

**LEGAL SERVICES  
FOR  
LAW ENFORCEMENT**

**A Center for Police Management Publication**



**THE COMMISSION ON  
PEACE OFFICER STANDARDS AND TRAINING  
STATE OF CALIFORNIA**

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LEGAL SERVICES  
FOR LAW ENFORCEMENT

Commission on  
Peace Officer Standards and Training

State of California

## FOREWORD

This document is one of a series of management information publications developed by the POST Center for Police Management for use by California law enforcement administrators.

The material presented in this report is the product of a POST staff study. Ideas and suggestions contributed by the police administrators and attorneys contacted during the period of this study are gratefully acknowledged.

Prior to publication, this report was reviewed by members of the California Law Enforcement Legal Advisors Association. Special thanks is due to Royce A. Fincher, Jr., Police Legal Advisor, San Jose Police Department, who provided an extensive review and critique.

The POST staff members principally involved in the development of this publication were Glen Fine, Bureau Chief, and Jan P. Deveny, Senior Consultant.

Reactions, comments, and opinions are invited to permit POST to continuously re-evaluate and revise the contents of this publication whenever it is appropriate.

Bradley W. Koch  
April, 1975

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## INTRODUCTION

The need to improve legal services in law enforcement was recognized by the President's Commission on Law Enforcement and the Administration of Justice in their report, Task Force Report: The Police, published in 1967. This need was again addressed by the National Advisory Commission on Criminal Justice Standards and Goals in their report, Police, published in 1973, and by the American Bar Association in its report, Standards Relating to the Urban Police Function, published in 1973. While these important national studies identified the need for broader legal services in law enforcement agencies, particular emphasis was placed on the need for improved legal advice in the formulation of policy and procedure and as an aid to training.

"Police, because they enforce the law, are particularly obligated to operate in complete compliance with the directives of the law. Law enforcement agencies often need supplemental legal assistance to function effectively, because of the number and frequency of judicial decisions, the heavy case-loads and diverse duties of county prosecutors and city attorneys, and the ever increasing complexity of the law enforcement function."<sup>1</sup>

Supreme Court decisions in recent years have applied the 14th Amendment of the United States Constitution to case law in ways which often involve attorneys in police investigations. Attorneys are now routinely involved in pre-trial confessions and admissions, lineups, and search and seizure situations. Today, criminal cases often hinge on the ability of a law enforcement officer to make subtle legal judgements, or to be able to obtain quality legal advice quickly. The clarity of the department's written directives as well as quality of the legal training afforded the officer will strongly affect actions taken during emergency situations.

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1. National Advisory Commission on Police Standards and Goals, Police, Washington, D.C.: Government Printing Office, 1973, p. 281.

Law enforcement agencies and administrators are also being named increasingly in civil actions. The sources of these actions are quite diverse. As police associations have organized and developed, they have not been reluctant to take their employers into court over labor matters, such as negotiations, discipline and grievances, workman's compensation cases, and even policy matters. Local course, governing bodies, and citizen groups are more frequently calling into question the policies and procedures of local police agencies. Police personnel practices, particularly those relating to recruitment, selection, and promotion, have come under legal attacks.

Concurrently, the "Doctrine of Sovereign Immunity," which historically prohibited filing suit against a governmental jurisdiction without that jurisdiction first granting permission, has gradually eroded as a result of both legislative and court actions.<sup>2</sup>

A recent survey of a five year history of police misconduct litigation has revealed that in a number of cases police administrators have been held personally liable for the acts of subordinate officers.<sup>3</sup>

"In these cases the plaintiffs have proved one or more of the following allegations:

1. A failure to train.
2. A failure to supervise.
3. Negligent hiring of an officer.
4. Negligent retention of an officer."<sup>4</sup>

For these and many other reasons, a law enforcement agency has a continuing need for a variety of legal services. These services can be grouped into two broad categories: first, legal advice as an aid to decision-making (both by management and in the field); and second, courtroom services, such as trial work and the preparation of legal writs.

