

EXTERNAL REVIEW OF COMPLAINTS OF POLICE
MISCONDUCT IN PORTLAND, OREGON

September 1982

Statement by the Oregon State Advisory Committee to the U.S.
Commission on Civil Rights prepared for the Commission's infor-
mation. No specific action by the Commissioners is being
requested. The conclusions in this statement should not be
attributed to the Commission, but only to the Oregon State
Advisory Committee.

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- . Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- . Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- . Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- . Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- . Submit reports, findings, and recommendations to the President and the Congress.

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This statement was prepared under the overall supervision of Thelma Crivens, Acting Regional Director, Northwestern Regional Office.

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Introduction

Beginning in November 1979, and continuing through February 1981, the Oregon State Advisory Committee to the U.S. Commission on Civil Rights (hereafter referred to as "the Advisory Committee") held a series of community forums throughout the state of Oregon to receive information on civil rights issues residents of the state considered to be the most significant.¹ Attending these forums were persons affiliated with some 21 agencies or organizations representing minority and ethnic groups, disabled persons, elderly persons, women, community service providers, and local government entities.² One major concern discussed at the forums was alleged discriminatory police practices, such as the high rate of arrests of minority persons, the abuse of minorities by the police, and the excessive use of force. After a review of the summary from the forums as well as a review of more recent information on civil rights issues in the state, the Advisory Committee determined that the issue of police-community relations in the state of Oregon should be studied in more detail and that particular emphasis should be placed on studying the Portland Police Bureau's internal procedures for resolving citizen complaints of police abuse.

The Oregon Advisory Committee's decision to focus on the citizen complaint process within the Portland Police Bureau was based on the current debate in the city over whether there is a need to establish an external review mechanism to monitor the Bureau's internal complaint process, review certain complaints in an appellate capacity, and recommend appropriate changes in that system. This debate is the result of an ordinance that a Police Internal Investigations Auditing Committee (hereafter referred to as "Auditing Committee") be established to carry out those functions. This ordinance has been placed on a citywide referendum to be decided on November 2, 1982.

The Advisory Committee decided to issue a statement on the Auditing Committee proposal. It felt that the U.S. Commission on Civil Rights' extensive research in the area of police-community relations, particularly police misconduct, would benefit local officials, police and law enforcement personnel, residents of the city, and other interested parties as they consider it. As early as 1961, the U.S. Commission on Civil Rights began to study the issue of police misconduct and police-community relations,³ in accordance with its mandate to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution... in the administration of justice."⁴ It has continuously reported on this issue, with its most recent report released in 1982.⁵ Other state advisory committees also have conducted studies of police practices and police-community

relations at the local level.⁶ In addition to studies by the Commission and its advisory committees, other national organizations have conducted studies on this issue as well.⁷

This statement analyzes whether the Auditing Committee proposal is a reasonable approach toward improving police-community relations in Portland based on a review of previous Commission reports as well as reports from other organizations. Because the citizens of Portland are limited to a choice of whether the Auditing Committee proposal should be adopted, the Advisory Committee deems it appropriate to limit its inquiry to the Auditing Committee proposal and asks the question "Are the internal complaint procedures of the Police Internal Investigations Division and the procedures of the proposed Auditing Committee mutually exclusive, or can they peacefully coexist as a first step toward improving police-community relations in the City of Portland?"⁸

The Oregon State Advisory Committee to the U.S. Commission on Civil Rights believes that the Auditing Committee Ordinance coupled with the internal complaint procedures do indeed represent a positive step toward improving police-community relations. First, the Auditing Committee Ordinance is a viable approach to providing citizen input into the internal complaint process. Second, it overcomes the flaws of citizen review boards cited by the U.S. Commission on Civil Rights. Third, it includes all of the minimum requirements that the Commission believes should be present in any review mechanism. Finally, the Advisory Committee believes that the Auditing Committee Ordinance is one of the best civilian review structures designed to date. A more detailed explanation of the Advisory Committee's position is discussed in the analysis below.⁹

Background

Responding to increasing concern regarding the credibility of the citizen complaint process within the Portland Police Bureau,¹⁰ Portland City Commissioner Charles R. Jordan, then also serving as Police Commissioner, appointed a fourteen-member "Citizen Task Force on Police Internal Affairs" to review the process by which the Police Bureau handles citizen complaints of police misconduct. The Task Force, which began its review on January 16, 1981, sought to determine whether the process was "fair, efficient, thorough, responsive, and concerned equally with the rights of the complaining citizen and the accused officer."¹¹ Recognizing that reasonable people may differ in their opinion of whether negative perceptions regarding the Internal Affairs Division (now the "Internal Investigations Division") were based on fact, Commissioner Jordan noted that these perceptions, nevertheless, could not be ignored and that "public confidence in the operation of the police is an important element in maintaining peace in a community, and in the long run helps police officers to do their job by reducing hostility against them."¹²

Before issuing its report, the Task Force undertook an extensive data-gathering process. Twenty-two meetings were held to interview members of the criminal justice and legal communities, representatives of community and minority concerns, the media, religious leaders, city officials, officials at the Police Bureau, and private citizens. The Task Force also utilized information on citizen complaint processes in other cities, statistics from the Internal Affairs Division and individual case reviews. Further, the Task Force visited the Internal Affairs Office to conduct an open audit of the Division's files and to discuss procedures with the investigative staff.¹³

On July 16, 1981, the Task Force issued its report, which contained conclusions and recommendations. In summary, the task force concluded that:

