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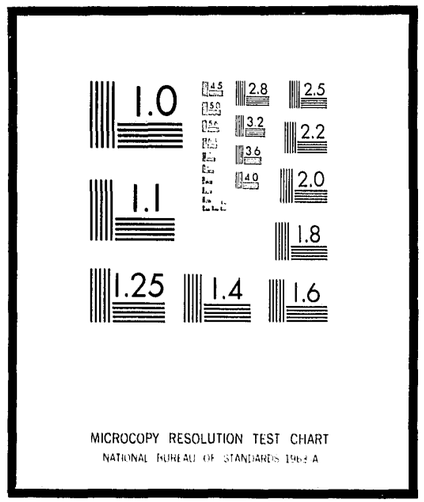

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ANNOTATION:
A PROCEDURE TO BRING DELINQUENT OFFICERS TO BOOK, TO UPGRADE THE LEVEL OF PERFORMANCE, AND TO IMPROVE MORALE.

ABSTRACT:
A MODEL PROCEDURE SHOULD BE FUNCTIONAL, READILY UNDERSTANDABLE BY A ROOKIE POLICEMAN OR AN ORDINARY CITIZEN. IT MUST CONTAIN SUFFICIENT SPECIFICITY, TO IMPOSE A CLEAR RULE OF LAW IN A FIELD WHERE ADMINISTRATIVE DISCRETION--OR ABUSE--HAS UNDERGONE LITTLE SCRUTINY. MANY OF THE DEPARTMENTAL ORDERS SURVEYED LEFT LARGE GAPS IN PROCEDURE AND ONE MAJOR DEPARTMENT OPERATED WITHOUT ANY WRITTEN RULES OF PROCEDURE AT ALL. IMPROVING THE PROCESS IS THE OBJECTIVE OF THIS STUDY. THE OVERRIDING OBJECTIVE OF THE PROCEDURES IS TO FOSTER IMPROVED SERVICE TO THE PUBLIC THE DEPARTMENT SERVES. BRINGING THE DELINQUENTS TO BOOK SERVES NOT ONLY TO UPGRADE THE GENERAL LEVEL OF PERFORMANCE AND ENHANCE DEPARTMENTAL MORALE BUT ALSO MAKES EVIDENT A SENSE OF RESPONSIBILITY TO THE COMMUNITY AT LARGE. OF EQUAL IMPORTANCE IS THE NEED TO EXPOSE THE UNFOUNDED, FALSE OR MALICIOUS COMPLAINT WHICH, STANDING UNREFUTED, WOULD TEND TO UNDERMINE THAT PUBLIC CONFIDENCE SO ESSENTIAL TO THE CONTINUATION OF EFFECTIVE LAW ENFORCEMENT. (AUTHOR ABSTRACT)

Disciplining the Officer: A Model Order for Police Departments*

NI - 090

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I. Introduction

Discovering a suitable mechanism for resolving charges of police malpractices long has challenged the ingenuity of interested observers. With rare exceptions, popular--and perforce political--clamor for enforcing effective discipline in police ranks has been translated into proposals to implement external surveillance of police practices. The notion of civilian-dominated review boards, once quite popular but now largely discredited, has been revived and intensified throughout the country in the form of proposals for ad hoc civilian investigatory groups, formal commissions and, most emphatically, the ombudsman.

Superficially, this preference for an external review procedure is surprising. Sound administration requires that any system of disciplinary machinery concentrate on strengthening internal procedures, reserving external review for the extraordinary, sensational or intractable case. On the other hand, where police are concerned, academic dogma holds that internal decisions about disciplinary matters rarely will be accepted as credible by large segments of a skeptical community. Presumably, based upon this summary evaluation of the futility of internal disciplinary machinery, interested academes largely have abandoned efforts to work within police departments and have concentrated their energies and resources upon refining and analyzing external grievance mechanisms. Undoubtedly there are other reasons for failure of researchers to examine closely internal disciplinary practices in police departments--a dearth of published information, inaccessibility of records and personnel, lack of cooperation by police, and suspicion and timidity among those who simply are reluctant to gather the data at the working level. Whatever the causes, it is clear that law enforcement agencies have received little outside assistance in formulating procedures governing questions of discipline.

From these assumptions arose the present research, which was based, in large part, upon an empirical investigation of practices within the Seattle Police Department. The methodology of the project during the one year grant period was as follows: a survey was made of the existing literature and the procedures enforced in several departments throughout the United States.[1] Interviews were conducted with various persons in the Seattle community who come into contact with the police disciplinary machinery--officers, complainants, minority citizens, representatives of community action groups and public officials. Complaints were monitored at various stages of the process to test the responsiveness of the system. Finally, a sample of the 1969 complaint file of the Internal Investigations Division of the Seattle Police Department was examined to determine the types of cases resolved by the internal complaint mechanism.[2]

Seattle, no less than other cities in the United States, historically has been quite primitive in handling questions of police discipline. External remedies of all types are available in theory in this city but are satisfactory only occasionally. Presently a well informed Seattle citizen, who has a grievance charging misconduct by a police officer, may file a complaint with the courts, the Human Rights Commission, State Board Against Discrimination, Citizen's Service Bureau, the Troubleshooter Column of the Seattle Times, the City Council or the Mayor's office. Soon he will be able to file a grievance with the Office of Citizen Complaints, an ombudsman-type institution presently being implemented jointly with King County pursuant to an Office of Economic Opportunity grant.[3] The purpose of the research was to determine how and to what ends the disciplinary machinery of the department itself functioned within this proliferation of possible remedies.

Recognizing deficiencies in present practices, the Seattle Police Department several times during the course of the project has revised its General

Order dealing with disciplinary procedures. At the outset, it must be acknowledged emphatically that issuing a few declarations about discipline cannot alone reduce inevitable frictions between the department and the community it serves. Spirited words mean little if not backed by an equally firm commitment from the administrators. Many complainants fail to discover the available machinery; some never will be pleased by the fairest of procedures; occasional disputes raise issues immune from resolution by a formal procedure;[4] some controversies, such as alleged criminal violations or illegalities in departmental policy, are destined for higher forums--the courts, the grand jury or the ombudsman. As this report was being written, a federal perjury trial in Seattle of an ex-Assistant Chief of the Seattle Police Department produced testimony documenting an extensive pay-off system within the department implicating several officers presently on the force and reaching the highest echelons of the staff.[5] One officer has testified that in 1968 he resigned within one week of his appointment by the mayor as head of the internal investigations unit because the Chief became "irritated" when the new commander "refused to limit his investigations to complaints of brutality from persons in the Central Area."[6]

That internal investigations could not uncover instances of wholesale corruption within a department is discouraging though insightful. That internal investigations might be useful in resolving "complaints of brutality from persons in the Central Area" is encouraging and also insightful. Conceding that some types of controversies about police conduct are meet for other forums or insoluble in any legal system, there nonetheless remains a substantial number of disputes which can be and are resolved by internal police disciplinary machinery. Most metropolitan police departments have some procedure for receiving and processing complaints about department personnel and all departments

have an internal disciplinary mechanism. In Seattle, as elsewhere, complaints are filed through ordinary channels, considered and decisions are made, sometimes favorably to the officer, sometimes not. Recent statistics, hollow in themselves, disclose that during the first three months of 1970 a total of one hundred complaints alleging police misconduct were logged and filed. Fifty-nine investigations were completed by April 1, eight of which resulted in disciplinary action.[7] During 1969 officers were fired for accepting bribes and thieving from prisoners, admonished for driving carelessly and referred for psychological counseling for cursing citizens. These reports, like all others emanating from an administrative agency, are subject to the usual charges of whitewash, distortion and manipulation. Probably, no internal system of grievance procedures could be drawn that would avoid charges that it is a "one-sided" instrument useful as a publicity tool for police propaganda;[8] a prop for maintaining departmental morale;[9] or inherently untrustworthy to large segments of the community.[10] But to argue that an institution suffers from actual or perceived limitations is not to prove that efforts to strengthen that institution are misguided.

