

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(unapproved)**

**Wednesday, March 14, 2018
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR MATTHEWS AT 7:07 P.M.

Present: Commissioner Sahana Matthews (Chair)
Commissioner George Lippman (Vice-Chair)
Commissioner Gwen Allamby
Commissioner George Perezvelez (arrived 7:15 p.m.)
Commissioner Andrea Prichett
Commissioner Terry Roberts
Commissioner Michael Sherman

Absent: Commissioner Ari Yampolsky

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andrew Greenwood, Sgt. Rashawn Cummings, Sgt. Sean Ross
(BPA)

The meeting opened with a moment of silence for the 17 victims of the Parkland, FL shooting.

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 5 speakers.

4. APPROVAL OF MINUTES

With Commissioner Lippman's correction to Item #9.a., to reflect that Commissioner Allamby, not he, seconded the motion, the Commission approved the March 14, 2018 regular meeting minutes by general consent.

5. CHAIR'S REPORT

Packed agenda today and will need to go into closed session around 9:30 p.m.

6. PRC OFFICER'S REPORT

- PRC Officer provided additional information about Policy Complaint #2433 that the Commission accepted at its February 28 meeting.
- Surveillance Ordinance first reading passed by Council last night following robust discussion and several revisions made on the spot, including that all policies will be sent through the PRC, and not to other commissions.
- Fair & Impartial Policing Report, on Council's agenda for last night, was postponed to the April 24 meeting.
- Juneteenth Festival will be June 17 this year; think about whether PRC wants to have a table. To be agendized.
- Letter to City Manager re 120-day limit and standard of proof, and letter to Council re performance and financial audit, are in today's packet.
- Chief will be presenting crime report to the Council on March 20.

Prioritizing new agenda items: Commission will need to figure out how it wants to work in new items to the already-established list of priorities.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

- Staffing still in crisis. Currently at 157 sworn officers, which is down 24 from 181 authorized. At executive level, making plans on how to hold everything together, including overtime and drawing down positions other than patrol.
- Recruitment and hiring continues; though 3 of 6 who recently started academy dropped out.
- Surveillance Ordinance and other matters have filled up time. Positive collaboration & discussion. Will have to shift resources to meet requirements in a month.
- Interviewing for promotions over the next 3 weeks.
- Mental health crisis calls are usually crisis plus a safety issue. Officers take care of the safety issue but the mental health part is broken, e.g., hours are spent waiting for an ambulance.
- Contract negotiations with BPA still under way.
- Outreach: Coffee with a Cop: Caffe Trieste on Saturday; Starbucks on Solano 3/20, 7 – 9:30 a.m. Dept's LGBTQ coordinator meeting with BHS LGBT group mid-April. Staffing Juneteenth for recruitment.

The Chief answered questions from the Commissioners.

8. SUBCOMMITTEE REPORTS (discussion & action)

a. General Orders C-64, etc. Subcommittee

-- Renew Subcommittee.

The General Orders C-64, etc. Subcommittee was renewed by general consent.

-- The PRC Officer will facilitate scheduling the next meeting.

b. Homeless Encampment Subcommittee.

PRC Officer to contact Homeless Commission Secretary to coordinate scheduling of a meeting of the two subcommittees.

9. OLD BUSINESS (discussion & action)

a. Continue discussion of review and consider next steps, including establishing a subcommittee, regarding City Council's November 14 referral on broader or longer-term changes to PRC structure and authority; review proposed ballot initiative filed by Berkeley Community United for Police Oversight.

Motion to create a subcommittee to review the ballot measure submitted by the Berkeley and the original PRC mandate; to make recommendations to the full Commission; and to develop possible alternative proposals. The subcommittee shall also meet with members of the community who worked on the ballot measure to further understand their intent.

Moved/Seconded (Matthews/Perezvelez) **Motion Carried**

Ayes: Allamby, Lippman, Matthews, Perezvelez, Roberts, Sherman

Noes: None

Abstain: Prichett

Absent: Yampolsky

The Chair appointed Commissioners Roberts, Allamby, Sherman, and Perezvelez to the subcommittee.

b. Ways to address BPD staffing shortage.

Discussion begun; to be continued at next meeting.

c. Decide how to address City Council referral regarding City's enrollment in the Department of Defense 1033 Program.

(Item postponed to the next meeting.)

d. Establish subcommittee or other means to review and make recommendations on Lexipol policies from BPD.

(Item postponed to the next meeting.)

e. Commendations of BPD personnel:

i) Establish process for review and communication back to BPD.

ii) Review commendations of BPD personnel for January to August 2017 and direct PRC Officer to communicate to BPD.

(Item postponed to the next meeting.)

10. NEW BUSINESS (discussion & action)

a. Process for requesting information from BPD.

(Item postponed to the next meeting.)

- b. Assess BPD's After-Action reporting and response to Public Records Act Request.
(Item postponed to the next meeting.)
- c. Review of General Order C-45, Police Chaplain Program
(Item postponed to the next meeting.)

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There were 5 speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2432

Motion to approve Complaint #2432 for administrative closure.

Moved/Seconded (Lippman/Allamby) **Motion Carried**

Ayes: Allamby, Lippman, Matthews, Perezvelez, Roberts, Sherman

Noes: None

Abstain: Prichett

Absent: Yampolsky

14. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2417

Motion to approve Complaint #2417 for administrative closure.

Moved/Seconded (Sherman/Allamby) **Motion Carried**

Ayes: Allamby, Lippman, Matthews, Perezvelez, Prichett, Roberts, Sherman

Noes: None

Abstain: None

Absent: Yampolsky.

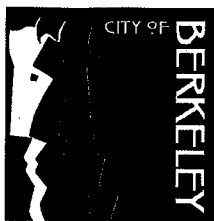
End of Closed Session

15. ANNOUNCEMENT OF CLOSED SESSION ACTIONS

The votes to administratively close Complaint #2432 and #2417 were announced.

16. ADJOURNMENT

By general consent, the meeting was adjourned at 10:00 p.m.



Office of the City Attorney

Date: March 26, 2018

To: Dee Williams-Ridley, City Manager

From: Farimah Brown, City Attorney
By: Kristy van Herick, Assistant City Attorney *KVH*

Re: **Legal analysis of City Council's November 14, 2017 Proposals related to the Police Review Commission**

Background

At its November 14, 2017 meeting, City Council voted to refer to the Police Review Commission (PRC) and to the City Manager a ballot measure proposal to present to Berkeley voters seeking to reform the PRC structure. The item included a referral for the PRC:

"to review the existing enabling legislation, rules, and regulations for the PRC, and to consider all options, including charter amendments, ballot measures, and any other amendments to strengthen the authority of the PRC to consider and act on citizen complaints, and other possible structural, policy and procedural reforms."

The Council referral also sought to have "the City Manager, through the City Attorney, provide legal analysis regarding which proposals can be completed legislatively and which require amendments to the City Charter", and provided some initial recommendations for the PRC's and City Manager's consideration, as follows:

"Changes the City Manager and PRC should consider, but not be limited to, include the following:

- 1. Use the "preponderance of the evidence" as the standard of proof for all PRC decisions.*
- 2. Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.*
- 3. Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.*

As part of the review of proposed improvements to the PRC process, the PRC should analyze police review policies and structures in other jurisdictions (e.g. San Francisco, BART, etc.), all PRC models and engage relevant stakeholders, including the Berkeley Police Association and community organizations, in developing proposals.

Full analysis by the PRC and City Manager must be reported to the City Council by May 2018."

The following is a legal review of the three initial proposals provided in the City Council's November 2017 referral. The PRC has not yet issued its response to the November 2017 referral, although this office is informed the PRC has created a subcommittee to work on the referral. Should the PRC provide additional proposals, this office will provide a supplemental response.

Issues/Conclusions

Issue: As to each of the three proposed PRC reforms listed below, what legal steps are required in order to implement the reform? Which proposals can be completed legislatively and which require amendments to the City Charter?

Proposal #1: Use the "preponderance of the evidence" as the standard of proof for all PRC decisions.

Conclusion: Changing the current standard of proof would require a simple majority vote of the PRC to amend the PRC Regulations. This proposed change also has impacts on Berkeley Police Association (BPA) members, therefore, it requires meet and confer with the Berkeley Police Association. No Charter Amendment is necessary to implement this change.

Proposal #2: Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.

Conclusion: This proposal would require a change to the Memorandum of Understanding between the BPA and the City. Such a change can only be made through meet and confer and a formal amendment to the Memorandum of Understanding.

Proposal #3: Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.

Conclusion: Depending on the type of evidence the PRC is seeking, this proposal may require a Charter Amendment. A governing-body-sponsored ballot measure as proposed by the referral would trigger meet and confer, which must be completed **before** the ballot measure goes to the voters.

Discussion/Analysis

General legal background on the PRC

Berkeley voters adopted Ordinance 4644-N.S creating the Police Review Commission on April 17, 1973. (See Berkeley Municipal Code (B.M.C.), Chapter 3.32.) The purpose of the PRC was to, "provide for community participation in setting and reviewing Police Department policies, practices and procedures and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department." (B.M.C. § 3.32.010.)

A "Board of Inquiry" is the confidential hearing process used by the PRC to review specific complaints against officers. Three Commissioners are impaneled to hear and render findings on a complaint, and Commissioners are required to sign a confidentiality and nondisclosure agreement. (PRC Regulations, I.A and I.B.4 [eff. March 28, 2016].) After the hearing, a summary of the PRC's findings are provided to the City Manager and the Chief of Police. (PRC Regulations, I.B.10.)

A case decided shortly after the PRC's creation invalidated certain provisions of Ordinance 4644-N.S. that would have "(1) given the PRC the power to recommend specific disciplinary actions against individual police officers, (2) prohibited the Berkeley Police Department from conducting its own internal investigations and disciplinary proceedings, and (3) given the PRC the right to demand and receive information from the police department or other city departments." (*Berkeley Police Ass'n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 390, citing *Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223, 233–235 (*Brown*).)

In *Brown*, the Court found that the invalidated provisions in the Ordinance were in conflict with "the charter grant of powers to the city manager." (*Brown v. City of Berkeley, supra*, 57 Cal.App.3d at p. 233.) It is long established that, to be valid, an ordinance must harmonize with the charter. (See *South Pasadena v. Terminal Ry. Co.* (1895) 109 Cal. 315, 321.) "An ordinance can no more change or limit the effect of the charter than a statute can modify or supersede a provision of the state Constitution." (*Brown v. City of Berkeley, supra*, 57 Cal.App.3d at p. 231.) Therefore, the powers specified in the Charter take precedence over the language in City ordinances, even those passed by voter initiative.

Article VII, section 27, of the Charter reads: "The Council shall appoint an officer, who shall be known as the City Manager, who shall be the administrative head of the Municipal Government and who shall be responsible for the efficient administration of all departments." Further, Article VII, Section 28, states, in relevant part:

"...The City Manager shall have the following powers and duties:

... (b) *Except as otherwise provided in this Charter, to appoint, discipline or remove all officers and employees of the City, subject to the Civil Service provisions of this Charter. ... Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.*

(c) *To exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof....*

(f) *To make investigations into the affairs of the City, or any department or division thereof, or any contract, or the proper performance of any obligation running to the City.*

(g) *To prepare and submit to the Council for its consideration the proposed annual budget."*

Under the City Charter, Article VII, sections 28(b), (c) and (f), the City Manager has the authority to oversee all performance issues of City staff, to oversee the administration of the police department, and to direct the activity of the Chief of Police and his staff. Any shift in these key roles from the City Manager to an appointed or elected police commission would therefore require a Charter amendment.

Referral No. 1: Use the "preponderance of the evidence" as the standard of proof for all PRC decisions.

The first proposal referenced in the Council resolution involves changing the standard of proof used for all PRC Board of Inquiry decisions from "clear and convincing evidence" to "preponderance of the evidence". As discussed below, this proposed change would not require a Charter Amendment or ballot measure. However, this proposal requires two steps: (1) amending the PRC Regulations for Handling Complaints Against Members of the Police Department, which can be accomplished through a simple Commission action, and (2) completion of a meet and confer process with the BPA prior to implementation.

The PRC's enabling ordinance specifically empowers the PRC to "adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary." (B.M.C. § 3.32.090.E.) The PRC Regulations currently specify a "clear and convincing" evidence standard:

"Standard of Proof. No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of evidence, but less than beyond a reasonable doubt."

(PRC Regulations, VIII.C.)

As background, under California law, " 'Burden of proof' means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code § 115.)

The PRC has utilized the "clear and convincing evidence" standard in its BOI hearings for more than 30 years. The PRC in 2014 proposed changing the standard of proof as part of a package of regulation amendments. After engaging in meet and confer as required under the Meyers-Miliias-Brown Act (MMBA) (Govt. Code § 3500, et seq.) concluded, this proposed amendment was not implemented.

The MMBA "has two stated purposes: (1) to promote full communication between public employers and employees; and (2) to improve personnel management and employer-employee relations within the various public agencies." (*Seal Beach Police Officers Assoc. v. City of Seal Beach* (Seal Beach) (1984) 36 Cal.3d 591, 597; see Govt. Code § 3500; *DiQuisto v. Co. of Santa Clara* (2010) 181 Cal.App.4th 236, 254.) To achieve these purposes, "the MMBA requires governing bodies of local agencies to 'meet and confer [with employee representatives] in good faith regarding wages, hours, and other terms and conditions of employment' and to 'consider fully' such presentations made by the employee organizations." (*Seal Beach, supra*, 36 Cal.3d at p. 596 (quoting Govt. Code § 3505).) Section 3505 of the Government Code defines "meet and confer in good faith" as both parties having "the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation...."

As to the PRC's Regulations, the City is obligated, consistent with MMBA, to meet and confer with representatives of the Berkeley Police Association and endeavor to reach agreement on the practical consequences "**of any changes** in wages, hours and **other terms and conditions of** employees represented by the Association." Meet and confer continues until management and labor either reach an agreement or reach impasse. "Impasse" means that the City and the BPA have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are **so substantial or prolonged** that future meetings would be futile.

Impasse is only reached after multiple meetings and extensive effort on both sides to reach an agreement. Before imposing a regulation, the parties typically would be required to participate in fact finding before a neutral party. After this process is completed, if the union does not agree to implement the change, the City Council can

unilaterally impose the change. However, such imposition can result in legal action, particularly if there is any question as to whether the parties were truly at impasse and whether the parties were participating in good faith.

Referral No. 2: Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.

To be effective, this referral would involve a change to language in the current Memorandum of Understanding ("MOU" or "Understanding") between the City and the Berkeley Police Association. The current MOU states in relevant part:

37.4 120 Day Limit on Imposition of Discipline

The City agrees that no disciplinary action against an employee covered by this Understanding, which action involves a loss or reduction of pay or discharge, shall be imposed unless such action is taken within one hundred twenty (120) calendar days after the date of the incident giving rise to the disciplinary action or within one hundred twenty (120) calendar days of the date the City has knowledge of the incident giving rise to the disciplinary action.

If a letter of advice or written reprimand is issued by the Department, neither the document nor any testimony offered by the Department or the City in an appeal process shall reference any time restrictions set forth in this section, nor reference any other discipline that may have been considered, recommended or imposed, but for the time restrictions set forth herein.

Any change to the MOU requires the mutual consent of the parties and ratification by the City Council.

"This Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein [...] This Understanding cannot be modified except in writing upon the mutual consent of the parties and ratification by the City Council."

(BPA –COB MOU Section 9.1.)

For a modification to the MOU to be discussed in the *current* negotiation process, it would have needed to be shared with the BPA in May of 2017. Therefore, to make this change without violating state law, any change to the 120 calendar day provision must be done through a separate meet and confer process reaching mutual consent and ratification by Council.

Any attempt to implement a change to the MOU without mutual agreement is considered a "unilateral change". A unilateral change in violation of the MMBA occurs when an employer takes any action to change the status quo on a matter within the scope of representation without having given the employee organization proper notice

and an opportunity to bargain. "The rule in California is well settled: a city's unilateral change in a matter within the scope of representation is a per se violation of the duty to meet and confer in good faith." (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 823.)

Referral No. 3: Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.

