

## The Fred Paez incident: two years later

By William Marberry

After several hours of beer drinking, Houston police officers Kevin McCoy and Steven Cain encouraged sexual overtures from Fred Paez, attempting to create an entrapment situation where they could arrest Paez. But something went wrong while arresting Paez, causing him to be killed over what may—or may not—have developed into a misdemeanor offense.

Simple as the facts were, the extenuating circumstances were complex. Fred Paez was openly gay, even having authored a Houston Gay Political Caucus pamphlet that advised total cooperation with the police in the event of arrest—especially wrongful or harassment arrest.

Also, Paez was killed only hours after the Houston Police Department had staged a raid on Mary's, Houston's best known gay bar, arresting 61—the third year that bar had been raided on the eve of Gay Pride Week. Coupled together, these events electrified Houston's heavily gay and cohesive Montrose district. Two unrelated events became one emotion laden issue.

Within days of the killing, a Fred Paez Task Force was formed to begin investigation of the killing. From the 125 interested persons who attended a Monday evening meeting at the Metropolitan Community Church, five members were elected to the Task Force: KPFT station manager Ray Hill, attorney Jim Kuhn, community activist Sue Cummings, Gay Political Caucus president Lee Harrington, and Debra Danburg, a nominee for State Representative.

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assumption that McCoy was intoxicated after five beers, grossly deviating from safe police procedures by failure to communicate a plan of action to the other officer present, going into a dark and unlighted area with Paez, and placing a cocked and loaded gun to the victim's head. Contended Rains, "The officer's judgement was impaired by alcohol."

Defense attorney Hinton, aided by a full table of assisting lawyers, asked for acquittal on the grounds that McCoy was merely performing his duty as a policeman, charging it was actually Paez who caused the accident by resisting arrest.

To instill reasonable doubt in the minds of the jurors, Hinton called officers McCoy and Cain to recount the events of the night of June 28, 1980. During testimony both officers said that the two six-packs of beer consumed between them had no effect whatsoever and they were completely sober. Other police officers testified they had been unable to detect the accused officer had been drinking on the night of the incident.

Expert police officers were called to testify that placing a gun to the head sometimes becomes necessary in unpredictable "street situations." One witness inadvertently likened the hostility and unpredictability of street patrol to a "combat zone."

One often repeated characterization to raise reasonable doubt in the jurors' minds was Hinton's references to Paez as "aggressive."

There were few surprises at the trial since little new information was introduced beyond what had already been known for a year, mostly supplied by the testimony of McCoy, and Cain as the only witness.

Doggedly cool in his delivery and manner, prosecutor Brain Rains was a sharp contrast to defense attorney Hinton's demonstrative and sometimes agitated style. Hinton was the superior in handling the witnesses; Rains never achieved the same degree of rapport with the testifying officers that Hinton did.

Defense attorney John Pizzitola, with his perfectly grayed temples, began final summation by assuring the jurors that McCoy was his friend, then confiding he felt his friend was innocent.

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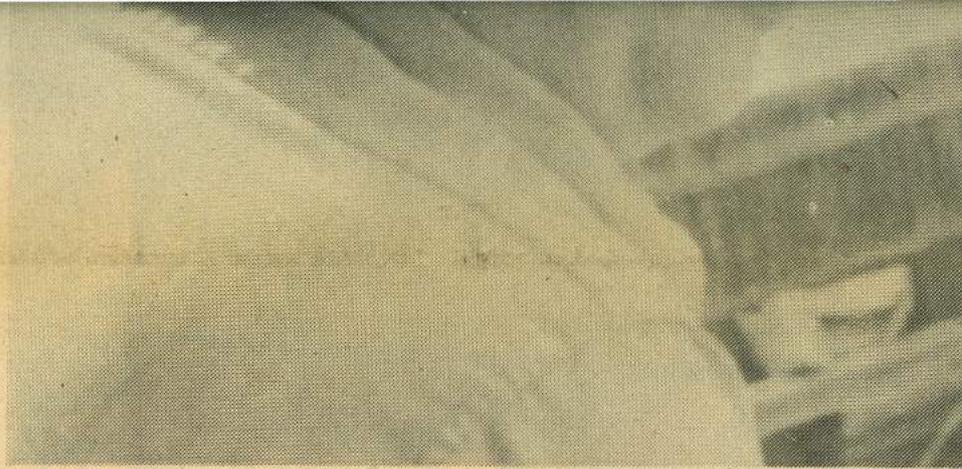
So successful was the Fred Paez Task Force that when the Harris County Medical Examiner's Office released its report at the end of August, 1980, ruling Paez's death accidental, other investigations did not stop.

Said Mary Sinderson, chief of the civil rights division of the U.S. Attorney's Office, "Even if a death is accidental, if it is the result of a civil rights violation, it is still within the purview of federal statutes. I'm not telling you we have made any such conclusion. Our investigation is continuing."