A model procedure should be functional, readily understandable by a rookie policeman or an ordinary citizen. It must contain sufficient specificity, nonetheless, to impose a clear rule of law in a field where administrative discretion--or abuse--has undergone little scrutiny. Many of the departmental orders surveyed left large gaps in procedure[11] and one major department operated without any written rules of procedure at all.[12] Improving the process is the objective of this study.

II. The Model Order

Section 1.00 STATEMENT OF PURPOSE

A relationship of trust and confidence between members of the police department and the community they serve is essential to effective law enforcement. Police officers must be free to exercise their best judgment

and to initiate law enforcement action in a reasonable, lawful and impartial manner without fear of reprisal. So, too, enforcers of the law have a special obligation to respect meticulously the rights of all persons. The [_____ Department] acknowledges its responsibility to establish a system of complaint and disciplinary procedures which not only will subject the officer to corrective action when he conducts himself improperly but also will protect him from unwarranted criticism when he discharges his duties properly. It is the purpose of these procedures to provide a prompt, just, open and expeditious disposition of complaints regarding the conduct of members and employees of the Department. To this end, the [_____ Department] welcomes from citizens of the community constructive criticism of the Department and valid complaints against its members or procedures.

The overriding objective of the procedures, here articulated, is to foster improved service to the public the department serves. Bringing the delinquents to book serves not only to upgrade the general level of performance and enhance departmental morale but also makes evident a sense of responsibility to the community at large. Of equal importance is the need to expose the unfounded, false or malicious complaint which, standing unrefuted, would tend to undermine that public confidence so essential to the continuation of effective law enforcement.

Section 2.00 DEFINITIONS.

2.01 "Aggrieved party" means the person or persons claiming to have suffered abuse or injury from the misconduct of a member of the department.

2.02 "Complainant" means the person who files a complaint with the department alleging the commission of a major violation or infraction by a member or members of the department and includes any aggrieved party and any person or group who assists him in filing the complaint.

2.03 "Exonerated" means the classification assigned to a complaint where the incident complained of occurred but was lawful and proper.

2.04 "Hearing Board" or "Board" means the group of members selected by the Chief of Police to adjudicate complaints.

2.05 "Infraction" means a violation of departmental rules and regulations defining transgressions that are not major violations.

2.06 "Major violation" includes:

(1) a violation of statutes and ordinances defining criminal offenses;

(2) the use of unnecessary of excessive force;

(3) discourtesy or the use of abusive and insulting language;

(4) language or conduct which is derogatory of a person's race, religion, life style or national origin; or

(5) abuse of authority.

2.07 "Member" means both sworn and civilian, including temporary, employees of the department.

2.08 "Not sustained" means the classification assigned to a complaint where there is insufficient evidence either to prove or disprove the allegation.

2.09 "Removal" means the termination of a member's employment in the department.

2.10 "Rules and Regulations" mean the administrative acts promulgated by the Chief of Police which are designed to regulate departmental standards of conduct and appearance.

2.11 "Suspension" means the temporary excusing of a member from active employment for a definite period of time.

2.12 "Suspension, investigative" means the temporary excusing of a member from active employment for a period of time no longer than forty-eight (48) hours pending the investigation of a complaint.

2.13 "Sustained" means the classification assigned to a complaint where the allegations are supported by a preponderance of the evidence.

2.14 "Unfounded" means the classification assigned to a complaint where the allegation complained of is false or not supported by the evidence.

2.15 "Witness" means a person who can produce evidence relevant to an alleged major violation or infraction.

Most procedures used by major police departments lack a definitions section with a consequent contribution to ambiguity. The definitions here set forth are crucial to an understanding of the scope and purposes of the Model. A few major policy decisions will be mentioned at this point.

The Model, with minor language changes, embraces the four classifications for investigated complaints recommended by the International Association of Chiefs of Police--exonerated, not sustained, sustained and unfounded.[13] Many departments presently abide by these classifications which generally have served the dual purpose of simplicity and specificity. A finding of exonerated is equivalent to traditional notions of excuse and justification in tort or criminal law. Illustrative is the case in Seattle of the off-duty police officer who took steps to subdue a belligerant, drunken driver until officers of the state patrol arrived to make an arrest. The plainclothesman was charged with brutality by the outraged citizen. The complaint was properly classified as exonerated--that is, the force used was justifiable--on the strength of a subsequent drunken driving conviction of the complainant and a commendation of the officer by the State Patrol. There is no doubt that an internal investigating authority must deal with clear cases of excuse and justification no less than other adjudicative bodies.

A conclusion that a complaint is "not sustained" must be premised upon the insufficiency of evidence "either to prove or disprove the allegation." Many investigations--some 10% in Seattle--fail to turn up enough information to resolve the controversy. In these cases, manifestly, no sanction would be appropriate but at the same time saddling the suitor as a "loser" in a contest with a member of the department is wholly inappropriate. A patient explanation that the department has "insufficient information to decide" is a correct disposition and one that, properly explained, need not offend the complainant who may be right on the merits. On the other hand, branding a complaint "unfounded" goes to the merits and concludes that the aggrieved party was a liar, a fool or reasonably mistaken.

Judicial notions of burden of proof generally are rejected in the definitions with the exception of a complaint "sustained" which must be supported "by a preponderance of the evidence." The imposition of sanctions assumes an acceptable level of proof which in disciplinary cases is thought to be satisfied by the "preponderance" standard of civil cases.[14] Short of such a finding of culpability, it is believed that discussions of burden of proof would serve only to muddy communication between interested parties. It is sufficient to inform the aggrieved party that "you are wrong; or "we don't have enough facts to tell you whether you are right or wrong"; or"you are right about the facts but the officer was right in what he did."

The draft embraces the distinction, preferred now by a few departments,[15] between minor "infractions" and "major violations." Distinguishing between complaints at the reception stage was thought to be helpful for purposes of establishing priorities for investigation and review and indicating what penalties may be imposed. Plainly, the categories are not immutable so that complaints at any stage of investigation may be reclassified and reassigned as appropriate.

The distinctions are largely self-evident. That charges of criminal conduct be treated as a "major violation" under §2.06(1) is hardly debatable. Widespread and damaging cynicism about all operations of the Seattle Police Department has resulted from the recent court disclosures of criminal activity among police officers. Brutality cases, as well, under §2.06(2), are denominated major cases, both because of the serious nature of the violation and its potential for creating widespread community resentment. The last three Seattle mayors have monitored closely all incidents of alleged brutality. Racial incidents and the "use of abusive and insulting language" also are thought to be

sufficiently provocative to deserve treatment as major violations. Lastly, the loose category of "abuse of authority" is included to cover cases where the status of the offender as a police officer serves to aggravate an incident that might go unnoticed if committed by a member of the general public. Minor traffic offenses, the "borrowing" of a newspaper from a stand without payment, or the use of a police car to go shopping for groceries assumes a special severity given the privileged status of the violator.

"Infractions" are described broadly as all transgressions of departmental regulations not treated as "major violations." Most police departments, like most major employers, have a vague collection of mandates to guide the sloppy, the neglectful and the lazy. Unshined shoes, lost revolvers and slumbering workers are inevitable recurrences in a large governmental agency. For the most part, minor "infractions," from complaint to disposition, are likely to be dealt with without a formal allegation from an outsider. The Model avoids attempting to delineate the limits of the powers of a department to discipline its personnel. The length of an officer's locks,[16] the strength of his credit rating[17] and the intensity of his premarital sexual relationships[18] are among the more exotic subjects treated in existing regulations.

Section 3.00 APPLICABILITY

> These procedures shall apply to all members of the department, whether on or off duty, with the exception of the Chief of Police and other personnel subject to summary removal, demotion or suspension by the Chief of Police.

The decision to apply the procedures to off-duty members of the department is consistent with the usual practice[19] and responsive to the empirical evidence in Seattle which discloses a surprisingly high number of off-duty incidents handled through the department's machinery. Distinguishing between the private and public lives of a policeman apparently is not usually done by

the ordinary citizen. Invariably, the department has an interest in claims of brutality or abuse of office taking place while the offender happens to be out of uniform. The shooting of a Negro by an off-duty policeman in Seattle several years ago is still cited today as an especially acute cause of ill feelings between police and the black community.