- (1) The Internal Affairs Division (IAD) processing of citizen complaints favors the police officer over the citizen;
- (2) The public is unaware of the IAD and its procedures;
- (3) Many citizens lack confidence in the IAD and are therefore reluctant to file complaints with the police;
- (4) The practice of "file pending court" (FPC) is favorable to the city in litigation, but is unfair to the complaining citizen, witnesses, and the accused officer. [File pending court (FPC) is the practice of delaying IAD investigations associated with court cases until court proceedings have been completed];
- (5) Although non-FPC investigations are prompt, neither the process nor the results of the investigation are adequately explained to the complainant;
- (6) Although the Police Bureau makes a genuine effort to select high quality officers for the IAD, several factors about the IAD assignment may discourage high quality investigation;
- (7) The IAD is not fully utilized as a management tool in promotion, training, police development, and the early identification of police officers who demonstrate patterns of misconduct;
- (8) There is poor communication between the IAD and some city offices which receive citizen complaints.¹⁴

The Task Force made several recommendations to improve the Internal Affairs Division.¹⁵ Its conclusion that "many citizens have no confidence in the IAD... and are, therefore, reluctant to file complaints..." led to its most controversial recommendation: that "some degree of regular public involvement in the

citizen complaint process should be instituted through the appointment of a Citizen Advisory Committee..."¹⁶ It is this recommendation that gave rise to the City Council's passage of the ordinance to create an Auditing Committee.¹⁷ Opposition by some city officials as well as by the Portland Police Association, however, resulted in a petition drive to place the ordinance on a referendum.¹⁸ Having collected the requisite number of signatures, with the petition effort carried out in significant part by the Portland Police Association, the petition drive was successful.¹⁹

Police Internal Regulation

A properly administered complaint review system serves both the special professional interests of the police and the general interests of the community. As a disciplinary device, it can promote and maintain desired standards of conduct among police officers by punishing -- and thereby deterring -- aberrant behavior. Just as important, it can provide satisfaction to those civilians who are adversely affected by police misconduct.²⁰

The above passage indicates two purposes that should be served by any citizen complaint process -- deterring misconduct and providing satisfaction to complainants.²¹ The most desirable method for achieving these purposes is through effective internal discipline. Effective internal discipline, however, does not always exist within police departments.

In its report on police practices entitled Who Is Guarding the Guardians?, the U.S. Commission on Civil Rights concluded that "external controls... are no substitute for fair and effective regulation of police conduct within a police agency."²² The Commission found, however, that the effectiveness of an internal complaint system for regulating police conduct may be undermined by:

- (1) Insufficient public education about the system;
- (2) Inaccessible, nonbilingual complaint forms in intimidating locations;
- (3) Unwillingness to investigate anonymous complaints;
- (4) Lack of notification to the complainant about the investigation and its results; and
- (5) Improper maintenance of records and statistics.²³

It is important to note that most of the factors cited by the Commission as tending to undermine an internal complaint system were found by the Task Force to exist in the Portland Police Bureau's Internal Affairs Division. For example, the Task Force stated in its report that there was almost unanimous testimony

that the "citizens of Portland generally do not know what the Internal Affairs Division is... [and] there does not appear to be any active effort on the part of the Police Bureau to publicize the existence of Internal Affairs or its procedures."²⁴ This conclusion is consistent with the Commission's finding that insufficient public education about an internal complaint process tends to undermine that process.

The Commission also noted that placing complaint forms in an intimidating location can undermine an internal complaint process.²⁵ The Task Force found the location of complaint forms within the Portland Police Bureau to be intimidating. The Task Force report stated: "[S]ome citizens have a fear of approaching the police with a complaint against a police officer... [and] feel threatened making their complaint to a police officer in police headquarters."²⁶ (emphasis added)

The Commission's finding that lack of notification to the complainant about the investigation and its results can undermine an internal complaint process is similar to the Task Force's conclusion that the Police Bureau's method of notice was less than adequate or effective. Although some notification is given to the complainant, the Task Force's conclusions regarding the ineffectiveness of that notice is tantamount to concluding that no notice was given. For example, the Task Force was critical of the Bureau's use of form letters that do not explain the investigative process to complainants, the specifics about the case, the basis of the finding or the discipline imposed in sustained cases. It further concluded that "neither the process nor the results of the investigation are adequately explained to the complaining citizen".²⁷ The Task Force pointed out that such "poor communication between the Internal Affairs Division and the public is another factor which contributes to the Internal Affairs Division's lack of credibility."²⁸

Finally, although the Task Force made no conclusion that the Police Bureau lacked proper maintenance of records and statistics, it determined that the records were not thoroughly utilized. The Task Force concluded that "there is little appreciation or use of the Internal Affairs Division [records] in four important areas of police decision-making: promotion, training, development or revision of policies and procedures, and identification of police officers who receive repeated complaints."²⁹

While there is no substitute for fair and effective regulation of police conduct within a department, self-regulation alone will not adequately serve the ends of deterring aberrant behavior and providing satisfaction to the citizens who are adversely affected by police misconduct when a police department's credibility in the community is low. As stated by the U.S. Commission on Civil Rights in Who Is Guarding the Guardians?:

Citizen support and cooperation can be attained only where the community perceives the police force as working in its behalf, not as "the enemy" to be feared and avoided. Even a model police agency can sometimes be perceived as abusing its authority, and it is therefore essential that every agency take the necessary steps to become more credible. The public must have confidence in the ability of the police to police themselves.³⁰

The review of the factors that the Commission identified as tending to undermine an internal complaint system and the Task Force's analysis of the Portland Police Bureau's Internal Affairs Division reveal that many of the factors that undermine an internal complaint system exist within that division. The Oregon Advisory Committee, therefore, concludes that internal regulation alone is not sufficient to regulate police conduct in Portland. The Task Force reached the same conclusion when it reported that "many citizens have no confidence in the Internal Affairs Division and its procedures and are, therefore, reluctant to file complaints with the police."³¹ From that conclusion, the Task Force recommended that "some degree of regular public involvement in the citizen complaint process be instituted."³² It recommended the appointment of a Citizen Advisory Committee; and the Portland City Council, agreeing in principle with the recommendation, passed an ordinance establishing an Auditing Committee.

