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TO: U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT ASSISTANCE

FROM: Arnold Markle, State's Attorney - Grantee
New Haven County at New Haven
121 Elm Street
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RE: GRANT NO. 191 - FINAL REPORT

Submitted herewith is the Grantee's Final Report.



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TABLE OF CONTENTS

Part A - Grant No. 191 - Final Report by Arnold Markle,
Project Director

Part B - Evaluation Report by Wayne Mucci,
Project Evaluation Officer

INDEX - MEMORANDA OF LAW

1. VOL. I, NO. 50 - Primary Illegal Act Does Not
Necessarily Require
(A) Dismissal of Information/Indictment nor
(B) Suppression of Evidence
2. VOL.II, NO. 1 Right Of Officer to Act REasonably
To Protect the Public and/or Himself -
Terry & Sibron & Peters
3. VOL.II, NO. 8 Establishing the Chain or Custody of
An Article - Some Suggested Procedures
To Insure Admissibility
4. VIOL.II, NO.10 SPINELLI - A Restatement Concerning
The Proper Method of Establishing
Probable Cause
5. VOL.II, NO. 12 Permissible Area of Search Incident
To An Arrest With or Without an Arrest
Warrant - A New And Severe Limitation
On The Permissible Area of Search

TEACHING AIDS

1. INFORMANT - How To Protect Informant With
Protective Layers In The Affidavit
2. MANDATORY POLICE PROCEDURE IN CONDUCTING A LINEUP
OF AN ARRESTED PERSON
3. AFFIDAVIT - United States v. Halsey (S.D.N.Y.1966)
257 F.Supp. 1002
4. USE OF SENSES - by Police Officer to Establish Probable
Cause also POLICE EXPERIENCE
5. SECOND LOOK AT MIRANDA - Are We Too Restrictive In
Its Interpretation?

F I N A L R E P O R T

"The Court's decisions have come in such rapid succession, and some are so technical, that many criminal lawyers have not yet mastered them. This threatens the average policeman with procedural paralysis - he's afraid that anything he does may be wrong. * * * ."

The Law - Crime Before The Court, by Fred P. Graham, New York Times, October 1, 1967.

The above quotation from the New York Times very accurately describes the law enforcement officer's dilemma as far as the pronouncements of the Supreme Court of the United States are concerned. Certainly, with the advent of Mapp v. Ohio. 367 U.S. 643, the law enforcement officer at the local and state level has been faced with the necessity of becoming familiar with all of the applicable rules of law as they have developed over the many years concerning the Fourth, Fifth and Sixth Amendment, and as they continue to develop on a day-by-day basis.

Thus, one of the main aims and the true thrust of the law enforcement training program conducted under Grant No. 191, Law Enforcement Assistance Act, was to properly train the local and state law enforcement officer to fully understand the historical background of the Bill of Rights as well as the development of present day interpretations of the relevant Articles of said Bill of Rights. In addition, once the officer understood the background of the Bill of Rights, the current decisions were discussed within this framework.

The officers attending the course of instruction were found to be extremely bright and were receptive to the method of instruction. In point of fact, in many instances [too many to satisfy this writer] this course of instruction was the first formal training offered to these experienced officers in this crucial field of police training, and their hunger and rate of absorption was astounding. To emphasize

their desire to become really knowledgeable and professional, one must bear in mind that these officers traveled great distances to attend the course, coming from almost every organized police department in the State and from the very borders of the State, attending at night after a full day of duty and without extra compensation.

The author is also quick to point out that the law enforcement officer who was selected and attended the course of instruction was, in the majority of instances, an experienced officer who had spent many years in his department.

NUMBER OF GRADUATES

During the two years of the Grant's life, the number of officers and prosecutors who graduated came to six hundred and fourteen men and women. The Grant reached every major police department in the State and the vast majority of the small departments. In sum total, the graduates represented the following number of police departments and/or allied agencies throughout the State, to wit: 83.

PERSONNEL AND METHOD OF INSTRUCTION

The classes themselves were conducted by two men, the Project Director and author of this report, Arnold Markle, Esq., and Leander Gray, Esq., who also acted as Financial Officer. Mr. Markle was, during the life of the Grant, the Chief Prosecuting Attorney* and the State's Attorney** for New Haven County. Mr. Gray was an Assistant Chief Prosecuting Attorney for the State of Connecticut and later a private attorney in the City of New Haven. The project was conducted under a contract with the grantee, the Connecticut Municipal Police Training Council, whose Executive Director gave unstintingly of his time and efforts.