Exempting the Chief and his immediate entourage accords with accepted administrative practice. The Chief, who is responsible for administration, generally has summary powers to appoint or dismiss Assistant Chiefs, Majors or Police Legal Advisors.[20-24] These key men, like most others at the top, properly are subject to the whims of their boss.

4.00 PROCESSING OF COMPLAINTS

§4.01 Source of Complaints

The department shall receive complaints from any source alleging an infraction or major violation.

This deceptively simple provision is designed to overcome limitations on the eligibility of persons who may file complaints. It is assumed that all attempts to restrict sources of complaints pose unrealistic obstacles to legitimate grievances. Some with legitimate claims, especially among minority groups, are stifled by a fatalism that feeds on ignorance, fear and past disappointments. A few, such as street walkers with complaints of harassment, refuse to complain because they do not wish to invite a formal police inquiry into their shady activities. But there is, in addition, sufficient documentation of police harassment of complainants in Seattle and elsewhere to make understandable the reluctance of even the most well intentioned to press their claims. During one period it was reported that the Washington, D.C. police department lodged criminal charges of filing

a false report against 40% of all persons attempting to file complaints alleging police misconduct.[25] Cases of physical abuse against the vocal aggrieved also have been recorded.[26] Deterring complainants may be more subtly accomplished. During a disturbance in the summer of 1969 in Seattle's University District the owner of a small cabaret claimed he was beaten by two members of the police department's tactical squad as he attempted to escort two female employees through an alley to see them safely home. Several days later two of his friends who are members of the police force persuaded him to refrain from filing a complaint. They reminded him that his application for a liquor license for his cabaret required the signature of the captain of the local precinct and, accordingly, the use of discretion was advisable. The interviewer was reminded, "Don't mention my name, you understand!"

These and other incidents create an atmosphere of suspicion and fear that deters the filing of complaints even though the doors may be genuinely open as almost all observers insist they are in the offices of Seattle's Internal Investigations Division. In this setting it is simply unrealistic to expect everyone to come directly to the department or go to a "friendly" public official with his grievance. Intermediary groups can help bridge the gap. In Seattle, the Human Rights Commission, American Civil Liberties Union and the Model Cities Law and Justice Task Force have served as active reception groups for receiving, screening, and passing on complaints to the department. More recently, VISTA volunteers and the Public Defender's Office actively have sought to discover instances of alleged police misconduct for consideration by the department. This practice of allowing another to file a complaint on behalf of an aggrieved person is preserved by the draft in §§ 2.01, 2.02.

4.02 Anonymous complaints

Anonymous complaints shall be accepted and may be investigated at the discretion of the commanding officer of the Internal Investigations Division.

This provision is a reaffirmation of §4.01 which declares that the department "shall receive complaints from any source." There is, in principle, no reason to reject anonymous complaints summarily, especially where legitimate fears are a well documented deterrent. The police department no less than the public restaurant should be anxious to solicit helpful tips and suggestions from someone who wishes to preserve his privacy. Indeed one could detect hypocrisy in a department anxious to investigate an outsider on the basis of an anonymous tip[27] but reluctant to investigate one of its own on similar unverified grounds. In Seattle anonymous tipsters have led to the identification of officers who were using vehicles for unauthorized purposes. This is not to say, of course, that complaints filed anonymously should be treated with the same consideration as those from a more credible source but neither should they be ignored altogether. The course of action, in any event, should be left to the commander of the Internal Investigations Division.

4.03 Form of complaint

A complaint may be filed in person, by writing or telephoning any member of the department.

Many departments further clog the complaint process by erecting procedural impediments designed to discourage all but the most determined. A 1969 act of the Texas legislature requires that a complaint against an officer be in writing and signed by the complainant.[28] The city charter of Rochester, New York requires the complaint to be written, signed, and verified.[29] Departmental rules in Buffalo,[30] Indianapolis,[31] Newark[32] and Washington, D.C.[33] impose similar limitations.

These obstacles are misconceived efforts to protect the department and its personnel from the slanders of the irresponsible. Far wiser would it be to accept all complaints and cull out the good from the bad in the administrative process. Procedural obstacles do not deter the liar and demagogue and, indeed, lend credence to charges of unresponsivity. The body of opinion that banished the forms of action in the courts should be extended to modern police departments.

4.04 Timeliness of complaint

A complaint must be filed with the police department within sixty (60) days after the date of the alleged incident. A complaint filed after that time will be investigated at the discretion of the commanding officer of the Internal Investigation Division.

The limitation period is supported by the familiar reasons of fading memories and disappearing witnesses that make difficult the investigation of stale complaints. The Seattle experience has been that a limitation period almost never would bar a legitimate complaint because the griper invariably reacts with rapidity to an unsavory contact that inspires him to take action. Authorizing a discretionary waiver of the time bar is defensible since the provision seeks to accomplish only a general directive for investigational priorities not an opportunity for slamming the door on seemingly meritorious complaints.

4.05 Receipt of Complaint

(1) A member of the department receiving a complaint shall record all pertinent facts and information, including the:

(a) nature of the alleged incident;
(b) date of alleged incident;
(c) place where alleged incident occured;
(d) name of member of department involved or his badge number or any other description;
(e) name, address, and/or telephone number of the aggrieved party, the complainant and of all known witnesses;
(f) summary of complaint with details of the alleged violation.

(2) A member receiving a complaint shall report the information immediately to the commanding officer of the Internal Investigations Division.

Logging complaints is a simple matter of filling out a form in most departments. It is a form with which all members of the department should become familiar. The usual stories about the impossibility of penetrating a bureaucracy have been recited about the Seattle Police Department: complaints have been given false information by departmental personnel about where complaints should be filed and what form is required. One officer, it is alleged, refused to accept complaints that were not notarized though such a requirement nowhere appears in the departmental rules. Complaints have been accepted and recorded by police officers, never to appear in the files of the internal investigations unit. Complainants have been met with the run-a-round, the put-off and the put-down. This is not to say that filing a complaint with the police department is any more difficult nor any easier than filing a complaint with another agency of government. It is to say that every effort should be urged to improve the accessability of the process. Oakland supplies a novel technique by distributing form complaints on post cards carrying the address of the Chief of Police. The fear that the department may be inundated with frivolous complaints is no excuse for erecting impediments that may cut off meritorious claims. Section 4.05(2), which requires the forwarding of all complaints to the Internal Investigations Division, deserves further explanation.

5.00 INVESTIGATION OF COMPLAINTS

5.01 Internal Investigations Division

The Internal Investigations Division is the staff unit which coordinates and exercises staff supervision over the investigation of complaints against members of the department. It shall ensure that an investigation of all complaints is conducted.

5.02 Staff

The Internal Investigations Division shall be staffed by a unit of investigators commanded by a captain who shall be directly responsible to the Assistant Chief.

5.03 Investigation

Upon receipt of a complaint, the commanding officer or his designee will determine whether the complaint alleges a major violation or an infraction. He will assign complaints alleging infractions to the unit commander of the accused. Complaints alleging major violations will be retained by the Internal Investigations Division for investigation by its own staff.

Funnelling all complaints to a single investigative unit is as important as it is difficult to achieve. A large number of departments, reciting the military dogma that "discipline is a function of command," require the commanding officer of the accused to conduct an initial investigation.[33a] Deservedly, this practice has been the target of much criticism for it offers an open invitation to the whitewashing that has undermined many internal procedures.[33b] A fair hearing is aborted when first-line supervisors consciously condone the misconduct of officers under their command and deliberately shield them from disciplinary action. Also, the time demands on today's policemen make it difficult for a supervisor to depart from his normal tasks to conduct a complete investigation. The deficiencies in this system can be eliminated by requiring that all serious complaints be forwarded to a single unit for investigation or assignment. Complaints alleging major violations--including the brutality and civil rights cases--will be retained by the investigative unit while lesser infractions will be routed elsewhere for disposition.[34] Plainly, it would be unwise and unrealistic to expect every case of unshined shoes to be passed to the special investigators and back to the line commander for an oral reprimand. But the need for a central, independent body cannot be overemphasized.