Citizen Review Boards

Citizen review boards³³ have met with varying degrees of success.³⁴ In Who Is Guarding the Guardians?, the U.S. Commission on Civil Rights found that the basic flaws of these boards were "that they were advisory only, have no power to decide cases or impose punishment, and that they lacked sufficient staffs and resources."³⁵ Despite the existence of these flaws, the Commission considers external review to be an important mechanism in a citizen complaint process, although it believes that the primary responsibility for processing citizen complaints and imposing discipline still rests with the police department itself. It stated:

This Commission believes, however, that it is imperative for this process [internal complaint procedures] to be subject to some outside review to ensure, among other things, that a citizen not agreeing with the police department's disposition of a complaint has an avenue of redress to pursue. The exact type of review mechanism employed will, of course, vary from community to community... We believe that whatever system is adopted, a citizen should have the right to seek review of his or her complaint, following initial investigation and disposition...³⁶

The National Minority Advisory Council on Criminal Justice³⁷ also supports the concept of citizen participation in the internal complaint process. In its report, The Inequality of Justice, the Council found that many attempts to resolve the issue of police accountability have resulted in the establishment of citizen review boards.³⁸ Citing flaws similar to those found by the U.S. Commission on Civil Rights, the Council noted that such boards "have been generally ineffective because of the shortage of resources to support the independent investigations necessary, the lack of legal authority to subpoena documents and witnesses and to impose discipline, and the overall lack of police department cooperation with their efforts."³⁹ The Council stated, however, that "the fact that civilian boards have not been very successful does not mean that there is no appropriate civilian concern."⁴⁰ Accordingly the Council recommended:

That local governing units enact legislation to create civilian police commissions to control the operation of the respective police agency/department and personnel within its jurisdiction.⁴¹

The National Minority Advisory Council also recommended community input in developing internal controls, noting that citizen participation "not only will increase the likelihood that the controls will be effective, but will help bridge the gap between the police and policed."⁴²

The U.S. Commission on Civil Rights also has recommended elements that, at a minimum, should be included in any type of citizen review mechanism. In Who Is Guarding the Guardians? the Commission stated that the review mechanism should:

- . be readily accessible to citizens;
- . be given adequate staff and funds;
- . be granted full investigatory and subpoena powers;
- . have access to relevant police department files and records;
- . be empowered to make recommendations to the chief of police regarding the disposition of the complaint and discipline, if any, to be imposed;
- . be able to forward its recommendations, when the body deems it appropriate, to the legally constituted authority to whom the police chief reports rather than to the chief; and
- . make its proceedings and recommendations a matter of public record.⁴³

The Auditing Committee Proposal

The preceding discussion of circumstances that tend to undermine police internal regulation and of factors that support the need for civilian participation in the complaint process demonstrates that the Task Force's recommendation for some degree of citizen participation in the complaint process was a prudent course of action. The Task Force called for a five- to nine-member "Citizen Advisory Committee" that would continuously advise the Police Commissioner and Chief of Police on the effectiveness and fairness of the Internal Affairs process, recommend changes in the complaint process, review citizen appeals when directed to do so by the Commissioner and/or Chief and function as a conciliatory body for citizen complaints.⁴⁴ The Task Force further proposed that this Committee review a quarterly report that it recommends the Police Bureau publish⁴⁵ and have full access to the Internal Affairs Division files.⁴⁶

The proposed Police Internal Investigations Auditing Committee (hereafter the "Auditing Committee") would implement the Task Force's recommendation for ongoing monitoring, review, and reporting. The Auditing Committee would be comprised of three members of the City Council, and would be assisted by City Council staff and citizen volunteers.⁴⁷ It would be charged with the responsibility of monitoring the internal investigations system utilized by the Bureau of Police in resolving allegations of police officer misconduct by reviewing the overall process and by hearing certain appeals, filed either by the complaining citizen or the accused officer in such cases.⁴⁸ A careful review of the proposed Auditing Committee Ordinance reveals that it is a viable approach to a serious problem.

In the preceding section, five flaws of civilian review boards were identified. The Advisory Committee's analyses show that the Auditing Committee Ordinance overcomes most of these flaws and, thus, should be able to function effectively. Outlined below are the common flaws of civilian review boards and a discussion of how the Auditing Committee overcomes these flaws:

- (1) Citizen review boards tended to be advisory only -- The proposed Auditing Committee would serve as more than an advisory body, since it would be comprised of members on the City Council. As a result, recommendations to the Council would have the full participation by Auditing Committee members in the decision-making process.⁴⁹
- (2) Citizen review boards had no power to decide cases or impose punishment -- The Auditing Committee would have power to "hear and determine appeals from police officers or complaining citizens who are dissatisfied with the Internal Investigations Division investigation or decision in a particular case or cases."⁵⁰ The Committee specifically is not granted the power to set

the level of discipline for any police officer. The responsibility for imposing discipline, however, should rest with the police department itself, since legally, a police chief cannot give away his/her authority in the department. 51

- (3) Citizen review boards had insufficient staff and resources to function effectively -- The proposal provides that the Committee may utilize the Council staff resources, citizen volunteers, and the City Auditor in carrying out its functions. 52
- (4) Citizen review boards lacked legal authority to subpoena documents and witnesses -- The Ordinance was drafted based on the City Council's authority, through the city charter, to investigate any board or department of the city government. Based on the charter, the Committee is empowered "to compel the attendance and testimony of persons, administer oaths and to compel the production of documents and other evidence," which gives it the legal authority it needs to carry out its responsibilities. 53

