

MEMORANDUM

TO: Peter Chaffetz, Michael Kelley, Joyce Wallach.
FROM: Susan Poliak *SMP*
RE: Review of Complaint Files and Personnel Files
DATE: June 17, 1991

Background

On June 12, 13, 14, 1991, I reviewed two kinds of files dealing with treatment of arrestees in police facility jails. The first were complaint files in which arrestees had alleged use of excessive force by station officers and in which the complaints had not been sustained. The second were personnel files of station officers. The personnel files I examined were those of station officers who were among the "top 100" for the number of Use of Force reports filed, and station officers who had been discharged as the result of use-of-force complaints.

General Observations

1. Many of the alleged instances of excessive use of force occur while arrestees are being moved between cells or areas of the jail. This makes sense, since it is at these times that station officers and arrestees come into contact with each other. Because of the potential for conflict in these situations, perhaps the Jail Division could design a policy for moving arrestees that offers greater security. For example, a supervisor could be required to be present or, at the very least, two or more station officers could be required to be in attendance. The presence of a greater number of guards might minimize chances that an arrestee would get out of hand and cause a confrontation. It might also minimize the chances that a lone station officer would feel free to treat an arrestee in his custody roughly.

2. The Jail Division policy requiring an independent witness to sustain any complaint in which the complainant's story differs from the officer's makes it difficult to sustain a complaint. Because all these instances occur in the jail environment, the only potential witnesses are arrestees and other employees of the Jail Division. Both these groups may be reluctant to testify against station officers; the other officers do not want to "rat" on their buddies, and the arrestees do not want to get into trouble or draw attention to themselves. For example, in one instance all three of the officers who were in the immediate area where an altercation took place claimed not to have seen it. In the same instance, 20 arrestees in the cell where the fight occurred said they had no memory of it. However, this problem may not be as serious as it seems at first glance. I did read several cases in which some arrestees and even

occasionally station officers supported the complainant's story. Also, even if this system is flawed, it may be difficult to contrive a viable alternative.

3. There does not seem to be a consistent policy concerning how much use of force, or how many sustained complaints of excessive force, is too much. Certain officers are involved in these incidents over and over. One name that appears quite frequently is station officer Crite. Another station officer with many excessive force complaints is officer [REDACTED] (discussed below). [REDACTED] has been suspended many times. However, other officers have been discharged following incidents no more serious, and no greater in number, than these. Station officer [REDACTED] (discussed below) was discharged after two excessive force complaints against him were sustained. Both involved beatings that did not cause serious injury. While I do not mean to downplay the seriousness of beating an arrestee, the force used by [REDACTED] was not significantly worse than that used in other instances by station officers who were not discharged. This inconsistency may make it difficult for station officers to understand what the department's attitude toward use of force is, and may reflect an ambivalence among supervisors concerning the use of force.

4. A related concern is that it is not clear whether use of excessive force is considered a serious infraction in the Jail Division. One supervisor minimized the importance of a complaint by referring to the allegation as a "simple beating." Station officer [REDACTED] (discussed below) was discharged after multiple sustained complaints of neglect of duty for tardiness and two sustained complaints of use of excessive force. The report in which his discharge was recommended emphasized the tardiness just as much as the use of force, as if these charges were of equal gravity. Review of [REDACTED] personnel file gives the impression that the excessive force complaints gave Jail Division the excuse it was already looking for to discharge this station officer. Others, such as [REDACTED] (discussed below), have been retained despite multiple instances of use of excessive force. This willingness of the department to allow such officers to continue in their employment suggests that treatment of arrestees may not be a high priority.

Another indication of this is that station officer evaluation forms do not have a rating category concerning treatment of arrestees. The evaluation forms are filled out by supervisors periodically for each station officer and are included in the officer's personnel file. The form lists many categories, in each of which the supervisor rates the officer. There is a category for relations with fellow officers and another for relations with the public, but there is nothing which deals directly with relations with arrestees. The officer's treatment of arrestees is often addressed in the comment section. However, the absence of this category on the evaluation form suggests that it is not of paramount concern.

5. The Jail Division does not have clear policies in many areas where perhaps it should. In addition to the lack of set

policies on how much use of force will be tolerated and on moving arrestees for maximum safety, both discussed above, the division does not have a fixed mechanism for the off-going watch to notify the on-going watch of special problems. These special problems include the presence of informants who must be isolated in the jail to ensure their safety, and the presence of members of opposing gangs. While this concern is not directly related to the use of excessive force, it may show a general lack of concern with the welfare of arrestees.

6. The concerns expressed in the preceding paragraphs are very real ones which need to be addressed, but I do not wish to imply that the Jail Division is a hopeless mess or a bastion of brutality. Neither the complaint files nor the personnel files reveal any serious pattern of violence against arrestees. Most of the complaints concerned fairly minor injuries, and many arose from situations which seemed to be as much the fault of the complainant as of the station officer. A jail facility is an inherently adversarial environment; some amount of conflict is unavoidable. While there are some problems and some violent station officers, the institution as a whole does not appear to be significantly dysfunctional.