For the reasons set forth below, this third proposal would require a Charter Amendment. The *Brown* case, referenced above, examined and invalidated a number of provisions in the original 1973 voter initiative creating the PRC as conflicting with the City Charter. One of the invalidated provisions is substantially similar to the Council's third referred proposal.

Specifically, Section 10(c) of the original voter adopted ordinance had provided the PRC with the power:

"to request and receive promptly such written and unwritten information, documents and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each and all of which are hereby directed as part of their duties to cooperate with and assist the Commission in the carrying out of its responsibilities; ..."

This section was found to violate the charter mandate that everything pertaining to administrative services go solely through the City Manager. (*Brown, supra*, 57 Cal.App.3d at p. 233–235.) In order for the PRC to have "full discretion and access to evidence" under the current proposal, the City Charter would need to be amended to shift some of the City Manager's authority to the PRC.

Depending on the level of discretion and access envisioned, state laws protecting the confidentiality of peace officer personnel records could also be implicated. Any language to change the Charter or PRC Ordinance also needs to be consistent with Penal Code sections 832.5 and 832.7¹ as well as Evidence Code 1043 to 1046, which specifies that *peace officer personnel records are confidential pursuant to the California Penal Code*.

¹ Penal Code section 832.7(a), provides, in part, that "[p]eace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." The Evidence Code provides that in order for personnel records of a peace officer to be disclosed for possible use in a civil proceeding, the agency must pursue a discovery motion (commonly referred to as a *Pitchess* motion.)

In addition to requiring amendment to the City Charter, the proposal triggers a requirement to meet and confer with the BPA and possibly with other City unions to the extent the changes impact other represented employees. Meet and confer must be conducted with all impacted unions **before** the City Council puts such an amendment before the voters.

According to the MMBA,

*"[e]xcept in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation **proposed to be adopted** by the governing body or the designated boards and commissions and shall give the recognized employee organization the opportunity to meet with the governing body or the boards and commissions."*

(Govt Code § 3504.5 [*emphasis added*].)

The language "proposed to be adopted" indicates that the meet and confer needs to happen before the ordinance or other legal change can take effect.

In *Seal Beach*, impacted employee associations sued the City of Seal Beach after voters passed a ballot initiative that amended the city's charter to require the immediate firing of any city employee who participated in a strike. (*Seal Beach, supra*, 36 Cal.3d at p. 595.) The City of Seal Beach had not engaged in meet and confer with the impacted unions before placing the charter amendments before the voters. (*Ibid.*) The California Supreme Court found that a charter city must comply with the meet-and-confer requirements of the MMBA **before** placing an initiative measure on the ballot, holding: "[T]he city council was required to meet and confer ...before it proposed charter amendments which affect matters within the scope of representation. The MMBA requires such action and the city council cannot avoid the requirement by use of its right to propose charter amendments." (*Id.* at p. 602.)

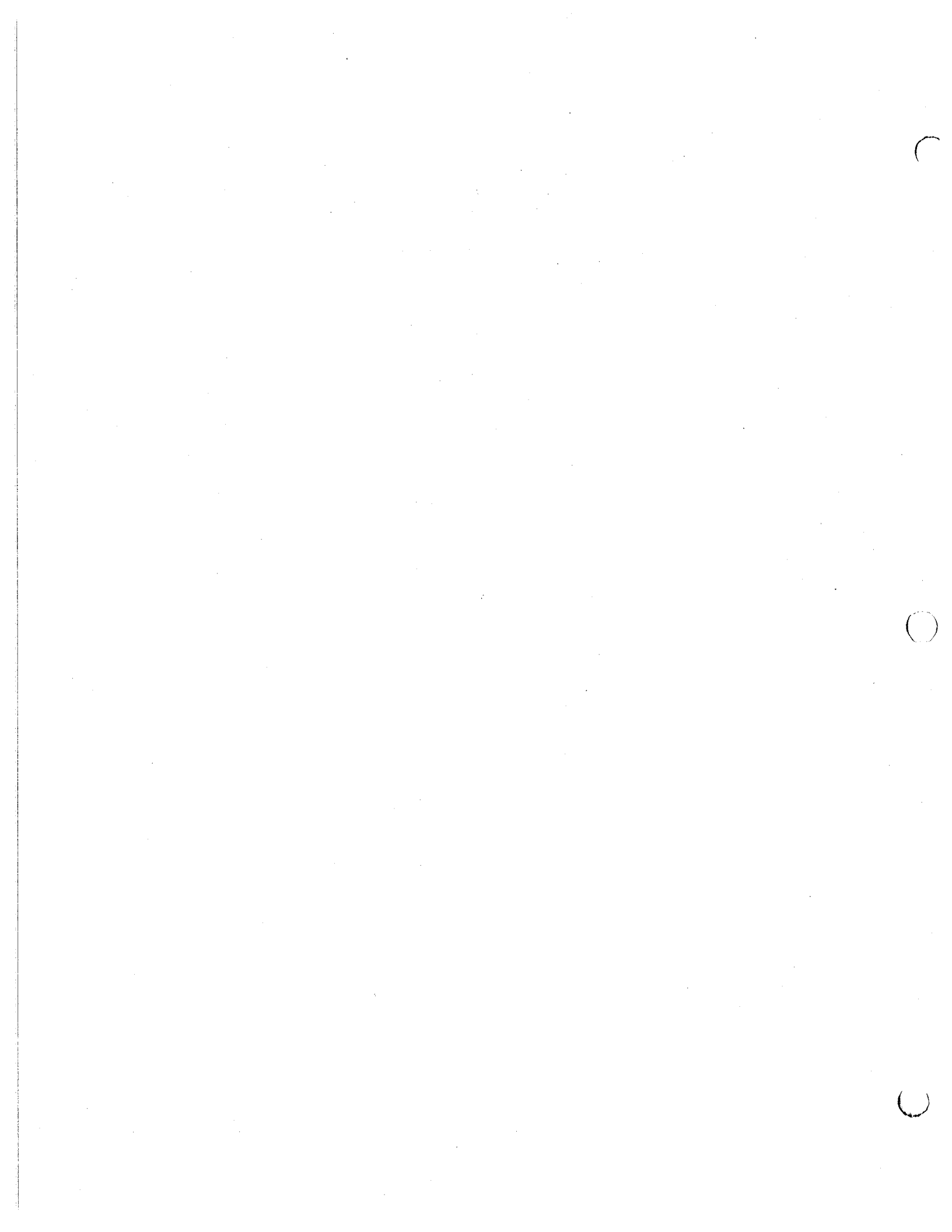
It is less clear whether there the City must meet and confer on a citizen-sponsored initiative which does not *directly* involve a proposal *by* the governing body. Last year, a California Court of Appeal decision annulled a decision of the Public Employment Relations Board (PERB) that the 'pre-ballot' meet-and-confer requirement for a governing-body-sponsored ballot proposal also applied to a citizen-sponsored initiative. (*Boling v. Public Employment Relations Board* (2017) 10 Cal.App.5th 853, *reh'g denied* (May 1, 2017), *rev. granted*, California Supreme Court (July 26, 2017).) In *Boling*, the voters of City of San Diego approved a citizen-sponsored initiative, the Citizens Pension Reform Initiative ("CPRI"), which adopted a charter amendment mandating changes in the pension plan for certain employees of City of San Diego. However, the mayor of San Diego (a City with a strong mayoral form of government) had provided support to

the proponents of the citizen-sponsored initiative to develop and campaign for the CPRI. (*Boling, supra*, 10 Cal.App.5th at p. 856.) The underlying PERB Decision found that the initiative could not be deemed purely a citizen action because of the public official's support.

The California appellate court ruled that: "[b]ecause a governing body lacks authority to make any changes to a duly qualified citizen's initiative (Elec. Code, § 9032), and instead must simply place it on the ballot without change, imposing a meet-and-confer obligation on the governing body before it could place a duly qualified citizen's initiative on the ballot would require an idle act by the governing body." (*Boling, supra*, 10 Cal.App.5th at p. 875.) However, as noted, the California Supreme Court has taken this case up for review, to consider among other matters, whether under the circumstances the voter initiative addressing a matter that falls within the MMBA was subject to meet and confer before the matter went to the voters.

Regardless of what the Supreme Court decides in *Boling*, pursuant to the language of the MMBA and the *Seal Beach* case, it is well established that governing-body-sponsored ballot proposals must go through the meet and confer process before going to the voters.

cc: Mark Numainville, City Clerk
Opn. Index: I.E; II.G.3.c



Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, March 26, 2018 8:07 AM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: Bobby Seale speech about creating a Police Accountability Board in Berkeley

-----Original Message-----

From: Russ Tilleman [mailto:russ.tilleman@gmail.com]
Sent: Sunday, March 25, 2018 2:33 PM
To: PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>
Subject: Re: Bobby Seale speech about creating a Police Accountability Board in Berkeley

Please email me directly at russ.tilleman@gmail.com if you plan to attend. We will send you and your guests passes, so even if the event goes over capacity, you will still be able to get in.

On Fri, Mar 23, 2018 at 5:46 PM, Russ Tilleman <russ.tilleman@gmail.com> wrote:

> Hear Bobby Seale speak on Police Accountability on Wednesday April 4!

>

> An Evening of Free Speech
> With Bobby Seale and Tony Platt

>

> Berkeley City Club
> 2315 Durant Avenue
> Berkeley, CA
> 510-485-6044

>

> Wednesday April 4, 2018
> Doors open at 5:30 pm
> Tony Platt 6:00 to 7:00 pm
> Bobby Seale 7:00 to 9:00 pm

>

> Bobby Seale is an activist working toward police accountability. He
> previously co-founded and was Chairman of the Black Panther Party.

>

> Tony Platt is a Distinguished Affiliated Scholar at the UC Berkeley
> Center for the Study of Law and Society. He is the author of ten books
> and 150 essays and articles dealing with issues of race, inequality,
> and social justice in American history. His upcoming book "Behind
> These Walls: Rethinking Crime and Punishment in the United States"
> will be released by St. Martin's Press in January 2019.

>

> They will be speaking on police misconduct and accountability in
> general, and specifically about the voter initiative to create an
> elected Police Accountability Board with full authority over the
> Berkeley Police Department.

>

- > There is no charge to attend. Any questions call 510-485-6044.
- >
- > Media please contact us so we can reserve space for you and any
- > equipment you might bring.

Berkeleyside

OPINION

Opinion: We must stop new initiative to hand power over the police department to Berkeley's Police Review Commission

Two PRC members circumvented fellow commissioners to put a measure on the ballot to strip oversight of BPD from the city manager.

By Elisa Mikiten, March 23, 2018, 9:30 a.m.

On March 14, two members of the Police Review Commission (PRC) subverted their fellow commissioners and attacked the structure of City Hall. They drafted a 19-page document that would remove the Berkeley Police Department from the control of the city manager and City Council — and give the power to oversee BPD to (you guessed it) themselves, in the form of a mutated PRC, an all-powerful “Berkeley Police Commission,” whose members would be appointed, not elected, and could only be removed (you guessed it again) by their own action.

The only concession to the mayor would be the ability to appoint the police chief, with consent of the City Council, from a list of two candidates approved by the Berkeley Police Commission.

If implemented, the document would render our dedicated and skillful police chief, Andrew Greenwood, who has decades of experience in the BPD, powerless. The new Berkeley Police Commission would “have the power to review and modify all written and unwritten policies, practices, and procedures of whatever kind and without limitation, in relation to the Berkeley police department.” No sworn officer

would be eligible to serve on the commission. Control of every important decision would rest with people who have no training or direct experience in policing, and who would not be accountable to anyone but themselves.

There are members of the PRC who have participated constructively and meaningfully over the years, and who have much to contribute. They are not the members who are seeking absolute power over policing in Berkeley.

The two PRC members who seek that power are Berkeley Copwatch co-founder Andrea Prichett, appointed by City Councilwoman Cheryl Davila, and George Lippman, appointed by City Councilwoman Kate Harrison.

Ironically, those two commissioners made their move on a night when their agenda said they were going to address the staffing crisis at the BPD.

There is an alarming exodus of officers from the BPD, and very low recruitment, which is a national problem but one that is particularly acute in Berkeley. The officers present at the

March 14 PRC meeting explained some of the root causes of the exodus, such as a lack of housing, and a lack of career opportunities in what is now a bare-bones department. But the biggest contributor seemed to be a perceived lack of political support for the department and extremely low morale.

The PRC meeting worsened the situation. The fact that the chief of police was not consulted on a document that would radically reshape police work in Berkeley confirmed the officers' fears that there is little respect or support for their work in this community.

The PRC was told that Councilman Kriss Worthington has already put the initiative on the March 27 Berkeley City Council agenda. (See the agenda item for the Berkeley Community United for Police Oversight Ballot Measure here.) The commissioners formed a subcommittee of four — not including Prichett or Lippman — to review that document and aim to consider making their own alternative proposal. The timeline for that process is still in the works, but the subcommittee met twice this week, with more discussions to come.

Prichett and Lippman want the City Council to take the measure as it is and put it on the November ballot. If that happens, we should expect the staffing crisis at the BPD to worsen to the point where basic police functions are no longer possible.

I don't think the City Council should take my word for it. I think they should ask the officers themselves. My only request, council members, is that when the officers tell you what their response to such a ballot initiative would be, that you believe them, and think twice.

To anyone who is supportive of the Berkeley Police Department, grateful for their work in any way, or in need of a police department that has enough officers to accomplish its work, this is the key moment to let your voice be heard. It is no longer safe for you to assume that your police department will remain viable in an atmosphere of political insanity.

Elisa Mikiten is a land use planner and partner in an architecture firm. Her recent interest in public safety stems from two robberies and a burglary in the last four months on her block.

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Berkeleyside

OPINION

Opinion: Berkeley should reduce, not enhance, its Police Review Commission

The push to give the PRC more authority over the police department is unneeded and unwarranted in Berkeley, which has an excellent department. Stop this misplaced zealotry.

By Eric Friedman, March 26, 2018, 9:50 a.m.

Berkeley is at a crossroads in its relationship with the Berkeley Police Department. Despite being widely admired for its professionalism, standards, and extraordinary care in the unique challenges Berkeley presents, the department is experiencing record attrition, has lost the ability to staff specialized units and is confronting unprecedented challenges in recruiting new officers. From 2010 to 2015, six officers left the department. Since 2016, departures have accelerated with 18 officers leaving. Worse yet, 80% of officers surveyed have taken “a concrete step” to leave the department or the profession.

While part of this trend can be attributed to the city’s slow-rolling financial train wreck, the City Council majority’s hostility toward the department has accelerated the decline. District 4 City Councilwoman Kate Harrison, Mayor Arreguín’s hand-picked successor, ran on a platform of “police accountability,” a dog whistle for reining in abusive cops in a city that has none. District 2’s Cheryl Davila appointed anti-police extremist and Berkeley Copwatch founder Andrea Prichett to the Police Review Commission. Prichett’s views are so immoderate that she has been forced to recuse herself multiple times because she is incapable of being

objective where officer conduct is involved. Watching her berate officers in a recent community meeting, one would think this was Selma in the 60s but for the fact that the object of her scorn was a highly respected African American sergeant in a department that has an outstanding record of diverse hiring and promotion and of treating community members with dignity.

Relations between the police and elected officials have deteriorated to such an extent that the Police Officers’ Association has had to resort to a direct outreach to citizens on a website whose title is a harbinger of the trouble ahead: wheresmyberkeleycop.com. The key points of that brief: we’re critically under-resourced; we have a major attrition problem; our job offers aren’t competitive; officers are feeling the lack of support from the political establishment. This is a dangerous road.

Most alarmingly, District 7’s Kriss Worthington is advocating to put an item, drafted by Prichett and Harrison’s PRC appointee George Lippman, on the 2018 ballot that would replace the PRC with an even more powerful commission to be called the Berkeley Police Commission. As a recent Berkeleyside opinion

essay explains, Prichett and Harrison advanced their proposal without consulting the other commissioners. Worthington put the item on the council agenda without consulting the chief of police. Oversight and accountability for thee, but not for me!