The last identified flaw with past citizen review boards -- lack of police department cooperation -- portends a problem that may continue even if the referendum on the Auditing Committee Ordinance is approved. 54 Any perceived lack of cooperation by the police, however, should not be based on the successful effort of the Portland Police Association to place the issue on a referendum. While some may prefer the expeditious route of creating a citizen review board by the limited (albeit public) forum of the City Council, the referendum allows for a full debate, thoughtful reflection, and public support or disapproval. The Advisory Committee believes that a referendum is an effective method of deciding the issue. 55 Although there has been opposition to the proposal, the Advisory Committee believes that open and free, yet mutually respectful, discussion would allow for continuing dialogue on ways to improve police-community relations, even if the ordinance is not adopted.

There does exist a concern by the police that civilians will "control" the police department. The Advisory Committee believes that this concern is overstated because the Auditing Committee is set up only to review reports, hear appeals from complainants or police officers following Internal Investigations Division determinations on a case-by-case basis, and recommend action to the Police Commissioner and/or City Council. The Police Bureau, through its Internal Investigations Division, will continue to have the major responsibility for and control of internal discipline procedures: it will take complaints, conduct investigations on the complaints, find the facts, and recommend appropriate action.

The Advisory Committee also believes that the police would benefit from such a committee for three reasons:

- (1) The Auditing Committee will help restore public confidence in the police because the disposition of citizen complaints will not be viewed as one-sided in favor of the police;
- (2) If an officer is exonerated by the Internal Investigations Division and that judgment is affirmed by the Auditing Committee, it is less likely that the exoneration will be seen as a "whitewash"; and
- (3) Since meetings of the Auditing Committee will be open, and since the committee will not only hear appeals but also review quarterly reports of and monitor the Internal Investigations Division, the public will be less likely to view the Police Bureau as secretive.

For these reasons, the Advisory Committee urges the police to give the Auditing Committee its full cooperation if the ordinance is approved.

The Advisory Committee also recognizes that some individuals believe that having the Auditing Committee composed of city council members makes it too "political" to function effectively. Having city council members on the Auditing Committee, however, explains why this Committee will be effective: it would consist of persons who have decision-making roles in the city and, therefore, would be more than just an advisory body. Further, since the meetings are open to the public and since the committee ultimately is responsible to the full city council, the members cannot act arbitrarily, capriciously or unfairly without being held accountable.

The Auditing Committee Ordinance also contains minimum elements that the U.S. Commission on Civil Rights recommends should be included in any civilian review mechanism. These elements, which were listed in the previous section, were that civilian review mechanisms should be accessible to citizens, be given adequate staff and funds, be granted full investigatory powers, have access to police department files, be empowered to make recommendations to the chief of police regarding the complaint, be able to forward its recommendations to the legal authority over the chief of police, and be able to make its proceedings a part of the public record.⁵⁶ Consistent with the Commission's recommendations the Auditing Committee would be:

- . Readily accessible to citizens through the committee itself, City Council staff, the citizens who are to assist in an advisory capacity, and the City Auditor.⁵⁷

- Given adequate staff and funds through City Council staff and resources, citizen volunteers, and the service of the City Auditor;⁵⁸
- Granted full investigatory and subpoena powers;⁵⁹
- Given access to relevant police department files and records through its investigatory and subpoena powers;⁶⁰
- Empowered to send its complaint appeal decision (brought by police or civilians) to the Police Commissioner and the Chief of Police;⁶¹
- Able to forward its recommendations on the complaint process to the Police Commissioner (to whom the Chief of Police reports) and/or to the City Council;⁶² and
- Required to publicly report its findings, conclusions, and recommendations.⁶³

In summary, the Advisory Committee believes that the Auditing Committee Ordinance overcomes the common flaws of citizen review boards cited by the U.S. Commission on Civil Rights and the National Minority Advisory Council, and includes all of the minimum requirements that the Commission believes should be present in a review mechanism.

Conclusion

This statement by the Oregon State Advisory Committee is prepared to provide information and analysis on the issue of civilian participation in processing citizen complaints of police officer misconduct. Our analysis indicates that the major factor leading to an effort to establish some sort of civilian review has to do with the perception of the citizenry that the police are not adequately policing themselves. Regardless of whether the perception is based on fact, the perception is very real and cannot be ignored, since it can have significant impact on a community. As the U.S. Commission on Civil Rights stated in Who Is Guarding the Guardians?:

[T]he consequences of police misconduct can be very farreaching. A single occurrence or a perceived pattern of discriminatory and unjustified use of force can have a powerful, deleterious effect on the life of the community.⁶⁴ (emphasis added)

The perception is partly due to the lack of public information concerning the receipt, processing, and investigation of citizen complaints. The more closed a system, the more likely the negative perception that the police are secretive in their approach, which leads to the belief that citizen complaint investigations are only a sham and a farce.

The U.S. Commission on Civil Rights believes, as does the Oregon Advisory Committee, that, although the primary responsibility for investigating citizen complaints and subsequently imposing appropriate discipline on police officers rests with the police department itself, it is imperative for this process to be subject to some outside review to ensure that a "citizen not agreeing with the police department's disposition of a complaint has an avenue of redress to pursue."⁶⁵ The Advisory Committee believes that the Auditing Committee proposal is one of the best civilian review board structures designed to date for providing citizen review of alleged police misconduct, since it overcomes the major flaws of past civilian review boards as well as contains all of the minimum requirements that the Commission believes any civilian review board should have.