The successful operation of this procedure depends on the establishment within the department of an independent unit which would assume full responsibility for the investigation of complaints. Such a unit should be commanded by a high-ranking officer who would be directly answerable to the Chief or Assistant Chief. Advantages of expertise, objectivity and increased public confidence are obvious. In large departments it would be advisable to include officers with legal training, for, in the hard cases, vigorous investigation in sensitive areas is required. The decision in the aftermath of the scandal in Seattle to appoint an elite investigative unit of police and prosecutors headed by the former chief of the Oakland Police Department should be indicative of the future direction of internal investigations. Independence, competence and commitment must be the hallmark of housecleaning efforts within a department.

An elite unit assumes the necessary resources. An easy way to deemphasize internal investigations is to scrimp on funds and cut back on competent personnel. Being stingy with resources assures delay, superficiality and unresponsiveness where speed, depth and sensitivity are needed. Until recently, the investigative unit of the Seattle Police Department was staffed by five officers who shared one small office, three telephones and one typewriter and who worked without a secretary, camera or tape recorder. For smaller departments without necessary funding, it might be advisable to designate one high-ranking officer to investigate all complaints. Or, has been suggested, the department could appoint an ad hoc investigative group to handle all complaints as they arise.[35]

The mechanics of the investigation are not specified in the procedure. It is assumed that the departments will utilize business as usual techniques. Physical examinations and photographs will prove useful in brutality cases. In Seattle, a positive polygraph test led to further investigation and ultimately the sustaining of a complaint initially thought to have been incredible.

Police officers, no less than other citizens, of course are entitled to the usual panoply of procedural rights arising when the investigation looks their way. Years of agitation by New York City's Patrolmen's Benevolent Association has resulted in the adoption of a Bill of Rights to safeguard the rights of officers involved in departmental investigations. The precedent is a good one.

5.04 Special cases

> If the complaint alleges misconduct on the part of a member assigned to the Internal Investigations Division, the Chief of Police shall assign the investigation of the complaint to another commanding officer unconnected with the Internal Investigations Division, who shall proceed to investigate in accordance with the provisions of this section.

Requiring the assignment to another unit of complaints against internal investigations personnel is merely an application of the general principle rejecting the built-in conflicts of interest inherent in inflexible insistence upon the "discipline is a function of command" notion. Where the internal investigations unit is called into question obviously the integrity of the entire disciplinary machinery is at stake and an objective inquiry dictated.

5.05 Classification of complaints

> Upon completion of an investigation, the commanding officer of the Internal Investigations Division shall review the results of the investigations and classify the complaint as either:
>
> (1) unfounded;
> (2) exonerated;
> (3) not sustained;
> (4) sustained.

The reasons supporting reaffirmation of the IACP's fourfold classification scheme have been set forth earlier.

5.06 Review by Chief

> The commanding officer of the Internal Investigations Division shall forward the results of the investigation and his recommendation to the Chief of Police who shall review the findings and:

(1) concur in the results and recommendation; or
(2) if not satisfied, return the file to the Commanding officer for further investigation.

The Police Chief is given this power of review at the investigative stage in the interests of sound administration. Obviously, at the investigative stage, the Chief will intervene only in the most sensitive incidents, especially where, as here, it is assumed that he has vast powers over the disciplining of members of the department. As a matter of written or unwritten administrative practice, a category of cases over which the Chief will exercise supervisory review gradually should be defined. The power to punish a fortiori assumes the power to order additional investigation.

6.00 ADMINISTRATION OF DISCIPLINE

6.01 Recommendations

Whenever a complaint has been classified "sustained," with the concurrence of the Chief of Police a member of the Internal Investigations Division familiar with the case shall meet with the accused's commanding officer to review the circumstances of the violation and the background of the accused. The commanding officer shall make a disciplinary recommendation to the Chief of Police who may approve or modify the recommendation or direct that a trial board be convened. When disciplinary action has been approved by the Chief of Police, the commanding officer shall notify the accused of the proposed discipline.

Upon a finding by the investigative unit that misconduct has occurred the procedure calls for consultation between the investigator and the accused's superior to determine what discipline is appropriate. This preserves the disciplining function of the commanding officer though, as mentioned, he has lost his investigative powers in serious cases. Plainly, the recommended punishment may run the gamut from oral reprimand to removal and may take positive forms such as counselling, medical or psychological treatment and retraining. The Chief of Police, as the ultimate administrative authority, is authorized to modify dispositions recommended by the accused's superiors

though in practice they usually will have the last word. Most day-to-day discipline will occur within this framework without resort to additional procedures.

6.02 Waiver of Trial Board

Within 48 hours from the time of notification, the accused must waive or demand his right, if any, to a trial board hearing. Any waiver must be voluntary and in writing signed by the accused.

6.03 Implementation of discipline

(3) Upon the signing of a waiver, the accused's commanding officer will implement the recommended disciplinary action. The Internal Investigations Division shall exercise staff supervision over implementation of the approved discipline.

These provisions, in large part, place the responsibility for initiating further review upon the affected officer. In serious cases he is afforded an opportunity for a de novo hearing before the trial board. He is put to the choice, however, of waiving or demanding his hearing. The signing of a waiver, which is the equivalent of a guilty plea within the administrative process, has the effect of vastly extending the range of discipline that can be administered summarily within the department. For administrative convenience, it might be advisable to assume a waiver unless the accused in writing requests that a Board be convened. In Seattle, the formal trial board procedures of the department have been invoked only once.

A more conventional procedure would have the accused exercise his right to a trial board hearing prior to a determintion by the Chief about appropriate discipline. This would avoid the Board being unduly influenced by any prior recommendation. On the other hand, advising the accused of the proposed discipline would afford him more direction about what was at stake. And in any event, the Chief can order the convening of a trial board without disclosing any prior opinion on the proposed sanction.

In some respects it is misleading to speak of an "accused" in the sense of a criminal adversary proceeding. Complaints may be "sustained" in cases where individual culprits are unknown. Illustrative are the several complaints arising out of the disturbance in Seattle's University District in August 1969 where unknown officers of the tactical squad were alleged to have inflicted damage on parked cars by deliberately beating them with night sticks. Through the use of filmed reports supplied by a local television station, the Internal Investigations Unit was able to ascertain that the allegations were true though identifying the officers was impossible.[36] The city was advised to pay all claims for property damage in connection with the incident. Similarly, on June 3, 1970 day long campus protests over the movement of United States troops into Cambodia resulted in numerous complaints that plainclothes officers armed with batons had inflicted unnecessary beatings on several persons in the university area. Though, once again, identification of the marauders was impossible the Internal Investigations unit affixed responsibility by identifying an error in judgment by the unit commander who allowed contact between the officers and civilans under circumstances likely to lead to violence. He was demoted and transferred.

Arguably, whether or not individual responsibility can be clearly fixed, a strong case can be made for eliminating the trial board in form as well as in fact. Several departments allow the chief to take summary action in disciplinary cases without the interposition of a hearing board.[37] In most departments, the Chief has broad powers to administer discipline.[38] Invariably, a serious disciplinary action--such as a suspension, demotion or discharge--is appealable to a local civil service commission empowered to hold hearings with a full panoply of procedural rights.[39] Add to these factors of futility

and duplication the costliness and delay of an internal hearing board[40] and the case against it is well substantiated.

On the other hand, having a hearing board affords the Chief an opportunity to plumb the judgment of other men in the department prior to approving summarily a disciplinary measure that may affect gravely the career of an individual officer. The accused himself is given an opportunity to be judged by his peers and to avoid what may be perceived to be persecution by his superiors. Moreover, a hearing allows the complaining citizen to participate directly in the adjudicatory process which he initiated. On balance, it was thought desirable to include provisions for a hearing board.

7.00 TRIAL BOARD HEARINGS

7.01 Applicability. A hearing shall be help upon:

(1) the demand of any accused who has been notified of proposed disciplinary action based upon a sustained major violation;

(2) the demand of any accused notified of proposed disciplinary action based upon a sustained infraction where the recommended penalty is suspension for a period of greater than thirty (30) days, demotion or removal;

(3) the direction of the Chief of Police.