Seeking legal services may become expensive, time-consuming, and occasionally, a frustrating experience. However, hastily conceived decisions or actions which are not soundly based in law will create more problems than they solve. It is far wiser to seek quality legal advice in the beginning even if several attorneys must be consulted to

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2. Douglas M. Walters, "Civil Liability for Improper Police Training," The Police Chief, Nov., 1971.

3. Americans for Effective Law Enforcement, Inc., Survey of Police Misconduct Litigation, Evanston, Ill., 1974.

4. ibid. p. 11.

explore all facets of a problem. The amount and quality of legal services will directly affect the Department's ability to perform its basic job.

Law enforcement officers often deal with citizens in crisis circumstances. Duties may cause them to deprive people of their liberty through arrest or to take possession of private property for a variety of reasons. Officers may encounter violent resistance in the course of their duties, which they must overcome. These and other public contacts are all subject to legal scrutiny. Each department policy and the actions of each officer must be able to withstand the most searching kind of legal examination. Without quality legal services, the department may find itself in trouble in several areas:

- Criminal cases may be lost for lack of appropriate police procedure.
- Members of the department may be named in lawsuits and judgments may be rendered against them.
- Personnel practices may come under legal attack. This may include, but not be limited to, recruitment and selection procedures, employee relations, and disability cases. The legal relief sought usually takes the form of a court order directing the department to stop doing something it is doing, or to begin doing something it is not doing.

Legal actions of this type tend to undermine confidence in the department and its administration. Thus, the entire department needs assurance that necessary legal services will be made available. The chief executive of the department has the responsibility to arrange for legal resources required.

The following is a listing of typical needs for legal service. Historically, many of the needs have been provided by the district attorney, county counsel, or the city attorney. However, most law enforcement agencies need more legal services than they are presently receiving.

#### Specific Needs for Legal Assistance

The following list is representative of the variety of needs for legal service a local law enforcement agency may encounter:

1. Employee relations and personnel matters.
  - a. Developing an employer-employee relations policy.
  - b. Personnel records system policy development.
  - c. Negotiations with employee groups.
  - d. Review of wording of negotiated contracts.
  - e. The conduct of internal investigations.
  - f. Handling of grievances, disciplinary matters and appeals.
  - g. Personnel selection and promotional practices.
  - h. Workman's compensation (disability cases).
2. Assistance to field officers during investigations.
  - a. Advice on search and seizure questions.
  - b. Handling of riots, civil disorders, or other major emergencies.
  - c. Conducting lineups.
  - d. Preparation of writs (search warrants and arrest warrants).
3. Legal review of policy and procedure; a staff service needed while the policy is being drafted.
  - a. Assist successful prosecution.
  - b. avoid civil liability.
  - c. Avoid other legal actions, i. e., injunctions.
4. Case preparation and review.
  - a. Civil
  - b. Criminal
5. Continuing study of new legislation and new court decisions to determine impact upon departmental operations.
6. Review of mutual aid agreements as well as contracts for services provided or to be received.
7. Advice on jurisdictional matters to determine which governmental agency will be responsible for what and under what conditions.
8. Drafting and reviewing of new or pending legislation, usually, but not limited to, local ordinances. However, a local law enforcement agency has a stake in both state and federal legislation and should keep itself informed of the legal implications of any pending legislation.



9. Review of legal-fiscal questions relating to dedicated funds and other budgetary matters.
10. Legal assistance in reviewing the need for certain types of liability insurance. Coverage required for sworn personnel as well as reserves or members of "ride-along" programs are examples of questions deserving attention.
11. Examination of insurance policies offered to determine if they meet departmental needs.
12. Legal review of speech materials and/or press releases dealing with sensitive issues.
13. Prosecution of cases, both criminal and traffic.
14. Legal representation in civil cases.
15. Twenty-four-hour call service. The district attorney and public defender may provide lists of on-call deputies. Often, call-outs are initiated for the purpose of calling attorneys to lineups, however, they may be needed for other matters such as search warrants or case analysis.
16. Legal assistance in the training of police officers, including both legal review of training material and classroom presentations.
17. Civil rights cases. Occasionally the department or some of its members may be accused of violating the civil rights of one or more citizens as defined by federal law. Special knowledge is required to defend these cases properly. Federal redress is afforded persons complaining of police wrongdoing in the following types of cases:
  - a. Illegal search and seizure;
  - b. Use of unnecessary force;
  - c. Assault and battery;
  - d. Coercion to obtain a confession;
  - e. Malicious prosecution; and
  - f. False imprisonment.