Finally, the advisory committee believes that it is in the interest of the police to support the ordinance if it is passed. As the Commission said in its Statement on Police Practices:

The public credibility of any police agency depends largely on the integrity of the internal disciplinary process -- that is, the degree of public confidence in the ability of the police to police themselves. Even a police agency exemplary in most areas of practice can experience incidents of abuse of authority or be perceived as abusing its authority, and it is therefore essential that every agency take those steps necessary to enforce its regulations and to maintain its credibility.⁶⁶

The Oregon State Advisory Committee reiterates its position that the Police Internal Investigations Division and the Auditing Committee can peacefully coexist and contribute to the improvement of police-community relations in Portland.

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- ¹ Forums were held in Pendleton (Nov. 16, 1979), Eugene (Oct. 9, 1980), Portland (Nov. 21, 1980), and Klamath Falls (Feb. 6, 1981).
 - ² Organizational attendees included the Advisory Committee on the Disabled, American Jewish Community, Collegio Cesar Chavez, Chicano Affairs Center, City-County Commission on Aging (Portland-Multnomah), Eugene Handicapped Commission, Indochinese Cultural Center, International Rescue Committee, Japanese-American Citizens League, League of Women Voters, Multnomah Association of Retarded Citizens, National Association for the Advancement of Colored People, National Organization for Women, North Clackamas Human Relations Council, Oregon Developmental Disabilities Center, Oregon Human Development Corporation, Oregon Women's Political Caucus, Organization of the Forgotten Americans, Portland Contract Compliance Division, Southern Oregon Indian Research Incorporated, Spanish-Speaking People of Oregon, Tri-County Affirmative Action Association, United Tribal People, Urban League, and the Women's Resource Center of the YWCA.
 - ³ U.S., Commission on Civil Rights, Justice (1961).
 - ⁴ 42 U.S.C., Sec. 1975c(a) (2).
 - ⁵ U.S., Commission on Civil Rights, Cairo, Illinois: A Symbol of Racial Polarization (1973); Mexican Americans and the Administration of Justice in the Southwest (1970); Police Practices and the Preservation of Civil Rights: A Consultation Sponsored by the U.S. Commission on Civil Rights, Washington, D.C., December 12-13, 1978 (1979) (hereafter referred to as "Consultation on Police Practices"); Police Practices and the Preservation of Civil Rights: A Statement by the U.S. Commission on Civil Rights (1980) (hereafter referred to as "Statement on Police Practices"); Who Is Guarding the Guardians?: A Report on Police Practices (1981) (hereafter referred to as "Who Is Guarding the Guardians?"); Confronting Racial Isolation in Miami (1982).
 - ⁶ Pennsylvania State Advisory Committee to the U.S. Commission on Civil Rights, Police-Community Relations in Philadelphia (1972); Florida State Advisory Committee to the U.S. Commission on Civil Rights, Toward Police/Community Detente in Jacksonville (1975); Tennessee State Advisory Committee to the U.S. Commission on Civil Rights, Civic Crisis-Civic Challenge: Police-Community Relations in Memphis (1978); Maryland State Advisory Committee to the U.S. Commission on Civil Rights, The Baltimore Police Complaint Evaluation Procedure (1980); Ohio State Advisory Committee to the U.S. Commission on Civil Rights, Policing in Cincinnati, Ohio: Official Policy and vs. Civilian Realty (1981); District of Columbia State Advisory Committee to the U.S. Commission on Civil Rights, Police-Community Relations in Washington, D.C. (1980); Nebraska State Advisory Committee to the U.S.

Commission on Civil Rights, Police-Community Relations in Omaha (1982).

- 7 President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police (1967); National Commission on the Causes and Prevention of Violence, Rights in Conflict (1968); National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Police, Police (1973); U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, "Improving Police-Community Relations" (1973); International Association of Chiefs of Police, Managing for Effective Police Discipline: A Manual of Rules, Procedures, Supportive Law and Effective Management (2d rev. ed., 1977) (hereafter referred to as "Effective Police Discipline"), U.S. Department of Justice, Community Relations Service, National Consultation on Safety and Force: An Opportunity for Police-Minority Community Cooperation, Summary Report (1980); National Minority Council on Criminal Justice, The Inequality of Justice: A Report on Crime and the Administration of Justice in the Minority Community (1982) (hereafter referred to as "The Inequality of Justice").
- 8 It is not the purpose of this statement to extensively review the internal regulations of other police departments or external "civilian review boards" or "advisory panels" in other cities. A thorough review has been undertaken by the Commission in its 1981 report on police practices entitled Who Is Guarding the Guardians?, and by the Hartford Institute of Criminal and Social Justice in its report on civilian review of police. See Hartford Institute of Criminal and Social Justice, "Civilian Review of the Police -- The Experiences of American Cities" (1980) (hereafter referred to as "Hartford Institute Report").
- 9 Since the release of the Task Force Report, the Portland Police Bureau promulgated a new general order on internal investigations (General Order, Sec. 340.00, "Complaint and Disciplinary Process"), which went into effect August 25, 1982. A review of this general order does not indicate that it in any way obviates the need for an Auditing Committee, since the Advisory Committee believes that some form of an external review mechanism is needed in the City of Portland at this time. Therefore, the new general order is not discussed in this statement.
- 10 Under investigation was an allegation that the Police Bureau's Special Investigations Division personnel planted evidence on innocent persons and lied under oath to obtain search warrants to raid the homes of the presumably innocent. In addition, an incident occurred where 2 officers left dead opossums at a restaurant operated by a black man. See The Oregonian, May 24, 1981.
- 11 Memorandum from Commissioner Jordan to The Citizens Task Force on Internal Affairs, Jan. 16, 1981.

