

CONFIDENTIAL MEMORANDUM

TO: Mr. Lee C. Howley  
FROM: Bruce L. Newman  
RE: Organizing Public Safety in Cleveland

September 2, 1970

At your request and that of the other members of your committee, the following is a brief summary of the findings and recommendations of the 1922 Cleveland Foundation Survey of Criminal Justice in Cleveland regarding the machinery of police administration in Cleveland, together with an analysis of those findings and recommendations in light of the most recent surveys and treatises on the subject. Included in the latter analysis are the President's Crime Commission Task Force Report on the Police; the Eastman Report on the Police and Wrap-up Report of the Cleveland Little Hoover Commission; The International City Managers' Association's treatise on Municipal Police Administration; and a recent treatise by Bruce Smith entitled Police Systems in the United States. Finally, this memorandum also includes a legal comparison of the present City Charter provisions regarding police administration and those in existence in 1922.

I. The Cleveland Foundation Survey of Criminal Justice in Cleveland

a) Background

One of the first efforts undertaken by The Cleveland Foundation after its creation in 1914 was a comprehensive survey of criminal justice in Cleveland. This survey, not unlike recent criminal justice studies, was undertaken in response to a "growing feeling of insecurity of life and property" in Cleveland. The Survey was directed by Roscoe Pound and Felix Frankfurter. Its purposes as stated in the Preface were "...first, to render an accounting of the functioning of (the criminal justice) system, to the fullest extent that social institutions are as yet adapted to statistical appraisal; and, second, to trace to their controlling sources whatever defects in the system the inquiry disclosed."

The survey, which was first published in 1922, consisted of over 600 pages of findings and recommendations covering all aspects of the criminal justice system, including police administration, prosecution, the criminal courts and correctional and penal treatment. The Survey was published widely throughout the country and is still quoted as one of the most comprehensive surveys of its kind.

b) Findings and Recommendations Re:  
The Machinery of Police Administration in Cleveland

The 1922 Survey gave extensive attention to what it felt was the essential and critical flaw in Cleveland's organization for public safety: split executive responsibility for the police. After quoting the appropriate sections of the Cleveland City Charter, the survey states as follows:

"Thus it appears that the chief is given wide powers,--wider than in most cities where there is a non-professional administrative head, such as the director of public safety, between the mayor and the chief--that he is charged with the initiation of authority in administration, that is, has 'exclusive' control under ordinary circumstances, while the director's connection with the routine affairs of the police division is restricted to business matters or, as the charter vaguely calls it, 'administration of the affairs of the division.' Yet, when the real test of 'exclusive' control appears, it is found that the director and not the chief has all the power. The director makes all of the really important decisions, as, for example, in the matter of preparing the budget for police service, making rules and regulations, conducting disciplinary trials, and making the selections for appointment and promotions from the civil service lists. The director, however, is not required, nor does he have an opportunity, to establish immediate and constant contact with the actual administrative processes of police work.

"There is another odd arrangement in connection with the distribution of powers and the establishment of a line of responsibility between the two heads of the police service. The director, while depending on the chief to exercise 'exclusive' control up to the point where the director himself makes the really important decisions, does not have direct control over the chief, but merely over the facilities with which the chief has to work. The chief is appointed by the mayor and not by the director. Likewise the mayor alone has 'the exclusive right to suspend the chief of the division of police or fire for incompetence or any other just and reasonable cause.' As a result, the chief is answerable to the director for his management of police work, but responsible to the mayor and not the director as far as his 'incompetence' is concerned. Only confused notions respecting official responsibility can result from such a situation.

"In the matter of disciplinary action, it should be pointed out here that there is another step in the scale of responsibility beyond the mayor and director. The municipal civil service commission alone has the power to pass on charges preferred against the chief of police, and it renders final judgment as well in all cases involving lower ranks which may be appealed to the commission from the judgment of the director.