Here is the substance of Worthington's proposal for a commission that would be empowered to:

- Hire and fire all officers without consideration of Berkeley's personnel practices
- Define police practices — vehicles, procedures, tools — without the commissioners having had police training of any kind
- Modify the department's budget request to the City Council
- Determine its own budget independent of the city manager and Berkeley's ability to pay
- Be completely independent of the professional city manager
- Reject policy proposals, with no overriding authority on the City Council
- Define its own measures of effectiveness, with no checks and balances
- Have the power to retain its own attorney at the city's expense
- Hire full-time staff to number at least twice the headcount of the existing PRC

Let me be clear: this proposal would fulfill the fantasies of anarchists everywhere. It is simply impossible to imagine professional officers choosing to serve under these conditions. We must not indulge this attempt to reform the Ferguson Police Department by destroying our own.

Unfortunately for proponents, there are few if any facts to suggest that this augmentation of civilian oversight is indicated. If anything, Berkeley is overspending on a body that delivers very little for the money.

Unique among the city's commissions, the Police Review Commission has dedicated, full-time staff costing \$602,055 in salary and benefits in 2017. (That cost is projected to rise to \$722,180 in FY 2018, according to the city budget.) That sum does not include time spent by internal affairs, the cost of officer representation, and the time of the officers themselves appearing before the commission. A typical PRC complaint requires upwards of 100 hours split among officers as well as attorneys, and investigators all with billable hours in the thousands of dollars.

Less than 20 complaints are filed in a typical year and nearly all of them are dismissed; the average of sustained complaints is one/year over the last five years. Nearly all of the sustained complaints are overturned on appeal.

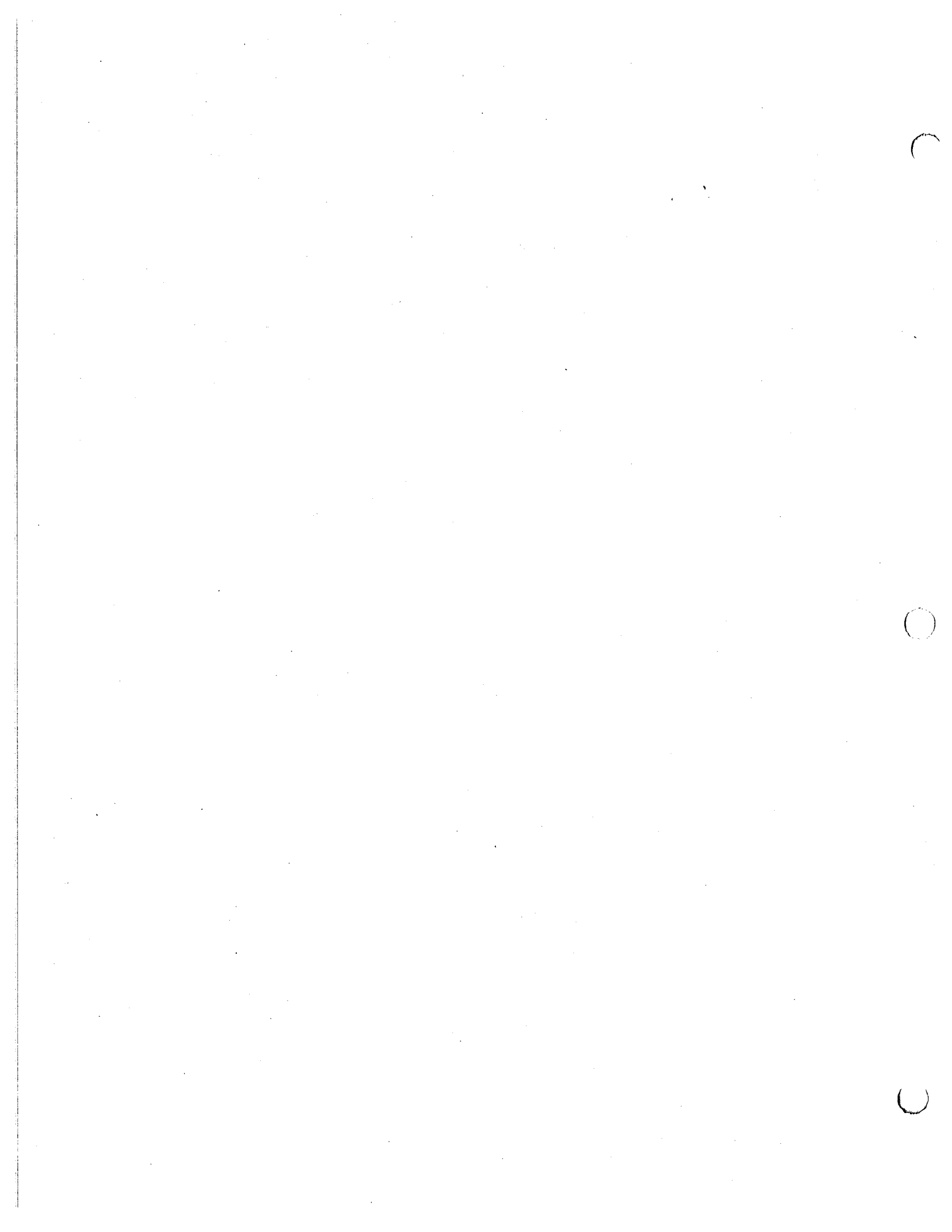
Worthington's proposal to double down on this failure might make sense in Ferguson or even Oakland, but it is exactly wrong for today's Berkeley. It amounts to a clear signal to our sworn officers and police staff that they are not trusted to uphold their oath to serve and protect the citizenry. The proposed body would increase costs at a time when Berkeley must look for ways to reduce expenses. In fact, the high costs and minimal impact of the PRC ought to invite exploration into lighter weight forms of oversight.

We have an excellent police department in Berkeley and pandering to misplaced zealotry is a disservice to them and to all of us. In sum, the City Council should refuse to put Worthington's absurd measure before the voters, place a high priority on repairing relationships with the department, and draft a new measure that replaces the existing PRC with an efficient and inexpensive process for addressing citizen complaints. Finally, residents of Districts 2 and 4 should lobby Davila and Harrison to have Prichett and Lippman removed from their positions; their end run around the rest of the commission and

Prichett's multiple recusals raise serious questions about their fitness to serve.

Eric Friedman leads a data science and engineering organization. He lives with his family in District 4 and enjoys cycling, wind sports and making wooden furniture.

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Berkeleyside

OPINION

Opinion: City Council must reject the misguided ballot initiative regarding Berkeley's Police Review Commission in its current form

The ballot initiative to create a new police oversight commission was crafted in secret and creates an onerous bureaucracy. A new initiative is in the works. Let's wait for that.

By George Perezvelez , March 26, 2018, 1:30 p.m.

As a seasoned police oversight practitioner, every time there are proposed changes to the structure of police oversight agencies and their relationship to the police departments they are entrusted to oversee, I ask several critical questions. What is the need such changes would serve? Are the changes operationally feasible and would their implementation affect the safety of law enforcement officers? Will their implementation increase transparency and accountability? Are the changes critical to public trust? And lastly, are the changes devoid of misconceptions and biases?

Although the proposed ballot initiative urges the creation of a new police oversight entity with broad powers of oversight and control over the police department, it fails to answer the question of what purpose it would truly serve by such a drastic change. The Berkeley police department is not the Detroit, St. Louis or Oakland police departments. There isn't a history of officer-involved shootings, excessive use of force or malicious intent.

Notwithstanding the Center for Policing Equity findings on stop statistics or the settlement of the court case dealing with crowd control directives during the Black Lives Matter demonstrations in 2014, the Berkeley Police Department has been responsive and demonstrated a willingness to engage the Police Review Commission in a collaborative effort. The PRC and police department have cooperated in making changes to a number of policies, including The Right to Watch, Treatment of Transgender Individuals, Impartial Policing and the newly created Body Worn Cameras General Order.

The stipulation that the new commission would "have the power to review and modify all written and unwritten policies, practices, and procedures of whatever kind and without limitation, in relation to the Berkeley police department," is only viable if it is made "in conjunction with the Berkeley Police Department and Command Staff." This process was very successful at the BART police department in recent changes to its Use of Force Policy from the discretionary

“reasonable use of force” to a “minimal use of force” standard.

Although ballot measure proponents profess that their work is geared at increasing transparency and accountability, they betray their intent by the obscurity of their actions. Three currently sitting commissioners (George Lippman, Andrea Prichett and Sahana Matthews) subverted a 2017 request by the City Council to propose changes to the PRC model. Instead of having an open and frank discussion at the PRC, those commissioners undermined the responsibility of the PRC by failing to include the entire commission in the process of writing the proposed ballot initiative. They constructed it behind closed doors. This was a betrayal to their duty to the PRC and, as an end result, alienated other commissioners on the PRC and the police department.

The proposal effectively creates a bureaucracy with intricate appointment structures and unnecessary staff, increasing its budget by 125%. It strives to undermine the will of the voters by expressly acquiring the power to circumvent the City Council and the mayor, and redefines the structure of the city by unbalancing the City Charter. This is clearly an example of non-professionals and inexperienced advocates using a “throw everything and see what sticks” process of changing models of oversight.

On the other hand, the Berkeley Police Department and the police union need to move away from any and all “nonnegotiable” attitudes that create extreme proposals and add to the belief that only by force can changes occur. It is time to move toward a “preponderance of the evidence” standard (as most other police oversight agencies in the Bay Area). It is time that internal investigations are part of the oversight process and that discipline is a shared responsibility between

the command structure and the community the department serves. It is time to move to a one-year standard for completion of investigations and for Caloca hearings to not be paid for by the taxpayers of Berkeley. (That refers to Caloca vs. County of San Diego, a California Court of Appeals case granting administrative review after a finding on an allegation.)

It is time to move toward obligatory department reporting as well as review of all use of force incidents.

Unfortunately, it is too late to follow the BART process and engage a consultant to interview all stakeholders and make recommendations based on facts and proven practices. The PRC has now formed a new subcommittee, which I chair, that intends to present to the City Council in May concrete and practical changes to the PRC that will increase transparency, accountability and implement unbiased progressive policies. With input from the community and the police department, it will be done on the record. At a minimum, it will give the City Council an alternative ballot measure. I will be asking the City Council on Tuesday night to postpone action of the proposed ballot measure until then.

Oversight is a conversation, a coming together to do what is right and a belief in a shared responsibility in public safety. City Council needs to reject this misguided, poorly written and overreaching initiative in its present form.

George Perezvelez is a long-time resident of Berkeley, one of the longest (current) serving commissioners on the Berkeley Police Review Commission and past chair and vice-chair of the PRC; an institutional member of the National Association for Civilian Oversight of Law Enforcement; and a founding member, and current chair, of the BART Police Citizen Review Board.

Berkeleyside

CITY

Charter change would put Berkeley police oversight into citizen hands (but whose?)

By Emilie Raguso, March 27, 2018, 6:24 a.m.



A movement is afoot in Berkeley to increase citizen oversight of the Berkeley Police Department. Photo: David Yee

The Berkeley City Council is slated to vote Tuesday on whether to place a controversial police oversight charter amendment on the November ballot.

The proposal would take oversight of the Berkeley Police Department away from the city manager and, to a large extent, the City Council, and put it in the hands of paid commissioners chosen by a non-elected selection panel. The charter amendment seeks to create a new department — outside the authority of the city manager — with layers of paid staff and the power to set its own budget.

The city is set to spend \$740,000 on its existing Police Review Commission this fiscal year, according to the city budget. Much of that goes

to the salaries of its three paid staffers. The new system proposes three directors — at least one of whom would be a department head — along with support staff, investigators and access to legal counsel. The cost to taxpayers would likely grow significantly.

Some community members have written emails to urge council to approve the proposal, to allow for “real accountability,” and “give Berkeley’s residents and visitors true authority over the police.” Another wrote that the amendment would “crack open the secrecy and ... prevent abuse and militarization.” On the other side, opponents have called the item “an insane proposal” that’s “ill-conceived” and “bad public policy” because it would take key decisions away from the officials elected by, and accountable to, voters — and away from city staff.

In November, council asked the Police Review Commission (PRC) to present recommendations by May about how to strengthen the city’s ability to act on citizen complaints. Officials said the solution might be a ballot measure, or could take other forms. Council members said they wanted the PRC to review what has worked elsewhere, and engage relevant stakeholders, such as the Berkeley Police Association. But for months nothing happened.

Instead, community members including George Lippman, Elliot Halpern and Forrest Liu, as part of a campaign calling itself “Berkeley Community United for Police Oversight” (BCUPO), came up with their own initiative and filed it with the city this month. Lippman, who is Councilwoman Kate Harrison’s appointee to the PRC and is also on the Peace & Justice Commission, and Andrea Prichett, co-founder of Berkeley Copwatch and Cheryl Davila’s PRC appointee, then presented the proposal to the PRC on March 14.

Other commissioners said they felt blindsided by the item, and that the PRC seemed to have abdicated its responsibility to consider an issue of significant community concern. PRC Chair Sahana Matthews — who is part of the charter amendment group — said, during the March 14 meeting, that the PRC hadn’t yet acted on the council referral because “we didn’t have time to craft our own complete ballot measure.” Commissioner George Perezvelez took issue with that position. He said, had that been the case, the PRC should have alerted council. After lengthy debate and sometimes heated disagreement, commissioners formed a four-person subcommittee to review the citizen initiative, and consider a PRC alternative to put before council in May, as directed. That process is now underway.

Meanwhile, Councilman Kriss Worthington put the “BCUPO” citizen initiative on the agenda for a council vote Tuesday night. In his brief council report, Worthington said officials should put the initiative on the ballot “to show that Council supports a community-driven process, and as a sign of recognition to Berkeley community members in their efforts.” It would cost the city \$10,000 to \$15,000 to put the item on the ballot, he wrote. His recommendation made no mention of the PRC referral, on which he had been the lone “no” vote.

An email from Worthington’s office last week, in advance of Tuesday’s meeting, raised concerns among some city employees, including BPD officers, because it urged support for his proposal, item No. 27 on the agenda. (Most council emails only go to a targeted list of followers, not all city staff.) The email had the subject line, “Yes on Item 27.”

“If this amendment passes, Berkeley will have a new Police Commission that will restore the original people’s mandate for independent oversight of the police department,” said the email, which bore Worthington’s signature.

Worthington later apologized for the email and said it had been sent to all staff due to an intern’s error. He said he had been home sick the day it was sent, and that the email was “not intended to be distributed” to so many. He also told Berkeleyside the email was “not political or illegal” — in relation to rules that limit campaigning by city email — and said support for a vote to put something on the ballot does not translate into advocacy for the policy itself.

What’s in the “BCUPO” police oversight proposal?

Supporters of the charter amendment have said the PRC has been “hamstrung in its efforts to provide oversight,” and that “change is needed.” According to a statement from campaign supporters Monday evening, those limits have been due to “California Supreme court decisions, the Officer’s Bill of Rights and the post-9/11 culture,” which “have all served to diminish the power of civilian oversight.”

Read the 19-page charter amendment.

The Berkeley campaign has described itself as a “diverse coalition”

that includes “educators, retirees, college students, families” and members of the Berkeley chapters of the ACLU and NAACP. One coalition member said 25-50 people have attended organizing meetings thus far. PRC Commissioner Lippman declined recently to share the names of the people or groups who helped craft the language of the amendment. It is based on an Oakland charter amendment approved by voters in 2016, but diverges in significant ways.

What would the Berkeley charter amendment change? In addition to creating a new city department with the authority to set its own budget, the newly formed “Berkeley Police Commission” would directly supervise BPD, determine who could be considered for police chief, and have the final say over police discipline decisions. It would be able to modify the Berkeley Police Department’s budget request to council “within 5% of current staffing levels,” although — like much of the language in the proposal — it’s not totally clear what that would mean. The commission would operate independently, and the city manager would have no “veto power” over the commission’s discipline decisions.

Most city departments and staff — the elected Rent Board being one notable exception — fall under the supervision of the city manager. The city manager acts as a liaison between elected officials and city staff, plays an important role in contract negotiations and confidential matters such as lawsuits, and is generally responsible for hiring and firing, the city budget, and the like. It remains to be seen exactly what it would mean for the Berkeley Police Department to be taken out of that structure and put under the proposed commission, which would have sweeping control.

“The Commission shall have the power,” the charter amendment reads, “to review and

modify all written and unwritten policies, practices and procedures of whatever kind and without limitation in relation to the Berkeley Police Department.”