Notes on Complaint Files

1. [REDACTED] The complainant alleged that while he was being fingerprinted a station officer struck him in the chest. The only witness to the incident was a second station officer. Both officers stated that the complainant resisted fingerprinting, and that the accused station officer grabbed the complainant to bring him back to the fingerprinting table but did not strike him.

There is nothing in this file to indicate that proper procedures were not followed. There was also nothing to indicate that there had been any internal criticism of the officer in question. The Commanding Officer who wrote the report was very supportive of the accused station officer. However, Lt. Pegueros wrote that the "lack of independent witnesses does not provide sufficient evidence to clearly prove or disprove the allegations made." While this does not amount to criticism of the station officer, it is a recognition that the department cannot determine with certainty what occurred.

No supervisors were involved in this incident. In addition, there was no confirmation that improper force was, in fact, used. The complainant stated that he experienced pain in his chest after the incident, but a medical examination revealed no visible injury or trauma to the chest.

2. [REDACTED] This complaint was lodged by the department rather than by an individual complainant. The incident occurred while two station officers were moving arrestees from holding cells to the misdemeanor housing section of the jail. An arrestee became combative, and one of the station officers wrestled him to the floor. The station officer

lay on top of the arrestee and then punched him in the stomach. The station officer admitted punching the arrestee, so the only question was whether this was an *improper* use of force. As will be discussed below, this question was initially answered in the affirmative, but the decision was later reversed and the complaint was not sustained.

The initial report was written by Cpt. William R. Hall, Commanding Officer of the Jail Division. It stated that the station officer punched the arrestee after the arrestee had already been subdued and was no longer a threat. The report emphasized the fact that the arrestee was 5'10" and weighed 140 lbs., while the officer was 6'2" and weighed 190 lbs. Station officers are taught that punches can be thrown only in life-threatening situations. Therefore, this use of force was excessive.

Several months after Cpt. Hall's report, the station officer was exonerated by Commander Robert Taylor, Assistant Commanding Officer of the Support Services Bureau. Taylor stated that the Jail Division Manual says force can be used to prevent bodily harm, and in this case the station officer properly struck the arrestee who was a threat to others.

Despite Commander Taylor's opinion, there does seem to be some evidence that the use of force was improper. The incident was used for roll call training as an example of out-of-policy force, suggesting that the station officer's actions were not within department policy. Furthermore, another arrestee who was in the cell at the time of the incident stated that the officers "jumped on him and beat him up. He had been talking but he did not do anything that was any reason to hit him." However, a medical examination of the arrestee revealed no injury, and the doctor did not prescribe any treatment.

In addition to sustaining the complaint against the station officer, Cpt. Hall's initial report sustained a complaint against a supervisor for failing to conduct a sufficient investigation of the incident. The supervisor's report consisted only of statements of five station officers who were involved in the incident and exhibits. Although Cpt. Hall stated that all five of these statements could have been taken in one day, the report was not submitted for over a month. No attempt was made to interview other employees or the many arrestees who were present in the cell where the altercation occurred. Cpt. Hall called this "an obvious attempt to justify [the station officer's] striking of a person in custody." Cpt. Hall further stated that this failure to take appropriate action occurs so frequently that it "almost appears to be the rule rather than the exception." Like the station officer, the supervisor was later exonerated by Commander Taylor.

3. Service [REDACTED] The complainant alleged that while he was being removed from his cell preparatory to his release, a sergeant unnecessarily grabbed his arm, pushed him against the cell door, and threatened to shoot him with a Taser.

The only witness was a station officer who was assisting in the complainant's release. Since the complainant's version of the facts differs from the officers' version, it is impossible to determine what transpired or whether the correct procedures were followed. The report states, "While it appears that [the sergeant] used the minimum and necessary force, that cannot be clearly proven by the statements of two interested persons." The complainant did not allege any injuries, so there is no medical evidence of use of improper force.

An interesting aspect of this file is that the accused sergeant's possession of a Taser counted in his favor. The report noted that it is not normal procedure for sergeants to carry Tasers or to involve themselves in the release of prisoners. The fact that in this case the sergeant did these things was taken to indicate that the complainant was especially difficult to handle. However, this assumption is not necessarily supported by the evidence. It is equally possible that the sergeant was in violation of the procedures, and was carrying a Taser when he should not have been. Either explanation is plausible; it is simply interesting that the report unquestioningly propounds the former.

4. The following files were improperly included in our list of unsustained complaints against station officers; in fact, they involved complaints of excessive force outside of the jail facility:

[REDACTED]

Notes on Personnel Files

1. [REDACTED] This file was included in the list of station officers who were in the "top 100" for the number of Use of Force reports filed. However, this officer's file did not contain a single complaint report of any kind. It is possible either that inclusion of this file in the top 100 was an error, or that this officer did file a large number of Use of Force reports but that these were all proper uses of force and no complaints were ever lodged against him. His evaluations were excellent. His supervisors recommended him for promotion and suggested that he become a police officer. One of his evaluations noted that he "is very professional when dealing with prisoners." In August of 1990 he resigned to take a position with the RTD police.