Provision for resort to the hearing procedures is made available here upon direction of the chief or upon insistence of the accused in serious cases. Under subsection (1) all sustained major violations, which invariably reflect adversely on the accused, are grounds for invocation of the trial board procedures. Similarly, infractions where the recommended penalty is suspension for a period of greater than thirty (30) days, demotion or removal put in motion the trial board procedure. Short of this, penalties for infractions may be administered summarily. As mentioned, the scope of summary punishment practically would be extended considerably upon consent of the accused. Tying

the availability of procedural protections to the gravity of the threatened sanction is not unknown in the law.[41-42]

7.02 Membership of Hearing Board

> The Hearing Board shall be composed of five (5) members of the department who shall be appointed by the Chief of Police to serve terms of one (1) year. The membership of the Board shall include one patrolman, one sergeant, one lieutenant, one captain and one major or assistant chief, except that no member of the board shall hold a rank below the member of the accused. In such event, the Chief of Police shall appoint a member of the same or higher rank of the accused to substitute for the ineligible member. Vacancies shall be filled within thirty days. Board members are eligible for reappointment. Three members shall constitute a quorum. The Chief of Police shall appoint an Assistant Chief to serve as chairman of the board for one year.

No immutable principles govern the make-up of the Board. Its size and composition reflect a rough effort to assure fairness. A Board of five members is large enough to assure a cross-section of personalities and ranks though small enough to avoid being unwieldy.[43] Most departments surveyed restrict membership on the Board to officers above the rank of lieutenant or captain,[44] a judgment rejected here on the ground that common sense is a prerogative extending to the lower ranks as well. Gains in departmental morale, moreover, theoretically are available by opening the Board to the lower ranks. A similar concern for morale suggests the provision making ineligible any Board member with a rank below that of the accused. Asking an officer to sit in objective judgment of a superior to whom he might be responsible later in the day is to ask the impossible.

The Chief is given the power of the appointment on the assumption--articulated throughout these procedures--that it is he who is ultimately responsible for departmental discipline. Other permissible variations would limit his appointive powers. One would authorize the Chief to appoint a panel of officers from which a Hearing Board is drawn by lot.[45] Another would allow

the accused to select one member of the department to sit on the board, with the Chief reserving the right to select the other members.[46] Still another allows a trial before an impartial arbitrator selected by the parties.[47] The draft limits the Chief's discretion--and protects him from charges of having convened a kangeroo court--by requiring appointments for a definite term of office instead of in response to a particular case.

There is some community sentiment in Seattle for allowing a representative of the public, possibly appointed by the mayor, to sit on the Hearing Board. Only one department surveyed allows participation by civilians: in the District of Columbia an attorney is chosen by lot from a panel of attorneys selected and appointed by commissioners of the District.[48] The suggestion, of course, is still another version of the police review board which, for varied reasons, has had a dismal history in this country.[49] Citizen involvement is here rejected on the ground that, at the initial stages at least, disciplining a police officer is the responsibility of the department. No internal review procedures need invite outside participation just as they should not purport to foreclose external review if there is dissatisfaction with the performance of the department.

7.03 Ineligible members

> (1) No member of the Department currently assigned to the Internal Investigations Division is eligible for appointment to the Board. Any member of the Board who is assigned to the Internal Investigations Division during the course of his term on the Board shall be replaced on the Board by another member of the same rank selected by the Chief of Police.
>
> (2) No member of the Board shall be eligible to sit in judgment on a complaint which he filed or investigated or has knowledge of as a witness or if he believes for other reasons that he cannot render an impartial decision. The Chief of Police shall select another member of the same rank to substitute for the ineligible member.

These disqualifications are obvious concessions to the need to separate the accusatory and adjudicatory functions of the Board. Allowing the investigator and the judge to be the same man is as unfair to the accused as it is insulting to the public. As a further courtesy to a member of the Board, he is permitted to disqualify himself at his option.

7.04 Powers and functions of the board and chairman

(1) Hearings. All hearings to be held under the provisions of this code shall be conducted by the Hearing Board.

(2) Function of Board. The Board shall:

(a) consider all the evidence bearing on the charges contained in the specification;
(b) determine the classification to be assigned to the complaint;
(c) explain in writing the reasons for deciding upon a classification;
(d) recommend appropriate disciplinary action, if any.

(3) Function of the Chairman. The Chairman shall:

(a) set a date, time and place for the hearing;
(b) notify the complainant and the accused of the hearing;
(c) issue subpoenas compelling any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry;
(d) administer oaths;
(e) decide all questions of procedure and admission of evidence.

Plainly, the reason for the hearing is to ventilate fully the circumstances of the alleged misconduct. Like the Internal Investigations Division at the investigatory stage, the function of the Board is to assign a classification to the complaint and to give reasons for its conclusion. A complaint "sustained under §2.13 requires a finding that the "allegations are supported by a preponderance of the evidence." Manifestly, the findings of the Internal Investigations Division and any recommendations as to classification will be part of the record before the Board.

Requiring the chairman to organize and preside over the hearing is consistent with sound administration. Departments having a police legal advisor

might wish to allow him to rule on peculiarly legal questions at the hearing --such as on evidentiary matters--if he is not conducting the prosecution of the case.

7.05 Pre-hearing procedure; notice; specification of charges

The Chairman of the Hearing Board shall give at least ten (10) days notice to the accused member of the date, time and place of the hearing. A specification of charges against the accused shall be prepared by the Internal Investigations Division and served on him at the same time notice of hearing is served.

7.06 Answer

The accused member has five (5) days from the date of service upon him to prepare and serve an answer which shall be in writing.

7.07 Service on complainant

The notice of the hearing, and copies of the specification of charges and answer of the accused member shall be served on the complainant at least three (3) days prior to the date set for hearing.

The decision to convene a formal hearing requires resort to the usual indicia of due process in adjudicatory proceedings. Notice and an opportunity to prepare the defense are preserved in the requirement for service of the specification of charges. Some departments make discretionary the obligation to serve an answer,[50] a practice rejected here on the ground that requiring the issue to be joined might contribute to eliminating surprise. Details of service and pleadings were omitted purposely in the interests of the simplicity sought throughout. Service upon the complainant is required to keep him informed as a member of the public allegedly wronged by police misconduct.

7.08 Challenge to Members of Board

The accused shall be allowed to challenge any member of the Board upon good cause shown. A challenge shall be made to the Chairman of the Board at least forty-eight (48) hours before the date set for the hearing and shall be decided by the other members of the Board.

A challenge is sustained if upheld by a divided vote of the members of the Board. The Chief of Police shall appoint another member of the same rank to substitute for a member successfully challenged.

The availability of challenges plainly will turn on the methods of selecting the Board. Departments allowing the accused to select members of the Board[51] might eliminate the opportunity for challenges of participation in the selection process suffices to offset any prejudice. Seattle goes further by allowing the accused both to select one member of the Board and to exercise one peremptory challenge and unlimited challenges for cause.[52] The draft opts for unlimited challenges for cause to overcome any unfairness thought to result by denying the accused a role in the selection process.

7.09 Conduct of hearing

The hearing generally shall be conducted as a "contested case" within the meaning of applicable administrative law. The Department legal advisor or city attorney shall prepare and present the case for the department. The complainant and accused may be represented by Counsel. All witnesses may be questioned under oath by counsel. Hearings shall be open to the public. A record of the proceedings shall be transcribed and shall be open to inspection.