How do local realities reflect national trends?

The issue of police reform has been a subject of significant public concern in recent years, particularly as questions have been raised about how police use force and against whom. But what does the landscape look like in Berkeley? The Berkeley Police Department has not had an officer-involved shooting since 2012. BPD handled 77,429 calls for service in 2016, and received no complaints about excessive force or discrimination that year, according to the most recent annual report from the PRC. From 2012 to 2016, there were 34 allegations of excessive force out of nearly 300,000 calls for service. Just two were sustained by the PRC.

That’s not to say there have been no questions raised about police use of force in Berkeley. Ten years ago, police shot and killed Anita Gay on Ward Street as she reportedly threatened her adult daughters with a large knife after using crack cocaine for days. One of the daughters told police the officer had saved her sister’s life, according to numerous media reports. Still, some community members protested Gay’s shooting and there were reports at the time that a wrongful death suit would be filed.

BPD was later sued over the in-custody death five years ago of Kayla Moore, though a U.S. District Court judge ruled in favor of the city Friday, citing a lack of evidence from the plaintiff. Police, called by Moore’s roommate, responded to her downtown Berkeley

apartment for a disturbance. The coroner's office said Moore's death was due to "acute combined drug intoxication," but her family and local activists have said police should have known Moore was schizophrenic and made different choices.

Most of the misconduct findings sustained by the PRC have later been overturned by a judge on appeal, leaving just three sustained allegations against BPD from 2012 to 2016.

According to the most recent annual report from the PRC, an average of 22 complaints a year are submitted to the PRC. From 2012 through 2016, the period reviewed by the annual report, most of those complaints were ultimately dismissed or deemed unfounded.

Within that five-year period, the PRC convened Board of Inquiry (BOI) hearings an average of seven times each year to consider alleged police misconduct. Out of 36 cases reviewed in five years, BOIs sustained 11 allegations of misconduct (though some may have occurred in the same incidents). Most of the misconduct findings were later overturned by a judge on appeal, however, leaving just three sustained findings of misconduct from 2012 through 2016, according to the annual PRC report.

The last time the PRC sustained an excessive force allegation against BPD was in 2013, when it sustained two; it was unclear from available records whether those decisions were later appealed to a judge or overturned.

Most of the complaints to the PRC in 2016 — 10 allegations across five cases — focused on improper procedures, or a category listed as improper arrests, searches, seizures, stops or detentions. Two allegations were sustained — related to an "improper investigation" and an "improper arrest, search, seizure, stop or detention" — but an appeal before a judge was planned.

The issue of who gets stopped, searched and arrested by police has been a central piece in recent years of the national discussion about the critical need for police reform. Numerous analyses have shown that minority drivers and pedestrians across the nation are more likely to be contacted by law enforcement than white ones. That pattern holds true in Berkeley, too, though a draft analysis by the Center for Policing Equity — set to be completed and presented to the public later this year — found that "racial disparities in BPD stops and reported use-of-force incidents were low in comparison to many other US police agencies, and much of the observed disparity was attributable to variations in neighborhood crime rates."

The draft analysis of stop data also offered "abundant reasons for optimism," its authors said, though there is room to improve. The authors said more analysis should be done to explain why, for example, Asian drivers in Berkeley were five times more likely than white ones to be searched, and why black and Hispanic drivers were more likely to be searched, but less likely to be arrested, than white ones. The draft analysis, the police chief previously told council, did not take into account all the data BPD already collects or its existing policies and training, and was incomplete at the time the PRC and City Council demanded its release last year in the interest of transparency.

Oversight experts: “least intrusive model” is best

The National Association for Civilian Oversight of Law Enforcement, a Maryland-based non-profit that began in 1995, has identified more than 144 oversight agencies in the nation. In a recent report, it looked at different approaches to the task, and categorized them as review-focused agencies, the auditor/monitor approach, and investigative-focused agencies. Berkeley's PRC, as well as the proposed Police Commission, would fall into this latter category.

The investigative approach has the most potential to increase the public trust, and the most independence, according to the report. The authors said public faith can wane, however, if reforms aren't forthcoming, and that the approach may undermine a police department's own responsibility to maintain discipline and investigate misconduct — because it can “simply blame the external oversight agency when misconduct occurs.” It's also the most expensive option, authors wrote, because timely, competent investigations require “significant costs and resources.”

The report notes that hiring appropriate investigators may be tough because “they may harbor either pro-police bias or anti-police bias, depending on their own personal background and experiences.”

The authors say it's more important to find the best fit for a particular jurisdiction than to focus on so-called best practices, since so many factors can come into play. Those include the social, cultural and political issues in a city, as well as police department culture

and the financial resources available for oversight.

But there is one concept that always holds true, the authors wrote.

“A jurisdiction seeking to create or update an oversight function should choose the least intrusive model of oversight necessary to accomplish the task,” they found. “Just as the police are expected to only use that amount of force that is proportionate, necessary and reasonable ... so it can be argued that jurisdictions creating or reforming an oversight function should similarly accomplish the feat of ensuring police accountability.”

Structure of the proposed Police Commission

Some critics of the BCUPO charter amendment have said they are concerned that commissioners would not be elected, or directly appointed by council members. Instead, a “selection panel” of council appointees would choose the commissioners, then present them to council as a unified slate. The group would have to be approved or denied as one. But if council members reject three slates, the selection panel would get to pick all the commissioners — with no further approval needed.

“Minimum staffing” for the commission would include an executive director, a policy director and an investigations director, an operations support specialist, one or more investigators and “other necessary staff,” all of which are to be full-time positions. The commission would have full authority over the directors, who could be fired at any time by a five-person vote.

“Resources shall be provided for appropriate office facilities, equipment, staffing, information technology support, outreach and other essential requirements,” the proposal reads. The city would also need to provide “sufficient resources” for training related to “the best practices of policing, police oversight, auditing, policy analysis, investigations, and human resources.”

Under the proposal, the city would need to provide meeting space to the commission “capable of accommodating at least 50 people,” despite the fact that current PRC meetings rarely draw more than a handful of attendees. The commission — made up of seven members and three alternates — could create subcommittees at will, and add members of the public to subcommittees as it sees fit. “Public members” would not be paid, but commission members would get \$20 an hour for subcommittee attendance, along with \$100 per night for regular meetings (not to exceed \$1,000 each per month). The stipend would be adjusted each year in line with the Consumer Price Index.

Investigations Section

Commission investigative staff would be able to view any complaints that come into BPD, as well as to the commission itself. The commission and its staff would have access to BPD files on all internal investigations, and would become the lead agency on any investigation it decided to take on. BPD’s internal affairs office “must fully cooperate and assist,” and “must also report ... any evidence they develop or encounter about a complaint.”

One attorney who reviewed the charter amendment over the weekend said the language as proposed raises a number of questions about how it might conflict with

existing confidentiality laws, and what sort of liability the city might face as a result of commission decisions in general.

The commission would get to decide which misconduct complaints it wanted to investigate — even for complaints sent directly to BPD. Any BPD employee who failed to respond to commission requests about an investigation “shall be subject to discipline, if appropriate,” according to the proposal.

Even if the commission’s own investigators decide to dismiss or close a complaint involving use of force or discrimination, the measure says, the commission could vote to have the case reopened and investigated again.

The commission would continue to hold Board of Inquiry hearings about alleged misconduct. In the instance of a sustained complaint, the chief would recommend “a final discipline.” But if that’s different from what the commission wants, it could send the case to a Discipline Committee, made up of three of its own commissioners, to decide what discipline is right. (Police would still be able to appeal that ruling to the Civil Service Board or “grieve” it under a collective bargaining agreement, as is legally required.)

Several aspects of the proposal are ones the PRC has already been pushing to change in recent years, with no results: lowering the bar for misconduct hearings to the “preponderance of evidence” standard of proof, rather than the “clear and convincing evidence” standard in place now; lengthening the time the PRC has to impose discipline beyond the current 120-day limit; and getting the ability to issue subpoenas and compel witnesses to testify. Under the new law, the commission would also be able to seek a contempt order if someone failed to appear, testify or produce subpoenaed documents.

What happens next?

Although PRC Commissioner Lippman declined to share the names of the authors behind the proposed charter amendment, he said the list of campaign endorsers has been growing. At this time they include the East Bay Community Law Center, the Green Party of Alameda County and the group Justice for Kayla Moore. Lippman said Max Anderson, former Berkeley City Council member, civil rights attorneys John Burriss and Jim Chanin, and two elected Berkeley officials — Cheryl Davila and Kriss Worthington — also support the item.

Worthington told Berkeleyside last week he ultimately plans to support a compromise — yet to be published — that would “refine” what’s proposed in the charter amendment. He described the BCUPO item as “basically a good idea.”

See a more detailed version of Tilleman’s item.

It’s not the only police reform initiative that’s been filed with the clerk’s office, however.

Russ Tilleman of the

Campaign for Police Accountability is circulating a petition for his own charter amendment to create a Police Accountability Board. The elected board would be charged with “controlling the Berkeley Police Department and any other security or law enforcement personnel employed by the City.” The board would be “fully and exclusively responsible for the supervision and control of the Berkeley Police Department and all its divisions.” It would have the power to hire and terminate staff, appoint the police chief and investigate police misconduct. Exactly how the city would pay for it remains an open question.

“The proposed measure does not provide for a specific funding mechanism, but the Board could request funding from the City or other available sources,” Tilleman wrote.

A charter amendment petition requires valid signatures from 15% of the registered voters in the city. That number is currently almost 79,000 people, according to data from the Alameda County registrar of voters. The city encourages campaigns to turn in signatures by May 10 to allow sufficient time for review. Council must take action on all measures for the November 2018 ballot before Aug. 10.

Read summaries of the BCUPO proposal here and here.

The BCUPO campaign said it is determined to succeed — whatever happens Tuesday night.

“We certainly hope that the City Council will vote to let the people of Berkeley decide this question and place it on the ballot, but no matter what, we are pressing ahead with our campaign to gather 12,000 signatures,” said Diana Bohn, a BCUPO spokeswoman, in a prepared statement Monday night. “We are very excited by the support we have gotten in just a short time and we are preparing to fight for this measure all the way to Nov. 6.”

The group says it will rally at 5:30 p.m. Tuesday, before the 6 p.m. council meeting, at Old City Hall, 2134 Martin Luther King Jr. Way.

See the full council agenda for the Tuesday, March 27, Berkeley City Council meeting. Read more 2018 election coverage from Berkeleyside.

2017 Crime Report

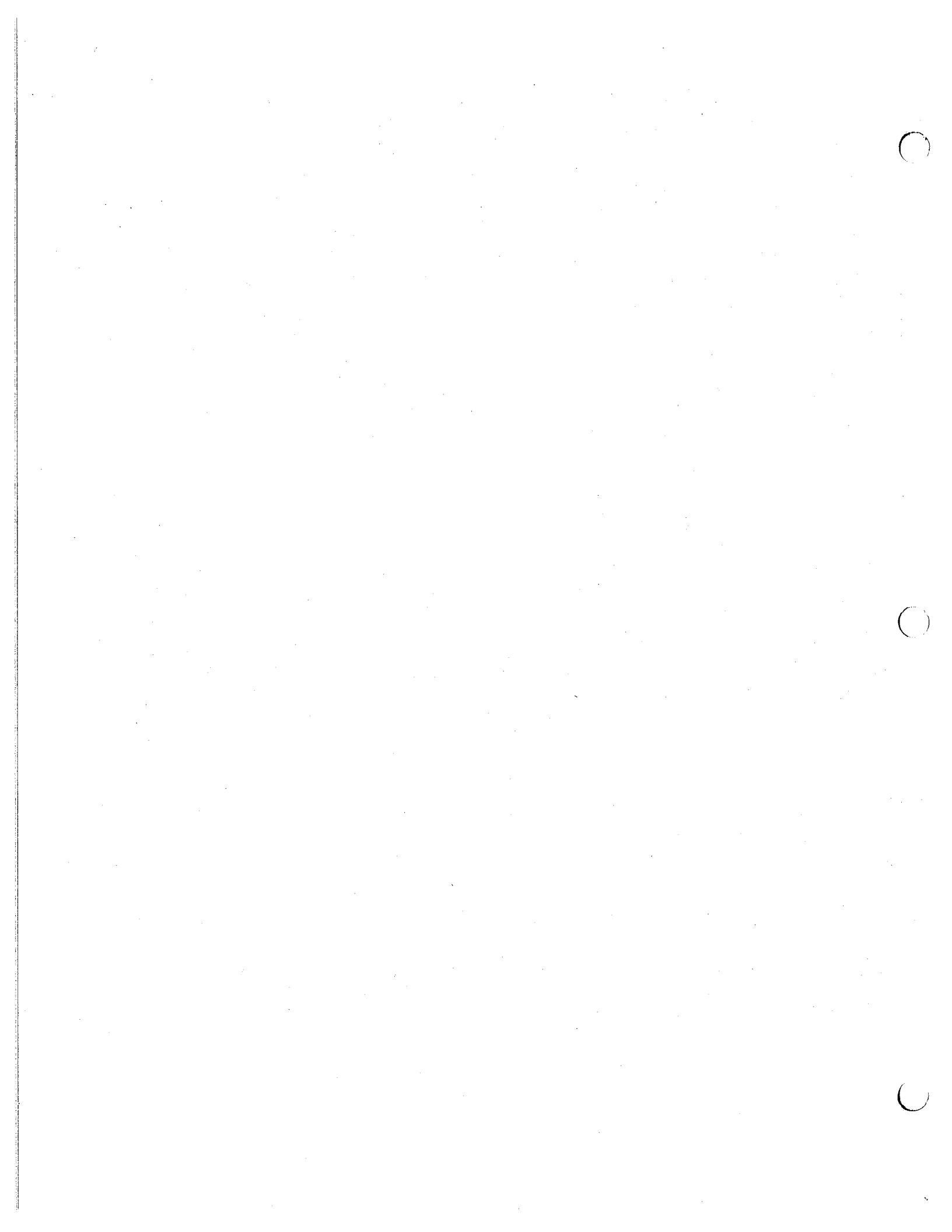
Berkeley Police Department

March 20, 2018

Chief Andrew Greenwood

Captain Ed Spiller





Uniform Crime Reporting Categories

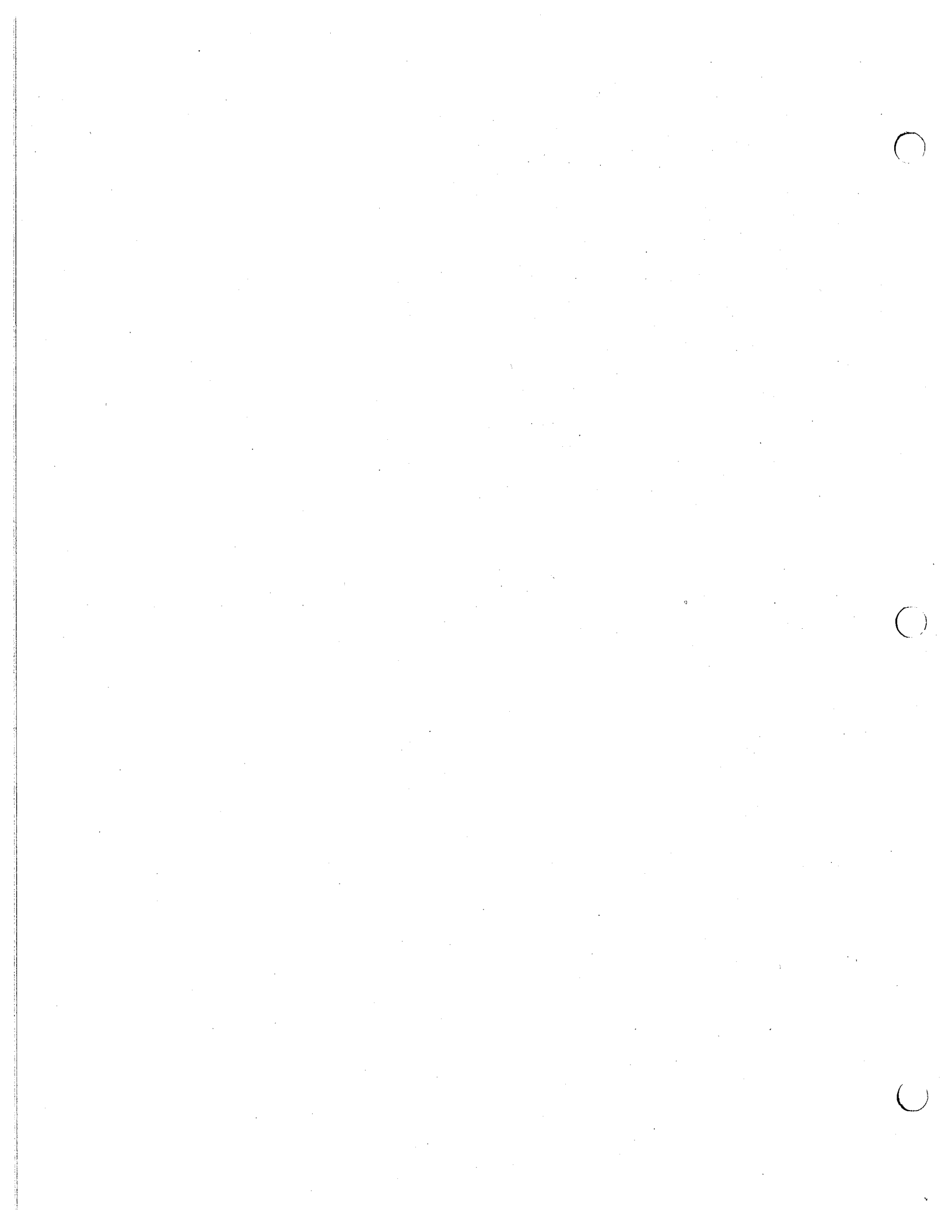
Property Crimes

- Burglary
- Larceny
 - Petty Theft
 - Grand Theft
 - Auto Burglary
- Auto Theft
- Arson