In addition, the Civil Rights Act gives a federal cause to protect these rights.

- a. The right to consult an attorney;
- b. The privilege against self-incrimination;
- c. To freely and peaceably meet in a public place;
- d. To distribute handbills;
- e. To have set, and post reasonable bail;
- f. To be promptly arraigned after arrest;
- g. To have a fair trial;
- h. To have medical care while imprisoned;
- i. To have access to the courts while incarcerated;
- j. To attend religious services while in jail;
- k. To be free from physical abuse by corrections officers.

18. Amicus curiae briefs. This refers to a lawyer filing a brief with a court as a "friend of the court". Issues are often decided in the courts based solely on principles of procedural law. The problem with this is that reasonable police practices may not be fully considered. When it is the police conduct on trial instead of the defendant's conduct, the police position should be represented and practices explained to the court.

#### Sources of Legal Service

The practice of law has become highly complex and specialized. It is best that legal service be sought from the source most qualified to render the type of service needed. In routine criminal matters, the district attorney is usually best equipped to provide the needed service. In routine civil matters, the city attorney or county counsel may be more experienced. Advice or services on special matters may be sought from other legal sources.

Department management should be aware that many problems overlap into more than one legal speciality. An example may best illustrate this point. A citizen is arrested for a crime and charges the officer with unnecessary use of force. This seemingly simple example has many legal implications. The department's policy on internal investigations should have been developed with the assistance of an attorney who is expert in employee relations. This is necessary to assure that the department's interests as well as the officer's rights as an employee are protected. Further, the district attorney will be concerned with the conduct of the officer as it may relate to the prosecution of the criminal case. The city attorney is concerned because, if the citizen's allegation is true, the city may incur civil liability. If a civil lawsuit is filed, insurance company attorneys may become involved. If the

citizen or the officer decides to allege that their civil rights have been violated, the United States Attorney may become involved. All of these attorneys will have a legitimate interest in the case and will seek to advise the department on a course of action. Because their interests in the case are different, their opinions and advice may be expected to differ. The department should seek written opinions and advice from the attorneys with a view to sorting out a proper course of action. This example is only intended to show that in any given situation, more than one lawyer may become involved in a matter which concerns the department.

The following list should be regarded as illustrative of the legal resources available to a local agency. However, it is not comprehensive and the local district attorney or city attorney may be able to provide further references.

1. District Attorney

- Routine advice and service pertaining to criminal matters.

2. City Attorney or County Counsel

- Advice and services concerning civil matters as well as governmental legal issues.

3. Public Defender

- Primarily valuable to local law enforcement as a witness at a lineup. There is potential for further use, including training.

4. Local magistrates

- Advice on policy and procedure as well as general coordination with the courts.

5. California Attorney General

- Provides services to local law enforcement on request.

6. United States Attorney

- Prosecution of federal cases and other services on request.

7. Private attorneys

- Usually work on a contract basis, most often used for trial work when the local agency is a defendant or for specialized legal areas such as employee relations.

8. Insurance attorneys

- The insurance carrier which is protecting the local jurisdiction will usually have a law firm which is available to the department for legal advice on liability questions.

9. Legal Aid Society and the American Civil Liberties Union

- May be of assistance to the department by providing advice on some policy matters.

10. The League of California Cities

- Will provide legal advice on the request of a city attorney or on the request of the majority of a city council.

Legal Advisors

Large departments will be able to justify a full time legal advisor on the staff. Several smaller jurisdictions might consider pooling resources to hire one legal advisor to serve all. However, the necessity and practicality of having an in-house lawyer should be carefully studied. On the one hand, it is doubtful that one attorney can provide all the services which any one department requires as he cannot be expert in all the legal specialties. On the other hand, a specialist legal advisor can develop a degree of expertise on "police issues" which are not likely to be found elsewhere.