The hearing is a departmental trial to be treated as a "contested case" for administrative law purposes. The legal advisor or city attorney is assigned to prosecute though, in cities without the manpower, a member of the Internal Investigations Division not appearing as a witness could serve in this role. It is assumed that the accused usually will be represented by the attorney retained by the Police Guild. To assure adequate representation of the complainant's interest, he specifically is invited to retain a lawyer of his choice. Rejected is the assumption, held by some departments,[53] that the complainant need not be represented by an attorney because the dispute is solely between the department and the accused. Several departments recognize that the public interest, too, demands that the citizen have a spokesman and one has gone so far as to supply an attorney if the complainant is financially unable to retain his own.[54]

Contested cases assume cross-examination, argument and a full opportunity to be heard. The draft does not attempt to deal with the self-incrimination problems of Garrity[55] and Gardner,[56] which indicate that an officer cannot be dismissed for failure to sign a waiver of immunity to prosecution. It is assumed that the accused is protected from loss of job and other sanctions by the usual constitutional guarantees.[57]

The subpoena power is a customary complement of trial-type hearings and is thought to be necessary to assure the appearance of recalcitrant witnesses. The failure of one department's trial board mechanism has been blamed on an inability to investigate fully in the absence of the subpoena power.[58] Precautions are advisable, however, since the power gives the department investigative authority beyond its usual complement. Possible abuses can be contained by judicial scrutiny of relevancy and specificity. The hard questions raised by conflicts between the hearing procedure and pending civil and criminal cases is dealt with in §7.10.

Most difficult to resolve is the question of whether hearings should be open to the public. Though fifty-one of ninety-four departments reported to the Harvard Law Review in 1964 that hearings were open to the press and public,[59] this could not be verified by the present study's examination of existing procedures. Only a small minority of departments allow public hearings[60] though the sample might be biased by a failure to consider civil service hearings which usually are open to the public.[61] The arguments against an open hearing are familiar: the proceeding is solely a private matter between the department and an employee, essentially no different from a disciplinary question

involving White Front Stores and one of its employees; public hearings about police conduct usually deteriorate into shouting matches before television cameras where the demogogues prevail; open disciplinary proceedings would subject the officer to an unwarranted and unnecessary invasion of his privacy.

Experience in Seattle tends to confirm some of the hobgoblins about open hearings. Sessions held last year before the Human Rights Commission, which was inquiring into a collision between police and demonstrators at a University of Washington construction site, were marked by wild though occasionally substantiated accusations delivered in a carnival-like atmosphere. Recently, an open hearing before a coroner's jury considering a police shooting of a Negro youth focused attention on the travesties of this ancient procedure which ventilates before the public sensitive issues better treated behind closed doors by a grand jury.[62] Also, many disciplinary matters involving officers of the department stem from sensitive psychological and emotional problems or alcoholism wisely treated with discretion. In one case a complaint by a medical doctor spurred an investigation that resulted in the medical retirement of an officer found to have had schizophrenia.

None of these reasons seem sufficient to exclude the public. It is a fiction to insist that a widely heralded incident inspired by outside complaints is solely a matter for the department. Slanderers, liars and demogogues, who perform best at hearings allowing no cross-examination, can be kept under control by adherance to the contested case procedures. The privacy argument, instead of supporting a blanket slamming of the doors, could be met by having a specific application and ruling by the Chairman to exclude outsiders whenever the testimony would involve intrusion into delicate private matters. That is the solution preferred by the courts. Moreover, from the point of view

of the department, it would appear that of all possible public forums the departmental hearing would be preferred. So long as closed doors raise the suspicion of whitewash there will be continued community pressure to air issues of police practices in external forums, such as a civilian review board or, as in Seattle, the human rights commission or some version of the defunct Police Liaison Committee, which was created by the mayor a few years ago following disorders involving police and citizens in the Central Area. Lastly, it deserves emphasis that in many cities much of the debate over the desirability of open inquiries into police disciplinary matters is entirely moot since for years civil service hearings have been open to an invariably disinterested public.[63]

Short of a completely open hearing, it would be acceptable to exclude the public but allow participation by the complainant and his counsel. This is the present practice in New York City.[64] Transcribing the proceedings and requiring a written and reasoned disposition would enhance the procedure. Allowing an outsider, like the soon-to-be-created ombudsman, to review the record for errors in procedure and other deficiencies would provide the necessary check on the conduct of the proceedings. Ideally, this procedure should satisfy the noisy factions.

7.10 Stay of Hearings

> On motion of the accused or the complainant, the Chairman may grant a stay of the hearings pending the completion of related civil or criminal proceedings or to allow for further preparation.

A conflict between police disciplinary proceedings and pending litigation is a recurring problem. The citizen's charge of excessive force against the officer may be the subject of a concurrent charge of resisting arrest against the citizen. During September 1969 police officers refused to participate

in one hearing before the Seattle Human Rights Commission on the ground that the incident complained of had given rise to criminal charges not yet resolved. Circumventing judicial rules of discovery and generating unfair pretrial publicity should not be the consequence of a disciplinary proceeding. One of the costs of a public hearing is to require the setting of priorities in litigation. If the hearings are open only to the complainant and his attorney, it might be possible to continue the proceeding concurrently with a related case. There s considerable precedent on establishing priorities between related civil and criminal matters.[65]

7.11 Consideration of the Record of the Accused

> Consideration shall be given to previous disciplinary actions against the accused only upon a finding that the complaint should be sustained and then only for the purpose of assessing appropriate disciplinary action.

Many departments allow a hearing examiner or board to review the accused's record when deciding a case.[66] Sometimes the accused is not afforded an opportunity to explain the notations appearing in the record.[67] The procedure limits the scope and power of the Board to examine an accused's record and thus endorses a principle of basic fairness firmly embedded in our judicial practice. It is assumed, in accordance with the prevailing opinion, that the personnel file of an officer will contain only a record of sustained complaints against him. Those given other classifications will be recorded in the private files of the Internal Investigations Division.

7.12 Decision and Recommendation of Board

> The decision and recommendation of the Board shall be decided by a majority vote and shall be delivered in writing to the Chief of Police within thirty (30) days following the conclusion of the hearing. Dissenting opinions may be included.

This requirement of a written decision is very important, especially if

the proceedings are closed to the public. Too often deep deliberations produce a long delayed cryptic disposition that has all the markings of a political put-on instead of a reasoned decision. The procedure adopts two of the recommendations made by the President's Commission on Law Enforcement and the Administration of Justice by requiring that the decision be prompt and accompanied by an opinion of the board containing findings of fact and an explanation.[68] The provision for dissenting opinions probably represents wishful thinking but is consistent with the principle of requiring a public explanation.

Consideration was given to allowing the Board to decide by secret ballot. The idea was rejected on the ground that this secrecy might conflict with the need of the public to know and that assuring the accused a tribunal free of coercive influences could be better achieved by building protections into the process of designating the board.

7.13 Review by Chief

> Upon receipt of the written decision and disciplinary recommendation of the Board, the Chief of Police, within fifteen (15) days, shall approve or modify the recommendation of the Board. The decision of the Chief of police is final and conclusive, subject only to a review by a court of competent jurisdiction or a civil service commission.

Accepting Wilson's premise that sound administration dictates that the Chief should have the right of final review in disciplinary cases,[69] the procedure requires that the decision and recommendation of the board be submitted to the Chief for final review and implementation of disciplinary action. Discipline, once determined, is to be administered under §6.00.

Giving the Chief a virtually unlimited power of review does not make the Hearing Board a mockery. Though in theory the Chief could order that discipline be imposed for a complaint deemed frivolous by the Board, the procedure is not likely to function that way. Plainly, the Chief will choose to invoke

the Board where the decision for him alone was difficult. A combination of institutional pressures indicates that the Board invariably will be the de facto final arbiter of disputes handled through the formal machinery. Departments wishing to impose limits on the discretion of the Chief might specify that he would have the authority to reduce but not to increase a disciplinary recommendation by the board.

7.14 Notification of Complainant

> Upon completion of an investigation, a member of the Internal Investigations Division shall notify the complainant of the results of the investigation, classification of the complaint and a suitable indication of the discipline imposed, if any. A copy of the decision and recommendations of the Hearing Board, if any, shall be forwarded to the complainant.