- 12 Ibid.
- 13 "Report of the Citizen Task Force on Police Internal Affairs" submitted to Commissioner Charles R. Jordan, July 16, 1981, p. 2 (hereafter referred to as "Task Force Report").
- 14 Ibid., p. 6.
- 15 Some recommendations were that complainants should have the same access as the police officer to the Internal Affairs Division investigative files; the city should increase the number of locations where complaints can be received; the Police Bureau should actively inform citizens about the Internal Affairs Division and complaint procedures; and Internal Affairs Division data should be used to identify areas where police-community friction could be reduced through training or policy development.
- 16 Task Force Report, p. 17.
- 17 Ordinance No. 153076, passed by the Council Apr. 8, 1982 (Amends Title 3, Administration of the Code of the City of Portland by adding a new Chapter 3.21, Police Internal Investigations Auditing Committee).
- 18 The Oregonian, Mar. 11, 1982, p. C8; The Sunday Oregonian, Sept. 5, 1982, p. B5.
- 19 The Sunday Oregonian, Sept. 5, 1982, p. B5.
- 20 Harold Beral and Marcus Sisk, "The Administration of Complaints by Civilians Against the Police", Harvard Law Review, Vol. 77 (1964), p. 500.
- 21 This passage by Beral and Sisk has been quoted extensively in reports on police practices. See, for example, Statement on Police Practices, p. 16 and Effective Police Discipline, p. 48.
- 22 Who Is Guarding the Guardians?, p. 127.
- 23 Ibid., pp. 51 and 157.
- 24 Task Force Report, p. 8.
- 25 The Commission also noted that inaccessible and non-bilingual complaint forms can undermine an internal complaint process, but since the Portland Task Force did not make specific mention of these factors, they are not pertinent to this discussion.
- 26 Task Force Report, p. 9.
- 27 Ibid., p. 11.

- 28 Ibid., p. 9.
- 29 Ibid., pp. 13-14. The Task Force was silent on the subject of processing anonymous complaints. According to the current policies, however, anonymous complaints are accepted, as are third-party complaints. See Bureau of Police, General Order, Section 340.00, Complaint and Discipline Process.
- 30 Who Is Guarding the Guardians?, p. 35.
- 31 Task Force Report, p. 17.
- 32 Ibid.
- 33 "Citizen review boards" vary in structure and procedure from community to community. As used in this statement the term encompasses both mechanisms by which: (1) police misconduct can be reviewed in a manner external to the investigations unit of police departments, and (2) citizens can participate in the formulation of departmental policy so that the future actions of the police will be guided by policies sanctioned by the community.
- 34 Who Is Guarding the Guardians?, pp. 124-127; See also Hartford Institute Report.
- 35 Who Is Guarding the Guardians?, p. 163.
- 36 Ibid.
- 37 The National Minority Advisory Council on Criminal Justice was established in 1976 by the Law Enforcement Assistance Administration (LEAA), U.S. Department of Justice. The council was created to advise LEAA on the development of effective programs and policies relating to minority concerns and to make recommendations for federal, state, and local governments in the implementation of minority concerns. The National Minority Advisory Council was chaired by Dr. Lee P. Brown, who taught at Portland State University and formerly served as sheriff and Director of the Department of Justice Services for Multnomah County.
- 38 The Inequality of Justice, pp. 233-234.
- 39 Ibid., p. 234.
- 40 Ibid.
- 41 Ibid., p. 384.
- 42 Ibid., p. 230.
- 43 Who Is Guarding the Guardians?, p. 163.
- 44 Task Force Report, p. 17.

- 45 Ibid.
- 46 Ibid.
- 47 Ordinance No. 153076, passed by the Council Apr. 8, 1982 (hereafter referred to as "Auditing Committee Ordinance").
- 48 Id., Sec. 3.21.020.
- 49 Id., Sec. 3.21.030.(1).
- 50 Id., Sec. 3.21.040(3).
- 51 Id., Sec. 3.21.120; Who Is Guarding the Guardians?, pp. 125-163.
- 52 Id., Secs. 3.21.030(3), 3.21.030(4), and 3.21.080.
- 53 Id., Sec. 3.21.040(4). This power is granted through the city charter, which allows the council or a committee of the council to investigate any board or department of the city government, and the official acts and conduct of any city officer, employee, or agent. That section also covers perjury. See Charter, City of Portland, Oregon, Sec. 2-109 Investigations.
- 54 Lack of police department cooperation is a flaw identified only by the National Minority Advisory Council on Criminal Justice. It is not a flaw identified by the U.S. Commission on Civil Rights.
- 55 History supports this opinion. After John Lindsay's election as mayor of New York City in 1966, he fulfilled a campaign pledge to establish a mixed review board (consisting of civilians and police) to replace the all-police review board. It was only operational between July and November of 1966 because the issue of citizen review was placed on a city referendum by a petition of the Patrolman's Benevolent Association. The referendum passed amending the New York City Charter to prohibit the handling of citizen complaints by a review board independent of the Police Department. Further membership on the board is restricted to persons who have been employed by the department for a minimum of one year. See Hartford Institute Report, pp. 24-26.
- 56 Who Is Guarding the Guardians?, p. 163.
- 57 Auditing Committee Ordinance, Sec. 3.21.030 and 3.21.060(3). It is contemplated that the citizen volunteers will serve as an advisory council to the Auditing Committee, and that they will be nominated by City Council members, the Multnomah County Bar Association, the National Conference of Christians and Jews, the

Metropolitan Human Relations Commission, or other organizations and public officials. See Auditing Committee Ordinance, Sec. 3.21.030(4).