If it is decided to hire a police legal advisor, his duties and responsibilities should be clearly defined. If he is a full time member of the law enforcement agency, there must be assurance and understanding that he is to fill a pure staff role.

A police legal advisor could be developed on the staff of the city attorney or county counsel. If one attorney were allowed to specialize in law enforcement matters, he could eventually provide most routine non-criminal services.

The most critical issue is whether the ever growing law enforcement needs for legal assistance will be met. Through the employment of departmental legal advisors, the city attorney or county counsel, through regionalized services, or through some combination of available resources, such assistance must be made available to all police and sheriff's departments.

### Legal "Paraprofessionals"

Legal "paraprofessionals" or even law school student "interns," if carefully supervised, may be used to research some legal issues. Information or materials gathered, however, should ultimately be reviewed by an attorney. An example of research which can be performed by paraprofessionals would be a continuing review of Advance Sheets which announce new court decisions. This type of continuing review can reveal unpublicized court decisions which may have an immediate impact upon law enforcement practices.

### Law Libraries

The State of California operates a Law Library in conjunction with the State Library program which contains a vast collection of statutes, codes and court reports from California, other states, and many foreign countries. Most counties and some cities also maintain current and complete law libraries which are accessible through the offices of the district or city attorney.

### Standard References

Some of the best and most commonly used legal references which can be found in most law libraries are listed as follows:

#### California Official Reports.

Official Advance Sheets of the Supreme Court, Courts of Appeal, and Appellate Departments of the Superior Court. Published by: Bancroft-Whitney Company, San Francisco.

#### West's California Reporter.

Full publication of California codes with the following special features:

Court Constructions, State and Federal, giving both facts and the law.

History and Source of the Law.

Copious Citations and Excerpts from Law Reviews.

Opinions of the Attorney General

References to the Official Administrative Code.  
Informative and interpretative articles on important  
subjects by outstanding California Judges,  
Authors and Lawyers.

The several uncodified Initiative measures.  
Separate exhaustive Code Indexes apart from the  
master consolidated Index covering the entire set.  
Time-saving Cross References to related laws.

Library References to the Digests, C.J.S., Law  
Revision Commission Recommendations, and  
Legislative Committee Reports.  
Published by West Publishing Co., St. Paul, Minn.

Law Enforcement Legal Review

Published by: Research Division, International  
Association of Chiefs of Police, Gaithersburg, Md.

Law Enforcement Defense Manual

A series of Amicus Curiae briefs. Published by  
Americans for Effective Law Enforcement,  
Evanston, Ill.

Legal Information for Law Enforcement

Published by: Evelle J. Younger, Attorney General  
of the State of California. (Supplemented by taped  
television presentations broadcast as scheduled  
throughout the state.)

## SUMMARY

Timely legal advice for law enforcement agencies is a long recognized need. The need seems to grow with the passage of time as new, complex legal issues arise. Legal assistance may be obtained from a variety of sources. A law enforcement agency will normally rely on the district attorney and city attorney/county counsel for most routine needs. Larger agencies may need to retain a full or part-time police legal advisor. Smaller agencies should consider pooling of resources to pay for regionalized services that may not be available through any other means.

Legal advice obtained by a law enforcement agency during the formulation of policy and procedure can be of great importance. The guidance provided in this manner should be of assistance at all levels of department operations on a continuing basis.

Another important use of legal advice is in training. Legal review of training needs as well as training material is always helpful. Application of new court decisions or case law is best explained by a practicing attorney.

A law enforcement agency should strive to acquire ready availability of expert legal guidance, and seek to develop and maintain close working relationships with all potential sources of legal assistance.

## APPENDIX A

### National Advisory Commission on Criminal Justice Standards and Goals

#### STANDARD 11.2

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##### LEGAL ASSISTANCE

Every police agency should immediately acquire the legal assistance necessary to insure maximum effectiveness and efficiency in all its operations.

