total cases were 8.8 years.

TABLE VI  
AVERAGE SERVICE TIME OF OFFICERS

D CASES	9.1 yrs.
FAE & D CASES	8.6 yrs.
TOTAL CASES	8.8 yrs.

TABLE VII reveals that the majority of incidents occurred on the third tour of duty, 50%.

TABLE VII  
TIME OF OCCURRENCE

	1ST TOUR	2ND TOUR	3RD TOUR
# OF D CASES ONLY	6	31	39
% OF D CASES ONLY	8	41	51
# OF FAE & D CASES	15	28	39
% OF FAE & D CASES	18	34	48
# OF TOTAL CASES	21	59	78
% OF TOTAL CASES	13	37	50

TABLE VIII reveals that the majority of incidents occurred on the street, 68%.

TABLE VIII  
PLACE OF CONTACT BETWEEN THE OFFICER & THE COMPLAINANT

PLACE	# FAE & D	% FAE & D	# D ONLY	% D ONLY	TOTAL	% TOTAL
STREET	63	77	44	58	107	68
RESIDENCE	9	11	16	21	25	16
STORE	2	2	8	11	10	6
STATION HOUSE	5	6	5	7	10	6
OTHER	3	4	3	4	6	4

TABLE IX reveals that the reason for contact was primarily a traffic incident, 41% and secondarily in response to a call for service or a crime, 16%.

TABLE IX  
REASON FOR CONTACT BETWEEN OFFICER AND COMPLAINANT

REASON	# FAE & D	% FAE & D	# D ONLY	% D ONLY	TOTAL	% TOTAL
TRAFFIC	35	43	30	40	65	41%
RESPOND TO CALL	13	16	12	16	25	16%
ASK QUESTIONS	4	5	9	12	13	8%
DISPUTE	10	12	10	13	20	13%
STREET SEARCH	6	7	4	5	10	6%
OTHER	14	17	11	14	25	16%

TABLE X reveals that less than half of the contact incidents resulted in the issuance of a summons or an arrest.

TABLE X  
SUMMONSES OR ARRESTS RESULTING FROM CONTACT

	SUMMONSES	ARREST	NO ACTION
# OP D CASES	21	1	54
% OP D CASES	28	1	71
# FAE & D CASES	24	15	43
% FAE & D CASES	29	18	53
# TOTAL CASES	45	16	97
% TOTAL CASES	28	10	62

TABLE XI reveals a language frequency distribution. The categories rude, crude and profane were defined as:

RUDE - Proper English words used in phrases or tone that were impolite, e.g., get away from me, don't bother me, get out of here.

CRUDE - Proper English words but used in a manner that projected a profane connotation.

PROFANE - Words/phrases that are defined as slang and not used in polite conversation. The threats under this category relate to threats that involved a degradation of the body, e.g., I'm going to take your clothes, make you run around naked, I'm going to kick your balls, other refers to unknown statements of profanity, i.e., the complainant alleged profanities without being specific.

TABLE XI  
LANGUAGE FREQUENCY DISTRIBUTION

	FAE & D	D ONLY	COMBINED
RUDE	20	18	38
CRUDE			
"HELL"	1	1	2
"ASS"	5	5	10
"SHIT"	3	7	10
"SLUT"	1	-	1
OTHER	4	4	8
PROFANITIES			
POCK	19	26	45
SCUM BAG	2	2	4
PRIVATE BODY PARTS	2	2	4
SON-OF-A-BITCH	5	2	7
GESTURES	0	4	4
BASTARD	3	-	3
THREATS	9	11	20
OTHER	13	6	19

TABLE XII reveals the dispositions of the cases. The majority of the cases were disposed of by informal interviews and instructions of the subject officers. This process is labeled conciliation and accounted for the disposition in 70% of the discourtesy sample cases.