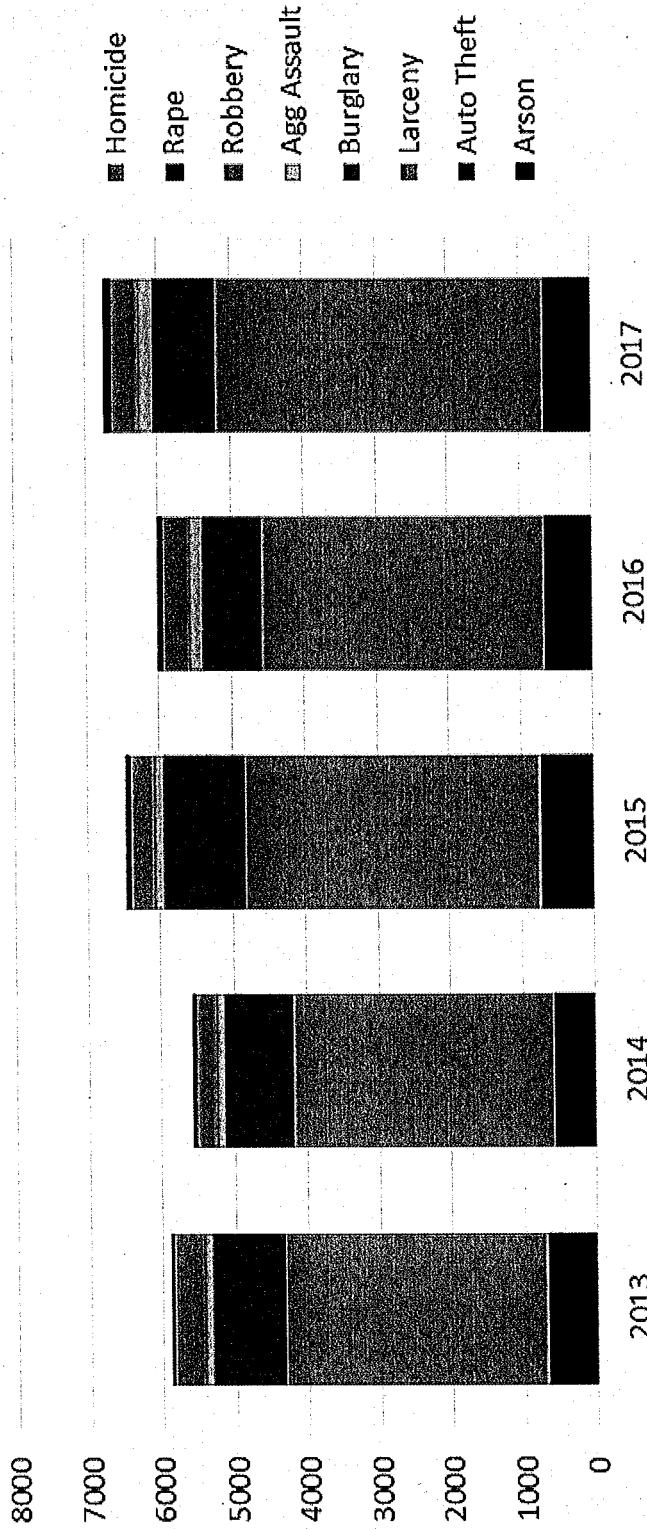
Violent Crimes

- Murder
- Rape
- Robbery
- Aggravated Assault

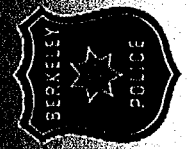


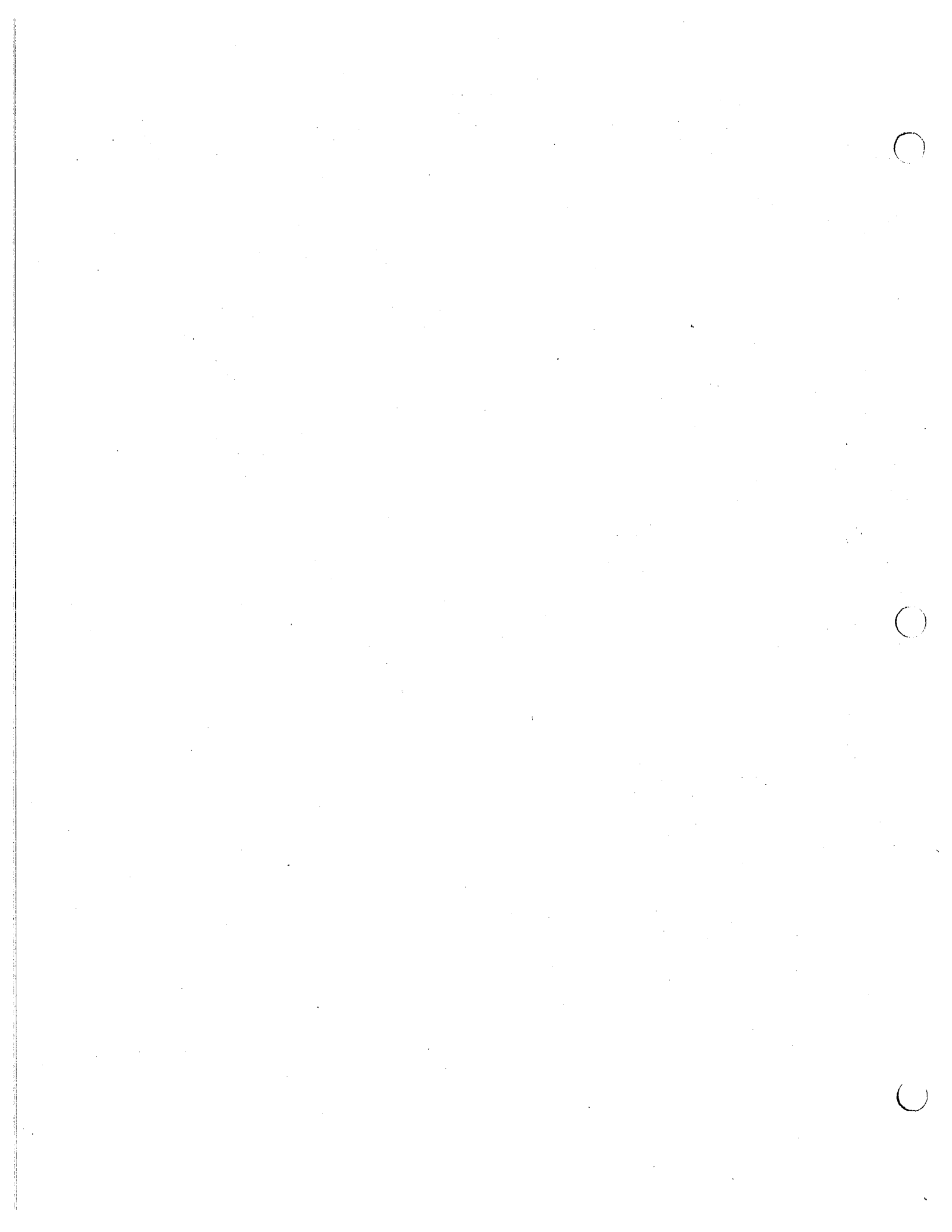


Total Part One Crimes 2013-2017

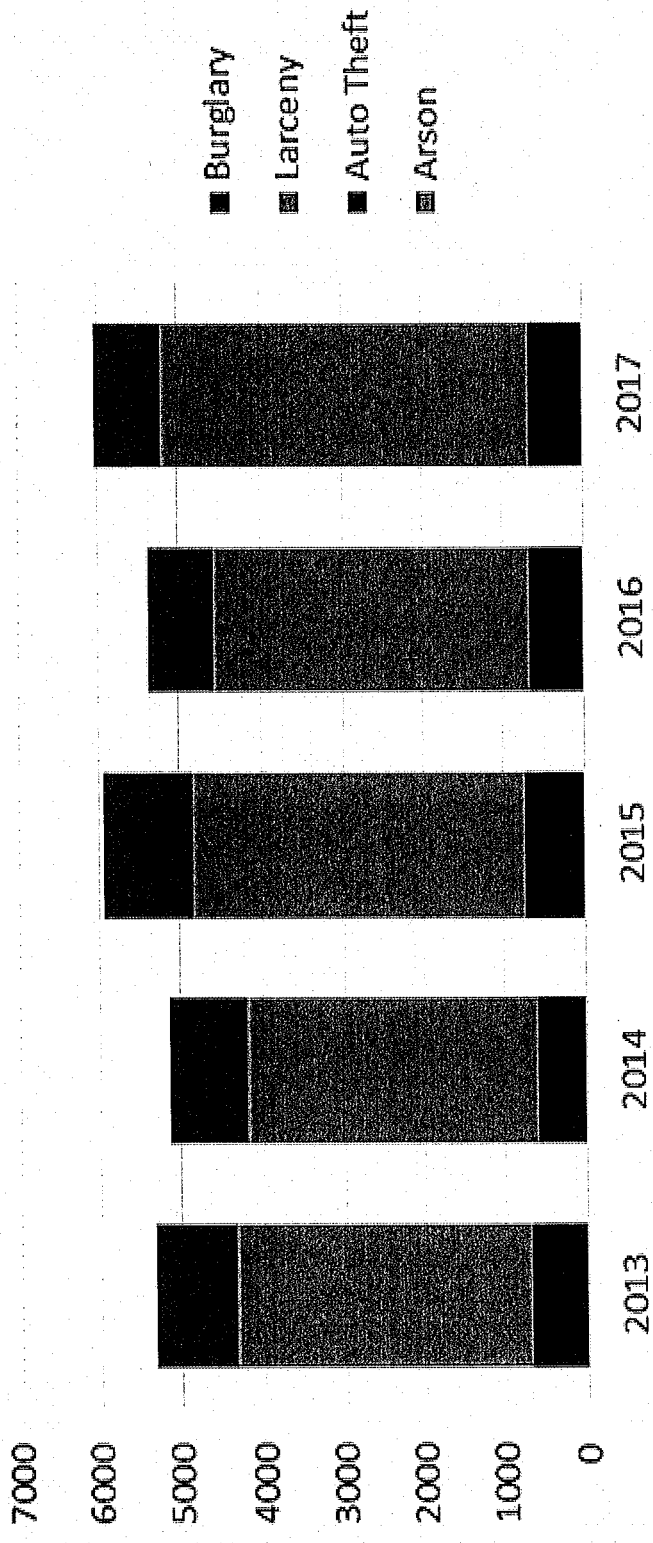


	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2013	4	29	409	122	978	3664	668	16
2014	3	25	265	132	934	3624	556	16
2015	1	41	331	135	1089	4118	713	20
2016	2	53	362	182	803	3927	647	20
2017	1	87	364	218	841	4556	619	33