1. Every police agency should make maximum use of the offices of its city attorney or county attorney, the county prosecutor, and the State attorney general, to acquire the legal assistance it needs. If it is necessary to provide legal assistance supplementary to these sources, a police legal adviser should be employed.
2. Every agency should obtain legal assistance in all agency operations where needed. This assistance may include:
  - a. Provision of legal counsel to the police chief executive in all phases of administration and operations;
  - b. Liaison with the city or county attorney, the county prosecutor, the State attorney general, the United States attorney, the courts, and the local bar association;
  - c. Review of general orders, training bulletins, and other directives to insure legal sufficiency;
  - d. Case consultation with arresting officers and review of affidavits in support of arrest and search warrants in cooperation with the prosecutor's office;



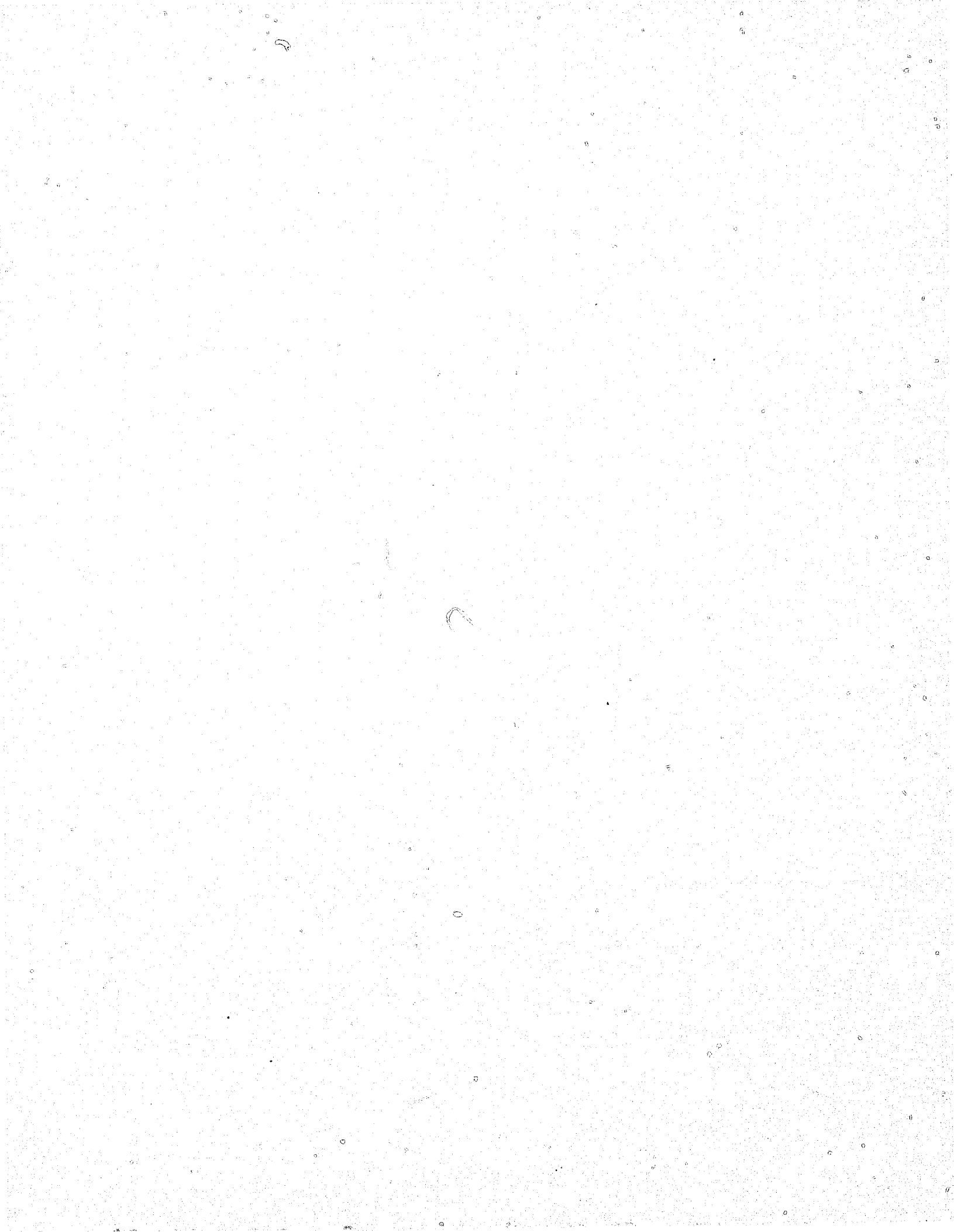
- e. Advisory participation in operations where difficult legal problems can be anticipated;
  - f. Attendance at major disturbances--and an oncall status for minor ones--to permit rapid consultation regarding legal aspects of the incident;
  - g. Participation in training to insure continuing legal training at all levels within the agency;
  - h. Drafting of procedural guides for the implementation of recent court decisions and newly enacted legislation; and
  - i. Provision of legal counsel for ad hoc projects, grant proposal development, and special enforcement problems.
3. Every police agency with 200 or more personnel should establish a police legal unit with at least one attorney as a full-time legal adviser.
- a. The size and composition of the legal unit should be proportionate to the size of the agency and the complexity of the legal assistance task.
  - b. One attorney should be designated as the director or administrative head when two or more attorneys are employed.
  - c. Adequate secretarial and clerical help should be provided, as well as police officers or law student interns for paralegal work.
  - d. Organizationally, the legal unit should be a separate entity, similar to the house counsel of a corporation, reporting directly to the chief executive and readily available to him.
  - e. Legal advisers should be civilian attorneys who serve at the request of the police chief executive.
4. Every police agency with fewer than 200 personnel may justify the establishment of a police legal unit with at least one full-time attorney legal adviser. When a full-time attorney legal adviser cannot be justified, and adequate legal advice cannot