TABLE XII  
DISPOSITIONS OF CASES

	# FAE & D	% FAE & D	# D ONLY	% D ONLY	TOTAL	% TOTAL
UNFOUNDED						
WITHDRAWN	5	6	4	5	9	6
CONCILIATED	43	52	67	88	110	70
VICTIM/COMPLAINANT UNAVAILABLE OR UNCOOPERATIVE	24	29.5	5	7	29	18
UNSUBSTANTIATED	6	7.5	0	0	6	4
SUBSTANTIATED	2	2.5			2	1
OTHER	2	2.5			2	1

UNITED STATES COMMISSION ON CIVIL RIGHTS

**EASTERN REGIONAL OFFICE**  
26 Federal Plaza  
Room 1639  
New York, New York 10007  
(212) 264-0400

July 18, 1983

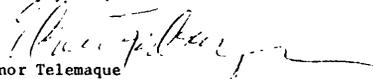
Ms Gail Bowman  
Subcommittee on Criminal Justice  
House Annex-362  
Washington D. C. 20515

Dear Ms Bowman:

As I discussed today, July 18, 1983, with Ms Anne West, Clerk, I am attaching herewith the monitoring by the New York State Advisory Committee's Subcommittee on Police Brutality of the shooting and killing of Robert L. Greene and the wounding of Nancy Moreno by police officers Carol Esserman and John Maier as they sat in a parked car in New York City. I understand that the monitoring will be part of the hearing record of the Subcommittee.

If you have any further questions , please do not hesitate to call me.

Sincerely yours,

  
Eleanor Telemaque  
Civil Rights Analyst

Enclosure: File on R. Greene and monitoring of trial of police officers  
Esserman and Maier

I am also enclosing a copy of the Commission publication, "Who's Guarding the  
Guardians"...

1777

6828 Dan Street  
Richmond, VA 23231  
June 20, 1983

Mr. Robert J. McGuire  
Police Commissioner  
NYC Police Department  
One Police Plaza  
New York, NY 10038

Dear Mr. Commissioner:

Over two years have passed since my brother, Robert Greene was killed by Carol Esserman. Less than six months have gone by since I witnessed the one-act play, presented in the Bronx Supreme Court Building, before chief critic Judge Peggy Bernheim.

Unless your department is corrupt, you would have proceeded with a departmental trial against the undercover officers involved.

Assuming these officers are not victims of diminished capacity, they can be held accountable for their negligence. That negligence led to the thoughtless, willful taking of a life--a murder.

You, the department leader, must move to define the parameters of justice, duty of care and responsibility. It's obvious from the following points that these are nebulous areas within your department; or that the principals involved chose to overlook these confines.

1. Radio call for the "Cobra Lounge" brings plainclothes officers to the vicinity
2. Officers see two people sitting in automobile and same officers approach this automobile to investigate (Why?)
3. Officers approached vehicle with drawn guns; don't identify themselves, and they thought they heard a gun fire
4. Officers shot at moving vehicle and a running occupant when no crime had been committed
5. Officers maintain that victim had a firearm
6. Parafin test performed on the victim proved that he had not fired a weapon; no bullet recovered from victim's car or from the area
7. Victim shot in the back
8. Victim's money disappeared
9. Victim's car was auctioned off by the Police Department
10. Supervisor who conducted search of the area fails to recall the incident even after reviewing report that he prepared
11. Sergeant O'Donald's testimony (under oath) that the Police Department had already exonerated these officers
12. The case two years old before trial.

During that trial, the officer's case was built around my brother's police record. But I don't have to plead a case for him because his record speaks for itself: Nothing of a violent nature.

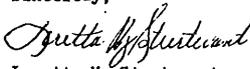
Can you justify the actions of the undercover officers, though? Can you justify the misconduct of your police investigators who got rid of crucial trial evidence? That evidence which a Grand Jury heard and indicted on; evidence to which the trial judge was not made privy?

Well, Mr. Commissioner, do the rules change midstream to protect people like you who are sworn to uphold the law and to protect it's worth; or is it to violate a Black man's right to exist?

On the walls of the District Attorney's office, in the Bronx Supreme Court, it states: "To be free is to live under a government by law." Unless we will live under a lawful government, then we will live enslaved by that government which we elect, that in turn seeks to appoint and hire that group of people that are so brutalized that they could claim the right to dispose of the lives of others.

I am asking you to proceed with a departmental trial against the officers indicated, as this is the normal recourse for citizens against those that break the law.