The failure of many departments to perform the simple courtesy of keeping the complainant informed has added credence to charges of futility by those whose complaints are absorbed by the bureaucracy never to surface again. Neglect in communication has been costly in police-community relations. The practice in Seattle is to type a letter or make a telephone call to each complainant informing him of the classification and, in the event of a "sustained" complaint, that "appropriate" disciplinary action would be taken. Most departments balk at informing an aggrieved person about the specifics of the discipline,[70] presumably to protect the privacy of the accused and to avoid debates over whether the discipline was sufficiently draconian. Compromising on this point, the draft calls for a "suitable" explanation of the discipline. In most cases, to assure full disclosure it would be appropriate to indicate to the complainant generally the action taken--suspension, discharge, retraining.

In Seattle, there is a tendency for the investigators to ignore complaints from the excessively querulous, those who were uncooperative during the investigation and, by necessity, transients with no forwarding address.

It is easy to sympathize with those inundated by frivolous grievances. Few outsiders appreciate how patently absurd some police complaints appear. One noteworthy example from the Seattle files is the grievance of the citizen who took offense at receiving a speeding ticket for traveling 75 mph in a city park and for cutting off a police motorcycle which was attempting to intercept another speeding vehicle. One would suppose that the aggrieved party should consider himself fortunate for having escaped with a mere ticket. A substantial percentage of the brutality complaints from the Central Area originate from one of three families, no member of which has earned a reputation for veracity within the Internal Investigations Division or several others in the community. Other illustrations of time wasting nonsense could be offered. Despite the tendency to react sharply against some types of complaints, fighting rudeness with rudeness is thought to be an untenable principle for a public body. It is recommended that within reasonable bounds a department supply written explanations to all complaining parties.

A special problem of communication arises where the subject matter of the complaint also is at issue in the courts. Prevailing practice seems to be to allow the complainant to cool his heels for several months without an explanation. Where the investigation or its findings are delayed, informing the complainant would be advisable.

8.00 SUSPENSION, INVESTIGATIVE

> Nothing in the provisions of this code shall be construed to limit the right of the Chief of Police to suspend a member of a department for an alleged infraction or major violation without a hearing for a time no longer than forty-eight (48) hours to complete the investigation of the complaint whenever, in the opinion of the Chief, such suspension is believed to be in the best interests of the department and the community.

This power of summary action has its parallel in exparte procedures

throughout the law. In rare cases the threat posed to the public welfare and safety by the continuation of a member on the force will be so grave as to justify a summary severance. Nothing in the due process clause forbids acting now and litigating later when the risk is intolerable.[71] Cooling a riot takes precedence over the nice procedural rights of an accused officer.

III. Conclusion

Imposing a rule of law on the administrative process is among the most important of public law questions today. Nowhere does a breakdown in law and order cut so destructively into the fabric of society than when it occurs within a law enforcement agency. Correcting the wrongs of the police efficiently and thoroughly only can be done by the police. The choice ultimately is theirs. Adopting and enforcing standards of internal discipline is the surest way for departments to consolidate the respect and independence they seek. Failure to do so will give further impetus to the running commentary over external review mechanisms which has done so much to foster polarization in police-community relations. It is hoped that the draft procedures and accompanying commentary will contribute to the strengthening of internal responsibility which is the touchstone of sensible police administration.

IV. Footnotes and Bibliography

1. Twenty-nine of thirty-five departments responded to a request mailed to a cross-section of cities: Baltimore, Birmingham, Buffalo, Cheyenne, Chicago, Cincinnati, Cleveland, Dallas, Detroit, Houston, Indianapolis, Los Angeles, Louisville, Memphis, Miami, Nashville, Newark, New York, New Orleans, Oakland, Omaha, Oklahoma City, Phoenix, Richmond, Va., Rochester, N.Y., St. Louis, Seattle, Spokane and Washington, D.C.

2. Working from a total universe of three hundred complaints filed during 1969, fifty complaints were selected on a random sample basis. Five were rejected because of insufficient data. The remaining forty-five were examined both as to the substance of the complaint and the procedural steps involved. Complaints were classified as to the nature of the complaint (excessive force, criminal conduct, improper use of authority, immoral conduct, rudeness or verbal abuse and miscellaneous) and examined for demographic data, method of filing and disposition.

3. See Rodgers, When Seattle Citizens Complain, _____ Urban Lawyer _____(1970).

4. Illustrative of the inevitable frictions in police-community relations in this report in the University of Washington Daily, "A Day in the Life of a Beat Walker":

> It started with just a gesture from the first officer and a nod from the second.
>
> It was a small thing, low key. That was typical.
>
> The two beat officers aroused their even, methodical strides. They crossed to the other side of the dimly-lit Ave at the crosswalk between 41st and 42nd N.E.
>
> It was a cold evening. The hint of a breeze carried an intermittent drizzle that put a misty glitter on the pavement. Street lamps, headlights, and dim storefronts lit the Ave in a gloomy halflight.

"One thing we do enforce out here are jaywalking laws, the city ordinances," Officer M. C. Walker had noted earlier. Walker, youngish, amiable, easy to talk to, covers two blocks of the U. District's University Way--the "Ave"--with his partner, Robert L. Morris.

Morris, also young, even-tempered, but a shade more reserved, stopped the youth in front of the Arabesque fabric shop.

"You know when you crossed the street back there?" he said. "That's a no-no."

"Do you have some identification?" asked Walker.

The youth, brown hair brushed across his narrow forehead, dug around and pulled a wallet out of his surplus army jacket.

"What if I didn't?" he asked as he pulled [illegible] driver's license.

"Then we'd take you downtown," answered Walker routinely. He inspected the license.

"You know," said Morris, "some yo-yo could have spun around that corner and really clobbered you."

"I know you probably heard it before," said the youth, "but there are crimes being committed in this city." He was tense, getting a little heated.

"Sure there are," retorted Morris, "right out there in the street," he looked toward the street, into the pavement, "lots of crime, see it out there?"

The exchange was developing a biting little undercurrent of hostility. You could feel it.

"Did you arrest me because I had long hair?" taunted the youth as Walker wrote out the ticket. "I smoke marijuana," the youth bragged.

"If you want to be a nice guy, we'll be nice guys," said Morris finally. "If you want to be an asshole, we can be a bigger asshole than you can."

Walker handed him the citation.

"Are you guys cops because you like to have power over people or what?"

"We're here to do a job," Walker retorted. "Somebody's got to do it. If it was left to people like you we wouldn't have laws--we'd have anarchy."

"Ya," said the youth, "that'd be cool."

Walker was irritated. "The trouble with you is that you're too immature to know what the laws are for--to protect people."

It was a stand off. Both sides had ruffled each other. The exchange shortly dropped off.

The youth put his ten-dollar ticket in his pocket and walked off coldly. The officers walked away thoughtfully.

5. United States v. Cook, Crim. No. 51944 (W.D. Wash. 1970).

6. Testimony of Major David Jessup, reported in the Seattle Times, June 30, 1970, p. C 7, col. 5.

7. During 1969 a total of 300 complaints were logged and filed. By December 31, 1969, investigations had been completed on all but two of these with the following results: unfounded, 109; exonerated, 85; not sustained, 28; and sustained, 76.

8. Wilson, Dilemmas of Police Administration, 28 Pub. Ad. Rev. 407, 409 (1968).

9. See American Civil Liberties Union of Southern California, Law Enforcement: The Matter of Redress 20 (1969) [hereinafter cited as ACLU Report]. The report suggests that internal procedures are used only to protect and cover up police misconduct.

10. See Report of the National Advisory Commission on Civil Disorders 311 (1968) [hereinafter cited as the Kerner Commission Report].

11. To compound the problem, police disciplinary procedures in many cities are scattered throughout departmental orders, civil service statutes and regulations, personnel hand books and the like. It is, moreover, a safe

assumption that written procedures and actual practices are less than compatible in many departments.

12. At the time the survey was taken, Oklahoma City was operating without any written rules of procedure.

13. See Int'l Assoc. of Chiefs of Police, A Survey of the Police Department of Seattle, Washington, App. V, Complaint, Disciplinary and Summary Punishment Procedures at 10 (1968). [hereinafter cited as IACP Report]. Although the report specifically was prepared for the Seattle Police Department, many of the IACP recommendations are boilerplate clauses appearing in similar reports.