Classes were conducted for a period of six weeks, one night per week, with each session lasting three hours. If an officer missed two or more classes, he failed to graduate. If the officer graduated, then he was given a diploma signifying that he had successfully completed the course of instruction. One re-training

seminar was held midway through the Grant and approximately two hundred and twelve officers attended the same. The classes were held at the Yale Law School, which graciously extended us the privilege of using its facilities. It is interesting to note that the law enforcement officers attending the classes preferred to utilize this facility over the many others offered as the Grant became accepted.

MEMORANDA OF LAW AND TRAINING HANDOUTS

The Project Director wrote sixty-nine Memoranda of Law and designed numerous training aids that were used to supplement the lectures. The Memoranda of Law were also mailed to all graduates to keep them abreast of the decisions and court procedures that confronted the law enforcement officer. If a new decision, such as Terry, Sibron and Peters [stop-and-frisk] was announced, a Memorandum of Law was written by the Project Director and immediately used in the class then in session and mailed to past graduates so that they could keep abreast of such decisions. As word spread to various police departments in neighboring states concerning the Memoranda of Law, we received numerous requests for the same. Thus, the Memoranda of Law are being utilized at the present time by members of the judiciary, prosecution and law enforcement. We have also received requests from as far away as Florida and Vermont and from several federal law enforcement agencies. An Index of the Memoranda of Law is attached hereunto and gives one the range of subjects covered. In addition, several Memoranda are attached hereunto so that the reader will understand the value of the same. Training aids were found helpful and usually consisted of one page handouts that were used to emphasize the subject under consideration. Copies of the same are attached hereunto for consideration by the reader.

COURSE CONTENT AND SUBJECTS COVERED

The course content and material covered the following areas: The historic development of the Bill of Rights as it applies to law enforcement; the writ of assistance under the British system as opposed to the requirement of probable cause under the Fourth Amendment; an explanation of what constitutes probable cause for an arrest without a warrant, an arrest warrant affidavit and/or a search warrant affidavit; how to spell out the facts and circumstances in an affidavit or on the witness stand, so as to show the issuing judge that there is probable cause in accord with the dictates of Aguilar and Spinelli; how to draw affidavits for search and/or arrest warrants; how to convert fact situations from an arrest warrant into facts for a search warrant; a check list for the officer to bear in mind when drawing an affidavit in an arrest and/or search warrant situation; the seizure of mere evidence incident to an arrest under the edict of Warden v. Hayden, and the limitation on the seizure of mere evidence under the existing statute pertaining to search warrants in the State of Connecticut; permissible areas of search as incident to service of arrest and/or search warrant; the method of entry to effectuate the service of an arrest and/or search warrant or to make an arrest without a warrant; search of the person and the motor vehicle; a discussion of the import of Preston and the requirement that the search be contemporaneous in place and time with the arrest, as well as the exceptions to the Preston rule, including emergency situations and the right to inventory a seized or impounded vehicle under the Cooper case; officers are encouraged to have their departments adopt a general order requiring the inventory of seized or impounded vehicles, etc.; fact situations that do not constitute a search under the Fourth Amendment, to wit: plain view, abandonment, on property to investigate a complaint and/or suppress a breach of peace, etc.; consent to search; how to obtain consent; the burden of proof where consent is involved; who can validly give consent; the dangers of relying on consent; entrapment as a legal defense; how to avoid

the defense of entrapment; evidence necessary to protect against the claim of entrapment; recent statutory enactments pertaining to criminal discovery as well as the case law applicable to the same as set forth in Brady; preparation of the prosecutive file; the officer and the pre-trial; the officer as an investigator and his duties when seizing evidence to assure a proper chain of custody for introduction into evidence; the officer as a witness and his demeanor on the witness stand; the proper use of photography as an investigative tool; the use of electronic equipment; when the use is legal and when it is illegal; the import of the recent decisions pertaining to the use of electronic equipment; a practical exhibition of electronic equipment, indicating what is available and practical; [the historical development of the reason that the Supreme Court reviews confession cases]; the totality of circumstances as effecting the admissibility of a confession; a discussion of the Wylie Murder case; the scope and development of the law pertaining to confessions as reflected by Massiah, Escobedo and Miranda; a discussion of the proper warnings as required by Miranda and when the same must be given to the subject; how to live with Miranda; where and when the warnings must be given; the requirement of counsel at lineups as set forth in Wade; how to live with Wade; the impact of Simmons upon identification by the victim or witness where the police department is utilizing photographs; how to comply and live with Simmons; the requirements of the Connecticut Statutes pertaining to arraignment; the requirements of the Connecticut Statutes relative to retroactive seizure warrants in liquor and gambling cases; the Connecticut Statutes pertaining to juvenile offenders are discussed as well as the requirements of In Re Gault; how to research a case citation and/or an actual case is discussed as well as how to read the Memoranda of Law that are issued; consciousness of guilt as substantive evidence is also discussed as well as the proper use of a prior felony conviction to impeach the credibility of a witness and/or defendant.