Sincerely,



Loretta Y. Sturtevant

cc

Gov. Mario Cuomo  
Mayor Edward I. Koch  
Judge William Kapelman  
William Hibsher  
Ruth J. Cubero  
Mario Merola

1779

## Harkness House Gallery

4 EAST 75th STREET, NEW YORK, NEW YORK 10021 • TELEPHONE (212) 794-0200  
CABLE HARKNESSUS



Contact: Charles Wieland  
CANTERNA Exhibit  
212/ 472-8772

For Immediate Release:

"THE BOTTOM LINE," A SCULPTURE BY BARRY MOVSESSIAN CANTERNA,  
BASED ON AN INCIDENT OF POLICE BRUTALITY, WILL BE SHOWN AT  
THE HARKNESS HOUSE GALLERY IN NEW YORK

New York -- An exhibition of sculpture by Barry Movsessian Canterna featuring the first public showing of "The Bottom Line," a major new work based on an actual incident of police brutality in New York City, will be presented here from June 12 through September 1 at the Harkness House Gallery at 4 East 75th Street.

A preview of the exhibit will take place on the evening of the opening, by invitation, from 7 to 10 p.m.

The summer-long show will include 18 selected works ranging from realistic to semi-abstract forms. They date from 1970 to the present. Marble, cast bronze and cast aluminum are among the materials used by Canterna.

"The Bottom Line" is a recreation of a harrowing incident of violence that the artist and his brother experienced at the Sixth Precinct here on the evening of May 18, 1978. For more than a year Canterna has devoted all of his energy and talent to working on the monumental work. The finished sculpture, cast in polyester resin and reinforced with fiber glass, is over life size in scale, and eventually

will be permanently cast in bronze. It is dominated by eight police officers who are shown hovering over two crumpled hand-cuffed figures; in real life, the artist and his brother.

"This sculpture is not an indictment against honorable police officers or law enforcement agencies," Canterna says, "Only those who use their badges as a vehicle for personal prejudices, hatreds and other hang-ups."

The main purpose of "The Bottom Line" is to establish the fact that there are many instances of police brutality here in New York, but because of fear they seldom rise to the surface. In addition, Canterna believes it is necessary to document the incident for his own integrity and for the continuation of his work as an artist.

A night of horror began for Barry Canterna and his brother Kevin when they set off for a concert by Lou Reed at The Bottom Line in Greenwich Village. An argument ensued inside the club which resulted in Barry being assaulted by Lou Reed's bodyguards and the club's bouncers. The assault continued out onto the street where Kevin, seeing that his brother was hurt, called the police.

Instead of coming to their support the police began their own seige of violence, beating the brothers on the street, after which they were taken hand-cuffed to the sixth precinct. Inside the precinct they were beaten with clubs and a chair, they were kicked and they were verbally assaulted for more than two hours. Both men required hospitalization. Kevin, for instance, was detained for one week in the police

ward at Bellevue Hospital, with multiple injuries including internal bleeding. He was not allowed to call his personal doctor or an attorney nor any member of his family for a period of three days.

Barry Canterna was born in 1951 in Sharon, Pennsylvania. His parents are Italian and Armenian descent. A talented sportsman, he excelled in basketball during his high school years and in 1969 received a basketball scholarship to Long Island University. He played for the Amateur Athletic Union representing the U.S.A. in the 1973 Israel games.

While attending Long Island University he expanded his studies in art and sculpture under Cynthia Danzig and art historian Martin Reese. He also studied at Temple University, at the Carnegie Mellon University (advanced sculpture with Douglas Pickering), at Pratt University in New York (metal casting with Dakon Morehouse and sculpture anatomy with Toshio Adato), and bronzing skills at the Modern Art Foundry, New York.

Apart from his career as a sculptor Canterna's secondary interest is the dance, especially the ballet. He is presently a student at The American Ballet Theatre School having previously attended The Manhattan School of Dance and the International School of Dance.

His sculpture has been exhibited in New York, San Francisco, Pittsburgh, Belgium and England. Notable American and European collectors own his work.

Kevin Canterna, age 20, is an aspiring dancer-actor. He is a scholarship student at the Harkness House for Ballet and most recently has appeared in the Off-off Broadway production, "Indulgences." He has studied drama at the Herbert Berghof Studio and dance at the International School of Dance at Carnegie Hall.



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