14. Cf. 2 K. Davis, Administrative Law § 14.14 (1958).

15. See Cincinnati Police Department's Procedure in Handling Disciplinary Matters, §6.17; Memphis Police Department's Procedure in Handling Disciplinary Matters, § 6.021. Newark has four classifications of offenses--improper procedure, breach of integrity, misconduct and neglect of duty. See letter to author from Thomas M. Henry, Deputy Chief of Police, Newark, N.J., Aug. 8, 1969.

16. See N.Y. Times, _____, 1970, p. ____, col. _____; Detroit Police Manual § 34 (23).

17. See Personnel Rules of the City of Richmond, Grounds for Disciplinary Action, p. 2--30.

18. Many departments enforce general prohibitions against "immorality" or "conduct unbecoming an officer." See, e.g., Detroit Police Manual §34(8), (39).

19. Though the disciplinary order of the Seattle Police Department does not specifically mention off-duty conduct, the procedures are routinely invoked for complaints against officers for activities not related to their duties.

20-24. See, e.g., Seattle City Charter, art. 6, §5.

25. See R. Galvin & L. Radelet, A National Survey of Police Community Relations 204 (1967).

26. See ACLU Report, supra note 9, at 37, 42. In one case in Seattle two police officers, incensed over a complaint being filed against them, inflicted a beating on the complainant, an indiscretion that later cost them their jobs. Reports elsewhere disclose cases of police retaliation by charging complainants with resisting arrest or disorderly conduct. See The President's Comm'n. on Law Enforcement and the Administration of Justice, Task Force Report: The Police 195 (1967) [hereinafter cited as Police Task Force Report]; P. Chevigny, Police Power 249 (1969).

27. See Lankford v. Gelsten, 364 F.2d 197 (4th Cir. 1966).

28. S.B. No. 148 (1969).

29. Rochester City Charter § 8-34 (1963).

30. Letter to the author from Frank N. Felicetta, Commissioner, Buffalo Police Department, Aug. 8, 1969.

31. See Police Dep't Procedure for Complaint Against Police.

32. Letter to the author from Thomas M. Henry, Deputy Chief of Police, Newark, N.J., Aug. 8, 1969.

33. Manual of Metropolitan Police Dep't, ch. XXXV, § 11 (1966); see St. Louis Police Dep't, Discipline & Deportment Rule 7.109.

33a. Departments in this category include those in Birmingham, Buffalo, Chicago, Cleveland, Houston, Los Angeles, Phoenix, Rochester and St. Louis.

33b. See R. Galvin & L. Radelet, supra note 25 at 189-92.

34. Experience in Seattle conforms to this pattern. Of the complaints assigned to other units for investigation, most include minor claims of rude-

ness, verbal abuse or hazardous driving. The central investigative unit retains all complaints alleging excessive force or brutality, discrimination and criminal activity and all complaints filed by minority citizens or alleging misconduct by minority officers.

35. See Brown, Handling Complaints Against the Police, 12 Police 74, 87 (May-June 1968).

36. Easily the most prevalent identification problem in Seattle arises because of the disappearance of name badges from officers who are engaged in quelling disturbances. Fundamentally mistrustful, many people on the scene view this practice of resorting to anonymity as a prelude and an invitation to unnecessary force by the police. In partial defense of the practice, many officers feel that they are likely to have their badges torn from their uniforms during a melee, causing damage to the clothing. Each officer is responsible for maintaining his uniform in good repair. This source of ill will will be eliminated shortly with the implementation of a decision to require the officer's name to be sewn on his uniform.

37. Among those in the survey were Birmingham, Houston, Memphis and Oakland.

38. Most departmental regulations allow the Chief either to administer discipline directly or to delegate this duty to a subordinate. See, e.g., Seattle City Charter, art. 6, § 2.

39. See, e.g., RCW 41.12.090 (1969), which provides in part that an officer in the classified civil service who has been removed, suspended, demoted, or discharged may file a written demand for an investigation by the civil service commission within ten days after the action has been taken against him by the department. The investigation "shall be had by public hearing." Similar

statutes are in force in most jurisdictions.

40. See R. Galvin & L. Radelet, supra note 25, at 226. These disadvantages explain why many departments favor a decision-making process without a hearing. See Note, the Administration of Complaints by Civilians Against the Police, 77 Harv. L. Rev. 499, 505-06 (1964).

41-42. See, e.g., Bloom v. Illinois, 391 U.S. 194 (1968).

43. Most departments surveyed prefer a five or three member hearing board. Louisville has an eleven member board. See letter to author from Sgt. Bill Lamkin, Aid to the Louisville Chief of Police, Aug. 7, 1969.

44. Only two of the departments surveyed, Louisville and Spokane, had hearing boards composed of a cross-section of the ranks. Louisville's board includes the Chief, three Lieutenant Colonels, three Majors, one Captain, one Lieutenant, one Sergeant and one patrolman. See letter supra note 43. Spokane draws a five member board from a list of twenty patrolmen, detectives and/or motorcyclemen; eight sergeants; and eight lieutenants. See letter to author from E. W. Parsons, Spokane Chief of Police, July 29, 1969.

45. See Los Angeles City Charter, art. XIX, §202(b).

46. This is the procedure recommended by the International Association of Chiefs of Police. See IACP Report, supra note 13, app. V at 5. This feature has also been incorporated into the disciplinary procedure of the Seattle Police Department. See General Order No. 70-2, §2.01.440(2)(d) (Jan. 19, 1970).

47. See Rules and Regulations of the Buffalo Police Department, art XII, §2.

48. Manual of Metropolitan Police Dep't, Ch. XXXV, §1(b)(1966) (prescribing a "Special Police Trial Board). The Complaint Review Board in Washington, D.C., consists of five adult residents, two of whom are members

of the bar and is responsible for reviewing citizen complaints against officers of the department, Id., § 1(c). Omaha has a provision for a Personnel Board comprised of five citizens which functions basically as a civil service commission. See letter to author from Richard R. Andersen, Omaha Chief of Police, Aug. 26, 1969. In many ways, of course, a functioning civil service commission provides the "civilian review" which in other contexts has become a fighting word.

49. See W. Gellhorn, When Americans Complain 170-195 (1966).

50. See, e.g., Memphis Police Dep't Manual §12-18 (by implication). Most departments fail to specify the procedural amenitites preceeding a trial board hearing.

51. See note 46, supra.

52. See General Order No. 70-2, §2.01.440(2)(d)(1) (Jan. 19, 1970).

53. By omission almost all regulations adopt this course.

54. See New York Police Dep't, Amendment to Rules for Civilian Complaints, 21/12.5 (1966).

55. Garrity v. New Jersey, 385 U.S. 493 (1967).

56. Gardener v. Broderick 39 2 U.S. 273 (1968).

57. See Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439 (1968).

58. See R. Calvin § L. Radelet, supra note 25, at 209 (discussing the Cincinnati experience).

59. See Note, supra note 40, at 507 n.34.

60. Memphis, Omaha and Rochester specify that hearings are open to the public. Richmond gives the accused an option to choose between an open and closed hearing. New York City and Washington, D.C. specify that hearings are

closed. Most departmental regulations are silent on the subject with the assumption being that hearings are closed.

61. See notes 39, 48, supra.

62. See, e.g., Seattle Times, May 21, 1970, p. ___, col.____.

63. See note 39 supra.

64. New York Police Dep't, Amendment to Rules for Civilian Complaints, 21/13.5 (1966).

65. See, e.g., United States v. Kordel, 397 U.S. 1 (1970).

66. See, e.g., St. Louis Police Dep't Discipline and Department Rule 7-118.

67. Of course this is the inevitable result where loose rules of evidence allow the past record to be introduced at the hearing and/where rights of cross-examination are compromised.

68. Police Task Force Report, supra note 26, at 197.

69. See O.W. Wilson, Police Administration 173 (2d ed. 1963).

70. See, e.g., Los Angeles Police Dep't, Statement of the Purpose and Functions of Internal Affairs Division, p. 5 (June, 1968).

71. See North American Cold Storage Co. v. Chicago, 211 U.S. 306 (1908).

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