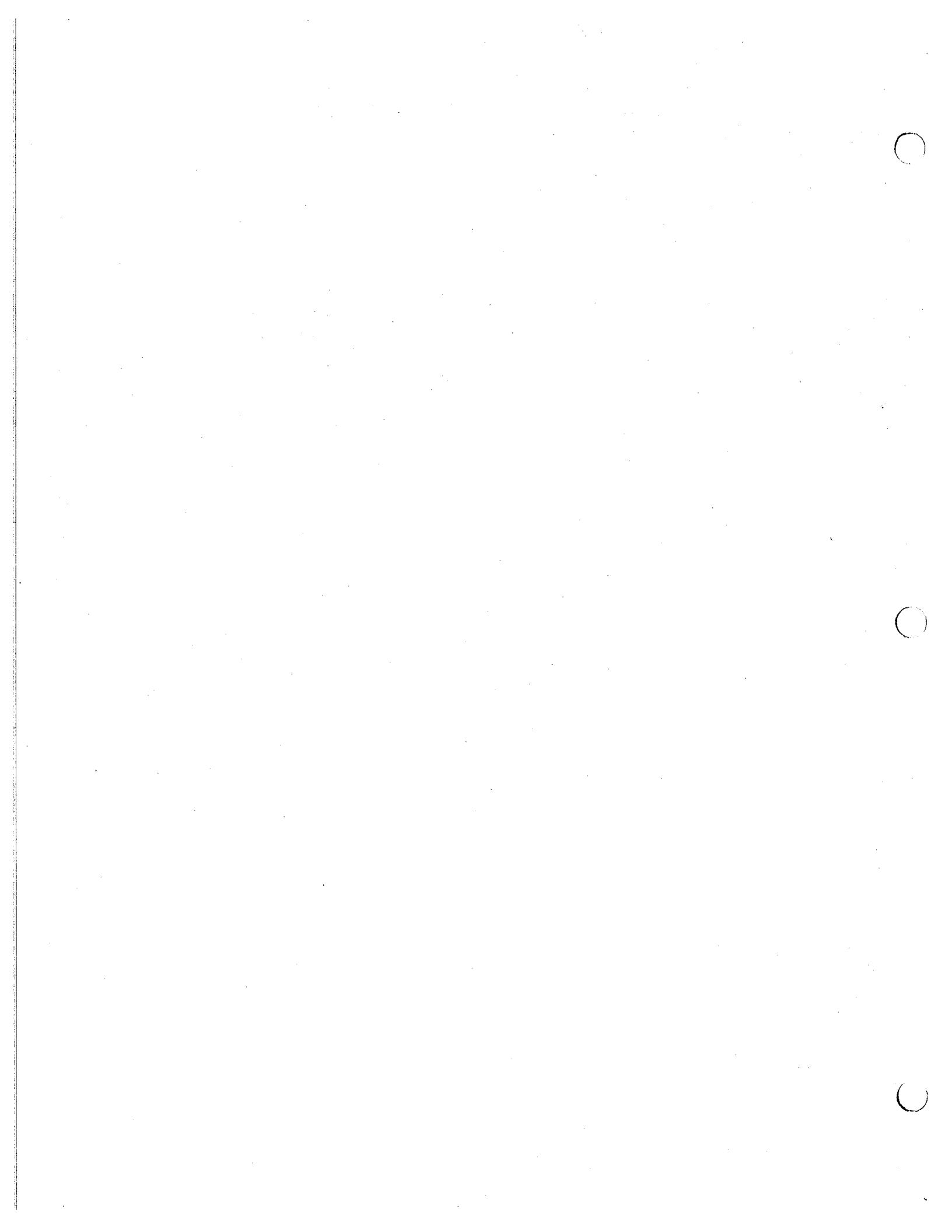


Total Part 1 Property Crimes 2013-2017



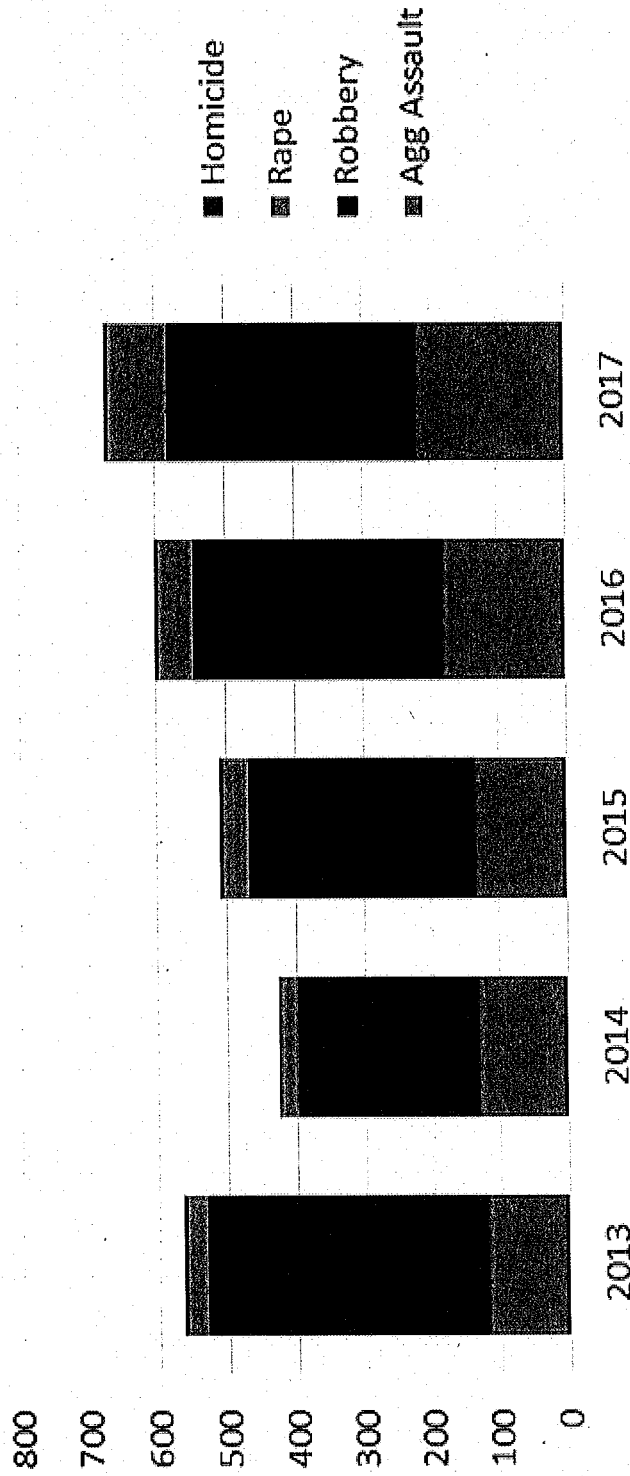
	Burglary	Larceny	Auto Theft	Arson
2013	978	3664	668	16
2014	940	3622	559	16
2015	1089	4118	713	20
2016	803	3927	647	20
2017	841	4556	619	33



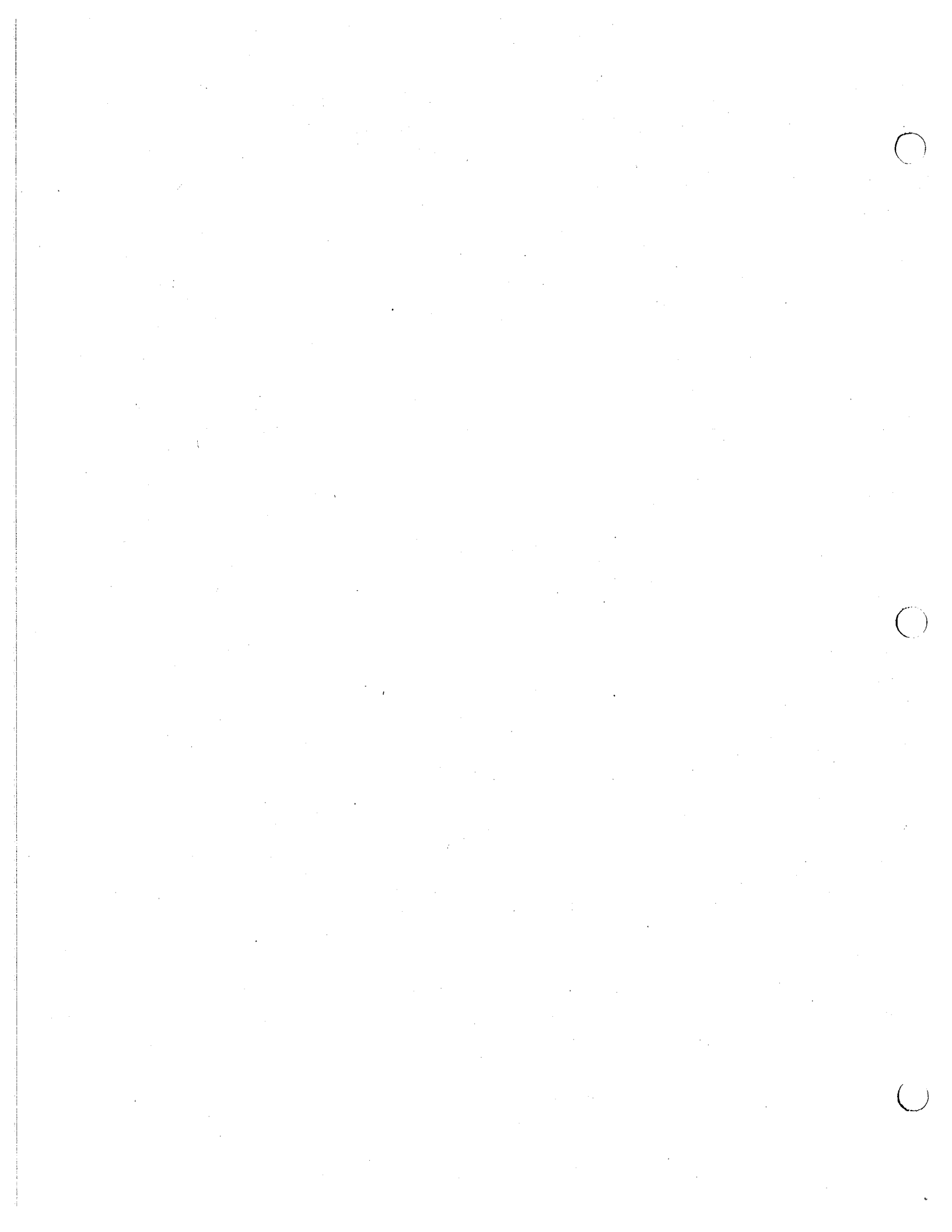


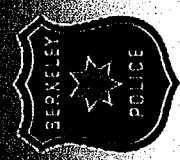


Total Part One Violent Crimes 2013-2017

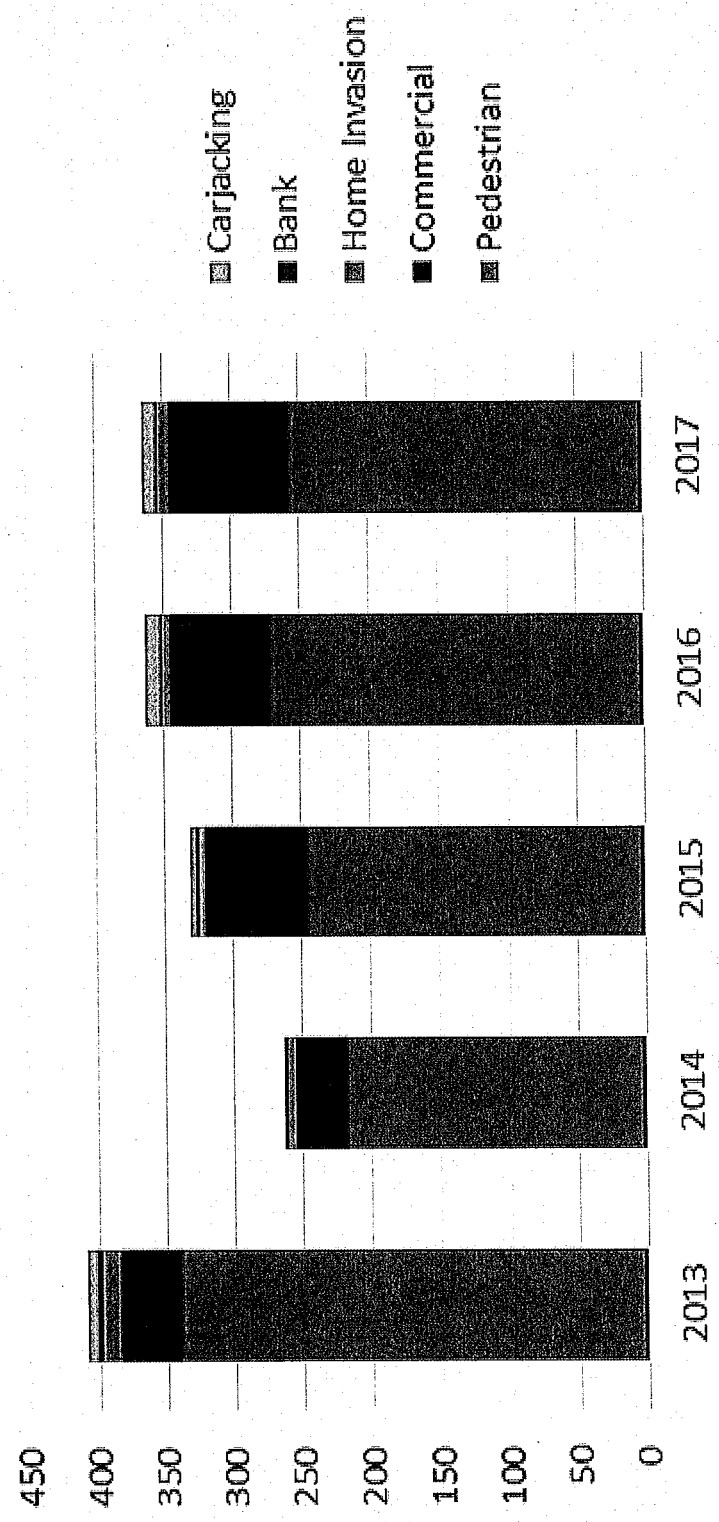


	Homicide	Rape	Robbery	Agg Assault
2013	4	29	409	122
2014	3	25	265	132
2015	1	41	331	135
2016	2	53	362	182
2017	1	87	364	218

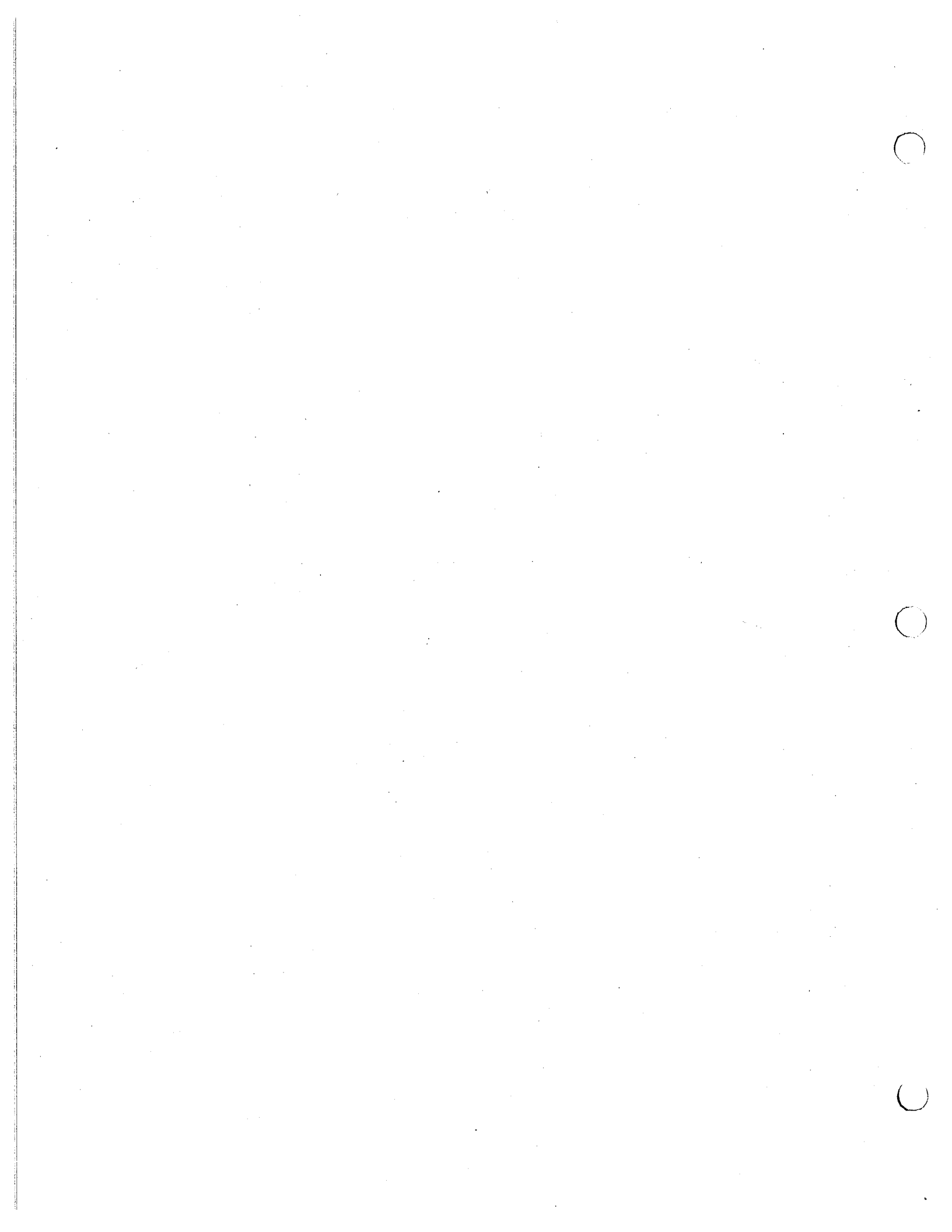




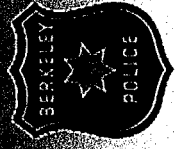
Five-Year Robbery Comparison

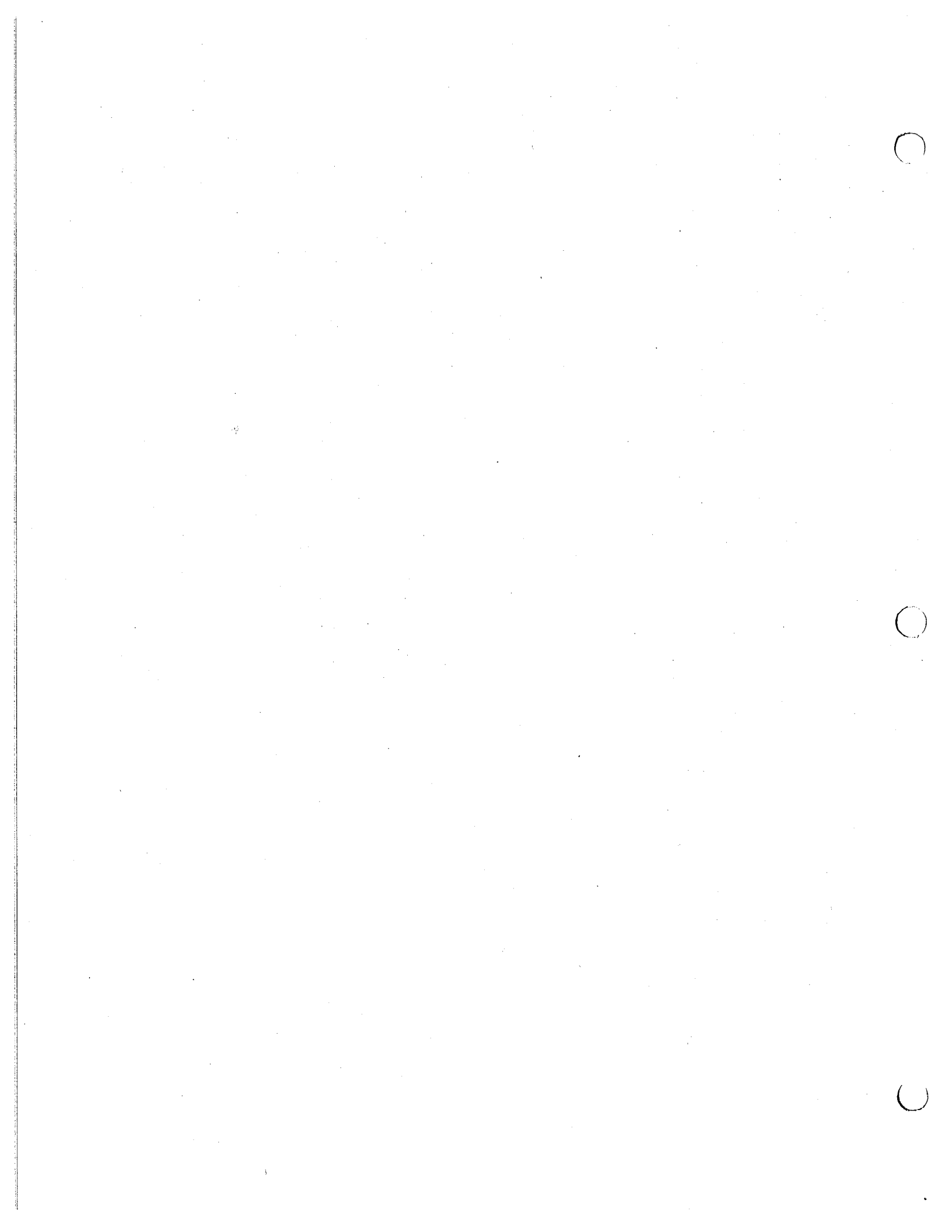


	Pedestrian	Commercial	Home Invasion	Bank	Carjacking
2013	339	45	13	4	8
2014	217	38	5	0	3
2015	245	75	4	3	4
2016	271	73	6	1	11
2017	257	87	9	1	10