Terry Wilson of the district attorney's office said his investigators were "still trying to run down some folks" to complete their study, just as if the ruling had been homicide. This in spite of the acknowledgement by the medical examiner's office that there had been pressure on the office for "anything they could find that was not in agreement with what we were finding."

The medical examiner's report concluded that officer McCoy's gun accidentally discharged to cause the death of Paez, and there was no evidence to contradict the officers' version of the death. There were no signs of struggle. Contact burns were present where the bullet entered Paez's head from a straight-on shot which angled only ten degrees up and ten degrees to the right. And too, there were hairs from Paez's head on officer McCoy's non-standard issue, chromed .45 pistol.

McCoy's lawyer, Michael Hinton, may have thought he was summing up the Paez incident for good when he told reporters, referring to the medical examiner's report, that there "are going to be some misfortunes from time to time as long as police officers carry guns. ... Houston is



Fred Paez

too tough a town, this is too tough a nation for officers to enforce the law without weapons."

Nonetheless, on October 15, 1980, the Harris County Grand Jury indicted McCoy on a charge of negligent homicide after three days of testimony which included appearances from members of the gay community.

News media repeatedly reminded the public that negligent homicide was the same charge first used against two policemen eventually given probation in the death of Joe Campos Torres.

The grand jury indictment charged that officer McCoy, "while under the influence of alcoholic beverage, placed a cocked, loaded pistol against the head of (Paez) and as a result thereof said pistol discharged," killing Paez.

Though only a misdemeanor charge, the trial would take place in felony court because the accused was a public official. Maximum penalty for negligent homicide is one year in jail and a \$2000 fine.

Certainly no rookie cop, McCoy had a good record, an excellent and unblemished record. Never before—*never*—had McCoy had to even fire his gun during an arrest.

The charge was not as strong as wanted, but even a weak charge was better than none at all. "It's a beginning," reacted GPC president Lee Harrington.

"Reaction to the indictment from McCoy and his attorney, Hinton, was laced with emotional surprise, dismay and assurances the case would never end in a conviction," reported the *Houston Post*.

President of the Houston Police Officers Association, Dave Collier, and Police Patrolmens Union president Bob Thomas

were vocal about saying gay pressure contributed to the indictment. Said Collier, "The gay community was very active in trying to get an indictment in this case." And Thomas alleged that the indictment was to "soothe the public whim of the gay community."

Twice postponed, the misdemeanor trial against Kevin McCoy began on September 1, 1981, in visiting judge Van Stovall's court. Filled to overflowing each day of the trial, the eighth floor courtroom of Houston's Harris County Criminal Courts Building was a strange circus of comings and goings.

McCoy's wife, Mary, and Paez's parents and sister were nearly invisible among the observing masses.

At times the number of uniformed police officers observing the trial exceeded thirty. Lots of plain clothes officers were there, too. Many news reporters and two artists were assigned to the trial.

Fred Paez Task Force members Ray Hill and Sue Cummings were there, and GPC president Lee Harrington was there with some of his membership. Steve Shiflett appeared at the trial.

Some local politicians kept an eye on the trial, too. Mayoral candidate Noble Ginther had an aid making occasional appearances at McCoy's trial while he made news headlines from a different floor of the same building with his lawsuit over Houston's property tax inequities. State Representative Debra Danburg sent an aid to observe parts of the trial; Danburg even made one brief appearance herself. The court room was always full, and someone was always coming or going.

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Prosecutor Rains' summation concentrated on McCoy's drinking as a reason for gross deviations from safe police procedure. The lone prosecutor reminded the jury that the evidence in the case was mostly what HPD chose to release, making a point that HPD had even dispatched a lawyer directly to the scene of the killing.

Through Rains' summation—as throughout the trial—there were repeated objections from Hinton, the sharpest objections coming when Rains told the jurors that it was not Paez on trial and that Paez had not killed himself; it was McCoy who lost control of the situation because of his drinking, committing negligent homicide.

It was after 10:00 p.m. when the jury returned their verdict, having completed four hours of deliberation.

Kevin McCoy was acquitted; the jury ruled him "not guilty" of negligent homicide in the shooting of Paez.

Within the gay community, which had been the driving force to bring McCoy to trial, the predominant opinion was that although a verdict had been rendered, justice was not serviced. "I heard enough evidence to convict on that indictment and I heard enough evidence to discredit the whole story," said gay spokesman Ray Hill.

The verdict agreed with the medical examiner's findings of a year earlier. The requirements of the law had been met.

When the trial ended and McCoy went back to his HPD job, the saga of Paez did not end. The night after the trial verdict, there was a gay "community meeting" to discuss available options in seeking to restore the mutilated reputation of Fred Paez. Too many people knew Paez as a good person, and a gentle person.