"Under such a scheme of confused responsibility for police business as has been outlined above, to whom do the people at Cleveland actually look for results in policing the city? Who is held to account when a wave of robberies, burglaries, or automobile thefts occurs? Is it the director of public safety or the chief of police? Which of the two officials bears the final responsibility? The answer under the present charter is, neither. Whenever the question of efficiency is called up, the director can point to the chief and say: 'There is the man who is running the department. I neither appoint him nor remove him; he is subject to civil service provisions. If he doesn't do the job satisfactorily, I am not to blame.' A chief under the same conditions can reply by saying: 'If I had the last word in matters of discipline, so as to weed out the unfit regardless of their political friends and influences, and keep all others on their toes; if I could make the rules and regulations governing the department and could select my men in accordance with my own standards of judgment, I could accomplish better results.' The whole scheme is admirably suited to the favorite game of 'passing the buck' -- an especially useful game where public criticism is involved.

"Moreover, the contention of each official, as suggested, would be absolutely correct so far as the charter goes. The director of public safety has wide general powers, but no specific contacts with the machinery he is controlling. The chief of police, on the other hand, is checked at a score of points where an administrator should have free initiative and complete authority. The chief's position at present is like that of a child driving a horse, while an adult sits beside him ready to grip the reins in front of his hands, whenever an important decision in the driving arises.

"Naturally, under the present arrangement, the whole complexion of administration changes with shifts in the offices of director and chief, and since neither officer is dependent on the other for appointment or continuance in office, such changes will be concurrent only by accident. Experience in the past has shown that with an aggressive type of man serving as chief the director will become a sort of fifth wheel whose exercise of his charter authority is likely at best to be a source of obstruction. With a less aggressive

chief it is probable that the director will assume more influence in the disposition of members of the force than is intended in the charter, and more than he is fitted to assume by reason of the multiplicity of his duties and his remoteness from actual police operations. Unless the chief be especially aggressive, almost to the point of standing against the director, the suggestions of the latter, because of his superior position, will be tantamount to orders."

As a result the Survey recommended that:

1. There should be a direct line of responsibility in the police organization, running from a single head down through the whole structure;
2. The police service be disassociated from the department of public safety and established as an independent department; and,
3. The department of police be in charge of a single administrative head, to be known as the director of police, appointed by the Mayor with full responsibility for administering the police service and with the exclusive right to name his own immediate assistants, including the chief ranking officer of the uniformed force to correspond to the present chief of police.

## II. Other Surveys and Treatises

### a) The Cleveland Little Hoover Commission

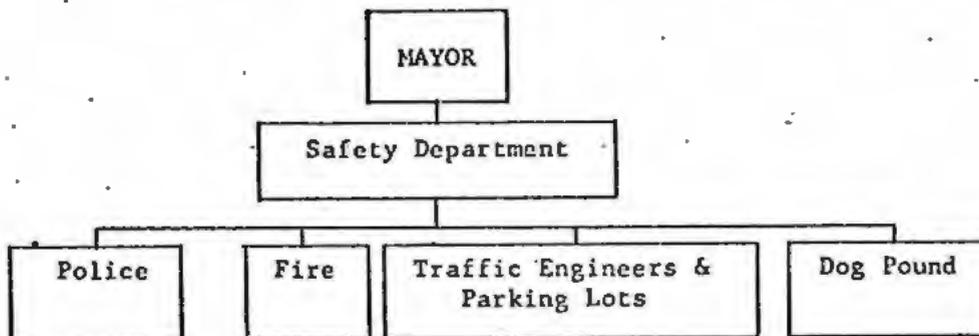
It is difficult to establish the official Cleveland Little Hoover Commission (Commission) position on reorganization of the police. There was, of course, no one Commission report. Instead there were several reports on various city functions. The pertinent one is Project #6 -- Police The Eastman Report, which did not make a specific, official recommendation on organization of the police force above the chief level, yet the Commission apparently supported the Pound-Frankfurter concept.