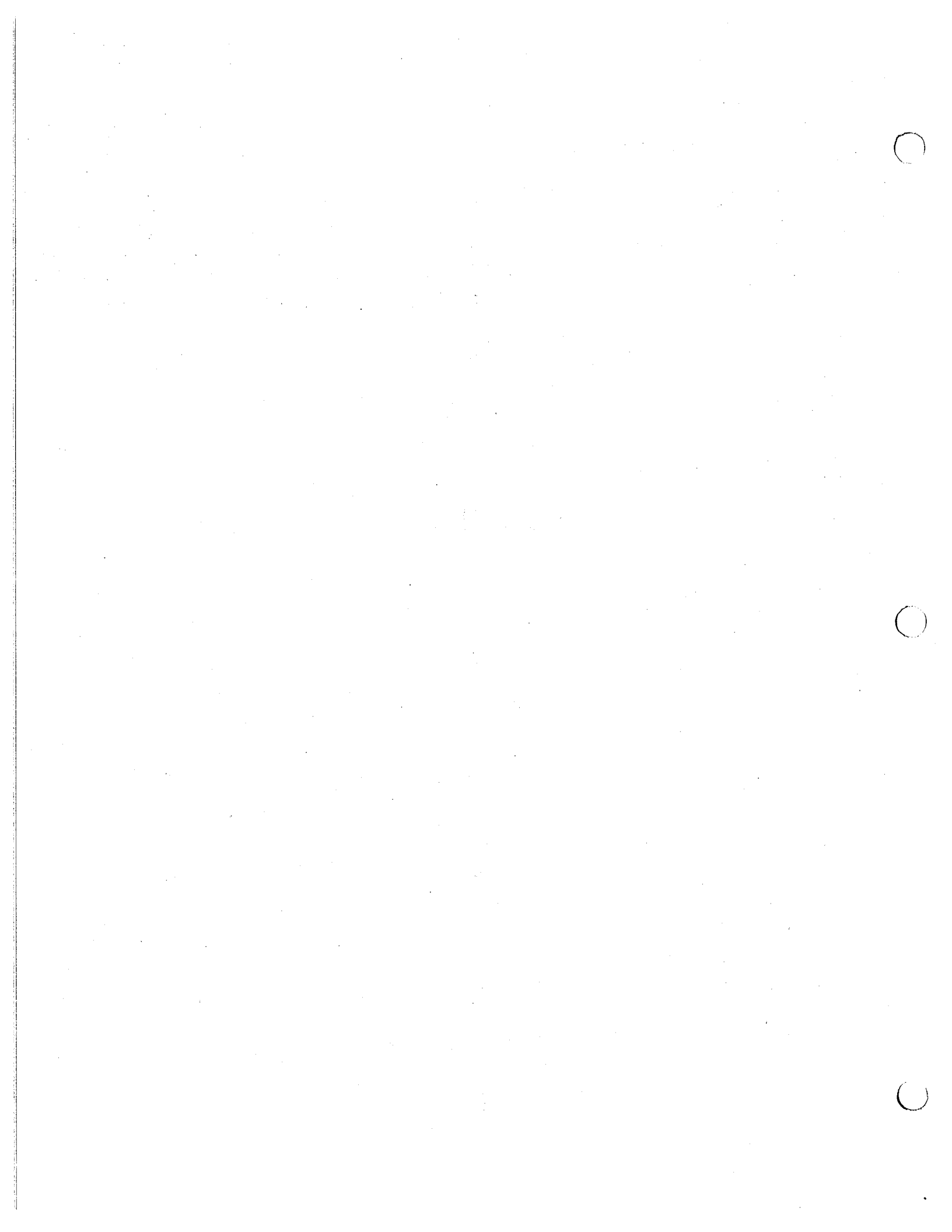
“ People don’t really acknowledge the things that went right in an event like this, but I want to extend the greatest gratitude for the diligence and helpfulness of the Berkeley Police Department, specifically the undercover cop who helped me from the moment of the theft, as well as my police escort.”