Other subjects were discussed as they were raised by the officers during the class sessions. If they were deemed of sufficient importance, they were added to the subject matter for subsequent classes.

EVALUATION

As the course of instruction progressed and evaluations were completed by Wayne Mucci, the Project Evaluation Officer, an interesting, but important concern revealed itself. That concern was the fact that the law enforcement officer receives little instruction from the prosecuting officers with whom he is in constant contact. As a result, there is a great deal of mistrust or misunderstanding of the prosecutor by the law enforcement officer. On the other hand, when a prosecuting attorney was included in a class as a student, and there were several prosecutors who attended the course, the officers were quick to note that presence and appreciate the same. Thus, if another such Grant were to be undertaken, the inclusion of prosecuting officials should be encouraged.

CONCLUSIONS

There should be more instruction given by those responsible for the prosecution to law enforcement officers so that there will be an interchange of trust and understanding by both branches of the enforcement arm of government. The prosecution should be made to understand the problems of the law enforcement officer as they actually exist on the street and in actual confrontations. If they do not so-partake, they will never be adequate to lead law enforcement.

The size of the classes were fixed at a minimum of twenty-five officers, and in the future, consideration should be given to reducing this number to approximately fifteen. The reason for the smaller class is that the officers will participate more fully in

smaller, intimate groups than they will if they are part of a larger group. In actual experience, the author found that the officers would not freely participate until they had attended the first two or three classes and only at that stage would they feel free to commence to ask questions, etc.

It might be noted that we attempted to furnish each class with a roster of its class members so that they might contact each other as years passed. We found that graduates would utilize this list to seek help from other departments when the criminal problem reached across city or town lines. Members of the classes quickly formed a select group of officers and still rely upon each other in much the same way that members of the same business organization will use one another.

The author feels that this type of program should be encouraged throughout the United States. If we, as prosecutors, are to be effective in court, we must depend upon the officer in the field. If that law enforcement officer is not properly trained and fails to act properly, then the prosecution will fail. As the Supreme Court of the United States continues to change the rules of law pertaining to the important field of police procedures, the officer is left in a morass of confusion unless he is immediately instructed in the full import of the decisions.

Not without significance is the fact that since we have had to cease class room instruction, two constitutional decisions have been enunciated by the Supreme Court of the United States which have drastically effected the law enforcement officer in the performance of his duties. I have in mind the Spinelli and the Chimel decisions. Fortunately, the Grant was able to reach the graduates of the classes and keep them apprised of the developing concepts of constitutional law as effected by Spinelli and Chimel, by virtue of the Memoranda of Law which were immediately issued to all graduates.

It is the author's feeling that it is of the utmost importance that the local and state law enforcement officer, who are daily

confronted with on-the-crime scene decisions, have the finest legal training available, since they are the "front-line troops" in the constant fight against crime. Their decisions at the crime scene does effect subsequent prosecution of major criminal offenders.

The officer wants to be a true professional; he is ready to be a true professional; and he has the ability, talent and brains to act as such, if we give him the appropriate tools, which are in the main, a proper education and training in the law of arrest, search and seizure, confessions and other constitutional mandates which now control their actions.

It is heartwarming to note that although the Grant has terminated in terms of time, we have on hand and continue to receive, numerous requests from individual officers and various departments for the acceptance of personnel if the class room instruction were to be resumed. The only sadness attached to the entire program has been that we have had to terminate what has been probably the most fruitful program ever commenced in this State in the field of the proper training of law enforcement officers to understand and comply with the new demands made upon them by the Supreme Court through its most recent decisions.

* The Chief Prosecuting Attorney for the Circuit Court, State of Connecticut, has jurisdiction over the 18 Circuit Courts throughout the State of Connecticut and approximately 80 prosecuting attorneys and assistant prosecuting attorneys who staff said Court. This Court has a misdemeanor jurisdiction and does conduct probable cause hearings to bind over felons to the Superior Court.

** The State's Attorney's Office [Superior Court] has felony jurisdiction for the County of New Haven which encompasses 15 towns. There are four Assistant State's Attorneys and five County Detectives attached to said office.

PART B

This section of the report is an attempt to assess, with as much precision as possible, the benefits of the project. It, thus, summarizes the results of questionnaires that were sent to participants, such results having been analyzed in greater detail in previous reports. Included in the assessment, and perhaps the most important part of it, are recommendations as to future training in this area, and a set of policy issues which, upon consideration and resolution, should govern the action of the State in the coming years.