2. [REDACTED] This file was also among the top 100. It is clear from this station officer's evaluations that his supervisors did take note of the large number of reported incidents of use of force. Many of this officer's evaluations expressed concern over his gruff treatment of prisoners. His evaluation in August, 1989, recommended that he be assigned to a position where his contact with prisoners would be minimal and

where he could be closely supervised. He went to the department Behavioral Science Unit for voluntary counseling.

This station officer was accused of beating arrestees on multiple occasions. Most of these complaints were not sustained due to the lack of witnesses. However, his file notes that at the least he behaved in a way which caused prisoners to complain. One complaint, made in October of 1988, was not sustained despite the fact that the complainant suffered contusions to the right ribs and to both wrists. Another complaint against this station officer was not sustained despite the fact that the complainant was treated for a muscle sprain to his left shoulder. In January, 1987, a complainant alleged that this station officer and three others kicked and beat him. The complainant was treated for a tender left chest and contusions to the right shoulder, and suffered visible scratches and bruises. However, the allegation was not sustained because the department was unable to determine which of the station officers had participated in the beating.

This officer was suspended many times, although not all the suspensions resulted from use of excessive force. In April, 1990, he identified a prisoner as an informant in front of other prisoners, thereby seriously jeopardizing the safety of the informant. At the time of this occurrence, Cpt. Hall recommended that he be discharged; he was given a 66 day suspension instead. The report of this incident noted the station officer's "history of minor sustained complaints involving his use of force and his judgment in dealing with prisoners." At various times this station officer was suspended for drunk driving and carrying a concealed weapon while off duty, for using improper tactics in transporting a hostile prisoner out of sight and away from the immediate assistance of other officers, and for neglect of duty in failing to complete Use of Force reports after reportable incidents occurred.

Finally, it is interesting to note that this file does not include the number of Use of Force reports completed by the station officer. Although he is in the "top 100," and although his supervisors are clearly concerned about his conduct, the total number of his Use of Force reports is not available. Furthermore, despite the volume of complaints against this individual, and despite the number of times he has been suspended, he has been retained as a station officer.

3. [REDACTED] This station officer was discharged following two sustained complaints of use of excessive force. His file indicates that the severe penalty of discharge was inflicted because of a long-term pattern of conduct. This pattern included use of excessive force, continual tardiness to work, and failure to appear to work. The report noted that the station officer's "prior history. . . present[s] a clear and present danger to prisoners," and that the most recent complaint was "not an isolated incident." The report also noted that prior suspensions had not affected the officer's pattern of behavior and could not be expected to change it in the future. Also, it is interesting

that the file states, "Time and time again [this station officer], instead of using the approved control holds, punches suspects." However, there are only two excessive force complaints in this file. Therefore, "time and time again" must be a reference to uses of force that did not lead to complaints. There must be a pattern in which each individual use of force is deemed not improper but the pattern as a whole is questionable.

The incident which precipitated this station officer's dismissal was really two occurrences which were consolidated into a single investigation. In both instances the officer was accused of beating an arrestee. In the second instance, the officer left the arrestee bleeding in a padded cell and failed to obtain medical treatment or complete a Use of Force report. The first complainant did not sustain any injuries; the second one suffered a laceration to the forehead that required 10 stitches. Both investigations were initiated by complaints from outside the Department.

Follow-up Witnesses

It would be useful to interview [REDACTED] [REDACTED] recommended strict penalties for use of excessive force in several of the cases I read, and he raised the interesting issue of adequacy of investigations of these incidents. He was with the department for many years, and is currently on extended leave for health reasons. Possible questions for [REDACTED] include the following:

1. In several of the files we read, you recommended harsher penalties than were ultimately given. Do you think that the penalties for use of excessive force are generally too light? If so, why do you think that is the case?

2. On what basis do you choose a penalty for use of excessive force? Does the Jail Division have any policy guidelines on how many suspensions a station officer will be given before he is discharged?

3. In one of the files we read your disposition of the complaint and recommendation of a penalty were overturned by Commander Taylor. Were your decisions concerning use of force complaints often reversed by your superiors, or was this an unusual event? In your opinion, were your superiors too lenient on station officers who had sustained excessive force complaints?

4. What is the process by which a station officer can appeal when a complaint against him is sustained? Is the appeal process utilized often? Are appeals often successful?

5. In one of the files we read, you expressed concern that investigations into use of force complaints are often inadequate. How prevalent is this problem? Do you think inadequate investigations are the result of sloppiness, or do you think there is a deliberate effort to conduct them so as to find the

complaint not sustained? How often does the investigating supervisor fail to interview arrestees as potential witnesses?

6. In your opinion, does the Jail Division take use of force complaints seriously? Is a sustained use of force complaint seen as a more serious infraction than a sustained neglect of duty complaint?

7. What steps do you think the Jail Division could take to improve its treatment of arrestees and its investigations of use of force complaints?

It may also be a good idea to interview [REDACTED], who reversed [REDACTED] decision in one of the cases discussed above and who seems to have a different attitude toward the use of excessive force and the appropriate penalty. Questions for [REDACTED] would touch on all the same points as the questions for [REDACTED]