The Eastman Report did, in fact, adopt the nomenclature appropriate to a restructured Department of Public Safety, explaining in a footnote that it did so because "it is recommended elsewhere that the Police Division be changed to department status with the Chief of Police reporting directly to the Mayor." In the report's nomenclature: "Department: Designates the police agency which is responsible for all police functions. Its chief reports directly to the Mayor."

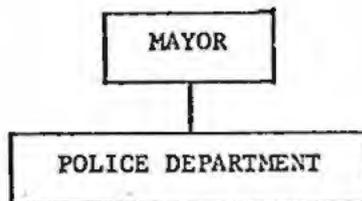
The "elsewhere" mentioned in the Eastman Report's puzzling footnote is the "Executive Director's Recommendations" made by Commission Executive Director, Dorward C. Witzke and attached to the Wrap-Up Report of the Commission, but not an official part thereof. This reference is puzzling also since Witzke wrote: "CLHC Report #6 -- Police recommended that the Police Division and the Fire Division be separated and that the police activities be upgraded to departmental status."

The Executive Director's Recommendations presents, without much in the way of further textual explanation, a revised organizational chart of the city government which in part is as follows:

CLEVELAND LITTLE HOOVER COMMISSION



Proposed organization:



Firefighting force and dog pound would be included, along with other functions, in a newly-created "Department of Community Services."

Traffic Engineering would go into a "Technical Department."

b. Current Trends

The current trend in organization for police control is along the course of establishing clear responsibility for the police in the hands of the elected chief executive, who is in turn responsible to an elected city council and the public at large. The trend is toward the elimination of buffers or baffles such as safety directors and citizen boards between the police and political leaders.

State control of municipal police departments remains in only a few cities in Missouri (Kansas City); Maryland (Baltimore); Maine and New Hampshire. Except for the recent experiment in Washington, D.C., which apparently hinged almost exclusively on one individual, no major cities have established safety departments since the early 50's when the movement seemed to have peaked. According to the International Association of Chiefs of Police, the following are the only major cities with safety directors: Cleveland, Cincinnati, Louisville, Pittsburgh, Rochester, Wilmington, and Gary.

Most major cities abide by the recommendation of the International City Managers' Association's Municipal Police Administration:

"The police function should be administered through a regular city department headed by a police chief directly responsible to the chief administrator of the city."

Realization of the complexities of police work demands a community re-appraisal of what the police should do and how they should be organized to do it. The President's Crime Commission Task Force Report on the Police devoted considerable attention to increasing the role of the police themselves in making policy on police matters, but only as part of a general community effort.

"The basic need," said the report, "...is for giving police policy-making greater visibility, so that the problems and current police solutions are known to the community; to devise methods of involving members of the community in discussions of the propriety of the policies; and to develop in the police a willingness to see this process as inherent in a democratic society and as an appropriate way of developing policies which are both effective and supported by the community." (p.33)

The desirability of community involvement in law enforcement does not, of course mean -- nor does it have to lead to -- local community control of law enforcement. While some liberal and radical groups are keenly interested in such a concept, there are good and sufficient reasons for maintaining centralized control through elected officials. As the Task Force Report emphasized, "Political accountability should be discussed among the police prosecutors and community groups. These should be approved by the political executive and given full publicity in the community, especially with those directly affected." (p.213)

Such "civilian" control can, has and will be called "political interference." But it can and should be called "democracy." The risk of improper influence is minimized, said the Task Force Report, when such control is exercised frankly and openly. The vice of political influence of an earlier day was that it tended to be of a personal nature and secretive.

### III. Legal Comparison of Present City Charter Provisions and Those in Existence in 1922

As in 1922 the Police Department for the City of Cleveland continues to operate as a division within the Department of Public Safety. The Safety Department is administered by a Director appointed by the Mayor and serving at his pleasure. As was the case in 1922, the current City Charter provides that the Safety Director shall be the executive head of police and fire forces under the direction of the Mayor.