be obtained regularly by enlargement of the prosecutor's or the city or county attorney's role, the agency should obtain needed legal assistance through:

- a. Employment of part-time and contracted legal advisers; or
  - b. Use of the services of a multiagency or a State police legal unit.
5. Every police agency, in determining the need for a legal unit and the size of its staff, should consider at least the following:
- a. Whether the city or county attorney and the county prosecutor are located near police headquarters;
  - b. Whether the staffs of the city or county attorney and the county prosecutor are full-time or part-time, and whether they are permitted to engage in private practice;
  - c. Whether the city or county attorney and the county prosecutor have effective legislative programs;
  - d. Whether the county prosecutor's office can be consulted routinely on planned enforcement actions prior to arrests;
  - e. Whether assistant prosecutors discuss pending cases adequately with arresting officers prior to trial;
  - f. Whether the county prosecutor's office will draft affidavits for arrest and search warrants and give other legal assistance whenever needed;
  - g. Whether the city or county attorney's staff is willing to answer routine questions; how promptly they respond to requests for written opinions; and how detailed and complete such opinions are;
  - h. How willingly the city or county attorney files suits on behalf of the agency; how vigorously he defends suits against the agency and its members; and how experienced his staff is in matters of criminal law and police liability;

- i. The educational level of police agency employees, comprehensiveness of preservice training given officers, and the quantity and quality of agency inservice training.
6. Every police agency should set firm minimum qualifications for the position of police legal adviser. These qualifications should require that each candidate for this position:
  - a. Be a qualified attorney eligible, except for residence requirement, for admission to the State bar in the State in which he is employed, and either licensed in that State or licensed in a State where licensing requires examination. He should become licensed in the State in which he is employed as soon as possible;
  - b. Have a wide breadth of professional and practical experience in criminal justice, preferably in criminal trial work; and
  - c. Have attitudes and personality conducive to the development of trust and acceptance by police personnel.
7. Every police agency employing a legal adviser should provide in the assignment of his duties that he not:
  - a. Prosecute criminal cases;
  - b. Decide what cases are to be prosecuted or what charges are to be brought except by agreement with the prosecutor;
  - c. Be assigned tasks unrelated to the legal assistance function that would interfere with performance of that function; nor
  - d. Either prosecute infractions of discipline before internal trial boards, or serve as a member of any trial or arbitration board.
8. Every police agency employing a legal adviser who also engages in private practice should insure that he does not represent criminal defendants, bring a claim against a

governmental agency he represents, lend his name to or have a financial interest in any law firm that represents criminal defendants, accept private employment that necessitates procuring police officers as witnesses or using police information, conduct private business in an office located in a police station, or represent any police union or agency employee organization.



**END**