58 Id., Secs. 3.21.030 and 3.21.060(3).

59 Id., Sec. 3.21.040(4).

60 Id.

61 Id., Sec. 3.21.090. Note that if the Police Commissioner disagrees with the Auditing Committee's appeal decision, the Auditing Committee can obtain a resolution of the appeal by sending its decision and the Police Commissioner's response to the City Council. See Auditing Committee Ordinance, Sec. 3.21.110(1).

62 Id., Sec. 3.21.020(2).

63 Id., Sec. 3.21.040(5).

64 Who Is Guarding the Guardians?, p. v.

65 Ibid., p. 163.

66 Statement on Police Practices, p. 14.

A P P E N D I X

ORDINANCE NO.

153076

An Ordinance amending Title 3, Administration, of the Code of the City of Portland by adding a new Chapter, 3.21, Police Internal Investigations Auditing Committee, which creates a committee, comprised of three (3) members of the Council, and assisted by City staff personnel and citizen volunteers, charged with the responsibility of investigating, as authorized by Section 2-109 of the Charter of the City of Portland, the internal investigations system utilized by the Bureau of Police in resolving allegations of police officer misconduct by reviewing the overall process and by hearing certain appeals, filed either by the complaining citizen or the accused officer, in such cases.

The City of Portland ordains:

Section 1. The Council finds:

1. That the Internal Investigations Division (IID) of the Bureau of Police is responsible for investigating allegations of police officer misconduct.
2. That recent events have caused the citizens of Portland to question whether or not the "police policing themselves" is a process that is fair, efficient, thorough, responsive and concerned equally with the rights of the complaining citizen and the accused officer.
3. That as a result of this public concern a Citizen's Task Force on Internal Affairs was appointed to make a six-month study and to make recommendations on both how the police internal investigation process might be improved and how the public confidence could be enhanced.
4. That fourteen persons who could provide a wide range of perspectives were selected to serve on the task force. The group met 22 times during the six months, heard testimony from 20 witnesses, made random sample and analyses of IID cases covering a recent one-year period and visited the IID office to examine its operation.
5. That the final report of the Task Force, dated July 16, 1981, was presented to the Mayor and Police Chief. The report listed eight major conclusions and made 20 specific recommendations for improvement.

6. That the Task Force agreed their most important recommendation to improve citizen confidence in their police was the establishment of an ongoing citizen committee to verify the fairness of the internal investigations process.
7. That in order to regain and maintain community credibility in the Bureau of Police internal investigation system, some ongoing process, external to that Bureau, must be established to ensure the effectiveness of that Bureau's process in resolving allegations of police officer misconduct.
8. That the most effective process that can be utilized, external to that Bureau, at this time, to regain and maintain community credibility in that Bureau's internal investigation system is to utilize that authority granted to the Council pursuant to Section 2-109 of the Charter to create a committee of its members to investigate, on an ongoing basis, that Bureau's system utilized to resolve allegations of police officer misconduct.

NOW, THEREFORE, the Council directs:

- a. That Title 3, Administration, of the Code of the City of Portland is hereby amended by enacting a new Chapter, 3.21, Police Internal Investigations Auditing Committee, as follows:

Chapter 3.21 - Police Internal Investigations
Auditing Committee

- 3.21.010 - Definitions
- 3.21.020 - Committee Created, Duties
- 3.21.030 - Committee Membership, Meetings
- 3.21.040 - Committee Powers
- 3.21.050 - Quarterly Reports
- 3.21.060 - Filing of Appeals
- 3.21.070 - Decision to Review Appeals
- 3.21.080 - Auditor's Duties
- 3.21.090 - Committee Action on Appeals
- 3.21.100 - Response of Commissioner in Charge

3.21.110 - City Council Review

3.21.120 - Limitation on Committee Power

3.21.010 - Definitions. Unless the context indicates otherwise, the following definitions are applicable to this chapter:

- (1) "Auditor" means the Auditor of the City of Portland, Oregon.
- (2) "Bureau" means the Bureau of Police of the City of Portland, Oregon.
- (3) "Chief" means the Chief of the Bureau.
- (4) "Commissioner in Charge" means the Commissioner in charge of the Bureau.
- (5) "Committee" means the Police Internal Investigations Auditing Committee.
- (6) "Complainant" means a person who has filed a police misconduct complaint with IID.
- (7) "IID" means the Internal Investigation Division of the Bureau, whose responsibilities and procedures are described in Section 330.00 of the Manual of Rules and Procedures of the Bureau, as amended from time to time.

3.21.020 - Committee Created, Duties. The Police Internal Investigations Committee is hereby empaneled to investigate, pursuant to the authority granted the Council by Section 2-109 of the Charter, the internal investigations system utilized by the Bureau of Police in resolving allegations of police officer misconduct. In conducting this investigation, on an ongoing basis, this Committee will carry out the following duties and responsibilities:

- (1) Monitor the IID process of resolving allegations of police officer misconduct to ensure that such investigations are effectively completed in an efficient, fair, thorough and timely manner showing equal concern for the rights of both citizens and police officers.
- (2) Assist the Bureau in regaining and maintaining community credibility in its IID process by reporting its findings, conclusions and recommendations about such process in writing to the Commissioner in charge and/or the Council, making such reports available to the public, as well, for review.

- (3) Provide an appeal process for either officers or citizen complainants who are dissatisfied with IID investigations or related decisions.

3.21.030 - Committee Membership, Meetings.