Again as in 1922 the Chief of Police is appointed by the Mayor, may be suspended by the Mayor, which right of suspension is lodged exclusively with the Mayor:

The Chief of Police shall have exclusive control of the stationing and transfer of patrolmen and other officers and employees constituting the police force under such rules and regulations as may be established by the Mayor or by the Director of the department to whom the Chief of Police may be immediately responsible. This language is from Section 116 in Chapter 25 of the City Charter, having been adopted to be effective November 6, 1951. Under related Section 119 of Chapter 25 of the Charter, effective November 9, 1931, the Chief of Police shall have the exclusive right to suspend any of the officers or employees under his management and control for specified reasons contained in the Charter provision. The right of suspension vested in the Chief is subject to review by the Director and thereafter through the Civil Service Commission. These provisions were the same in 1922.

The Director shall make rules for the regulation and discipline of the Fire and Police Departments and shall provide for the classification of the members in accordance with the authorization of City Ordinances.

In summary, there is no essential difference in the relationship between the Mayor, the Safety Director and the Chief of Police as these relationships existed in 1922 and as they now exist under the law of the City. Both the Director and the Chief serve at the pleasure of the Mayor. The Director's authority over the Chief is subject to the direction of the Mayor, and the Chief controls the exclusive right to suspend officers or employees in the Police Division subject to a further procedure which does involve the Director.

The actual administrative functions of the Safety Department confine the Director largely to responsibility in business matters, such as the purchase of supplies and equipment, budgets, repair and upkeep of property. An exception to this is the power of the Safety Department as an appointing authority under the direction of the Mayor, subject to the Civil Service law of the City, in selecting recruits and promoting members of the Police Department. Nevertheless, the Chief, as previously noted, does have exclusive control of the stationing and transfer of all patrolmen and other officers and employees, according to the rules and regulations of the Director. As a consequence, as in 1922, there is the continuing picture of a Chief given wide powers as to suspension, control of the stationing and transfer of personnel, and daily police operations; whereas, the Director exercises decisions on administrative matters regarding budgets, rules and regulations, disciplinary appeals, and selecting for appointments and promotions.

Though the Chief appears to be answerable to the Director for certain management aspects of police work, it is the Mayor who exercises the exclusive control for removing the Police Chief. Moreover, when the Director exercises his judgment on disciplinary action of the Chief, the Director's findings are still subject to further review by the Civil Service Commission, so that the Director's control over disciplinary matters in the Department are intermediate and not final from an administrative standpoint.

As in 1922, the office of Safety Director remains a permissive department of city government. Under Section 77, Chapter 13 of the City Charter, the mandatory departments are Law, Finance and Public Utilities. Other departments and offices of the city government are permissive in accordance with their establishment by ordinance of Council, with the concurrence of the Board of Control. The same procedure follows for discontinuance, as well as combination, changes of functions, and duties of departments and offices; so that, in addition to the power of the purse, the City Council along with the Board of Control has, in fact, a continuing transient power over the Department of Safety.

Without further review of the duties of the Safety Department for the operation of the Fire Department, the Dog Pound, and the Division of Traffic Engineering and Parking, it is clear that there is no essential difference in the structure of the Department of Safety, nor any essential difference in the administrative problems as these matters appeared in 1922 as against the way they are now.

#### IV. Summary

Modern trends in organization for control of large city police forces favor the establishment of clear and direct lines of responsibility between a mayor and a single administrator of the police force.

Cleveland's organizational set-up guarantees divided authority, responsibility and direction.

The police function deserves full departmental status, with its head reporting directly to the mayor, and thus should be disassociated from the fire, traffic, parking and pound functions, for which appropriate "homes" must be found.

The present absence in the Safety Director's office presents an excellent opportunity to review the need for that office and indeed the whole organization of public safety.