It is apparent, from the review of training efforts currently underway in Connecticut, that there is room for substantial improvement in law enforcement efforts. One of the major needs is the provision of high quality legal training, such as has been provided by the present course. The major issue is how to continue the work already done under this OLEA grant. It is likely that funds under the Safe Streets and Crime Control Act of 1968 can pick up the slack.

Part B covers briefly four areas: (1) the relation of legal training to professionalization of the police, (2) the participants' response to the course, (3) an assessment of its value, and (4) implications for future training. In the latter section, recommendations are made.

Professional Values and Legal Training

The need for additional training of police officers and officials has become clearly apparent over the past several years. In this regard, Connecticut is no different from other states. The scope of training required to professionalize the police is broad: from training in human relations and understanding of minority groups on the one hand, to training in the meaning of our legal heritage and requirements of the constitution on the other.

The police have often become the focal point of violent controversy. Much of the resentment would perhaps be best directed at other agents of our society, yet the police, being the most visible, may find themselves the most convenient scapegoat. Yet, in some cases, police actions cause the controversy, particularly in the area of relations with minority groups. But an area of equal importance, and one which has as great a potential for misunderstanding and adverse consequences, is lack of training in the law, particularly the constitutional standards as have been established by the Supreme Court during the sixties. Lack of training in the criminal law may lead not only to increased tension with minority groups, but also to losing a case through improper investigation or lack of following the rules.

One of the major purposes of the Chief Prosecuting Attorney's Training Program (now the State's Attorney's Law Enforcement Training Program) conducted with federal funds was to explain (a) what the rules are, and (b) the reasons for the rules. It can be stated with little hesitation that these purposes were accomplished, at a level at once more sophisticated, but at the same time more understandable than anything heretofore done in Connecticut.

It is more difficult to determine whether the explanation of the reasons for current decisions in constitutional law leads to agreement with them. Yet, that is not the relevant issue. As long as the police, having been taught the legal bounds on their behavior, can and do conduct themselves within those limits, there is no particular reason why they should agree with the limits. One of the distinguishing marks of a professional is his ability to separate his personal inclinations, biases or preferences from the conduct of his professional responsibilities.

The 614 officers throughout the State who participated in the program should, in the evaluator's opinion, be far better equipped to make this professional distinction than they were in the past.

Response to the Course

Response to the course, on the part of both those attending it and their superiors, has been uniformly favorable. The degree of recognition attained is perhaps illustrated by the number of police chiefs who attended. In Connecticut, the chiefs have traditionally kept their policies and procedures separate from close integration with policies of prosecuting officials. As a matter of fact, there has generally been a barrier between the police and the prosecutor. Such a barrier should, of course, never exist for law enforcement to be most effective. This course shows the first real promise in Connecticut of breaking down this barrier. For Connecticut, this is of great importance, and the momentum built up should not be allowed to falter.

One interesting and important finding with respect to the response to the course is given in the Table below. The percentages are based on 855 responses to the question "What subject was of most benefit to you?". It provides a quick and probably quite accurate indication of the needs of police, and the focus of legal training. Questions relating to search and seizure and probable cause are by a wide margin seen as the most important for those officers attending the course, accounting for over one half of the responses.

<u>Area</u>	<u>Rank</u>	<u>Percent Responses</u> <u>(Number = 855)</u>
Search and Seizure	1	37
Probable Cause	2	20
Miranda	3	12

<u>Area</u>	<u>Rank</u>	<u>Percent Responses</u> <u>(Number = 855)</u>
Arrest	4	9
Affidavits	5	7
Gault	6	5
Policeman as Witness	7	3
Entrapment	8	2
All other	9	2
Total	---	100

When asked about changes in the class, the great majority of respondents suggested that classes should either (a) extend for a period of greater than 6 weeks, or (b) be called back into session from time to time as new decisions are handed down. Other recommendations for greater emphasis are listed below, although it is the opinion of the evaluator that, under the present format, little in the way of accommodation can be made. Slightly less than 50 percent of the respondents (249) made suggestions.

<u>Suggestions for greater emphasis</u>	<u>Number of Officers</u>
Search and Seizure	47
Probable Cause	33
Miranda	27
Gault	19
Methods of Obtaining Confessions	17
Prosecutor's File	15
Arrest Warrants	14
Entrapment	10
Relations with Prosecutor	9
How to prove intent	8
Interrogation of juveniles	6
Homicide Investigations	5
Drug Investigations	5
Use of equipment (photography, electronic surveillance)	5
All others	29

Search and seizure, probable cause and Miranda unsurprisingly lead the list