- (1) The Committee shall consist of three (3) members of the Council, duly authorized and appointed by the Council, for a term of one (1) year from the effective date of the enactment of this chapter. One council member shall be selected by the Committee as chairperson. The Commissioner in charge of the Bureau of Police shall not be appointed to, nor shall he/she serve on, the Committee.
- (2) Prior to the completion of this one-year period and each succeeding one-year period, the Council shall either extend the appointments of each Committee member's term for an additional one-year term or make such new appointments as it deems appropriate.
- (3) The Committee may utilize the staff resources of those Council persons appointed thereto in carrying out its duties and responsibilities pursuant to this chapter.
- (4) The Committee may utilize citizens who volunteer to participate in carrying out its duties and responsibilities pursuant to this chapter. Such citizens may be recommended by Council members, the Multnomah County Bar Association, the National Conference of Christians and Jews, the Chief, the Metropolitan Human Relations Commission or any other organization, association or public official.
- (5) Committee meetings shall be subject to the Oregon public meetings law, ORS 192.610 through 192.710.

3.21.040 - Committee Powers. In carrying out its investigative duties and responsibilities and to otherwise administer its affairs, the Commission shall have the power to:

- (1) Review a detailed quarter-yearly report, which shall be submitted in a timely fashion by the IID, through channels, and which shall describe, in summary form approved by the Committee, all IID activities during the immediately preceding quarter-yearly period.
- (2) Independently monitor the Bureau internal investigative process, including visits to the IID offices, examination of IID documents, reports and files and such other actions that the Committee deems necessary

and consistent with the purposes of this chapter. To maintain the security of such documents, reports or files, the Chief may require that the examinations be conducted in the IID offices.

- (3) Hear and determine appeals from police officers or complaining citizens who are dissatisfied with the IID investigation or decision in a particular case or cases.
- (4) Utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of persons, administer oaths and to compel the production of documents and other evidence.
- (5) Report publicly its findings, conclusions and recommendations.
- (6) Adopt such procedural rules as are necessary to carry out its duties and responsibilities in conformity with this chapter.

3.231.050 - Quarterly Reports. At the conclusion of its quarterly review of the activities of the IID, the Committee will prepare a written report of its findings, conclusions and recommendations to the Commissioner in charge, the Chief and the Council.

3.21.060 - Filing of Appeals. Appeals, by citizen complainants or involved officers accused of misconduct, of a specific IID investigation(s) or decision(s) shall be subject to the following requirements:

- (1) Any complainant or police officer accused in an IID complaint who is dissatisfied with the IID investigation or decision may appeal to the Committee.
- (2) Appeals must be filed within 120 days from receipt of the Police Bureau determination by the police officer or complainant, unless waived by the Committee for good cause shown.
- (3) An appeal may be made either personally or in writing at the office of the City Auditor. The City Auditor shall help appellants complete the statement necessary for making an appeal.
- (4) The appeal shall state:
 - (a) The name, address and telephone number of the appellant;
 - (b) The approximate date the IID complaint was filed (if known);

- (c) The substance of the IID complaint and the reason for the appeal; and
- (d) Whether the appellant believes the Committee should hear witnesses and, if so, the name, address and telephone number of all proposed witnesses.

3.21.070 - Decision to Review Appeals. The Committee shall have discretion to determine which appeals it will review and whether to receive testimony from witnesses. The Committee shall exercise its discretion after reviewing the IID file and communicating with the appellant. In exercising its discretion, the Committee shall consider the following factors:

- (1) The seriousness of the complaint;
- (2) The likelihood of error by the IID;
- (3) The number of similar appeals received by the Committee.
- (4) The likelihood that testimony will contribute materially to a fair review of the appeal; and
- (5) The time available to the Committee considering the total number of appeals filed.

3.21.080 - Auditor's Duties. The office of the Auditor shall accept appeal requests, in writing, during regular business hours. Such requests shall be recorded and forwarded in a timely fashion to the Committee.

3.21.090 - Committee Action on Appeals. After considering an appeal by a complainant or an officer, the Committee shall inform the Commissioner in charge and Chief in writing, stating:

- (1) That it agrees with the IID investigation and recommends that the IID determination be approved;
- (2) That it feels further investigation is warranted and the case should be reopened; or
- (3) That it feels the determination of the IID was inappropriate and the decision should be reviewed by the Commissioner in charge and Chief.

3.21.100 - Response to Commissioner in Charge. The Commissioner in charge, after reviewing a report provided by the Committee under Section 3.21.050 or 3.21.090, shall respond promptly to the Committee in writing, but in no event more than sixty days after receipt of the Committee report. The response shall indicate (whichever is applicable):

- (1) What, if any, policy or procedural changes within the IID are to be effectuated as a result of recommendations made pursuant to Section 3.21.050, or
- (2) The final disposition of a particular case after considering the report of the Committee.

3.21.110 - Council Review.

- (1) If there is a difference between the recommendation of the Committee and the Commissioner in charge concerning a particular IID investigation, the Committee shall forward a copy of its written report concerning that particular investigation together with the Commissioner's response to the Council for its review and appropriate action.
- (2) The Committee shall forward a copy of each of its quarterly reports in a timely manner to the Council for its review and appropriate action.

3.21.120 - Limitation on Committee Power. The Committee is not empowered to set the level of discipline for any police officer in any case.

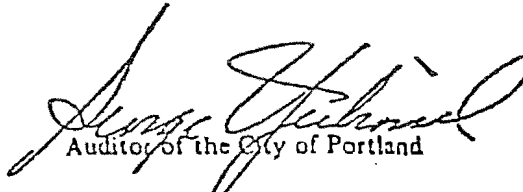
Passed by the Council, APR 8 1982

Commissioner Jordan

Bill Rhodes

Revised: KH Scoumperdis
March 23, 1982

Attest:


Auditor of the City of Portland