Commercial Robbery Series



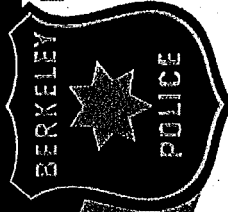


Law and Social Justice



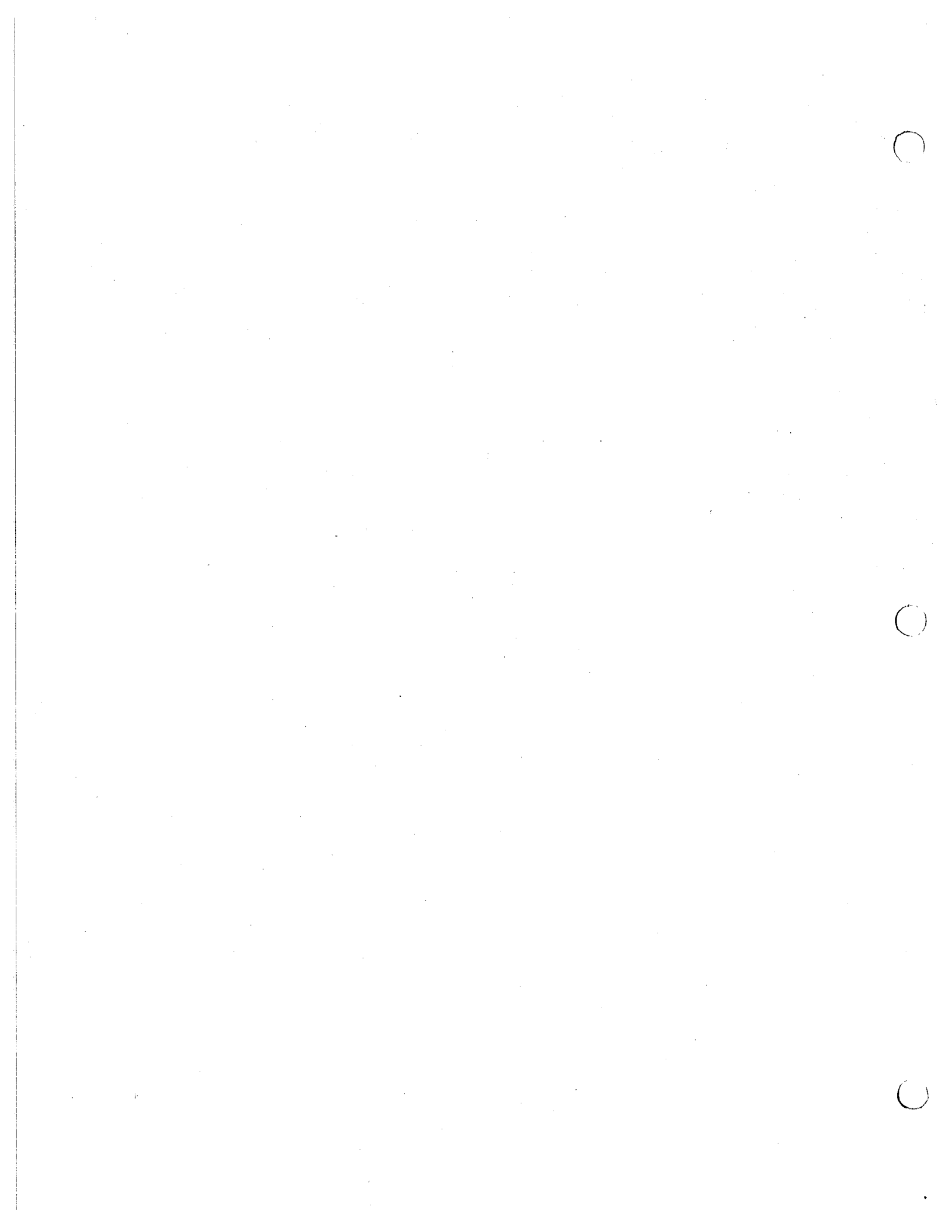
FROM OUR COMMUNITY

JUSTICE PATHWAY



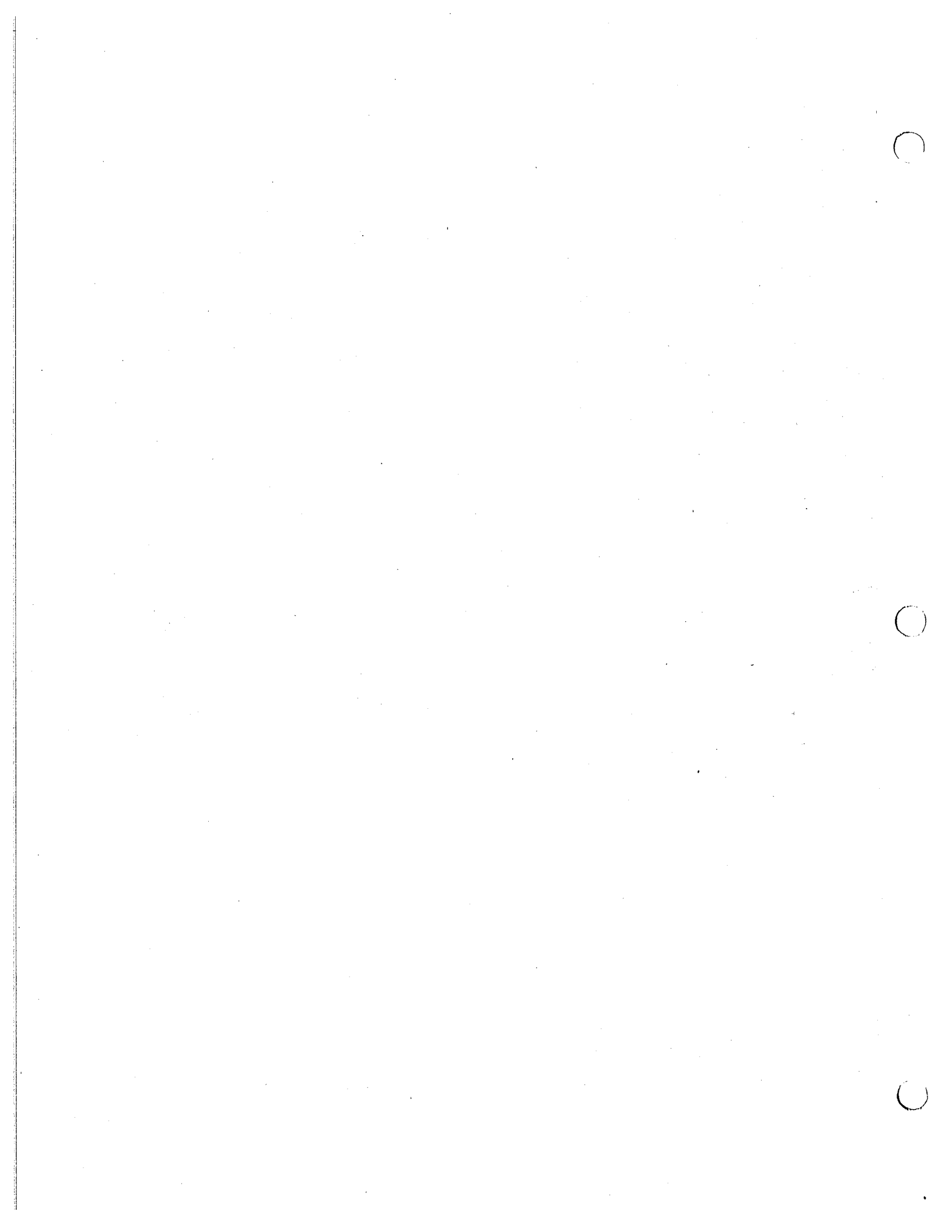
FOR OUR COMMUNITY





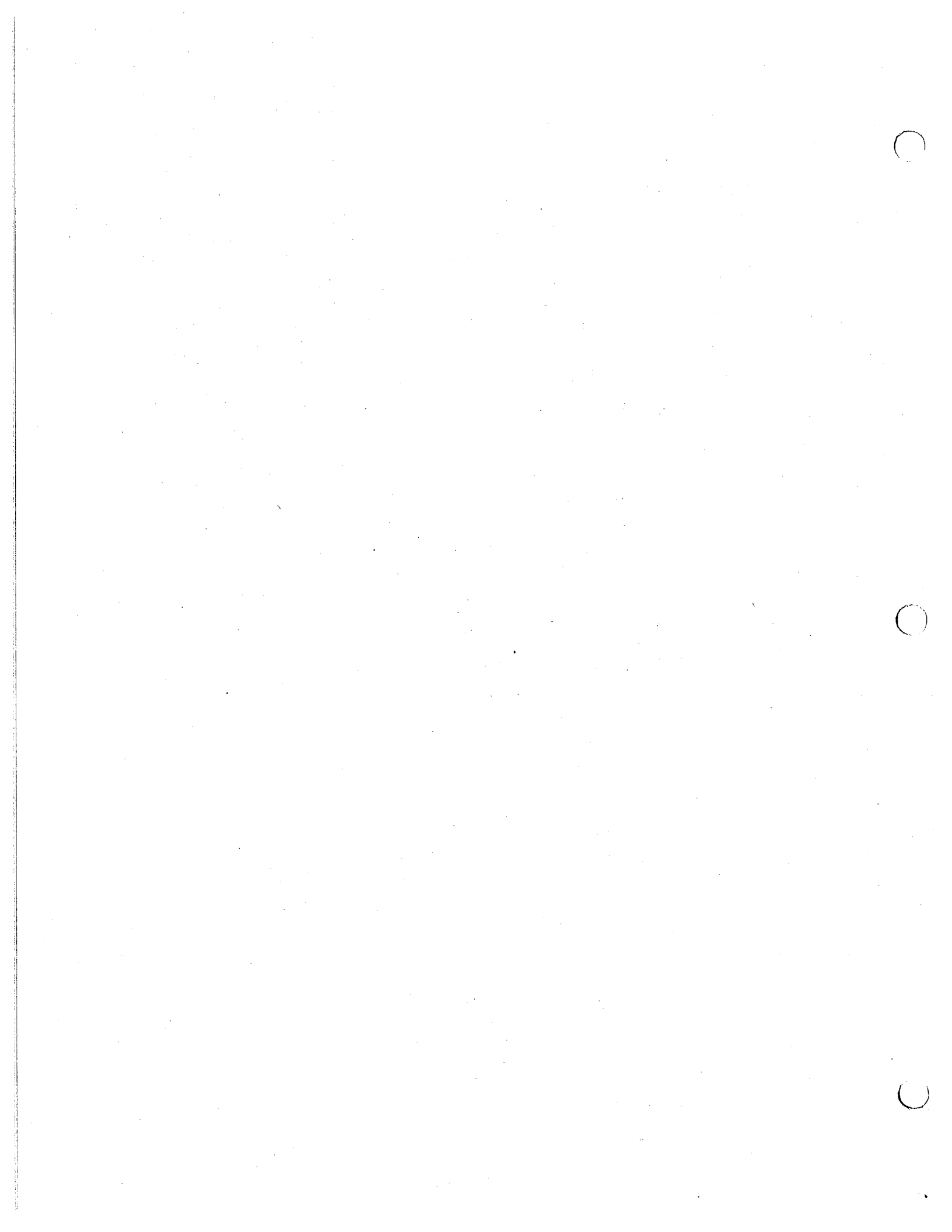
Patrol Ride Along





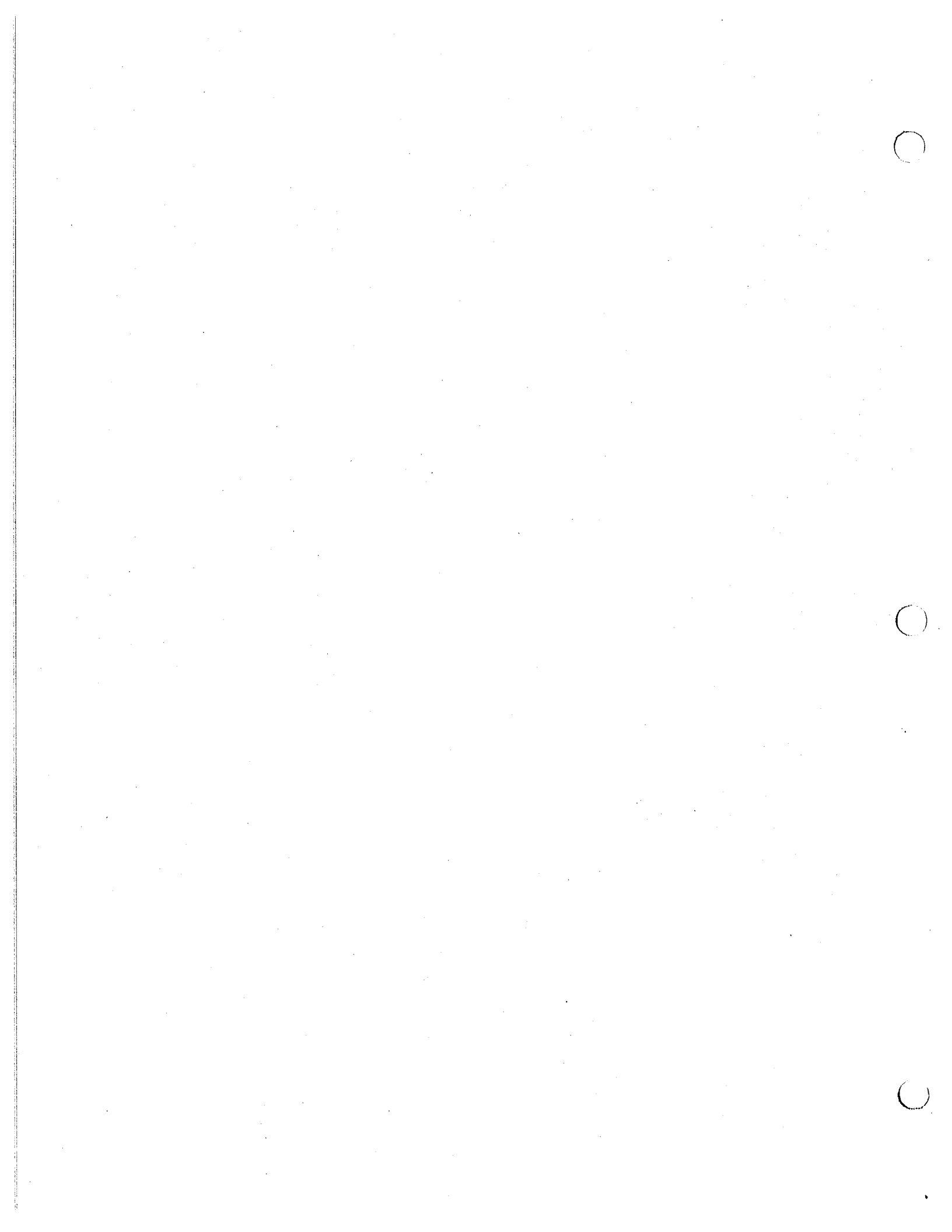
Coffee with a Cop



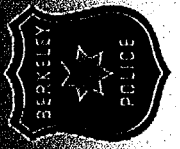


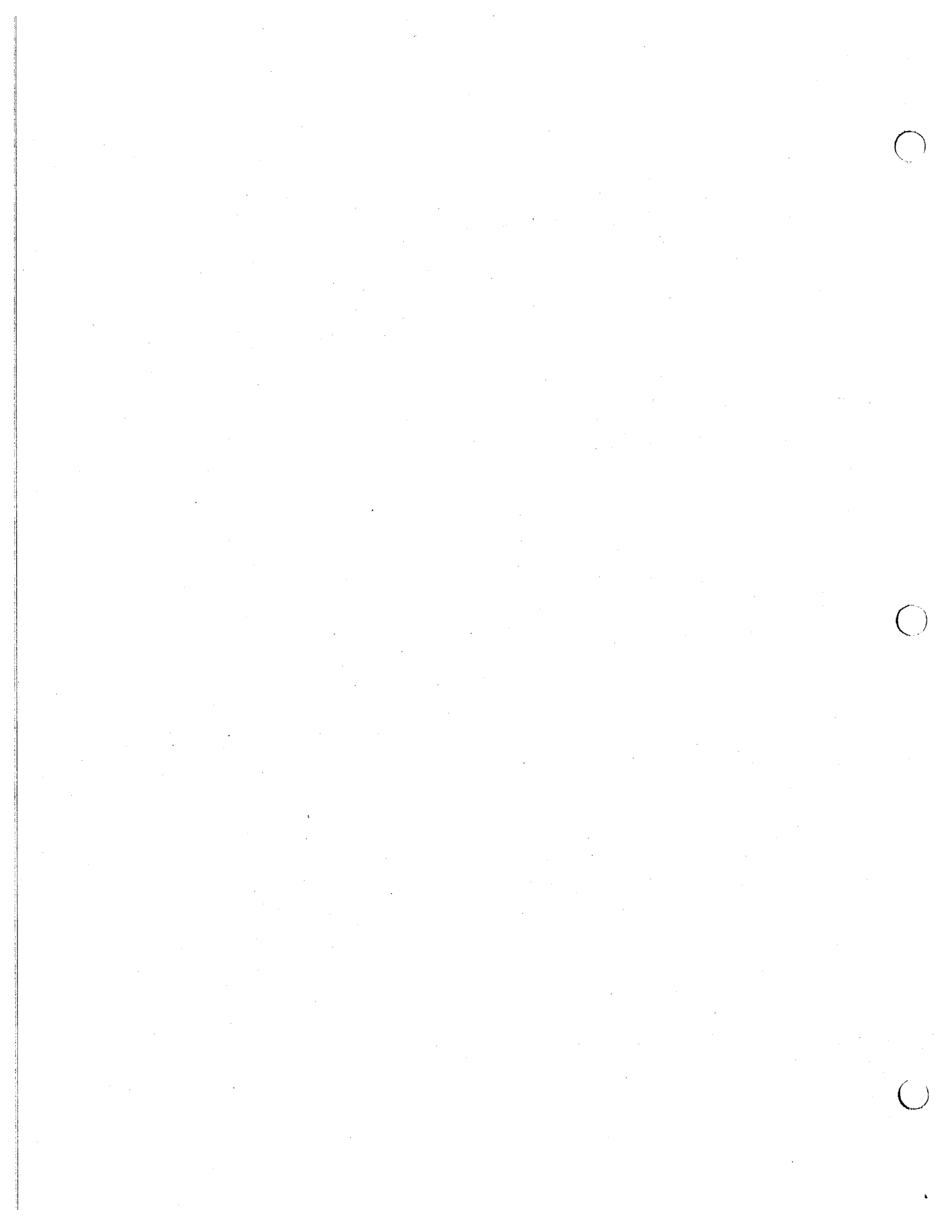
San Francisco Pride Parade





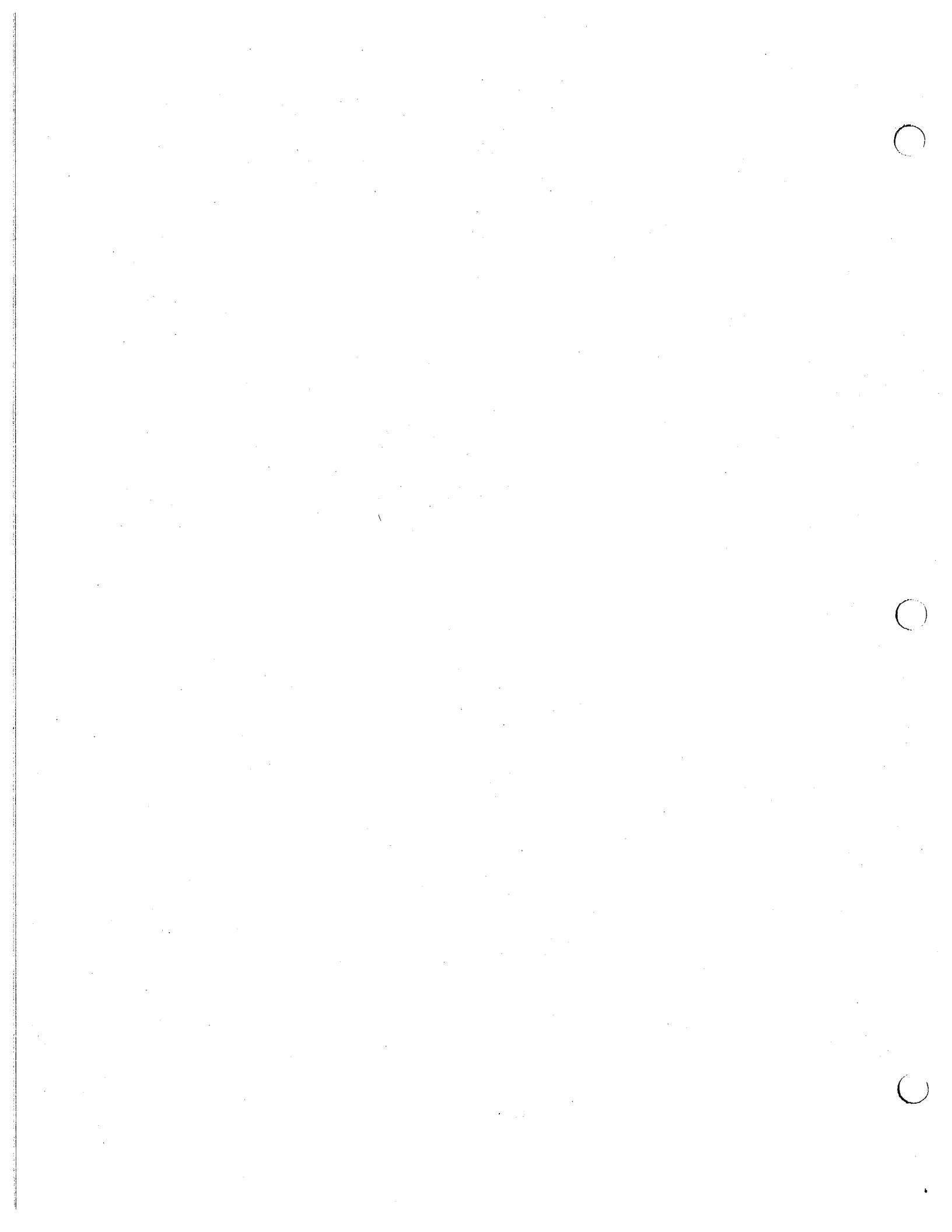
Active Shooter Training





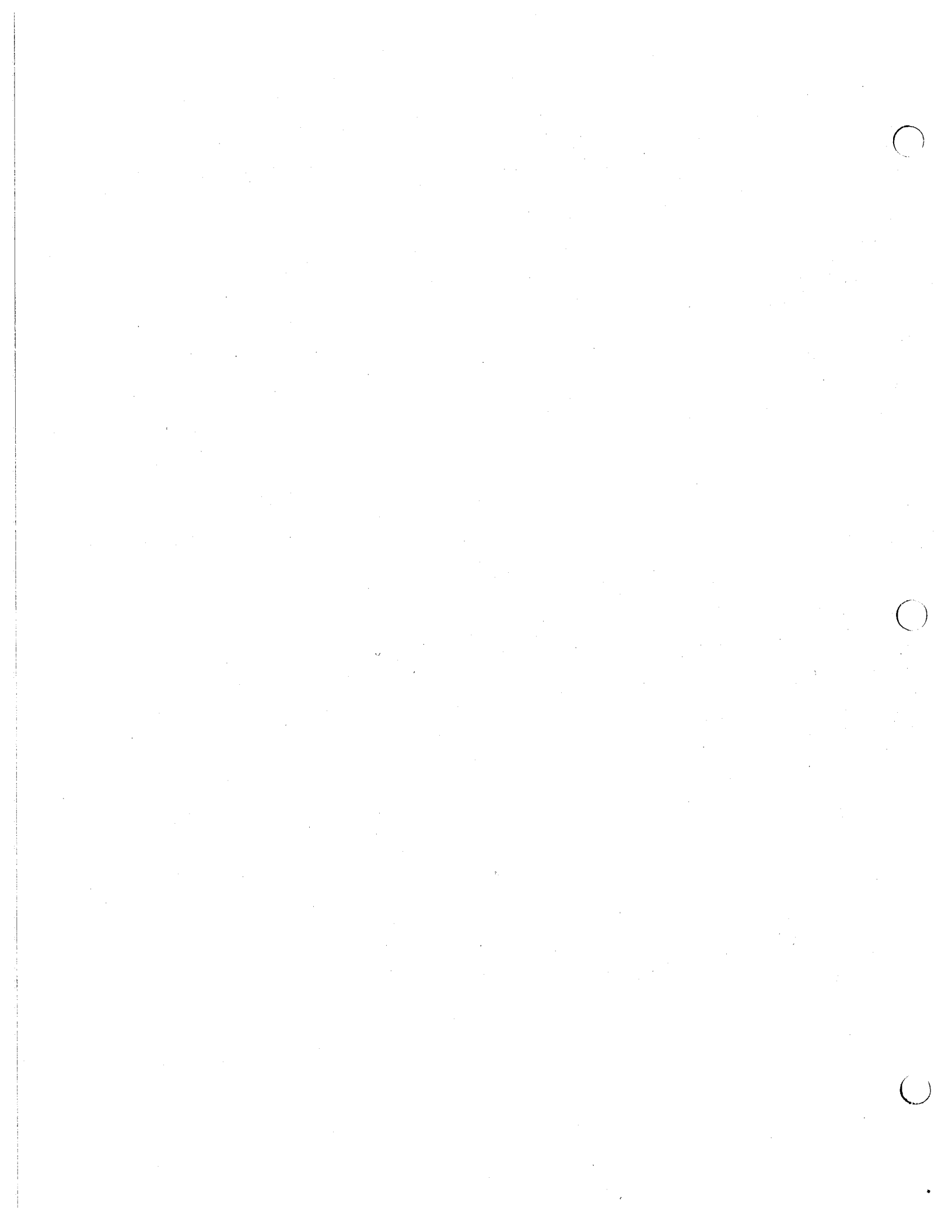
Santa Rosa Fires





2017 Protests





Questions



